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Administrative Review
11/01/2012 – 10/31/13
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December 1, 2014

MEMORANDUM TO: Paul Piquado
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 2012-2013 Antidumping Duty Administrative Review: Fresh Garlic from the People's Republic of China

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I. SUMMARY

In response to a request 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, 2012, though October 31, 2013. The Department preliminarily determines that the two mandatory respondents, Hebei Golden Bird Trading Co., Ltd. (Golden Bird) and Jinxiang Hejia Co., Ltd. (Hejia), are not eligible to qualify for a separate rate and, thus, are part of the PRC-wide entity. As such, the PRC-wide entity is under review. And because elements of the entity, Golden Bird and Hejia, failed to cooperate by not acting to the best of their ability to comply with the Department's request for information, the Department is applying total adverse facts available and assigning the PRC-wide entity the highest rate on the record in this proceeding. In addition, the Department preliminarily grants a separate rate to seven 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. Finally, the Department also preliminarily determines that fourteen companies made no shipments.

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. Interested parties are invited to comment on these preliminary results. We intend to 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).

II. BACKGROUND

On November 16, 1994, the Department published the AD duty order on fresh garlic from the PRC.[1] On November 1, 2013, 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 November 1, 2012, through October 31, 2013.[2] Between November 23 and December 2, 2013, Petitioners[3] and seventeen other interested parties requested an AR.[4] On December 30, 2013, the Department initiated this review for 147 producers/exporters.[5] On March 31, 2014, Petitioners timely withdrew their review requests for 94 of the 147 companies. Zhengzhou Harmoni Spice Co., Ltd. (Harmoni) also filed a timely request for withdrawal on the same date. On May 29, 2014, we published a partial rescission.[6] On July 23, 2014, the Department extended the deadline of these preliminary results to December 1, 2014.[7]

Sixteen parties submitted "no shipment" certifications, attesting they had no entries of subject merchandise during the POR. Specifically, these companies are: (1) Cangshan Qingshui

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[1] *See Antidumping Duty Order: Fresh Garlic From the People's Republic of China*, 59 FR 59209 (Nov. 16, 1994).
[2] *See Antidumping or Countervailing Duty Order, Finding, Or Suspended Investigation; Opportunity To Request Administrative Review*, 78 FR 65612 (Nov. 1, 2013).
[3] *See* Petitioners' letter to the Department, "19th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Requests for Administrative Reviews," dated November 27, 2013 at 2. Petitioners consist of the following companies: the Fresh Garlic Producers Associations and its individual members: Christopher Ranch L.L.C., The Garlic Company, Valley Garlic, and Vessey and Company, Inc.
[4] *See* Golden Bird's letter to Secretary of Commerce, "Fresh Garlic from the People's Republic of China – Request for Antidumping Administrative Review for the 19th Period of Review (11/01/2012 – 10/31/2013) on Behalf of Hebei Golden Bird Trading Co., Ltd.," dated November 25, 2013 at 2; Shandong Chenhe International Trading Co., Ltd.'s letter to the Department, "Fresh Garlic from the People's Republic of China – Request for Antidumping Administrative Review for the 19th Period of Review (11/01/2012 – 10/31/2013) on Behalf of Shandong Chenhe International Trading Co., Ltd.," dated November 25, 2013 at 2; Qingdao Lianghe International Trade Co., Ltd.'s letter to Secretary of Commerce, "Fresh Garlic from the People's Republic of China – Request for Antidumping Administrative Review for the 19th Period of Review (11/01/2012 – 10/31/2013) on Behalf of Qingdao Lianghe International Trade Co., Ltd." at 2 (Nov. 25, 2013); Jinxiang Richfar Fruits & Vegetables Co.'s letter to Secretary of Commerce, "Fresh Garlic from the People's Republic of China – Request for Antidumping Administrative Review for the 19th Period of Review (11/01/2012 – 10/31/2013) on Behalf of Jinxiang Richfar Fruits & Vegetables Co., Ltd.," dated Nov. 25, 2013 at 2; Weifang Hongqiao International Logistics Co., Ltd.'s letter to Secretary of Commerce, "Fresh Garlic from the People's Republic of China – Request for Antidumping Administrative Review for the 19th Period of Review (11/01/2012 – 10/31/2013) on Behalf of Weifang Hongqiao International Logistics Co., Ltd.," dated November 25, 2013 at 2; Letter to Secretary of Commerce, "Fresh Garlic from the People's Republic of China – Request for Antidumping Administrative Review for the 19th Period of Review (11/01/2012 – 10/31/2013) on Behalf of Requestors, " dated November 26, 2013 at 2; Shenzhen Xinboda Industrial Co., Ltd.'s letter to Secretary of Commerce, "Fresh Garlic from the People's Republic of China – Request for Review," dated November 27, 2013 at 1; Zhenghou Harmoni Spice Co., Ltd.'s letter to Secretary of Commerce, "Request for Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China," dated December 2, 2013 at 1.
[5] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 78 FR 79392 (Dec. 30, 2013) (*Initiation Notice*).
[6] *See Fresh Garlic from the People's Republic of China: Partial Rescission of the 19th Administrative Review; 2012-2013*, 79 FR 30819 (May 29, 2014).
[7] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, "Fresh Garlic from the People's Republic of China – 19th Administrative Review (2012-2013)" at 2 (July 23, 2014).

Vegetable Foods Co., Ltd. (Qingshui Vegetable);[8] (2) Jinxiang Merry Vegetable Co., Ltd. (Merry Vegetable);[9] (3) XuZhou Simple Garlic Industry Co., Ltd. (Simple Garlic); (4) Chengwu County Yuanxiang Industry & Commerce Co., Ltd. (Yuanxiang); (5) Jianxiang Chengda Imp. & Exp. Co., Ltd.; (6) Jinxiang Yuanxin Imp. & Exp. Co., Ltd.; (7) Qingdao Sea-line International Trading Co.; (8) Qingdao Maycarrier Import & Export Co., Ltd.; (9) Yantai Jinyan Trading, Inc.; (10) Qingdao Tiantaixing Foods Co., Ltd.; (11) Qingdao Xintianfeng Foods Co., Ltd.; (12) Jining Yifa Garlic Produce Co., Ltd.; (13) Jining Yongjia Trade Co., Ltd.; (14) Shenzhen Bainong Co., Ltd.; (15) Jinan Farmlady Trading Co., Ltd.; and, (16) Shijiazhuang Goodman Trading Co., Ltd.

Ten companies timely submitted separate rate status certifications or applications. Specifically, these companies are: (1) Yuanxiang; (2) Jinxiang Richfar Fruits & Vegetables Co., Ltd. (Richfar); (3) Golden Bird; (4) Hejia; (5) Qingdao Lianghe International Trade Co., Ltd. (Lianghe); (6) Shandong Chenhe International Trading Co., Ltd.(Chenhe); (7) Shenzhen Xinboda Industrial Co. Ltd. (Xinboda); (8) Weifang Hongqiao International Logistic Co., Ltd. (Hongqiao); (9) Simple Garlic; and (10) Harmoni.

As discussed below, the Department selected Golden Bird and Hejia for individual examination. On May 7, 2014, and May 9, 2014, the Department sent questionnaires to Golden Bird and Hejia, respectively. Golden Bird and Hejia filed their responses to the Section A of the Initial Questionnaire on June 11 and June 25, 2014, respectively. Golden Bird filed its responses to the remaining sections of the questionnaire on June 25 and 26, 2014. Hejia filed its responses to the remaining sections of the questionnaire on June 30, 2014. Petitioners submitted new factual information concerning shipment volumes for Golden Bird and Hejia on June 25, 2014. On July 9, 2014, Petitioners also filed comments on discrepancies with volume of exports reported by Golden Bird and Hejia, as well as relevant documents from the 18th administrative review of fresh garlic and information to rebut, clarify, or correct information submitted by Golden Bird.[10] On August 15 and 18, 2014, the Department issued supplemental questionnaires to both Golden Bird and Hejia, respectively. Golden Bird filed the first part of its supplemental questionnaire response (SQR Part 1) on September 5, 2014, and the second part of its first supplemental questionnaire response (SQR Part 2) on September 11, 2014. In lieu of submitting its SQR, Hejia filed a withdrawal notice on September 12, 2014, withdrawing from participation in this

[8] The Department notes that Cangshan Qingshui Vegetable Foods Co., Ltd., which participated in the November 1, 2012, to April 30, 2013 new shipper review (*see, e.g.*, *Fresh Garlic From the People's Republic of China: Final Results of the Semiannual Antidumping Duty New Shipper Review of Jinxiang Merry Vegetable Co., Ltd. and Cangshan Qingshui Vegetable Foods Co., Ltd.; 2012-2013*, 79 FR 62103 (October 16, 2014)), certified that it had no shipments between May 1, 2013, and October 31, 2013.

[9] The Department notes that Jinxiang Merry Vegetable Co., Ltd., which participated in the November 1, 2012 to April 30, 2013 new shipper review (*see, e.g., Fresh Garlic From the People's Republic of China: Final Results of the Semiannual Antidumping Duty New Shipper Review of Jinxiang Merry Vegetable Co., Ltd. and Cangshan Qingshui Vegetable Foods Co., Ltd.; 2012-2013*, 79 FR 62103 (October 16, 2014)), certified that it had no shipments between May 1, 2013, and October 31, 2013.

[10] *See* Letter from Petitioners to the Department, "19th Administrative Review of Fresh Garlic from the People's Republic of China – Petitioners' Submission of New Factual Information Concerning Shipment Volume Reported by Mandatory Respondents," dated June 25, 2014. *See also* Letter from Petitioners to the Department "19th Administrative Review of Fresh Garlic from the People's Republic of China – Petitioners' Submission of Public Information to Rebut, Clarify or Correct Information Submitted by Golden Bird, dated July 9, 2014 (Petitioners' July 9 letter to Rebut Info Submitted by GB).

review.[11] On September 30, 2014, the Department issued a second supplemental questionnaire to Golden Bird.[12] Petitioners filed comments regarding Golden Bird's SQR Part 1 and SQR Part 2 on October 7, 2014.[13] Finally, Petitioners filed pre-preliminary comments on October 24, 2104.[14]

<u>Respondent Selection</u>

On April 28, 2014, we issued a memorandum indicating that we would examine two exporters (Golden Bird and Hejia) with largest volume of imports into the United States.[15] The Department issued questionnaires to Golden Bird and Hejia on May 7, 2014, and May 9, 2014, respectively.

On July 1, 2014, Xinboda submitted a letter requesting consideration as either a mandatory or voluntary respondent.[16] Xinboda raised concerns about whether there would be adequate sample of calculated margins for separate rate applicants. On August 6, 2014, the Department issued a memorandum explaining that we would not be adding Xinboda as a mandatory respondent. We also determined not to examine Xinboda as a voluntary respondent since it had failed to provide information by the relevant deadlines set for the mandatory respondents in accordance with section 782(a)(1)(A) of the Act, and that it would be unduly burdensome to review Xinboda in this proceeding.[17]

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[11] *See* Letter from Hejia to the Department, "Fresh Garlic from the People's Republic of China: Withdrawal from Review," dated September 12, 2014.
Administrative Review of Fresh Garlic from the People's Republic of China – Petitioners' Request for Investigation of Substantial Discrepancies Between Golden Bird and Hejia's Volumes of POR Exports Reported to Commerce/CBP and China's Customs Authority, dated July 9, 2014. *See also* Letter from Petitioners to the Department, "19th Administrative Review of Fresh Garlic from the People's Republic of China – Petitioners' Submission of Relevant Documents from Preceding Annual Administrative Review," dated July 9, 2014. *See also* Letter from Petitioners to the Department, "19th Administrative Review of Fresh Garlic from the People's Republic of China – Petitioners' Submission of Information to Rebut, Clarify or Correct Information Submitted by Golden Bird," (Petitioners' Letter to Rebut, Clarify or Correct Information Submitted by GB) dated July 9, 2014.
[12] *See* Letter from the Department to Golden Bird, "2012-2013 Administrative Review of Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Second Supplemental Questionnaire," (GB Second SQ) dated September 29, 2014.
[13] *See* Letter from Petitioners to the Department, "19th Administrative Review of Fresh Garlic from the People's Republic of China – Petitioners' Comments on Deficiencies in Golden Bird's Supplemental Questionnaire Response That Provide Good Cause for Verification," dated October 7, 2014.
[14] *See* Letter from Petitioners to the Department, "19th Administrative Review of Fresh Garlic from the People's Republic of China – Petitioners' Pre-preliminary comments regarding Golden Bird," dated October 24, 2014.
[15] *See* Memorandum to Edward Yang through Mark Hoadley from Jacqueline Arrowsmith, "Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Respondent Selection Memorandum," dated April 28, 2014 (Respondent Selection Memorandum).
[16] *See* Letter from Xinboda to the Department, "Fresh Garlic from the People's Republic of China – Request for Selection as Respondent," dated July 1, 2014.
[17] *See* Memorandum to Edward Yang through Mark Hoadley from Jacqueline Arrowsmith on "2012-2013 Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Shenzhen Xinboda Industrial Co., Ltd.'s Request to be a Mandatory Respondent or a Voluntary Respondent Industrial Co., Ltd.'s {sic} Request," dated August 6, 2014.

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 March 31, 2014, Petitioners timely withdrew their review requests for 94 producers/exporters; Harmoni also filed a timely withdrawal of its review request on the same date. On May 29, 2014, in accordance with 19 CFR 351.213(d)(1), we published a partial rescission of this review.[18]

With regard to this partial rescission of the review, the Department will instruct CBP to assess antidumping duties on all appropriate entries. Because both Harmoni and Jinma have a separate rate from a prior segments of this proceeding, antidumping duties shall be assessed at rates equal to the cash deposits 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).

III. 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, 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 harvested 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: 0703.20.0000, 0703.20.0010, 0703.20.0015, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, 0711.90.6500, 2005.90.9500, 2005.90.9700, 2005.99.9700, and 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 the 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 declarations to U.S. Customs and Border Protection to that effect.

IV. DISCUSSION OF METHODOLOGY

[18] *See Fresh Garlic From the People's Republic of China: Partial Rescission of the 19th Antidumping Duty Administrative Review; 2012-2013*, 79 FR 30819 (May 29, 2014)(Partial Rescission of the 19 AR). For those producers/exporters for which this review has been rescinded and which have not been assigned a separate rate from a prior segment of the proceeding, the Department stated that they belong to the PRC-wide entity and that the administrative review will continue for these companies.

Preliminary Determination of No Shipments

The companies listed in Appendix I timely filed "no shipment" certifications stating that they had no entries of subject merchandise during the POR.[19] The Department subsequently asked CBP to conduct a query on potential shipments made by these companies during the POR; CBP provided no evidence that contradicted their claims of no shipments the POR. Based on the certifications by these companies and our analysis of CBP information, we preliminarily determine that the companies listed in Appendix I did not have any reviewable transactions during the POR. In addition, the Department finds that consistent with its refinement to its assessment practice in non-market economy (NME) cases, further discussed below, it is appropriate not to rescind the review in part in these circumstances but to complete the review with respect to these 16 companies and issue appropriate instructions to CBP based on the final results of the review.[20]

Non-Market Economy Status

The Department considers the PRC to be an NME country.[21] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the Department. Therefore, we continue to treat the PRC as an NME country for purposes of these preliminary results.

Separate Rate Determination

In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may apply for separate rate status in NME reviews.[22] In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed a single antidumping duty rate.[23] It is the Department's policy to assign all exporters of subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.[24] Exporters can demonstrate this independence through the absence of both *de jure* (in law) and *de facto* (in fact) governmental

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[19] The Department notes that Jinxiang Merry Vegetable Co., Ltd. and Cangshan Qingshui Vegetable Foods Co., Ltd., companies who participated in the November 1, 2012, to April 30, 2013, new shipper review (*see, e.g., Fresh Garlic From the People's Republic of China: Final Results of the Semiannual Antidumping Duty New Shipper Review of Jinxiang Merry Vegetable Co., Ltd. and Cangshan Qingshui Vegetable Foods Co., Ltd.; 2012-2013*, 79 FR 62103 (October 16, 2014) each certified that it had no shipments between May 1, 2013 and October 31, 2013.
[20] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011); *see also* "Assessment Rates" section below.
[21] *See, e.g., Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Results in the First Administrative Review, Preliminary Rescission, in Part, and Extension of Time Limits for the Final Results*, 76 FR 62765, 62767-68 (October 11, 2011), unchanged in *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review*, 77 FR 21734 (April 11, 2012).
[22] *See Initiation Notice*.
[23] *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, available at http://trade.gov/enforecement/policy/bull05-1.pdf.
[24] *Id.*

control over export activities.[25] The Department analyzes each entity's export independence under a test first articulated in *Sparklers* and as further developed in *Silicon Carbide*.[26] 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.[27]

In order to demonstrate separate-rate status eligibility, the Department normally requires an entity, for which a review was requested, and which was assigned a separate rate in a previous segment, to submit a separate-rate certification stating that it continues to meet the criteria for obtaining a separate rate.[28] For entities that were not assigned a separate rate in the previous segment, however, the Department requires a separate rate application.[29]

Three companies timely submitted separate rate applications; these companies are: (1) (1) Richfar; (2) Lianghe; and (3) Chenhe. Seven companies timely submitted separate rate certifications. Specifically, these companies are: (1) Yuanxiang; (2) Golden Bird; (3) Hejia; (4) Xinboda; (5) Hongquiao; (6) Simple Garlic; and (7) Harmoni. Hejia and Golden Bird are part of the PRC-wide entity and are not eligible to a separate rate, *see* "Hejia" and "Golden Bird" sections below. As discussed above, with respect to Harmoni , the Department rescinded the company's review request due to Petitioners' and Harmoni's timely request to rescind the review with respect to Harmoni. Thus, the Department need not consider separate rate treatment for Harmoni.

A. Separate Rate Applicants

All of the separate rate applicants (Richfar, Lianghe, and Chenhe) provided evidence that they are either joint ventures between Chinese and foreign companies, or are wholly Chinese-owned.[30] Thus, the Department analyzed whether each of these companies demonstrated an absence of *de jure* and *de facto* government control over its respective export activities.

1. <u>Absence of *De Jure* Control</u>

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) any legislative enactments decentralizing control of companies, and (3) other formal measures by the government decentralizing control of companies.[31] The evidence provided by the separate rate applicants

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[25] *Id*.
[26] *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*"); *see also 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*").
[27] *See*, *e.g.*, *Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007).
[28] *See Initiation Notice*.
[29] *Id.*
[30] *See* Separate Rate Applications.
[31] *See Sparklers*, 56 FR at 20589.

supports a preliminary finding of an absence of *de jure* government control based on the criteria outlined above.[32]

2. 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 ("EPs") 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 disposition of profits or financing of losses.[33] The Department determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control, which would preclude the Department from assigning separate rates. The evidence provided by the separate rate applicants supports a preliminary finding of an absence of *de facto* government control based on the criteria outlined above. [34]

Therefore, the Department preliminarily finds that all three separate rate applicants established that they qualify for separate rates under the criteria established by *Silicon Carbide* and *Sparklers.*

B. Separate Rate Certifications

As discussed below, with respect to Hejia and Golden Bird, we are preliminarily treating both Golden Bird and Hejia as part of the PRC-wide entity. Neither Hejia nor Golden Bird is entitled to a separate rate.

With respect to the four other remaining companies who filed separate rate certifications (Yuanxiang, Xinboda, Hongquiao, and Simple Garlic), the evidence placed on the record by these companies demonstrates a continued absence of *de jure* and *de facto* government control under the criteria identified in *Silicon Carbide* and *Sparklers*. Accordingly, the Department has preliminarily determined that these companies, which submitted separate rate certifications, have demonstrated that they continue to be eligible for a separate rate.

C. Separate Rate for Non-Selected Companies

Pursuant to section 777A(c) of the Act, because of the large number of exporters/producers, and lacking the resources to examine all companies, the Department determined that it was not practicable to individually examine all companies subject to this review and, thus, employed a limited examination methodology. Pursuant to section 777A(c)(2)(B) of the Act, we selected

[32] *See* Separate Rate Applications.
[33] *See Silicon Carbide*, 59 FR at 22587; *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).
[34] *See* Separate Rate Applications.

Golden Bird and Hejia as the mandatory respondents in this review.[35] As discussed below, we have determined that both Golden Bird and Hejia should be considered part of the PRC-wide entity so we cannot average the rates of the two mandatory respondents.

As discussed above, Simple Garlic, Yuanxiang, Hongqiao, Richfar, Lianghe, Chenhe and Xinboda 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 in an investigation using rates established for individually investigated producers and exporters, excluding any zero or *de minimis* margins or any margins based entirely on facts available.[36] Section 735(c)(5)(B) of the Act also provides that, where all margins are zero rates, *de minimis* rates, or rates based entirely on facts available, we may use "any reasonable method" for assigning the rate to non-selected respondents. The weighted-average margins preliminarily determined for the individually-examined respondents in this review is based entirely on facts available. Therefore, for the preliminary results, the Department has preliminarily determined that the margin to be assigned to the separate rate recipients is 1.82 U.S. dollars per kilogram, which is the rate for separate rate companies for the most recently completed (18th) administrative review, which was based on the rate calculated for Xinboda for the final results of the 18th administrative review as it was the only company with a calculated rate for those final results.[37]

The PRC-Wide Entity

For the reasons described below, the Department has preliminarily determined that neither Hejia nor Golden Bird is eligible for a separate rate and, therefore, they are part of the PRC-wide entity. Moreover, as noted above, while Petitioners withdrew the review request for 94 companies, all but two of these companies did not have separate rates from prior segments.[38] Upon initiation of the administrative review, we provided all companies for which the review was initiated an opportunity to complete either the separate rates application or certification. Additionally, 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.[39]

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[35] *See* Respondent Selection Memorandum.
[36] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Preliminary Results and Partial Rescission of the Antidumping Duty Administrative Review and Preliminary Results of the New Shipper Review; 2012-2013*, 79 FR 42758 (July 23, 2014).
[37] *See 2011-2012 Garlic Final*.
[38] *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).
[39] *Id.*

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.[40]

Use of Facts Available and AFA

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply "facts otherwise available" if, *inter alia*, necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority" if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to consider the information if it can be used without undue difficulties.

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. For the reasons explained below, the Department determines that application of facts otherwise available pursuant to sections 776(a)(1) and (2) of the Act is warranted and that an adverse inference is warranted, pursuant to section 776(b) of the Act.

Background

In their Section A questionnaire responses of June 11 and June 25, 2014, Hejia and Golden Bird certified to the Department that they exported to the United States a specific quantity of subject

[40] *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).

merchandise during the POR.[41] As discussed above, pursuant to section 777A(c)(2) of the Act, we limited our selection of mandatory respondents in this review to the two exporters accounting for the largest volume of subject merchandise.[42] Based on the CBP entry data, we selected Hejia and Golden Bird as the two mandatory respondents for this review.[43]

On June 25, 2014, and July 9, 2014, Petitioners placed information on the record from the Port Import Export Reporting Services (PIERS) which purported to show that the export data from the General Administration of Customs of the People's Republic of China (GACC) reflected Hejia and Golden Bird as the exporters on record into the United states for amounts of subject merchandise significantly less than what both Hejia and Golden Bird declared to the Department or was reported to CBP.[44] This information also purportedly showed that a specific number of the Chinese exporters subject to the PRC-wide entity rate were recorded by the GACC as exporting to the United States during the POR. During the POR, however, there was no corresponding entry on the CBP side for any of these exporters.[45] Petitioners alleged that this information indicated that these companies were exporting under a shipper name and number from one or more other entities, or that one or more other entities were exporting the subject merchandise on their behalf. Specifically, Petitioners alleged that the difference between what Hejia and Golden Bird reported to the Chinese government can be accounted for by the amount of garlic exported by the other exporters, and that this amount was falsely reported as having been exported Hejia and Golden Bird, which were subject to zero or low cash deposit rates.[46] Petitioners alleged that, if true, this information would demonstrate that Hejia and Golden Bird were involved in a scheme to circumvent millions in customs duties as they allowed other companies to use their zero or low cash deposit rates.[47]

On July 2, 2014, Golden Bird submitted a response to Petitioners' June 25, 2014 letter.[48] Golden Bird stated that Petitioners New Factual information is submitted without support as to the veracity and accuracy of GACC information submitted. Golden Bird further stated that Petitioners June 25, 2014 letter involved serious allegations and requested that the Department reject this filing. Golden Bird also argued that the GACC data and its source are not BPI, as so claimed by the Petitioners, because Petitioners filed this data from PIERS, which provides data

[41] *See* Hejia Section A Questionnaire Response, dated June 25, 2014; *see also* Golden Bird Section A Questionnaire Response, dated June 11, 2014.
[42] *See* Respondent Selection Memo.
[43] *See id.*
[44] *See* Letter from Petitioners to the Department "19th Administrative Review of Fresh Garlic from the People's Republic of China – Petitioners' Submission of New Factual Information Concerning Shipment Volumes by Mandatory Respondents, dated June 25, 2014, (Petitioners' June 25 letter). *See also* Letter from Petitioners to the Department "19th Administrative Review of Fresh Garlic from the People's Republic of China – Petitioners' Submission of Public Information to Rebut, Clarify or Correct Information Submitted by Golden Bird, dated July 9, 2014 (Petitioners' July 9 letter to Rebut Info Submitted by GB).
[45] *See* Petitioners' June 25 Letter.
[46] *See* Letter from Petitioners to the Department, "19th Administrative Review of Fresh Garlic from the People's Republic of China – Petitioners' Request for Investigation of Substantial Discrepancies Between Golden Bird and Hejia's Volume of POR Exports Reported to Commerce/CBP and Chinese Customs Authority , dated July 9, 2014 (Petitioners' July 9 Letter about Volume of POR Exports Reported to Commerce) at 3.
[47] Petitioners' July 9 Letter about Volume of POR Exports Reported to Commerce at 3-4.
[48] *See* Letter from Golden Bird to the Department, "Fresh Garlic from the People's Republic of China – Response to Petitioners' Submission of New Factual Information Concerning Shipments Volumes Reported by Mandatory Respondents filed on Behalf of Hebei Golden Bird Trading Co., Ltd.," dated July 2, 2014.

to members for a charge. The Department accepted Petitioners' June 25, 2014 filing; similar issues were raised and addressed in the last administrative review of garlic from the PRC.[49] Additionally, the Department disagrees with Golden Bird and finds the designation of the PIERS data as BPI proper because disclosing the sources of this type of PIERS data risks disclosing the identity of the foreign researcher who gathered it. Disclosing the identity of the foreign researcher, in turn, could hinder the researcher from gathering the data in the future. If this data source is revealed, we find that it could cause substantial harm to the competitive position of the Petitioners. Thus, we find that the designation of this type of PIERS data as BPI is proper.

Based on the Petitioners' allegation, and the past peculiarities with the CBP entry data[50], we subsequently issued supplemental questionnaires to Golden Bird and Hejia. We requested all of the Chinese customs export declaration forms (CEDFs) and Phyto-sanitary certificates pertaining to the sales/entries of subject merchandise that occurred during the POR demonstrating the amount of garlic exports they declared to the GACC during the POR, and explain, if applicable, any discrepancies between what they reported to the GACC and what was reported to the Department and to CBP.[51] These supplemental questionnaires and the responses to such are discussed in further detail below.

<u>Hejia</u>

On August 18, 2014, we issued a supplemental questionnaire, which included a request that Hejia provide the CEDFs and Phyto-sanitary certificates documenting its exports, because there was a large discrepancy between high volume of shipments it reported to the Department and the relatively low volume reflected in the PIERS/PRC customs data.[52] Hejia requested a two-week extension to respond to the Department's supplemental questionnaire on August 28, 2014. On August 29, 2014, we issued a letter granting a partial extension for questions 4 through 6 and questions 9-13 and a two-week extension for the remaining questions of the supplemental questionnaire.

On September 8, 2014, Hejia requested a few more days for both the first part of the supplemental questionnaire and the remaining questions. On September 9, 2014, we issued a letter granting Hejia until September 12, 2014, for the first part of its supplemental questionnaire and September 19, 2014, for the remaining questions. However, on September 12, 2014, Hejia filed a letter stating that it was withdrawing from the administrative review.[53] Hejia stated that it "simply does not have the requisite resources to fully answer the Department's questionnaires in a timely manner, despite its best efforts of the last several months."[54]

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[49] *See* Garlic 18 Final.
[50] *See id.*
[51] On August 18, 2014, we issued the first (and only) supplemental questionnaire to Hejia. On August 15, 2014 and September 30, 2014, we issued the first and second supplemental questionnaires to Golden Bird, respectively.
[52] *See* Petitioners' June 25 letter at 4-5.
[53] *See* Letter from Hejia to the Department, dated September 12, 2014.
[54] *Id.*

On October 23, 2014, Petitioners argued that because Hejia has withdrawn its participation, the Department will have no choice but to rely on total adverse facts available in assigning Hejia a rate for in its preliminary results. [55]

We preliminarily find that Hejia's decision to withdraw from this administrative review, and therefore, to cease providing the Department further information requires us to disregard Hejia's information, including any part of its incomplete Section A response. Consequently, Hejia failed to establish its eligibility for a separate rate. Accordingly, we find Hejia to be part of the PRC-wide entity.

We are preliminarily determining that the use of facts available is warranted with respect to the PRC-wide entity, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act, because it withheld information that had been requested, failed to provide information within the deadlines established, and significantly impeded our administrative review.

Moreover, because Hejia withdrew from the administrative review, the Department preliminarily determines that the PRC-wide entity failed to cooperate by not acting to the best of its ability to comply with the Department's request for information. Accordingly, pursuant to section 776(b) of the Act, the Department has determined that, when selecting from among the facts otherwise available, an adverse inference is warranted with respect to the PRC-wide entity.

<u>Golden Bird</u>

In our first supplemental questionnaire, we asked Golden Bird to provide all the CEDFs as well as all of its Phyto-sanitary certificates, which the FDA requires of all companies importing agricultural products into the United States, for its exports of subject merchandise to the United States, so that we could to corroborate the sales value it reported in its sections A and C responses.[56]

In GB First SQ, the Department asked Golden Bird:

> If applicable, please explain any discrepancies between the totals from the submitted GACC Export Licenses and the total export amount reported to the Department of Commerce.

Golden Bird stated it could not address any potential discrepancies without the CEDFs and that it could continue to try to obtain them.[57] Golden Bird continued:

> As noted above, if requested Golden Bird will continue to retrieve additional CEDFs. Without the CEDFs or the data complied {sic} by the Chinese government for exports of

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[55] *See* Letter from Petitioners to the Department "19th Administrative Review of Fresh Garlic from the People's Republic of China – Petitioners' Pre-Preliminary Comments Concerning Golden Bird," dated October 23, 2014(Pre-Prelim Comments).
[56] *See* Letter from the Department to Golden Bird, "2012-2013 Administrative Review of Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Supplemental Questionnaire," (GB First SQ) dated August 15, 2014. *See* also Second GB SQ.
[57] *See* GB SQR Part 1 at 2.

> garlic to the United States that reflect the same data as reported on the CEDFs, Golden Bird cannot address possible discrepancies. Golden Bird believes there are no discrepancies between its CEDF totals and the total sales amount Golden Bird reported to the Department. Nor, does Golden Bird believe there is any discrepancy between what Golden Bird reported to the Department and the data complied{sic} by the Chinese government for exports of garlic.[58]

In GB SQR Part 1, filed on September 5, 2014, Golden Bird provided copies of 82 CEDFs and 22 Phyto-sanitary certificates for exports made in October 2013, the last month of the POR. Golden Bird did not provide any other CEDFs or Phyto-sanitary certificates for any other month in the POR. We note that the CEDFs and Phyto-sanitary certificates provided by Golden Bird did not cover all of the October 2013 U.S. sales/shipments reported by Golden Bird in its Section C database. Moreover, the CEDFs and Phyto-sanitary certificates did not account for all the entries of Golden Bird's subject merchandise as declared to CBP.

Golden Bird claimed that it does not keep these documents in the normal course of its business due to a change to exempting vegetable circulation VAT rebate.[59] Golden Bird stated "{g}iven additional time, Golden Bird will supply more CEDFs. In addition, Golden Bird can provide reconciliation statements that reflect the sales by Golden Bird to its customers in the United States or Golden Bird can provide copies of other U.S. import documentation to confirm the amount of Golden Bird's sales of subject merchandise to the United States during the POR." [60]

Pursuant to section 782(d) of the Act, Department issued a second supplemental questionnaire, GB Second SQ, which identified certain deficiencies in Golden Bird's supplemental questionnaire response. In our second SQ, we asked Golden Bird to provide legible copies of CEDFs where the ones provided were illegible.[61] Specifically, we requested that it, "provide the remaining, legible copies of the authenticated CEDFs {for all exports of subject merchandise to the United States during the POR} substantiating the export amounts you, or your agent(s), declared with GACC."[62] We further requested it, "provide the remaining, legible copies of the authenticated inspection certificates (*i.e.* Phytosanitary{*sic*} certificate) from the China Inspection Quality Bureau (or from the entry-exit inspection and quarantine organs authorized by the China Inspection Quality Bureau)."[63]

In its response to GB Second SQ, Golden Bird provided 82 additional CEDFs and 34 Phyto-sanitary certificates documentation. Golden Bird also claimed that it was not aware that it needed to retain the documents at issue. For example, in its second SQR, Golden Bird stated the following:

> Golden Bird never received notice from the Department, nor any complaints from the Chinese government authorities, that a failure to retain copies of the CEDFs would result

[58] See GB SQR Part 1 at 2.
[59] *See* GB First SQR Part 1 at 1.
[60] *See* GB First SQR Part 1 at 2.
[61] *See* Second SQR at 3.
[62] *See* Second SQR at 5.
[63] *See* Second SQR at 9.

> in Golden Bird not being considered the exporter of the subject garlic….Had Golden Bird been informed (or placed on notice) that copies of CEDFs would be required to complete the chain of documentation, Golden Bird would have required its forwarders to send copies to Golden Bird.[64]

Golden Bird stated that "{w}hile it is possible for GB to obtain copies from its forwarding agent, Golden Bird has not considered it important to receive copies of every Phyto-sanitary Certificates to keep on file. Again, Golden Bird was not notified that Phyto-sanitary Certificates are a necessary component of the chain of documents." [65]

We note that in our second SQ, we also stated that "{i}f unable to do so {provide requested CEDFs and Phyto-sanitary certificates}, please explain why and submit any supporting documents that substantiate this explanation." However, in its response to our second supplemental questionnaire, Golden Bird did not provide any documentation substantiating its claim as to why it was unable to provide the supporting documents (*e.g.*, a letter from Golden Bird to its forwarders requesting the remaining CEDFs). Rather, as noted above, Golden Bird stated that it could obtain copies but that it chose not to provide the Department with these requested documents. Additionally, Golden Bird stated that it could provide reconciliation statements which tied its reported U.S. sales amounts to the GACC data as an alternative to the documents requested by the Department, but never provided such documents. Instead, Golden Bird attempted to reconcile a small number of the discrepancies in its sales to the United States versus sales reported to CBP by providing explanations about invoices that account for a tiny fraction of POR sales reported to CBP. (These explanations included incorrectly filed CEDFs, transposed digits, rounding of numbers, and some where Golden Bird stated that there were no discrepancies.) [66] However, this response did not attempt to address or explain the significant discrepancy in the sales value reported in its sections A and C versus the CEDFs provided in its GB SQR Part 1 and GB Second SQR. [67]

Also, in our second SQ to Golden Bird we also requested further clarification about the unit price, which differs between the CEDFs and the reported sales transactions. In response Golden Bird stated:

> China Customs prices are just proforma prices. In China, in order not to leak any business secrets many exporters are reluctant to provide anyone the actual prices. For Golden Bird, CEDFs is made based on proforma contract and invoice, price information to be as the commercial invoice.[68]

[64] *See* Letter from Golden Bird to the Department "19th Administrative Review Fresh Garlic from the People's Republic of China – Response to the Department's September 29, 2014, Second Supplemental Questionnaire on Behalf of Hebei Golden Bird Trading Co., Ltd.," dated October 14, 2014 (GB Second SQR) at 1-2.
[65] *See* GB Second SQR at 9.
[66] *See* GB Second SQR at 3-4 and Exhibits 3, 3.1 and 3.2.
[67] *See* GB Second SQR at 3-4 and Exhibits 3, 3.1 and 3.2.
[68] *See* Second GB SQR at 3.

On October 23, 2014, Petitioners filed pre-preliminary comments arguing that Golden Bird has failed to substantiate the volume of its U.S. sales during the POR.[69] Specifically, Petitioners pointed to information on the record of this administrative review: the Department's memorandum placing the information obtained from CBP on the record; Golden Bird's March 5, 2014 letter noting that CBP had overstated its entry figures; [70] Golden Bird's section A response; and its own July 9, 2014 letter alleging a significant discrepancy between GACC's records and Golden Bird's own filings, which demonstrate that there was a significant discrepancy between what Golden Bird exported from the PRC and what is shown in CBP's records.[71] Petitioners allege that "it appears that Golden Bird allowed other Chinese entities to use its relatively low cash deposit rate during the POR (*i.e.*, $0.14/kg from Nov. 1, 2012 to June 16, 2013, and $0.00/kg. from June 17, 2013 to October 31, 2013) to enter large volumes of fresh garlic into the United States absent the depositing of millions of dollars in estimated antidumping duties."[72]

Petitioners argued that even with the partial (and self-selected) information provided by Golden Bird, Golden Bird only provided CEDFs that accounted for only a portion of the volumes reported in the GACC data for the last three months, not the volumes reported in response to the Department's questionnaire.[73] Petitioners note that there is a substantial shortfall between the volumes reflected by the CEDFs submitted and the volume of U.S. sales it has reported to the Department.[74]

Also in its pre-preliminary comments, in response to Golden Bird's statement that "retrieving copies of the CEDFs takes time" and that Golden Bird does not retain all copies of the CEDFs "in the normal course of its business," Petitioners state that Golden Bird has effectively been on notice in this proceeding since Petitioners first placed information on the record of this administrative proceeding on July 9, 2014, which is 97 days before Golden Bird submitted its response to the second SQR on October 14, 2014.[75]

Petitioners point to the Department's reliance on total adverse facts available in assigning a final margin to Golden Bird in the 18th administrative review and argue that Golden Bird's failure in this review should also result in total AFA in assigning a margin to Golden Bird for these preliminary results. Petitioners further argue that Golden Bird failed to remedy the deficiencies in its response to the first SQ. Petitioners also note that Golden Bird recognized that it was supposed to follow the applicable Chinese laws and regulations, which obligate Golden Bird to maintain paper or electronic copies of CEDFs and Phyto-sanitary certificates.[76] According to the Petitioners, the Department should conclude that it has met the requirements of 782(d), by providing Golden Bird with an opportunity to remedy its failure to provide the CEDFs and

[69] *See* Letter from Petitioners to the Department "19th Administrative Review of Fresh Garlic from the People's Republic of China – Petitioners' Pre-Preliminary Comments Concerning Golden Bird," dated October 23, 2014.
[70] On March 5, 2014, Golden Bird filed a letter stating that the CBP data overstated its entries, but that Golden Bird is not able to identify which sales these are to explain since dates were not provided.
[71] *See* (Petitioners' July 9 letter to Rebut Info Submitted by GB.
[72] *Id.* at 4.
[73] *Id.* at 6.
[74] *Id.* at 7.
[75] *See* Second GB SQ.
[76] *Id.* at 11-13.

Phyto-sanitary certificates for all of its POR sales of fresh garlic.[77] Finally, Petitioners argue that Golden Bird's submissions reflect a failure to cooperate to the best of its ability. Accordingly, the Department should rely on total AFA in assigning a dumping margin to Golden Bird in the preliminary results.[78]

Analysis

The Department preliminarily determines to apply facts available pursuant to sections 776(a)(1), (2)(A), (B) and (C) of the Act because necessary information is not available on the record and the PRC-wide entity withheld requested information, failed to provide requested information by the established deadlines and impeded the investigation. Specifically, Golden Bird failed to provide all of the requested CEDFs and Phyto-sanitary certificates that were complete and accurate.

Where the Department determines that a response does not comply with the request, section 782(d) of the Act requires that the Department provide parties with an opportunity to correct deficient responses. Here, the Department allowed Golden Bird two opportunities to provide documentation to remedy deficient responses. As discussed above, the documents that Golden Bird provided (*i.e.*, the CEDFs) after being given two opportunities to remedy its deficient responses were themselves deficient and partial at best (CEDFs and Phyto-sanitary certificates submitted accounted for a small portion of the sales volume and value that Golden Bird reported in its Sections A and C responses).[79] Golden Bird therefore failed to remedy the issue. Instead, Golden Bird relied on its explanation that it did not retain these documents in the normal course of its business and that it required more time to submit the documents.

The record of this review shows that Golden Bird was afforded 60 days to provide the requested documents.[80] We note that in preparation for verification, mandatory respondents typically have seven days to ensure that copies of required documents are available for the Department's verifiers.[81] We find that the 60 days we provided between issuing our first supplemental questionnaire and the date Golden Bird submitted the response to our second supplemental response is more than a reasonable amount of time. This is particularly true when the response concerns documents the interested party is required to maintain electronically or in hard copy by the GACC. [82] Moreover, in Garlic 18, the Department requested the same CEDFs from Golden Bird for that period of review.[83] Thus, Golden Bird had knowledge that the Department may request such documents, for multiple reasons.

[77] *Id.* at 15-18.
[78] *Id.* at 18.
[79] As noted above, the CEDFs and Phyto-sanitary certificates, Golden Bird provided failed to corroborate the total volume of subject merchandise during the POR that Golden Bird claimed to the Department. Moreover, as noted above, Golden Bird conceded that the price information on the CEDFs was potentially false.
[80] We issued our first supplemental questionnaire on August 15, 2014. Golden Bird filed the response to our second supplemental questionnaire on October 14, 2014.
[81] *See* Memorandum from Jacqueline Arrowsmith to the File, "Placing Documents on the Record of this Administrative Review", dated November 25, 2014, at Attachment 1. This will include the public version of Xinboda's outline from Garlic 18.
[82] *See* Petitioners' Letter to Rebut, Clarify or Correct Information Submitted by GB Articles 2 and 3 of Attachment 1 and Articles 4 and 7 of Attachment 2.
[83] See Garlic 18.

The Department further finds, Golden Bird failed to cooperate by not acting to the best of its ability to comply with our request for information. This standard requires a respondent to do the "maximum it is able to do."[84] In making this determination, we consider the extent to which a respondent may benefit from its own lack of cooperation.[85] Also, we assess the extent of respondent's abilities, efforts, and cooperation, in responding to our supplemental questionnaire.[86] There is no intent element and mere insufficient attention to statutory obligations suffices for adverse treatment.[87] The standard "does not condone inattentiveness, carelessness, or inadequate record keeping."[88]

In its SQRs, Golden Bird stated that it did not keep all of the requested documents because of a change in the PRC VAT exemption, which eliminated VAT on listed vegetables, and therefore eliminated the need to retain documents to obtain a rebate.[89] We find this unconvincing, because it is contradicted by substantial record evidence, including Golden Bird's own statement in GB Second SQR response that "{t}he VAT exemption itself did not remove the documentation requirement of the GACC."[90]

The GACC regulations require exporters to maintain the completed export declaration forms for three-years.[91] These regulations are unconnected and unrelated to any VAT tax exemption. Golden Bird stated that these laws were applicable to it.[92] Although Golden Bird provides a translation of the "Notice on Exempting Vegetable Circulation VAT" from the Ministry of Finance and State Administration of Taxation (from the PRC) that stated since January 1, 2012, "the vegetable circulation VAT shall be exempted," and garlic is listed as one of the vegetables, this regulation does not speak to import and export document requirements or, for that matter, the retention of such documents.[93] Given these facts, the record evidence establishes that Golden Bird was required to keep the CEDFs on file for three-years, and that it did, in fact, keep at least some of the partially completed forms even after the exemption on the vegetable circulation VAT. Therefore, Golden Bird's explanation, that it might not have kept the forms as a result of a change in the VAT exemption, is unconvincing. And, as noted above, Golden Bird stated that the "VAT exemption itself did not remove the document retention requirement of the GACC, it

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[84] *Nippon Steel Corporation v. United States,* 337 F.3d 1373 (CAFC 2003) (*Nippon Steel*) at 1382.
[85] *Gourmet Equip.*, 24 C.I.T. at 577.
[86] *Nippon Steel*, at 1382.
[87] *Id.* at 1378-1379 and 1382-1383.
[88] *Id.* at 1382.
[89] *See* GB SQR at 1 and Exhibit 3, *See also* Second SQR at 1-2.
[90] *See* GB Second SQR at 2.
[91] *See* Petitioners' July 9 Letter to Rebut, Clarify or Correct Information Submitted by GB Articles 2 and 3 of Attachment 1 (Regulations on External Auditing by GACC, Decree 209, promulgated and entered into force by the State Council of the PRC on January 3, 1997) and Attachment 2 (Measures for Implementation of the Regulations of the People's Republic of China on External Auditing, Decree No. 79, promulgated and entered into force by the GACC on January 11, 2000.) Article 7, which is most directly relevant states: "The audited shall retain import or export declaration forms , the contract, and other material directly related to import or export operations within the time limit of customs external auditing stipulated in Article 4 of these measures{sub part (3) specifies the three years}."
[92] *See GB* SQR Part 2, at 1.
[93] *See* GB SQR at Exhibit 3.

simply took away any business reason for having a records retention system to ensure copies of the CEDFs were provided by the forwarders to Golden Bird."[94]

As noted above, in the supplemental questionnaires we simply asked for documents that Golden Bird is required to keep under the laws of the PRC – and would reasonably be expected to keep - for the period that Golden Bird was being reviewed for. As another indication of its failure to cooperate with our request for information, we note that we granted Golden Bird two-extensions to submit its SQR.[95] Nevertheless, Golden Bird's SQRs were deficient. We find that Golden Bird had the ability to provide verifiable information in the time allotted, because Golden Bird was required to maintain these documents in either paper or electronic form and failed to do so.

Because Golden Bird submitted only some of the export declarations the Department requested, those of which contained price information Golden Bird acknowledges is potentially false, despite being legally obligated to submit accurate declarations and maintain them for three-years, we find that Golden Bird failed to provide complete, timely responses to our questionnaire. By not submitting all of the requested CEDFs, Golden Bird withheld information requested of it, within the meaning of 776(a)(2)(A) of the Act. In addition, because Golden Bird failed to provide all of the requested CEDFs and Phyto-sanitary certificates, and because Golden Bird acknowledged some, if not all of these documents contained false information, we find that Golden Bird failed to provide information by the deadlines for submission of the information, and significantly impeded our ability to conduct this review, pursuant to section 776(a)(2)(B) and (C) of the Act. Here the information submitted by Golden Bird is partial information, at best. And, as held by the court, the Department is not forced to accept partial information as it would allow "interested parties to manipulate the process by submitting only beneficial information…" providing respondents with "ultimate control to determine what information would be used for the margin calculation."[96] Consequently, the Department shall apply facts otherwise available.

Furthermore, Section A of the questionnaire requests general information about the company including the quantity and value of sales, separate rate eligibility, corporate structure and affiliations, sales process, accounting/financial practices, merchandise, and exports through intermediate countries. In the end, Golden Bird was unable to substantiate its Section A response and its sales transactions. Because Golden Bird's Section A response and SQR are the very documents in which discrepancies have been revealed *(i.e.,* Golden Bird has not been able to corroborate its volume and the price in CEDFs differed from those reported to the Department) we cannot rely on Golden Bird's submitted Section A responses. For the reasons discussed above, the Department finds that Golden Bird failed to to cooperate to the best of its ability in providing CEDFs and Phyto-sanitary certificates, the information requested by the Department.[97] Thus, pursuant to section 776(b) of the Act, the Department is applying adverse facts available.

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[94] *See* GB Second SQR at 2.
[95] *See* First Extension Grant Letter at 1 and Second Extension Grant Letter at 2.
[96] *See Steel Auth. of India v. United States,* 149 F. Supp. 2d 921, 928 (CIT 2001).
[97] *See generally Tissue Paper Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order, 76 47551,* 47553(August 5, 2011) (noting that the respondent "was expected to maintain the requested production and accounting records in the normal course of business and was required to maintain them under Vietnamese accounting law, but did not do so."); Memorandum from Stephen J. Claeys, Deputy Assistant Secretary, to David M. Spooner, Assistant Secretary, "Issues and Decision Memorandum:

Finally, if the Department finds that the response to a request for information fails to comply with the request and the submitting party fails to remedy the deficiency, the Department may disregard all of the original and subsequent responses.[98] Here, as discussed above, Golden Bird has had ample time to explain or remedy its deficiencies in the supplemental questionnaire. But Golden Bird failed to do so. Moreover, in accordance with section 782(e) of the Act, the Department determined it could not consider the information provided by Golden Bird because the information was so incomplete it could not serve as a reliable basis for reaching the applicable determination, and Golden Bird did not demonstrate it acted to the best of its abilities in supplying this information.[99] Because we determine that the entirety of Golden Bird's information is unusable, including its separate rate information, we find that Golden Bird has failed to rebut the presumption that it is part of the PRC-wide entity and, because the PRC-wide entity, which includes Golden Bird, failed to cooperate to the best of its ability, application of total adverse facts available, pursuant to section 776(b) of the Act, is warranted. As adverse facts available we are applying the rate of 4.71 U.S. dollars per kilogram to the PRC-wide entity.[100]

CORROBORATION OF ADVERSE FACTS AVAILABLE RATE

As discussed above, the Department is relying on total adverse facts available with respect to the PRC-wide entity, because it failed to cooperate by not acting to the best of its ability in this administrative review. In selecting from the facts otherwise available and making an adverse inference, we have determined that its dumping margin is the current PRC-wide entity rate of 4.71 U.S. dollars per kilogram. Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. Secondary information is defined as "{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise."[101]

The SAA provides further that the term "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value.[102] Thus, to corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used. The SAA also states that independent sources used to corroborate secondary information may include, for example, published price lists, official import statistics, and customs data, as well as information obtained from interested parties.[103]

Final Results of Administrative Review," dated July 7, 2008 at 9; *Nippon Steel* at 1383; *Gourmet Equipment (Taiwan) Corp v. United States* 24 CIT at 579 (noting "Although Gourmet responded to Commerce's questionnaires, it did not provide the kind of information Commerce required to verify the questionnaire responses. In light of the fact that it was within Gourmet's capacity to provide the right kind of information, Commerce's determination that Gourmet failed to comply to the best of its ability is in accordance with law and supported by substantial evidence.")

[98] *See* section 782(d) of the Act.

[99] Section 782(e)(2)-(4) of the Act.

[100] *See Zhejiang Dunan Hetian Metal Co. v. United States*, 652 F.3d 1333, 1348 (Fed. Cir. 2011) (holding that the Department may use total AFA when the "submitted data exhibited pervasive and persistent deficiencies that cut across all aspects of the data," making the reported data unreliable or unusable).

[101] *See* Statement of Administrative Action accompanying the URAA, H.R. Rep No. 103-316 (SAA) at 870.

[102] *Id.* at 870.

[103] *Id*.

The *ad valorem* rate of 376.67 percent is the highest rate on the record of any segment of this fresh garlic antidumping duty proceeding. This rate was applied to the PRC-wide entity in the original investigation and was consistently applied to the PRC-wide entity until the thirteenth administrative review.[104] In *Garlic 13*, the Department converted the *ad valorem* rate to a per-unit rate of 4.71 U.S. dollars per kilogram. The rate of 4.71 U.S. dollars per kilogram has been applied to the PRC-wide entity in each review since *Garlic 13*.[105] Furthermore, the rate selected for the PRC-wide entity was corroborated with transaction-specific margins in a prior administrative review.[106] No information from this review calls into question its reliability. Thus, the Department determines preliminarily that this rate continues to be reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico*,[107] the Department disregarded the highest margin in that case as adverse best information available (the predecessor to "facts available") because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been judicially invalidated.[108]

Similar to reasons cited in *Watanabe Group v. United States*, Court No. 09-00520 Slip Op. 10-139 (CIT December 22, 2010) and *Peer Bearing Company - Changshan v. United States*, 587 F. Supp. 2d 1319 (CIT December 8, 2008), here the Department finds the PRC-wide rate to be corroborated. Specifically, the Department finds this rate to be reliable and relevant, because: (1) it constitutes the highest rate from any segment of the proceeding, (2) it has been applied as the PRC-wide entity rate in over a dozen completed reviews, and (3) was corroborated in a prior review based on an examination of transaction-specific margins in that review.

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[104] *See Fresh Garlic From the People's Republic of China: Final Results and Partial Rescission of the 13th Antidumping Duty Administrative Review and New Shipper Reviews*, 74 FR 29174 (June 19, 2009) (*Garlic 13*); *see also Notice of Preliminary Determination of Sales at Less Than Fair Value: Fresh Garlic From the People's Republic of China*, 59 FR 35310 (July 11, 1994), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Garlic From the People's Republic of China*, 59 FR 49058 (September 26, 1994).

[105] *See Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 14th Antidumping Duty Administrative Review*, 75 FR 34976 (June 21, 2010) and *Fresh Garlic From the People's Republic of China: Final Results and Final Rescission, in Part, of the 2008-2009 Antidumping Duty Administrative Review*, 76 FR 37321 (June 27, 2011).

[106] *See Fresh Garlic from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Preliminary Results of New Shipper Reviews*, 70 FR 69942 (November 18, 2005), unchanged in *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper* Reviews, 71 FR 26329 (May 4, 2006).

[107] *Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (*Fresh Cut Flowers from Mexico*).

[108] *See D&L Supply Co. v. United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997).

V. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

✓

Agree   Disagree

Paul Piquado
Assistant Secretary
 for Enforcement and Compliance

1 DECEMBER 2014

Date