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International Trade Administration
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Administrative Review
11/1/2011-10/31/2012
**Public Document**
VII: LW/NC

December 16, 2013

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of the 2011-2012 Antidumping Duty Administrative Review: Fresh Garlic from the People's Republic of China

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## SUMMARY

In response to requests from interested parties, the Department of Commerce (Department) is conducting an administrative review (AR) of the antidumping (AD) duty order on fresh garlic from the People's Republic of China (PRC) covering the period of review (POR) of November 1, 2011, through October 31, 2012. This review covers two respondents, Hebei Golden Bird Trading Co., Ltd. (Golden Bird) and Shenzhen Xinboda Industrial Co., Ltd. (Xinboda). The Department preliminarily finds that these two respondents sold subject merchandise to the United States at prices below normal value (NV).

If these preliminary results are adopted in our final results of review, the Department will instruct U.S. Customs and Border Protection (CBP) to assess AD duties on all appropriate entries of subject merchandise during the POR. The Department preliminarily grants a separate rate to nine companies which demonstrated eligibility for separate rate status. The rates assigned to each of these companies can be found in the "Preliminary Results of Review" section of the accompanying preliminary results Federal Register notice. The Department also preliminarily determines that eight companies made no shipments.

Interested parties are invited to comment on these preliminary results. We will issue final results no later than 120 days from the date of publication of this notice pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).

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## BACKGROUND

On November 16, 1994, the Department published the AD duty order on fresh garlic from the PRC.[1] On November 5, 2012, the Department published a notice of opportunity to request an AR of the AD duty order on fresh garlic from the PRC for the POR of November 1, 2011, through October 31, 2012.[2] Between November 14 and 30, 2012, Petitioners[3] and 11 other interested parties filed requests for the Department to initiate an AR.[4] Accordingly, on December 31, 2012, the Department initiated this AR with respect to 139 companies.[5] On April 25, 2013, the Department extended the deadline of these preliminary results to November 15, 2013.[6] As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.[7] Therefore, all deadlines in this segment of the proceeding were extended by 16 days, thus extending the deadline for these preliminary results until December 1, 2013. Subsequently, on November 21, 2013, the Department fully extended the deadline for these preliminary results to December 16, 2013.

Thirteen parties submitted "no shipment" certifications that attested to the fact that they had no entries of subject merchandise during the POR. Specifically, these companies are: (1) Jinxiang Chengda Imp. & Exp. Co., Ltd. (Chengda); (2) Foshan Fuyi Food Co., Ltd. (Fuyi); (3) Heze Ever-Best International Trade Co., Ltd. (Heze); (4) Zhengzhou Huachao Industrial, Co., Ltd., (Huachao); (5) Qingdao Maycarrier Import & Export Co., Ltd. (Maycarrier); (6) Jinxiang Merry Vegetable Co., Ltd. (Merry Vegetable); (7) Cangshan Qingshui Vegetable Foods Co., Ltd. (Qingshui Vegetable); (8) Qingdao Tiantaixing Foods Co., Ltd. (QTF); (9) Qingdao Sea-line International Trading Co. (Sea-line); (10) XuZhou Simple Garlic Industry Co., Ltd. (XuZhou); (11) Jining Yongjia Trade Co. Ltd. (Yongjia); (12) Jinxiang Yuanxin Imp. & Exp.

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1 See Antidumping Duty Order: Fresh Garlic From the People's Republic of China, 59 FR 59209 (November 16, 1994).

2 See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review, 77 FR 66437 (November 5, 2012).

3 Petitioners are the Fresh Garlic Producers Association and its individual members: Christopher Ranch L.L.C., The Garlic Company, Valley Garlic, and Vessey and Company, Inc.

4 See Chengwu County Yuanxiang Industry & Commerce Co., Ltd. (Chengwu) November 14, 2012 Request for AR; see also Jining Yifa Garlic Produce Co., Ltd. (Yifa) November 26, 2012 Request for AR; see also Yantai Jinyan Trading, Inc. (Jinyan) November 26, 2012 Request for AR; see also Shenzhen Bainong Co., Ltd. (Bainong) November 26, 2012 Request for AR; see also Golden Bird November 26, 2012 Request for AR; see also Jinan Farmlady Trading Co., Ltd. (Farmlady) November 27, 2012 Request for AR; see also Shijiazhuang Goodman Trading Co., Ltd. (Goodman) November 27, 2012 Request for AR; see also Weifang Hongqiao International Logistics Co., Ltd. (Hongqiao) November 27, 2012 Request for AR; see also Qingdao Xintianfeng Foods Co., Ltd. (QXF) November 27, 2012 Request for AR; see also Zhengzhou Harmoni Spice Co. Ltd. (Harmoni) November 30, 2012 Request for AR; see also Xinboda November 30, 2012 Request for AR.

5 See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 77 FR 77017 at 77020-77022 (December 31, 2012) (Initiation).

6 See Memorandum to Christian Marsh, Deputy Assistant Secretary, for Antidumping and Countervailing Duty Operations, "Fresh Garlic from the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review (2011-2012)," dated April 25, 2013.

7 See Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government," dated October 18, 2013.

Co., Ltd. (Yuanxin); and (13) Shandong Jinxiang Zhengyang Import & Export Co. Ltd. (Zhengyang).

The following companies timely submitted separate rate status certifications or applications: (1) Chengwu; (2) Farmlady; (3) QXF; (4) Goodman; (5) Golden Bird; (6) Jinyan; (7) Hongqiao; (8) Bainong; (9) Yifa; (10) Harmoni; (11) Merry Vegetable; (12) Qingshui Vegetable; and (13) Xinboda. Petitioners filed a timely request on April 9, 2012, that the Department conduct verification for this review. On April 15, 2013, the Department selected the two largest exporters by volume, Golden Bird and Xinboda, as mandatory respondents.[8] Following the selection of the mandatory respondents, the Department issued a questionnaire (Initial Questionnaire) to each of the selected mandatory respondents on April 16, 2013.

Golden Bird and Xinboda filed their responses to Section A of the Initial Questionnaire on May 10, 2013, and May 15, 2013, respectively. Golden Bird filed its responses to the remaining sections of the questionnaire on May 17 and May 20, 2013. Xinboda filed its responses to the remaining sections of the questionnaire on June 7, 2013. On September 4, 2013, the Department issued supplemental questionnaires to both Golden Bird and Xinboda. Golden Bird and Xinboda filed their responses on September 29, 2013, and September 30, 2013, respectively. Petitioners filed comments regarding Golden Bird's supplemental questionnaire response on October 23, 2013 and November 27, 2013. Golden Bird filed a response to Petitioners November 27 comments on December 9, 2013. On November 22, 2013, Petitioners filed pre-preliminary comments. In response, Xinboda filed rebuttal comments on December 3, 2013.

On May 2, 2013, the Department placed the Surrogate Country List on the record and solicited interested parties to submit comments regarding the selection of the surrogate country (SC) as well as provide surrogate values (SVs).[9] Between June 26 and June 28, 2013, Petitioners, Golden Bird and Xinboda submitted comments and information regarding the SC selection and SV information on the record. On July 22, 2013, Petitioners and Golden Bird filed rebuttal comments to these SC/SV submissions.

## SCOPE OF THE ORDER

The products covered by the order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay. The scope of the order does not include the following: (a) garlic that has been mechanically harvest and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed. The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings

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[8] See Memorandum to Barbara E. Tillman regarding "Antidumping Duty Administrative Review of Fresh Garlic from the People's Republic of China: Respondent Selection," dated April 15, 2013 (Respondent Selection Memorandum).
[9] See Letter to All Interested Parties regarding "Fresh Garlic from the People's Republic of China: Surrogate Countries Selection and Surrogate Value Information," dated May 2, 2013 (Surrogate Country List).

0703.20.0010, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the Harmonized Tariff Schedule of the United States (HTSUS).

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive. In order to be excluded from the order, garlic entered under HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declaration to CBP to that effect.

## DISCUSSION OF THE METHODOLOGY

### Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(l), the Secretary will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. On April 1, 2013, Petitioners timely withdrew their review requests for 96 producers/exporters; Harmoni also filed a timely withdrawal of its review request on the same date. In accordance with 19 CFR 351.213(d)(1), we partially rescind this review with respect to Harmoni and Jinxiang Jinma Fruits Vegetable Products Co., Ltd. (Jinma). The remaining companies for which Petitioners withdrew their requests for review did not have separate rates from prior segments. Consequently, in accordance with our practice, the Department is not rescinding the review for these 94 companies. We further address this issue below in the "PRC-Wide Entity" section of this memorandum.

With regard to this partial rescission of the review, the Department will instruct CBP to assess antidumping duties on all appropriate entries. Since both Harmoni and Jinma have separate rates from prior segments of this proceeding, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(2). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the accompanying Federal Register notice.

### Non-Market Economy Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a non-market economy (NME) country.[10] In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. Accordingly, the Department calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

[10] See, e.g., Fresh Garlic From the People's Republic of China: Preliminary Results of the 2009–2010 Antidumping Duty Administrative Review, 76 FR 76375 (December 7, 2011), unchanged in Fresh Garlic from the People's Republic of China: Final Results of the 2009–2010 Administrative Review of the Antidumping Duty Order, 77 FR 34346 (June 11, 2012) (09-10 Garlic Final).

Preliminary Determination of No Shipments

As noted above, 13 companies timely filed certifications indicating that that they did not have any exports of subject merchandise during the POR.

Merry Vegetable and Qingshui Vegetable each requested a new shipper review for sales that were made during the POR.[11] On this basis, on January 22, 2013, both companies filed no shipment certifications, stating that neither company made any sales of subject merchandise during the POR, other than those for which they requested to be covered in the new shipper review.[12] The Department subsequently rejected the new shipper requests for entries made during the POR of this administrative review.[13] Thus, both companies had POR shipments subject to this administrative review. The Department, however, provided Merry Vegetable and Qingshui Vegetable the opportunity to submit separate rate applications with regard to these sales. Both companies, in-turn, timely filed separate rate applications on July 15, 2013.

Based on the certifications filed by these companies and our analysis of CBP information, we preliminarily determine that these companies did not have any reviewable transactions during the POR. In addition, the Department finds that, consistent with its refinement to its assessment practice in NME cases, it is appropriate not to rescind the review in part in these circumstances but, rather, to complete the review with respect to the 13 companies and issue appropriate instructions to CBP based on the final results of the review.[14]

Separate Rates

Designation of a country as an NME remains in effect until it is revoked by the Department.[15] Accordingly, in proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single AD duty rate.[16] It is the Department's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (de jure) and in fact (de facto), with respect to its exports. To establish whether a company is sufficiently independent to be eligible for a separate, company-specific rate, the Department analyzes each

[11] See, e.g., Merry Vegetable's Letter to the Department "Fresh Garlic the People's Republic of China – Entry of Appearance, Certificate of No Sales and APO Application" dated January 22, 2013 (Merry Vegetable No Shipment Certification) at Exhibit 1; see also Qingshui Vegetable's Letter to the Department "Fresh Garlic the People's Republic of China – Entry of Appearance, Certificate of No Sales and APO Application" dated January 22, 2013 (Qingshui Vegetable No Shipment Certification) at Exhibit 1.
[12] See Merry Vegetable No Shipment Certification; see also Qingshui Vegetable No Shipment Certification.
[13] See Department's June 28, 2013 Letter to Merry Vegetable and Qingshui Vegetable.
[14] See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties, 76 FR 65694 (October 24, 2011).
[15] See section 771(18)(C)(i) of the Act.
[16] See, e.g., Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 75 FR 24892, 24899 (May 6, 2010), unchanged in Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 59217 (September 27, 2010).

exporting entity in an NME country under the test established in Sparklers[17] and further clarified in Silicon Carbide.[18] However, if the Department determines that a company is wholly foreign-owned or located in a market economy (ME), then a separate-rate analysis is not necessary to determine whether it is independent from government control.

In order to demonstrate separate-rate status eligibility, the Department normally requires entities, for which a review was requested, and which were assigned a separate rate in a previous segment of this proceeding, to submit a separate-rate certification stating that they continue to meet the criteria for obtaining a separate rate.[19] For entities that were not assigned a separate rate in the previous segment of a proceeding, to demonstrate eligibility, the Department requires a separate-rate application.[20]

The Department received separate rate applications from six companies: Bainong; Goodman; Hongqiao; Merry Vegetable; Qingshui Vegetable; and Yifa.[21] Furthermore, the Department received separate rate certifications from seven companies: Chengwu; Farmlady; Golden Bird; Harmoni; Jinyan; QXF; and Xinboda.[22]

A. Separate Rate Applicants

The Department has not considered separate rate treatment for Goodman. Although Goodman had shipments during the POR of this administrative review, these shipments are being analyzed in a concurrent new shipper review.[23] Therefore, Goodman will not be analyzed for the purposes of a separate rate in this review but will maintain the rate it received from its new shipper review. Of the remaining five separate rate applicants, all have provided evidence that they are either joint ventures between Chinese and foreign companies or are wholly Chinese-owned companies.[24] Thus, the Department analyzed whether each of these companies has demonstrated an absence of de jure and de facto government control over its respective export activities.

i. Absence of De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) legislative enactments

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[17] See Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588 (May 6, 1991) (Sparklers).
[18] See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994) (Silicon Carbide).
[19] See Initiation, 76 FR at 82269.
[20] Id.
[21] See company-specific Separate Rate Applications submitted between February 15, 2013 and July 15, 2013 (Separate Rate Applications).
[22] See company-specific Separate Rate Certifications submitted between January 21, 2013 and February 28, 2013 (Separate Rate Certifications).
[23] See e.g., Fresh Garlic From the People's Republic of China: Preliminary Results of New Shipper Review of Shijiazhuang Goodman Trading Co., Ltd., 78 FR 67112 (November 8, 2013).
[24] See Separate Rate Applications.

decentralizing control over export activities of the companies; and (3) other formal measures by the government decentralizing control over export activities of companies.[25]

The evidence provided by the separate rate applicants (Bainong; Hongqiao; Merry Vegetable; Qingshui Vegetable; and Yifa) supports a preliminary finding of an absence of de jure government control for each of these companies based on the following: (1) an absence of restrictive stipulations associated with the individual exporters' business and export licenses; (2) the existence of applicable legislative enactments decentralizing control of the companies; and (3) the implementation of formal measures by the government decentralizing control of Chinese companies.[26]

ii. Absence of De Facto Control

Typically, the Department considers four factors in evaluating whether a respondent is subject to de facto government control of its export functions: (1) whether the export prices (EP) are set by, or are subject to the approval of, a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.[27] The Department has determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.

The evidence provided by the separate rate applicants (Bainong; Hongqiao; Merry Vegetable; Qingshui Vegetable; and Yifa) supports a preliminary finding of an absence of de facto government control based on record statements and supporting documentation showing that the companies: (1) set their own EPs independent of the government and without the approval of a government authority; (2) have the authority to negotiate and sign contracts and other agreements; (3) maintain autonomy from the government in making decisions regarding the selection of management; and (4) retain the proceeds of their respective export sales and make independent decisions regarding disposition of profits or financing of losses.[28]

Therefore, the evidence placed on the record of this review by the separate rate applicants demonstrates an absence of de jure and de facto government control under the criteria identified in Sparklers and Silicon Carbide.

B. Separate Rate Certifications

With regards to Harmoni, as discussed above, the Department has rescinded the company's review due to Petitioners timely withdrawal of the request for review. Thus, the Department

[25] See Sparklers, 56 FR at 20589.
[26] See Separate Rate Applications.
[27] See Silicon Carbide, 59 FR at 22586-87; see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China, 60 FR 22544, 22545 (May 8, 1995).
[28] See Separate Rate Applications.

need not consider separate rate treatment for Harmoni. The Department reviewed separate rate certifications from the other seven companies, who have previously been granted separate rate status. The evidence placed on the record in this review by these companies demonstrates a continued absence of de jure and de facto government control under the criteria identified in Sparklers and Silicon Carbide.[29] Accordingly, the Department has preliminarily determined that these companies have demonstrated that they continue to be eligible for a separate rate.

Separate Rate for Non-Selected Companies

In accordance with section 777A(c)(2)(B) of the Act, because of the large number of exporters/producers, the Department employed a limited examination methodology, as it did not have the resources to examine all companies for which a review request was made. We selected Golden Bird and Xinboda as the mandatory respondents in this review.[30] As discussed above, applicants Bainong, Chengwu, Farmlady, Hongqiao, Jinyan, Merry Vegetable, Qingshui Vegetable, QXF, and Yifa, are exporters of subject merchandise from the PRC that have demonstrated their eligibility for a separate rate but were not selected for individual examination in this review. The statute and the Department's regulations do not directly address the establishment of a rate to be applied to individual companies not selected for individual examination where the Department limited its examination in an AR pursuant to section 777A(c)(2) of the Act. The Department's practice in cases involving limited selection based on exporters accounting for the largest volumes of trade has been to look to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate. This section states that the all others rate will be an amount equal to the weighted average of the weighted-average dumping margins of the selected respondents, excluding any margins that are zero or de minimis or based entirely on facts available.[31] Section 735(c)(5)(B) of the Act also provides that, where all margins are zero, de minimis, or based entirely on facts available, we may use "any reasonable method" for assigning the rate to non-selected respondents. In this instance, we have calculated rates above de minimis for both Golden Bird and Xinboda.

Accordingly, for the preliminary results, consistent with the Department's practice, the Department has preliminarily determined that the margin to be assigned to the separate rate recipients should be a simple average of the two margins calculated for mandatory respondents Golden Bird and Xinboda.[32]

PRC-Wide Entity

As noted above, while Petitioners withdrew the review request for 96 companies, all but two of these companies will remain under review of the PRC-wide entity, as these companies did not have separate rates from prior segments.[33] Upon initiation of the

[29] See Separate Rate Certifications.
[30] See Respondent Selection Memorandum.
[31] See, e.g., 09-10 Garlic Final.
[32] See Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 76 FR 64318 (October 18, 2011).
[33] See, e.g., Small Diameter Graphite Electrodes From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 55680, 55681 (Small Diameter Electrodes) (September 11, 2013).

administrative review, we provided all companies for which the review was initiated an opportunity to complete either the separate rates application or certification. We have preliminarily determined that the companies for which the review requests were not withdrawn and did not demonstrate their eligibility for separate rate status are properly considered part of the PRC-wide Entity.[34] In NME proceedings, "'rates' may consist of a single dumping margin applicable to all exporters and producers."[35]

As explained above in the "Separate Rates" section, all companies within the PRC are considered to be subject to government control unless they are able to demonstrate an absence of government control with respect to their export activities. Such companies are thus assigned a single AD rate distinct from the separate rate(s) determined for companies that are found to be independent of government control with respect to their export activities. We consider the influence that the government has been found to have over the economy to warrant determining a rate for the entity that is distinct from the rates found for companies that have provided sufficient evidence to establish that they operate freely with respect to their export activities.[36] Therefore, we find these companies to be subject to the PRC-wide Entity rate of $4.76 per kilogram.[37]

Surrogate Country

A. Level of Economic Development

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base normal value (NV), in most circumstances, on the NME producer's factors of production (FOPs), valued in a surrogate ME country, or countries, considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that (a) are at a level of economic development comparable to that of the NME country and (b) are significant producers of comparable merchandise. Moreover, it is the Department's practice to select an appropriate surrogate country (SC) based on the availability and reliability of data from the countries.[38]

Pursuant to section 773(c)(4) of the Act, the Department determined that Colombia, Costa Rica, Indonesia, the Philippines, South Africa and Thailand are countries comparable to the PRC in terms of economic development.[39] Section 773(c)(4)(A) of the Act is silent with respect to how the Department may determine that a country is economically comparable to the NME country. As such, the Department's long standing practice has been to identify those countries which are at a level of economic development similar to the PRC in terms of gross national income (GNI)

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34 See, e.g., Small Diameter Electrodes.
35 See 19 CFR 351.107(d).
36 See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079, 53082 (September 8, 2006).
37 See e.g., Garlic 2010-2011.
38 See Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin No. 04.1).
39 See Letter to All Interested Parties regarding "Fresh Garlic from the People's Republic of China: Surrogate Countries Selection and Surrogate Value Information," dated May 2, 2013 (Surrogate Country List).

data available in the World Development Report provided by the World Bank.[40] The Department is satisfied that they are equally comparable in terms of economic development and serve as an adequate group to consider when gathering SV data. Further, providing parties with a range of countries with varying GNIs is reasonable given that any alternative would require a complicated analysis of factors affecting the relative GNI differences between the PRC and other countries, which is not required by the statute. In contrast, by identifying countries that are at the same level of economic development as of the PRC based on GNI, the Department provides parties with a predictable practice which is reasonable and consistent with the statutory requirements. We note that identifying potential surrogate countries based on GNI data has been affirmed by the U.S. Court of International Trade (CIT).[41] As the Department's policy is to consider all countries on the SC list to be at the same level of economic development, we evaluated which of these countries is also a significant producer and has reliable data so to choose an appropriate SC.

B. Significant Producers of Comparable Merchandise

Where possible, the Department relied on the 2011 United Nations Food and Agriculture Organization (FAO) production data for fresh garlic when considering whether any of the countries in the Surrogate Country List are also significant producers of comparable merchandise. The production data placed on the record of this review[42] for the six countries on the Surrogate Country List indicates that domestic production levels are as follows:

| Economically-Comparable Countries | Garlic Production (MTs) | Source |
|---|---|---|
| Thailand | 75,589 | FAO |
| Indonesia | 14,749 | FAO |
| The Philippines | 9,056 | FAO |
| Colombia | 6,170 | FAO |
| South Africa[43] | 1,500 | DAFF |
| Costa Rica | 0 | FAO |

This production data indicates that Colombia, Indonesia, the Philippines, Thailand and South Africa are significant producers of comparable merchandise. As these countries are both economically comparable and significant producers of comparable merchandise, we have considered them as potential surrogate countries. Costa Rica had no garlic production. Consequently, the Department has not considered any SVs from Costa Rica. Additionally, we note that information from the South African DAFF, provided by petitioners, indicates that South Africa did have garlic production during 2011.[44] However, the FAO production data indicated

[40] See, e.g., Pure Magnesium from the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review of the Antidumping Duty Order, 75 FR 80791 (December 23, 2010) and accompanying Issues and Decision Memorandum at Comment 4.
[41] See Fujian Lianfu Forestry Co., Ltd. v. United States, 638 F. Supp. 2d 1325 (CIT 2009).
[42] See Letter to the Acting Secretary, "18th Administrative Review of Fresh Garlic from the People's Republic of China – Petitioners' Comments on the Selection of a Surrogate Country and Surrogate Factor Values," dated June 28, 2013 (Petitioners' SV Submission) at page 5.
[43] South African Department of Agriculture, Forestry and Fisheries (DAFF); see Petitioners' SV Submission at page 16.
[44] See Petitioners' SV Submission at page 16.

that there was no production of garlic in South Africa during 2011.[45] Because of the discrepancies between these data, the Department has concerns regarding the reliability of the garlic data from South Africa. As a result, we will not consider South Africa as a significant producer in these preliminary results.

Additionally, petitioners have argued that, consistent with the previous administrative review of fresh garlic from the PRC,[46] the Department should consider using Ukraine as the surrogate country. It is the Department's policy that it will only depart from the countries on the Surrogate Country List if we find that none of the countries in the list are significant producers or if there are issues regarding the availability of SVs from the countries on the list.[47] In this case, the Department has determined that four of the six countries on the Surrogate Country List are significant producers of fresh garlic with reliable data and interested parties have submitted possible SVs for all FOPs. Additionally, petitioners have placed no information regarding garlic production in Ukraine during 2011 on the record, and aside from garlic bulb prices, have provided no other surrogate value information on the record. As such, the Department has not considered any SVs from Ukraine.

C. Data Considerations

After evaluating economic comparability and significant production of comparable merchandise, if more than one country remains, it is the Department's practice to select an appropriate SC based on the availability and reliability of data from those countries.[48] In this case, we looked at the availability of information regarding the most significant FOPs. As in prior proceedings of this order, raw garlic bulb is the most significant input because it accounts for the largest percentage of NV, as fresh garlic (both whole and peeled) is produced directly from the raw garlic bulb.[49] As such, we must consider the availability and reliability of the SVs for raw garlic bulb on the record. Accordingly, the Department has determined that we must go one step further in the evaluation of the data by looking at information which would indicate which country produces garlic which is most similar to that produced in the PRC. This would include an evaluation of any information regarding the general garlic produced in the country, such as the growing conditions and physical characteristics of the varieties grown in the country.

The Department received submissions regarding the characteristics of garlic produced in the Philippines, South Africa and Thailand. Because we have considered South Africa not as a significant producer of the subject merchandise we have narrowed the selection of a primary SC for this review to the Philippines and Thailand.

A review of the information regarding garlic grown in the Philippines and Thailand indicates that the garlic produced in these countries is smaller than the large garlic bulbs produced in the PRC. Specifically, the garlic grown in Thailand appears to be 3.5 mm or less.[50] While there is

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[45] See, e.g., Golden Bird SV Submission, Exhibit 1.
[46] Id., at pages 21 and 22; see also Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 36168 (June 17, 2013) (Garlic 2010-2011).
[47] See, e.g., Garlic 2010-2011 at Comment 5.
[48] See Policy Bulletin No. 04.1.
[49] See, e.g., Garlic 2010-2011.
[50] See Golden Bird SV Submission at Exhibit 3 ("Table I Size of the Garlic Bulb").

information indicating that larger garlic may be grown in the Philippines,[51] there is no information to indicate how much, if any, of this large garlic is actually grown in the country. Additionally, petitioners have indicated that the average size of garlic grown in the Philippines is in the 30 to 45 mm range.[52] Petitioners have indicated that "although China produces large garlic with garlic bulb diameters at or above 55 mm, garlic reported by the respondents has been of more moderate bulb diameters."[53] Thus, the Department finds no clear evidence that one country's garlic is more comparable to Chinese garlic than the other. Therefore, for purposes of these preliminary results, we have evaluated which country's pricing data is the most reliable.

The pricing data for the Thai garlic, provided by Golden Bird, was reportedly issued by the Thai Ministry of Agriculture Cooperatives (MOAC).[54] However, no supporting MOAC publication or website printout was provided. Instead, a printout from a website (www.rakbankerd.com), which appears to be business portal, was provided. The Philippine pricing data is published by the Philippine Department of Agriculture's Bureau of Agricultural Statistics (BAS),[55] which matches the prices published in the FAO data.[56] Since the Department is able to tie the Philippine garlic prices directly to official government sources as well as to the FAO data, we find that this provides a more reliable source for data than the Thai garlic pricing. Additionally, while both the Philippine and Thai price data are publicly available and contemporaneous, the Philippine prices clearly exclude taxes and duties,[57] whereas we cannot determine whether the Thai prices exclude taxes and duties. On this basis, we have preliminarily selected the Philippines as the SC for the instant review.

While it is the Department's preference to rely on a single SC, we note that in those cases where a specific SV from the Philippines is not available, the Department will use SVs from Thailand. The sources of the SVs are discussed under the "Normal Value" section below and in the Surrogate Values Memorandum.[58]

*Date of Sale*

Golden Bird and Xinboda reported the invoice date as the date of sale. The Department normally uses invoice date as date of sale, consistent with 19 CFR 351.401(i). The Department's regulation establishes a presumption for invoice date, and the CIT has held that a party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to satisfy the Department that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.[59] In this review, the Department preliminarily determines that the invoice date, which is when material terms such as price and

[51] See Petitioners' SV Submission at Exhibit P-2 ("7. Size classification")
[52] Id. at page 12.
[53] Id.
[54] See Golden Bird SV Submission Exhibit 6.
[55] See Petitioners' SV Submission at Exhibits P-4 and P-5.
[56] Id., at pages 13 and 14.
[57] Id., at Exhibit P-9.
[58] See Memorandum to the File "Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Surrogate Values for the Preliminary Results," dated December 16, 2013 (Surrogate Values Memorandum).
[59] See Allied Tube & Conduit Corp. v. United States, 132 F. Supp. 2d 1087, 1090 (CIT 2001).

quantity are set, is the most appropriate date to use as the date of sale for both respondents in accordance with 19 CFR 351.401(i) and the Department's long-standing practice of determining the date of sale.[60]

*Fair Value Comparisons*

To determine whether Golden Bird or Xinboda sold fresh garlic to the United States at less than normal value, the Department compared the export price (EP) to the normal value, as described in the "Export Price" and "Normal Value" sections below.[61]

A. Differential Pricing Analysis

Pursuant to 19 CFR 351.414(c)(1), we calculate dumping margins by comparing weighted-average normal values to weighted-average EPs or constructed export prices (CEPs) (the average-to-average (A-to-A) method) unless we determine that another method is appropriate in a particular situation. In antidumping investigations, we examine whether to use the average-to-transaction (A-to-T) method as an alternative comparison method using an analysis consistent with section 777A(d)(l)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern our examination of this question in the context of administrative reviews, we nevertheless find that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in antidumping investigations.[62] In recent investigations, we applied a "differential pricing" (DP) analysis for determining whether application of A-to-T comparisons is appropriate pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.[63] The Department finds the DP analysis used in these and other recent proceedings may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review.[64] We intend to continue to develop our

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[60] See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10.

[61] In these preliminary results, the Department applied the weighted-average dumping margin calculation method adopted in Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification, 77 FR 8101 (February 14, 2012). In particular, the Department compared monthly weighted-average EPs with monthly weighted-average NVs and granted offsets for non-dumped comparisons in the calculation of the weighted average dumping margin.

[62] See Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Review; 2010-2011, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum at Comment 1.

[63] See Memoranda to Paul Piquado, Assistant Secretary for Import Administration, from Abdelali Elouaradia, Director of AD/CVD Operations Office 4, entitled "Less Than Fair Value Investigation of Xanthan Gum from Austria: Post-Preliminary Analysis and Calculation Memorandum," "Less than Fair Value Investigation of Xanthan Gum from the People's Republic of China: Post-Preliminary Analysis and Calculation Memorandum for Neimenggu Fufeng Biotechnologies Co., Ltd, (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd) and Shandong Fufeng Fermentation Co., Ltd, " and "Less than Fair Value Investigation of Xanthan Gum from the People's Republic of China: Post-Preliminary Analysis and Calculation Memorandum for Deosen Biochemical Ltd," all dated March 4, 2013.

[64] As noted above, the DP analysis has been utilized in recent investigations and several recent antidumping duty administrative reviews to determine the appropriate comparison methodology. See, e.g., Certain Steel Threaded Rod From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 21101 (April 9, 2013); see also Circular Welded Carbon Steel Pipes and Tubes From Thailand:

approach in this area based on comments received in this and other proceedings, and on our additional experience with addressing the potential masking of dumping that can occur when we use the A-to-A method in calculating weighted-average dumping margins.

The Department's differential pricing analysis requires a finding of a pattern of EPs (or constructed EPs) for comparable merchandise that differs significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin.

The differential pricing analysis evaluates all purchasers, regions, and time periods to determine whether a pattern of price differences exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the customer codes reported by Golden Bird and Xinboda. Regions are defined using the reported destination code (i.e., zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the period of review being examined based upon the reported date of sale. For purposes of analyzing sales transactions by customer, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP (or constructed EP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen's *d* test is applied when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is calculated to evaluate the extent to which the net prices to a particular purchaser, region or time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large. Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant if the calculated Cohen's *d* coefficient is equal to or exceeds the large (i.e., 0.8) threshold.

Next, the "ratio test" – the second stage of the analysis – assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports

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Preliminary Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 21105 (April 9, 2013); see also Polyvinyl Alcohol From Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2010-2012, 78 FR 20890 (April 8, 2013); see also Polyester Staple Fiber from Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 17637 (March 22, 2013).

the consideration of the application of the A-T method to all sales as an alternative to the A-A method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an A-T method to those sales identified as passing the Cohen's *d* test as an alternative to the A-A method, and application of the A-A method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the A-A method.

If both tests in the first stage (i.e., the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, we examine whether using only the A-A method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the A-A method only. If the difference between the two calculations is meaningful, this demonstrates that the A-A method cannot account for differences such as those observed in this analysis, and, therefore, an alternative method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if (1) there is a 25 percent relative change in the weighted-average dumping margin between the A-A method and the appropriate alternative method where both rates are above the de minimis threshold, or (2) the resulting weighted-average dumping margin moves across the de minimis threshold.

Interested parties may present arguments in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

B. Results of the Differential Pricing Analysis

For both Golden Bird and Xinboda, based on the results of the differential pricing analysis, the Department finds that over 66 percent of both companies' U.S. sales confirm the existence of a pattern of EPs for comparable merchandise that differ significantly among purchasers, regions, or time periods.[65] As such, the Department finds that these results support consideration of an alternative to the average-to-average method. However, when comparing the weighted-average dumping margin calculated using the standard average-to-average method and the weighted-average margin calculated using the appropriate alternative method, there is not a meaningful difference in the results.[66] Accordingly, the Department has preliminarily determined to use the average-to-average method in making comparisons of EP and NV for both Golden Bird and Xinboda.

*U.S. Price*

In accordance with section 772(a) of the Act, EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the

[65] See company-specific analysis memoranda.
[66] Id.

subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under section 772(c) of the Act. In accordance with section 772(a) of the Act, we used EP for the U.S. sales of Golden Bird and Xinboda because the subject merchandise was sold directly to the unaffiliated customers in the United States prior to importation and because constructed EP was not otherwise warranted.

We based the EP on delivered prices to an unaffiliated purchaser in the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting prices for movement expenses, including expenses for foreign inland freight from the plant to the port of exportation and domestic brokerage and handling.

*Normal Value*

A. Methodology

Section 773(c)(1)(B) of the Act provides that the Department shall determine normal value (NV) using an FOP methodology if the merchandise is exported from an NME country and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department calculates NV using each of the FOPs that a respondent consumes in the production of a unit of the subject merchandise because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies. However, there are circumstances in which the Department will modify its standard FOP methodology by choosing to apply an SV to an intermediate input instead of the individual FOPs used to produce that intermediate input.

The Department has previously found that garlic producers in the PRC do not generally track actual labor hours incurred for growing, tending, and harvesting activities and, thus, do not maintain appropriate records which would allow most, if not all, respondents to quantify, report, and substantiate this information.[67] In the 11th administrative review and NSRs, the Department also stated that "should a respondent be able to provide sufficient factual evidence that it maintains the necessary information in its internal books and records that would allow us to establish the completeness and accuracy of the reported FOPs, we will revisit this issue and consider whether to use its reported FOPs in the calculation of NV."[68] In the course of this review, the respondent did not report FOPs related to growing whole garlic bulbs. As such, for the reasons outlined in the Intermediate Input Methodology Memorandum[69], the Department is applying an "intermediate-product valuation methodology" to the respondent in these preliminary results. Using this methodology, the Department calculated NV by starting with the

[67] See e.g., Fresh Garlic From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2010-2011, 77 FR 73980 (December 12, 2012) (Garlic 2010-2011 – Preliminary Results) unchanged in Garlic 2010-2011.

[68] See Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the Eleventh Administrative Review and New Shipper Reviews, 77 FR 34438 (June 22, 2007).

[69] See "Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Intermediate Input Methodology," dated December 16, 2013 (Intermediate Input Methodology Memorandum).

SV for the garlic bulb (i.e., the "intermediate product"), adjusting for yield losses during the processing stages, and adding the respondent's processing costs which were calculated using its reported usage rate for processing fresh garlic.

B. Factor Valuations

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly-available information to value the FOPs. However, when a producer sources an input from a market-economy (ME) country and pays for it in an ME currency, the Department may value the FOP using the actual price paid for the input.[70] In this case, neither Golden Bird nor Xinboda reported that any inputs were sourced from ME suppliers.

As the basis for NV, Golden Bird and Xinboda provided FOPs used in each of the stages for producing fresh garlic. The Department's general policy, consistent with section 773(c)(1) of the Act, is to value the FOPs that a respondent uses to produce the subject merchandise. To calculate NV, the Department valued the per-unit factor quantities reported by Golden Bird and Xinboda using publicly-available SVs from the Philippines and Thailand. To calculate NV, we multiplied the reported per-unit factor consumption rates by publicly-available SVs. In selecting the SVs, consistent with our past practice, we considered the quality of the data as well as: (1) broad market average; (2) public availability; (3) product specificity; (4) tax and duty exclusivity; and (5) contemporaneity of the data.[71] In accordance with Sigma Corp. v. United States, 117 F.3d 1401, 1408 (Fed. Cir. 1997), we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to the input SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory, where appropriate. For those values not contemporaneous with the POR, we adjusted for inflation using data published in the International Monetary Fund's International Financial Statistics.

In accordance with the OTCA 1988 legislative history, the Department continues to apply its long-standing practice of disregarding SVs if it has a reason to believe or suspect the source data may be subsidized.[72] In this regard, the Department has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea and Thailand because we have determined that these countries maintain broadly available, non-industry specific export subsidies. Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea, and Thailand may have benefitted from these subsidies. Additionally, we disregarded prices from NME countries as well as any imports that were labeled as originating from an "unspecified" country because the Department could not be certain that they were not from either an NME country or a country with general export subsidies. For more information regarding the Department's valuation for the various FOPs, see Surrogate Values Memorandum.

[70] See, e.g., Garlic 2010-2011 – Preliminary Results, unchanged in Garlic 2010-2011.
[71] See, e.g., 09-10 Garlic Final and accompanying Issues and Decision Memorandum at Comment 4.
[72] See Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) (OTCA 1988) at 590.

1. Raw Garlic Bulb Input Valuation

As noted above, the raw garlic bulb input is the most significant input because it accounts for the largest percentage of NV, as fresh garlic is produced directly from the raw garlic bulb. As discussed above, the Department is applying an intermediate input methodology for Golden Bird and Xinboda. Therefore, we sought to identify the best available SV for the raw garlic bulb input for production rather than re-construct the cost of raw garlic bulb inputs via the calculation of farming costs involved in growing the input. The Department's practice when selecting the "best available information" for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, SVs which are publicly available, product-specific, representative of a broad market average, tax-exclusive, and contemporaneous with the POR. For the preliminary results of this review, we find that "Farmgate Prices" from "CountrySTAT Philippines," a website of the Bureau of Statistics of the Department of Agriculture, provides the most appropriate information available to value raw garlic bulb inputs. For more information regarding the Department's valuation for the raw garlic bulb inputs, see Surrogate Values Memorandum.

2. Labor

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME AD proceedings. In Labor Methodologies, the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary SC.[73] Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization's (ILO) Yearbook of Labor Statistics.

As noted above, the Department has selected the Philippines as the primary SC for the preliminary results. As a result, the Department has obtained and relied on the ILO Chapter 6A data from the Philippines to value the labor usage rates reported by Golden Bird and Xinboda.

3. Financial Ratios

The Department's criteria for choosing surrogate companies are the availability of contemporaneous financial statements, comparability to the respondent's experience, and publicly available information.[74] Moreover, for valuing factory overhead (OH), selling, general and administrative expenses (SG&A) and profit, the Department normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the

[73] See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, 76 FR 36092 (June 21, 2011) (Labor Methodologies). This notice followed the Federal Circuit decision in Dorbest Ltd. v. United States, 604 F.3d 1363, 1372 (Fed. Cir. 2010), which found that the regression-based method for calculating wage rates as stipulated by section 351.408(c)(3) of the Department's regulations uses data not permitted by the statutory requirements laid out in section 773 of the Act (i.e., 19 U.S.C. 1677b(c)).
[74] See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China, 70 FR 24502 (May 10, 2005) and accompanying Issues and Decision Memorandum at Comment 3.

SC.[75] In addition, the CIT has held that in the selection of surrogate producers, the Department may consider how closely the surrogate producers approximate the non-market producer's experience.[76]

The Department received seven financial statements, five from Philippine companies and two from Thai companies. As a result of the Department's analysis of these statements, the Department has preliminarily determined that the financial statements from the Thai company AgriPure Holdings Public Company (AgriPure) are the best available information. The Department finds that Agripure's primary merchandise (canned sweet corn and fresh vegetable) is the most similar to the fresh garlic produced by respondents, whereas the merchandise produced by the other available companies (liquid and powdered milk, sugar, flour, snacks, chocolate) are not comparable to fresh garlic. The Department notes that in the selection of SVs, we have the obligation to select from the information placed on the record. Accordingly, the Department has preliminarily calculated OH, SG&A and profit based on AgriPure's financial statements but also invites interested parties to submit additional financial statements for consideration for the final results. Additionally, the Department will search for more appropriate financial statements and, should any be obtained, will place them on the record and provide parties an opportunity to comment on them. For more information regarding the Department's evaluation of the financial statements and the calculation of surrogate financial ratios, see Surrogate Values Memorandum.

4. Other Surrogate Values

The Department has obtained SVs for all other inputs and costs, as reported by Golden Bird and Xinboda. For more information regarding the Department's selection and application of SVs for all other reported inputs and costs, see Surrogate Values Memorandum.

*Currency Conversion*

Where necessary, the Department made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank. These exchange rates are available on the Enforcement and Compliance website at http://enforcement.trade.gov/exchange/index.html.

For a complete listing of all the inputs and a detailed discussion about our SV selections, see Surrogate Values Memorandum.

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[75] See, e.g., Diamond Sawblades and Parts Thereof from the People's Republic of China, Final Determination in the Antidumping Duty Investigation, 71 FR 29303 (May 22, 2006) and accompanying Issues and Decision Memorandum at Comment 2; see also 19 CFR 351.408(c)(4); section 773(c)(4) of the Act.

[76] See Rhodia, Inc. v. United States, 240 F. Supp. 2d 1247, 1253-1254 (CIT 2002); see also Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 6836 (February 9, 2005) and accompanying Issues and Decision Memorandum at Comment 1.

**RECOMMENDATION**

We recommend applying the above methodology for these preliminary results.

✓

Agree — Disagree

Ronald K Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

December 16, 2013

Date