A-570-831
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Administrative Review
11/01/2014 – 10/31/2015
E&C/Office VII: KW/AC

December 5, 2016

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 2014-2015 Antidumping Duty Administrative Review: Fresh Garlic from the People's Republic of China

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I. SUMMARY

In response to requests from interested parties, the Department of Commerce (Department) is conducting an administrative review (AR) of the antidumping duty (AD) order on fresh garlic from the People's Republic of China (PRC) [1] covering the period of review (POR) of November 1, 2014, though October 31, 2015. The Department preliminarily finds that the mandatory respondents, Zhengzhou Harmoni Spice Co., Ltd. (Harmoni), and Qingdao Tiantaixing Foods Co., Ltd. (QTF) each failed to cooperate to the best of its ability. As a result, we preliminarily find that Harmoni has not rebutted the presumption that it is part of the PRC-wide entity, and we preliminarily base QTF's dumping margin on adverse facts available. The Department also preliminarily finds that voluntary respondent Shenzhen Xinboda Industrial Co., Ltd. (Xinboda) sold subject merchandise to the United States at less than normal value. We are also preliminarily granting a separate rate to five companies which demonstrated their eligibility for separate rate status, but were not selected for individual examination. 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 10 companies made no shipments during the POR.

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 ADs 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

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

notice pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.221.

II. BACKGROUND

On November 3, 2015, the Department published a notice of opportunity to request an administrative review of the AD order on garlic from the PRC. Between November 16, 2015, and November 30, 2015, interested parties submitted requests for review. On January 7, 2016, the Department initiated the twenty-first administrative review of fresh garlic from the PRC with respect to 42 companies.[2] On January 27, 2016, the Department issued a memo tolling all deadlines for the administrative review by four business days due to Snowstorm Jonas.[3]

Thirteen parties timely submitted "no shipment" certifications, attesting that they had no entries of subject merchandise during the POR. Specifically, these companies are: (1) Qingdao Sea-line International Trading Co.; (2) Qingdao Xintianfeng Foods Co., Ltd (QXF); (3) Yantai Jinyan Trading, Inc., (4) Shijiazhuang Goodman Trading Co., Ltd.; (5) Qingdao Lianghe International Trade Co., Ltd. (Lianghe); (6) Shandong Chenhe International Trading Co., Ltd.; (7) Jinxiang Richfar Fruits & Vegetables Co., Ltd.; (8) Jining Yifa Garlic Produce Co., Ltd. (9) Jining Shengtai Fruits & Vegetables Co., Ltd.; (10) Qingdao Maycarrier Import & Export Co., Ltd.; (11) Jining Shunchang Import & Export Co., Ltd.; (12) Shenzhen Yuting Foodstuff Co., Ltd. (13) Jinxiang Guihua Food Co., Ltd.[4]

Eight companies each timely submitted a separate rate status certification or application. Those companies include: (1) Jining Alpha Food Co., Ltd. (Jining Alpha);[5] (2) Weifang Hongqiao International Logistics Trading Co., Ltd. (Weifang Hongqiao);[6] (3) Jinan Farmlady Trading Co., Ltd. (Farmlady);[7] (4) Shenzhen Bainong Co., Ltd. (Bainong);[8] (5) QTF;[9] (6) Jinxiang Zhengyang (Zhengyang);[10] (7) Harmoni;[11] and (8) Xinboda.[12]

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[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 736 (January 7, 2016). (Initiation Notice)

[3] *See* Memorandum from Ron Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, Re: "Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm 'Jonas'" (January 27, 2016).

[4] *See* Letter from Chenhe et al, "Fresh Garlic from the People's Republic of China – No Sales Shipments in Connection with the Garlic 21 (2014-2015) Administrative Review" (January 13, 2016).

[5] *See* Letter from Jining Alpha Food Co., Ltd., "Fresh Garlic from the People's Republic of China – Separate Rate Application for the 21st Period of Review filed on Behalf of Jining Alpha Food Co., Ltd." (January 15, 2016). (Jining Alpha's SRA).

[6] *See* Letter from Weifang Hongqiao International Logistics Trading Co., Ltd., "Fresh Garlic from the People's Republic of China – Separate Rate Certification for the 21st Period of Review filed on Behalf of Weifang Hongqiao International Logistics Trading Co., Ltd." (January 15, 2016)(Weifang Hongqiao's SRC).

[7] *See* Letter from Jinan Farmlady Trading Co., Ltd., "Fresh Garlic from the People's Republic of China – Separate Rate Certification for the 21st Period of Review filed on Behalf of Jinan Farmlady Trading Co., Ltd." (January 15, 2016) (Farmlady's SRC).

[8] *See* Letter from Shenzhen Bainong Co., Ltd., "Fresh Garlic from the People's Republic of China – Separate Rate Certification for the 21st Period of Review filed on Behalf of Shenzhen Bainong Co., Ltd." (January 15, 2016) (Bainong's SRC).

[9] *See* Letter from QTF, "Fresh Garlic from the People's Republic of China, Separate Rate Certification for Qingdao Tiantaixing Foods Co., Ltd. ("QTF")" (January 15, 2016).

[10] *See* Letter from Zhengyang, "Fresh Garlic from the People's Republic of China – Sep. Rate Certification – Jinxiang Zhengyang" (February 8, 2016)(Zhengyang's SRC).

On March 1, 2016, the Department issued a memorandum indicating that we would examine the two largest exporters of subject merchandise, Harmoni and QTF.[13] On March 7, 2016, the Department issued questionnaires to Harmoni and QTF.[14] Between April 1, 2016, and April 20, 2016, QTF submitted timely responses to this questionnaire.[15] Between March 29, 2016, and April 21, 2016, Xinboda submitted voluntary responses to the questionnaire.[16] By July 1, 2016, Harmoni failed to respond to the Department's questionnaire. The Department selected Xinboda as a voluntary respondent for this administrative review on August 4, 2016.[17]

On March 25, 2016, Harmoni submitted a letter requesting that the Department temporarily suspend the administrative review with respect to Harmoni. The request stated that the members of the New Mexico Garlic Growers Coalition (NMGGC)[18] did not meet the statutory definition of a "producer" of "domestic like product" and therefore did not have standing to request a review of Harmoni.[19] Harmoni also alleged in its March 25, 2016, letter that certain exporters of subject merchandise and the NMGGC had committed fraud.[20] Between March 29, 2016, and October 21, 2016, Harmoni, QTF, NMGGC and Petitioners each submitted information and comments regarding the NMGGC's standing as a producer of domestic like products, and the allegations of fraud. [21]

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[11] *See* Letter from Harmoni, "Separate Rate Certification from Zhengzhou Harmoni Spice Co., Ltd. in the Twenty-First Annual Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China, A-570-831 (POR 11/01/14-10/31/15)," (February 8, 2016) (Harmoni SRC).
[12] *See* Letter from Xinboda, "Fresh Garlic from the People's Republic of China – Sep. Rate Certification – Shenzhen Xinboda" (February 19, 2016).
[13] *See* Memorandum, "Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Respondent Selection Memorandum" (March 1, 2016).
[14] *See* Department Questionnaire for Harmoni (March 7, 2016) *and see* Department Questionnaire for QTF (March 7, 2016).
[15] *See* Letter from QTF, "Fresh Garlic from the People's Republic of China – SAQR in 21st Antidumping Administrative Review filed on Behalf of Qingdao Tiantaixing Foods Co., Ltd.," (April 1, 2016) (QTF's Section A Response). *See also* Letter from QTF, "Fresh Garlic from the People's Republic of China - SCQR in 21st Antidumping Administrative Review filed on Behalf of Qingdao Tiantaixing Foods Co., Ltd." (April 8, 2016). *See also* Letter from QTF, "Fresh Garlic from the People's Republic of China -Section D Questionnaire Response (SDQR) in 21st Antidumping Administrative Review filed on Behalf of Qingdao Tiantaixing Foods Co., Ltd. (QTF)" (April 20, 2016).
[16] *See* Letter from Xinboda, "Fresh Garlic from the People's Republic of China – Section A Response – Shenzhen Xinboda" (March 29, 2016). *See also* Letter from Xinboda, "Fresh Garlic from the People's Republic of China - Section C Response - Shenzhen Xinboda" (April 14, 2016). *See also* Letter from Xinboda, "Fresh Garlic from the People's Republic of China – Section D Response – Shenzhen Xinboda," (April 21, 2016).
[17] *See* Memorandum, "Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Selection of Additional Respondent" (August 4, 2016).
[18] The NMGGC's members are El Bosque Farm and Boxcar Farm.
[19] November 28, 2015 NMGGC requested a review of Harmoni. *See* Letter from NMGGC, "Fresh Garlic from the People's Republic of China, 21st Administrative Review – Request for Antidumping Review of Shenghou Harmoni Spice Co., Ltd. and Affiliates," dated November 28, 2015.
[20] *See* Letter from Harmoni, "Request for Temporary Suspension of POR 21 Administrative Review of Zhengzhou Harmoni Spice Co., Ltd. in Antidumping Duty Order on Fresh Garlic from the People's Republic of China (A-570-831)," (March 25, 2016).
[21] *See* Letter from NMGGC, "21st Administrative Review of Fresh Garlic from the People's Republic of China – NMGGC Comments on March 25, 2016, Letter of Zhengzhou Harmoni Spice Co., Ltd. and Harmoni International Spice, Inc. ("Harmoni")" (March 30, 2016). *See also* Letter from QTF, "Fresh Garlic from the People's Republic of China, 21st Administrative Review – Request for Department Position on Fabricated Claims Double Bracket

Treatment in Submissions of Harmoni – filed on behalf of Qingdao Tiantaixing Foods Co., Ltd.” (April 1, 2016). *See also* Letter from Petitioners, “21st Administrative Review of Fresh Garlic from the People’s Republic of China – Petitioners’ Comments in Support of Harmoni’s Fraud Claim” (April 5, 2016). *See also* Letter from Harmoni, "Renewal of Request for Temporary Suspension of POR 21 Administrative Review of Zhengzhou Harmoni Spice Co., Ltd. in Antidumping Duty Order on Fresh Garlic from the People's Republic of China (A-570-831)" (April 7, 2016). *See also* Letter from NMGGC, "Fresh Garlic from the People's Republic of China, 21st Administrative Review - Comments on April 5, 2016, FGPA Comments in Support of Harmoni's Fraud Claim filed on behalf of the New Mexico Garlic Growers Coalition" (April 8, 2016) (NMGGC April 8 Comments). *See also* Letter from Harmoni, "Additional Information Supporting Harmoni’s Allegation of Hume Group Fraudulent Conduct in POR 21 Administrative Review and Previous Reviews of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China (A-570-831)" (April 13, 2016). *See also* Letter from the Department, "Additional Information Supporting Harmoni’s Allegation of Hume Group Fraudulent Conduct in POR 21 Administrative Review and Previous Reviews of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China" (April 15, 2016). *See also* Letter from QTF, "Fresh Garlic from the People's Republic of China, 21st Administrative Review - Response to Comments of Harmoni dated Apri113, 2016, -- filed on behalf of Qingdao Tiantaixing Foods Co., Ltd." (April 25, 2016). *See* also Letter from Harmoni, “Response to Messrs. Crawford and Katz’ Claims to be Domestic Producers or Wholesalers in Antidumping Duty Order on Fresh Garlic from the People’s Republic of China (A-570-831),” (April 25, 2016) (Harmoni April 25 Comments). *See also* Letter from QTF, "Fresh Garlic from the People's Republic of China, 21st Administrative Review - New Factual Information to Rebut Claims of Harmoni and the FGPA filed on behalf of Qingdao Tiantaixing Foods Co., Ltd." (May 2, 2016). *See also* Letter from Harmoni, “21st Administrative Review of Fresh Garlic from the People’s Republic of China – NMGGC Rebuttal Comments of Zhengzhou Harmoni Spice Co., Ltd. and Harmoni International Spice Inc. Harmoni Comments dated April 26, 2016,” (May 3, 2016) (Harmoni May 3 Comments). *See also* Letter from Harmoni, "POR 21 Review of Antidumping Duty Order on Fresh Garlic from the People's Republic of China (A-570-831)- Activity in U.S. District Court, Central District of California Case 2:16-cv-00614-BRO-AS Harmoni International Spice, Inc. et al v. Wenxuan Bai et al." (May 25, 2016). *See also* Letter from NMGGC, "21st Administrative Review of Fresh Garlic from the People's Republic of China - NMGGC Rebuttal to Comments of Zhengzhou Harmoni Spice Co., Ltd. and Harmoni International Spice Inc. filed by Winston & Strawn" (May 31, 2016). *See also* Letter from Harmoni, "Additional Information Supporting Harmoni’s Allegation of Hume Group Fraudulent Conduct in POR 21 Administrative Review and Previous Reviews of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China (A-570-831)" (June 1, 2016) (Harmoni 6/1 Fraud Allegation). *See also* Letter from NMGGC, "21st Administrative Review of Fresh Garlic from the People's Republic of China - NMGGC Response to the Untimely Request to Rescind the 21 AR and {Yet Another} Request for Extension of Time for Harmoni to Respond to the Department's Questionnaire" (June 27, 2016). *See also* Letter from NMGGC, "21st Administrative Review of Fresh Garlic from the People's Republic of China - New Factual Information Confirming that Harmoni is Competing Directly with Garlic Produced by NMGGC - Filed on Behalf of the New Mexico Garlic Growers Coalition (NMGGC)," (August 9, 2016). *See also* Letter from Harmoni, "Response to NMGGC Letters of August 9 and 10, 2015; Renewal of Request for Conference - POR 21 Administrative Review of Zhengzhou Harmoni Spice Co., Ltd. in Antidumping Duty Order on Fresh Garlic from the People's Republic of China (A-570-831)," (August 12, 2016). *See also* Letter from NMGGC, "21st Administrative Review of Fresh Garlic from the People's Republic of China - Response to Harmoni Renewal of Request for a Meeting - Filed on Behalf of the New Mexico Garlic Growers Coalition (NMGGC)," (August 18, 2016). *See also* Letter from NMGGC, "21st Administrative Review of Fresh Garlic from the People's Republic of China - New Factual Information Concerning Harmoni Shipments - Filed on Behalf of the New Mexico Garlic Growers Coalition (NMGGC)," (August 29, 2016). *See also* Letter from Harmoni, "Response to NMGGC Letter of August 29, 2016; POR 21 Administrative Review of Zhengzhou Harmoni Spice Co., Ltd. in Antidumping Duty Order on Fresh Garlic from the People's Republic of China (A-570-831)," (August 31, 2016). *See also* Letter from NMGGC, "21st Administrative Review of Fresh Garlic from the People's Republic of China - Reply to New Factual Information Concerning Harmoni Shipments - Filed on Behalf of the New Mexico Garlic Growers Coalition (NMGGC)," (September 6, 2016). *See also* Letter from Harmoni, "Pending Request to Reject NMGGC Untimely Filed New Factual Information Submissions, Antidumping Duty Order on Fresh Garlic from the People's Republic of China (A-570-831)," (September 8, 2016). *See also* Letter from NMGGC, "21st Administrative Review of Fresh Garlic from the People's Republic of China - New Information to Rebut, Clarify, or Correct Factual Information On the Record Concerning Zhengzhou Harmoni Spice

On June 3, 2016, the Department issued a memorandum announcing the finding that the members of the NMGGC are domestic producers of fresh garlic, and thus, have standing to request administrative reviews of foreign exporters.[22]

On May 9, 2016, the Department requested information and comments relating to the selection of a surrogate country and surrogate values for this administrative review.[23] The Department received timely filed comments and/or rebuttals from NMGGC,[24] Xinboda,[25] Petitioners,[26] and QTF.[27]

Co., Ltd. and Harmoni International Spice Inc. Statements - Filed on Behalf of the New Mexico Garlic Growers Coalition (NMGGC)," (September 12, 2016). *See also* Letter from NMGGC, "21st Administrative Review of Fresh Garlic from the People's Republic of China - New Factual Information Concerning Fresh Garlic Shipments from China - Filed on Behalf of the New Mexico Garlic Growers Coalition (NMGGC)," (October 14, 2016). *See also* Letter from Harmoni, "Response to NMGGC Letter of October 14, 2016; POR 21 Administrative Review of Zhengzhou Harmoni Spice Co., Ltd. in Antidumping Duty Order on Fresh Garlic from the People's Republic of China (A-570-831)," (October 19, 2016) (Harmoni's October 19th Letter). *See also* Letter from NMGGC, "21st Administrative Review of Fresh Garlic from the People's Republic of China - New Factual Information and Request for the Department to Issue Partial Preliminary Results from Harmoni as Scheduled on November 3, 2016 - Filed on Behalf of the New Mexico Garlic Growers Coalition (NMGGC)," (October 21, 2016).

[22] *See* Memorandum, "Whether the members of the New Mexico Garlic Growers Coalition (NMGGC) are U.S. Domestic Producers of Fresh Garlic: Administrative Review of Fresh Garlic from the People's Republic of China (PRC)," (June 3, 2016).

[23] *See* Letter from the Department, "2014-2015 Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Request for Surrogate Country and Surrogate Value Comments and Information," (May 9, 2016).

[24] *See* Letter from NMGGC, "21st Administrative Review of Fresh Garlic from the People's Republic of China – Comments on Surrogate Country and Submission of Surrogate Value Information – Filed on Behalf of the New Mexico Garlic Growers Coalition," (July 22, 2016) (NMGGC's SC Comments).

[25] *See* Letter from Xinboda, "Fresh Garlic from the People's Republic of China: Surrogate Country Comments," (July 22, 2016) (Xinboda's SC Comments). *See also* Letter from Xinboda, "Fresh Garlic from the People's Republic of China: Rebuttal Surrogate Country Comments," (August 5, 2016) (Xinboda's Rebuttal SC Comments). *See also* Letter from Xinboda, "Fresh Garlic from the People's Republic of China: Preliminary Surrogate Value Submission," (August 9, 2016) (Xinboda's SV Submission). *See also* Letter from Xinboda, "Fresh Garlic from the People's Republic of China: Rebuttal Surrogate Value Submission," (August 19, 2016) (Xinboda's Rebuttal SV Submission). *See also* Letter from Xinboda, "Fresh Garlic from the People's Republic of China: Final Surrogate Value Submission," (October 4, 2016) (Xinboda's 2nd SV Submission). *See also* Letter from Xinboda, "Fresh Garlic from the People's Republic of China: Pre-Preliminary Comments," (Xinboda's Pre-Prelim Comments) (November 7, 2016).

[26] *See* Letter from Petitioners, "21st Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Comments on Surrogate Country Selection," (July 22, 2016) (Petitioners' SC Comments). *See also* Letter from Petitioners, "21st Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Submission of Information to Rebut, Correct, and Clarify Respondent's Surrogate Country Selection Comments," (August 5, 2016) (Petitioners' Rebuttal SC Comments). *See also* Letter from Petitioners, "21st Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Surrogate Country Rebuttal Comments," (August 5, 2016) (Petitioners' 2nd Rebuttal SC Comments). *See also* Letter from Petitioners, "21st Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Submission of Surrogate Values from Romania," (August 9, 2016) (Petitioners' SV Submission). *See also* Letter from Petitioners, "21st Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Submission of Information to Rebut, Clarify, or Correct Mexican Surrogate Values," (August 19, 2016) (Petitioners' Rebuttal SV Submission). *See also* Letter from Petitioners, "21st Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Submission of Additional Romanian Surrogate Value Information," (October 4, 2016) (Petitioners' 2nd SV Submission). *See also*

Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), 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 11, 2016, review requests were timely withdrawn for 14 companies.[28] Therefore, we are rescinding this administrative review with respect to those 14 companies.[29]

On June 3, 2016, the Department found that the members of the NMGGC were domestic producers of fresh garlic and thus had standing to request administrative reviews of foreign exporters.[30] As a result of that finding, the Department declined to suspend its review of Harmoni. The Department also stated that it would address other arguments regarding the status of the NMGGC members in the preliminary results of this review.[31]

Since that finding, interested parties in this review have continued to make arguments and submissions of factual information regarding the standing of the NMGGC members[32] to request a review of Harmoni. Specifically, Harmoni and Petitioners have continued to argue that the Department should rescind its review of Harmoni because the review was requested by the NMGGC on behalf of individuals who control QTF and its affiliated Chinese garlic exporters/producers, namely Mr. Bai Wenxuan and Mr. Wang Ruopeng, and that these same individuals allegedly control Hebei Golden Bird Trading Co., Ltd. (Golden Bird). Harmoni and Petitioners maintain that the record of this review shows that statements made by NMGGC members are not trustworthy and that NMGGC members were controlled by QTF.[33] For example, Harmoni and Petitioners contend that El Bosque Farm's claim that it withdrew its review request for Harmoni in the immediately preceding administrative review because Harmoni had intimidated El Bosque Farm by sending private investigators to inspect its facility

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Letter from Petitioners, "21st Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Submission of New Factual Information to Rebut, Clarify, and/or Correct Xinboda's Final Surrogate Value Submission," (October 14, 2016) (Petitioners' 2nd SV Rebuttal). *See also* Letter from Petitioners, "21st Administrative Review of the Antidumping Order Covering Fresh Garlic from the People's Republic of China – Petitioners' Submission of Supplemental Surrogate Values," (Petitioners' 3rd SV Submission) (November 7, 2016).

[27] *See* Letter from QTF, "Fresh Garlic from the People's Republic of China – Surrogate Country Comments for Administrative Review POR 11/01/14-10/31/15 filed on behalf of Qingdao Tiantaixing Foods Co., Ltd.," (May 16, 2016) (QTF's SC Comments). *See also* Letter from QTF, "Fresh Garlic form the People's Republic of China: Rebuttal Comments on Surrogate Country Selection," (August 10, 2016) (QTF's Rebuttal SC Comments).

[28] *See* Letter from Petitioners, "21st Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Withdrawal of Certain Requests for Administrative Review," (March 11, 2016).

[29] *See Fresh Garlic from the People's Republic of China*: *Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*; *2014-2015,* at Appendix 1 (dated concurrently with this memorandum) (Garlic 2014-2015 Preliminary FR Notice).

[30] *See* Memorandum, "Whether the members of the New Mexico Garlic Growers Coalition (NMGGC) are U.S. Domestic Producers of Fresh Garlic: Administrative Review of Fresh Garlic from the People's Republic of China (PRC)," (June 3, 2016).

[31] *Id*. at 5.

[32] As noted above, El Bosque Farm and Boxcar Farm comprise the NMGGC.

[33] *See e.g.* Harmoni's October 19th Letter.

and pry into its business[34] has been discredited by subsequent submissions made by the NMGGC on the record of this review.

On March 22, 2016, NMGGC stated that the real reason that El Bosque Farm withdrew its review request for Harmoni in the immediately preceding administrative review was that the owner of QTF asked it to do so.[35] Harmoni also points to the fact the El Bosque Farm's owner travelled to China to "research garlic production" in China at QTF's expense in July 2015 as further evidence that the NMGGC made its review request on behalf of QTF and its affiliated Chinese garlic exporters/producers.[36]

As noted in the standing memo, section 771(9)(C) of the Act defines an interested party as "a manufacturer, producer, or wholesaler in the United States of a domestic like product." The term "producer" is not defined in the Act. And the regulations, at 19 CFR 351.213(b)(1), plainly state that a "domestic interested party" may request an administrative review.[37] The contradictory statements made by NMGGC member, El Bosque Farm, and the fact that its owner travelled to China to meet with QTF's owner clearly indicate that the member communicated with QTF in 2015. This communication arguably shows that the NMGGC member has coordinated its actions with QTF and its affiliates during 2015. However, the fact that an NMGGC member communicated with Chinese exporters and may have coordinated the withdrawal of its review request of Harmoni in the immediately preceding administrative review with those parties does not negate the fact that NMGGC members have an independent interest in a review of Harmoni. The NMGGC has provided substantial evidence of its members' interest in a review of Harmoni, as discussed in the Department's June 3, 2016 memorandum. There is no indication that the NMGGC members have fabricated any of the evidence supporting their claims to be domestic garlic producers.

Evidence suggesting that the idea to request a review of Harmoni was originated by representatives of Chinese exporters, and that NMGGC's attorney may have coordinated with those foreign exporters, does not negate the NMGGC's legitimate interest in a review of Harmoni, or establish that it is a mere agent of other parties. The Department disagrees with the Petitioners' and Harmoni's contention that it is implausible that the NMGGC members, who grow and sell garlic in the United States for their livelihoods, would have an interest in the review of a Chinese exporter, particularly given the prevalence of Chinese garlic in the U.S. market and Harmoni's position as one of the top two exporters by volume during the period of review.

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[34] El Bosque Farm requested and withdrew its review request for Harmoni in the immediately preceding administrative review. *See* Letter from NMGGC, "Fresh Garlic from the People's Republic of China, Supplemental Comments for the 21st Administrative Review on behalf of New Mexico Garlic Growers Coalition," (December 3, 2015)(NMGGC Supplemental Comments) at 4-5.

[35] Attorney Robert Hume stated in a declaration that he advised El Bosque Farm's owner to withdraw the request for the 20th administrative review following a notification from Mr. Wang Ruopeng, the attorney for QTF in China, that the review request was damaging QTF's business. *See* NMGGC April 8 Comments at Exhibit 5.

[36] *See also* Harmoni May 3 Comments at 4-5. *See also* Harmoni April 25 Comments at Exhibit A referencing NMGGC Supplemental Comments at 4-5.

[37] The term "domestic interested party" is defined to mean, *inter alia*, a party described in section 771(9)(C) of the Act. *See* 19 CFR 351.102(b)(17).

Harmoni and Petitioners urge the Department to look behind the NMGGC's review request to analyze NMGGC's motivations, or connections with foreign exporters. However, they do not cite any precedent for such an analysis, and the Department preliminarily finds that this analysis is not warranted. Nothing in section 751(a) of the Act, addressing administrative reviews of AD orders, or section 777A(c) of the Act, addressing respondent selection in antidumping proceedings, directs the Department to consider a possible motivation to assist a foreign producer or exporter, or to consider an affiliation with a foreign producer or exporter as the basis for rescinding a review. The absence of such direction stands in contrast to an industry support determination following the filing of a petition, for which section 732(c)(4)(B)(i) of the Act provides that the Department shall disregard the position of domestic producers that oppose the petition "if such producers are related to foreign producers, as defined in section {771(4)(B)(ii) of this Act}, unless such domestic producers demonstrate that their interests as domestic producers would be adversely affected by the imposition of an AD order." The fact that Congress directed the Department to consider a domestic producer's relationships with foreign producers for purposes of determining industry support for a petition, but did not similarly direct the Department to consider such relationships in the administrative review request context, suggests that Congress did not intend a domestic producer's relationships with foreign producers to be disqualifying in the latter context.

Because information on the record of this review demonstrates that the NMGGC's members are domestic producers of domestic like product, that is, fresh garlic, they have standing to request administrative reviews of foreign exporters. As such, the Department preliminarily determines not to rescind its review of Harmoni.

We note that parties recently made a number of submissions[38] which we have not had time to consider for these preliminary results.

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[38] *See e.g.,* Letter from Petitioners, "21st Administrative Review of the Antidumping Duty Order Covering Fresh Garlic from the People's Republic of China – Petitioners' Pre-Preliminary Comments on Control of QTF and NMGGC," (November 15, 2016); Letter from Winston & Strawn, "POR 21 Review on Fresh Garlic from the People's Republic of China," (November 16, 2016); Letter from Harmoni, "Pre-Preliminary Comments on Zhengzhou Harmoni Spice Co., Ltd. in Twenty First Review of Antidumping Duty Order on Fresh Garlic from the People's Republic of China (A-570-831)," (November 21, 2016); Letter from NMGGC, "21st Administrative Review of Fresh Garlic from the People's Republic of China – Rebuttal to the "Summary" Filing of Zhengzhou Harmoni Spice Co., Ltd. and Harmoni International Spice, Inc. regarding the Dismissed RICO Case," (November 21, 2016); Letter from QTF, "Fresh Garlic from the PRC, 21st Administrative Review Rebuttal Comments on Petitioners' 11/15/2016 Submission," (November 23, 2016); Letter from Harmoni, "Additional Pre-Preliminary Comments of Zhengzhou Harmoni Spice Co., Ltd. in Twenty First Review of Antidumping Duty Order on Fresh Garlic from the People's Republic of China (A-570-831)," (November 23, 2016); Letter from Winston & Strawn, "POR 21 Review on Fresh Garlic from the People's Republic of China," (November 25, 2016); Letter from Harmoni, "Additional Pre-Preliminary Comments of Zhengzhou Harmoni Spice Co., Ltd. in Twenty First Review of Antidumping Duty Order on Fresh Garlic from the People's Republic of China (A-570-831)," (November 23, 2016); Letter from Harmoni (Winston & Strawn LLP), "POR 21 Review on Fresh Garlic from the People's Republic of China," (November 25, 2016); Letter from NMGGC, "21st Administrative Review of Fresh Garlic from the People's Republic of China - Reply to the Pre-Preliminary Comments of Zhengzhou Harmoni Spice Co., Ltd. dated November 21 & 23, 2016 -- Filed on Behalf of the New Mexico Garlic Growers Coalition (NMGGC)," (November 28, 2016); and Letter from Harmoni, "Harmoni's Response to NMGGC's Reply to Pre-Preliminary Comments of Zhengzhou Harmoni Spice Co., Ltd. in Twenty First Review of Antidumping Duty Order on Fresh Garlic from the

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, 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 this 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: 0703.20.0010, 0703.20.0020, 0703.20.0090, 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

Preliminary Determination of No Shipments

As discussed in the background section above, 13 companies timely filed "no shipment" certifications stating that they had no entries of subject merchandise during the POR. The Department subsequently asked CBP to conduct a query on potential shipments made by these companies during the POR; CBP provided information that indicated one of the companies had shipments during the POR.[39] As discussed in the "Affiliations" section below, two of the companies that certified non-shipment during the POR, QXF and Lianghe, are affiliated with QTF, and will thus be treated as a part of the QTF entity.

For the remaining 10 companies, CBP has provided no evidence that contradicted their claims of no shipments during the POR. Based on the certifications by these companies and our analysis of CBP information, we preliminarily determine that the companies listed in Appendix III of *Garlic 2014-2015 Preliminary Federal Register Notice* 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

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People's Republic of China (A-570-831)," (November 30, 2016); Letter from NMGGC, "21st Administrative Review of Fresh Garlic from the People's Republic of China – Reply to Harmoni Response to the NMGGC Reply to Pre-Preliminary Comments of Harmoni dated November 21, 2016 – Filed on Behalf of the New Mexico Garlic Growers Coalition (NMGGC)," (December 2, 2016).

[39] *See* Memorandum from Alexander Cipolla, "21st Administrative Review of Fresh Garlic from the People's Republic of China: Concerning Shenzhen Yuting Foodstuff Co., Ltd.'s No Shipment Certification," (December 5, 2016).

appropriate not to rescind the review in part, in these circumstances, but to complete the review with respect to these 10 companies and issue appropriate instructions to CBP based on the final results of the review.[40]

Non-Market Economy Status

The Department considers the PRC to be an NME country.[41] 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.

Affiliations

Section 771(33) of the Act, provides that:

> The following persons shall be considered to be 'affiliated' or 'affiliated persons':
>
> (A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.
> (B) Any officer or director of an organization and such organization
> (C) Partners.
> (D) Employer and employee.
> (E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.
> (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.
> (G) Any person who controls any other person and such other person.

Additionally, section 771(33) of the Act stipulates that, "For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person."

As an initial matter, we note that QTF has claimed that it is controlled by its sole shareholder and that it has no "relationship", "connection" or "affiliation" with any other Chinese producer or exporter of subject merchandise.[42] However, information on the record indicates that QTF is affiliated with other producers/exporters of subject merchandise. Specifically, publicly-available documents show that QTF's legal representative and manager, Bai Leiwen, is a fifty-percent

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[40] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011). *See also* "Assessment Rates" section below.
[41] *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).
[42] *See* QTF's Section A Response.

shareholder in Qingdao Tianhefeng Foods Co., Ltd. (QTHF), an agricultural processor.[43] In addition, QTF states that Bai Leiwen is brother to Bai Wenxuan.[44] Bai Wenxuan, according to publicly-available documents, is the legal representative of QXF, a garlic producer under review in this segment.[45] Furthermore, QXF's only public shareholder is Qingdao Beixing Trading Co., Ltd. (QBT), a garlic trading company, and all of its registered capital was provided by Bai Wenxuan.[46] According to publicly-available documents, the brothers' father, Bai Xuezhong, is a shareholder in QBT.[47] Furthermore, the wife of Bai Wenxuan, Chen Hongxia, is the manager and legal representative of another garlic producer under review, Lianghe.[48]

Based on the information on the record in this review, we preliminarily find that QTF is affiliated with QTHF, QXF, QBT, and Lianghe pursuant to section 771(33)(F) of the Act, based on the common control of these companies by the Bai family. For a detailed discussion of the issue, *see* "Application of Facts Available and Use of Adverse Inferences," below.

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.[49] 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 at a single AD rate.[50] 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.[51] Exporters can demonstrate this independence through the absence of both *de jure* (in law) and *de facto* (in fact) governmental control over export activities.[52] The Department analyzes each entity's export independence under a test first articulated in *Sparklers* and as further developed in *Silicon Carbide*.[53]

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

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[43] *See* Memo, "Administrative Review of Antidumping Duty Order on Fresh Garlic from the People's Republic of China: QTF Affiliation Documents," dated concurrently with this memo (QTF Affiliation Documents).
[44] *See* Letter from QTF, "Fresh Garlic from the PRC, 21st Administrative Review Response to Second Supplemental Questionnaire," (September 6, 2016) at 1.
[45] *See* QTF Affiliation Documents.
[46] *Id*.
[47] *Id*.
[48] *Id*.
[49] *See* Initiation Notice
[50] *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/enforcement/policy/bull05-1.pdf.
[51] *Id.*
[52] *Id*.
[53] *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*").

obtaining a separate rate.[54] For entities that were not assigned a separate rate in the previous segment, however, the Department requires a separate rate application.[55]

Separate Rate Applications and Certifications

As noted under the "Background" section of this memorandum, 8 companies timely submitted separate rate status certifications or applications. As discussed above, QTF and Harmoni were selected as mandatory respondents, and Xinboda was selected as a voluntary respondent. As discussed below, we are preliminarily treating Harmoni as part of the PRC-wide entity.

The remaining timely-filed separate rate applications or certifications came from Bainong, Farmlady, Jining Alpha, Weifang Hongqiao, and Zhengyang.

Each company certified that it had suspended entries during the POR.[56]

1. 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) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.[57]

The evidence placed on the record of the instant administrative review by QTF, Xinboda, Jining Alpha, Weifang Hongqiao, Bainong, Zhengyang, and Farmlady demonstrates an absence of *de jure* government control under the criteria identified in *Silicon Carbide* and *Sparkler*s.

2. Absence of *De Facto* Control

Typically, the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the export prices 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.[58] The Department 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 granting a separate rate.

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[54] *See Initiation Notice*.
[55] *Id.*
[56] *See* Jining Alpha's SRA. *See also* Weifang Hongqiao's SRC. *See also* Farmlady's SRC. *See also* Bainong's SRC. *See also* Zhengyang's SRC.
[57] *See Sparklers*, 56 FR at 20589.
[58] *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).

The evidence placed on the record of the instant administrative review by QTF, Xinboda, Jining Alpha, Weifang Hongqiao, Bainong, Zhengyang, and Farmlady demonstrates an absence of *de facto* government control under the criteria identified in *Silicon Carbide* and *Sparklers*. Accordingly, the Department has preliminarily determined that these six companies have demonstrated that they are eligible for a separate rate.

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 QTF and Harmoni, the exporters accounting for the largest volume of imports of the subject merchandise, as the respondents in this review. We later selected Xinboda as a voluntary respondent.[59]

As discussed above, Jining Alpha, Weifang Hongqiao, Bainong, Zhengyang, and Farmlady have demonstrated 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 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 volume of imports 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 margins established for individually investigated producers and exporters, excluding any zero or *de minimis* margins or any margins based entirely on facts available.[60]

In this review, Xinboda is the only reviewed respondent that received a weighted-average margin. Therefore, the Department preliminarily determines that Xinboda's calculated weighted-average dumping margin of $2.27 per kilogram will be assigned to Jining Alpha, Weifang Hongqiao, Bainong, Zhengyang and Farmlady.

Margin for Companies Not Receiving a Separate Rate

As noted above, we initiated administrative reviews for 42 producers/exporters of garlic, rescinded the reviews of 14 producers/exporters, confirmed that 10 producers/exporters had no shipments of subject merchandise during the POR, and granted separate rates to 5 non-selected producers/exporters. In addition, we determined that Xinboda and QTF were eligible for separate rates.[61] Therefore, 9 PRC producers/exporters remain under review. For these remaining 9 entities that did not demonstrate their eligibility for separate rate status, the

[59] *See* Initial Respondent Selection Memorandum and Additional Respondent Selection Memorandum.
[60] *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).
[61] We note that QXF and Lianghe are included in the QTF entity.

Department finds that they have not rebutted the presumption of government control and, therefore, are considered to be part of the PRC-wide entity.

The PRC-Wide Entity

Upon initiation of the administrative review, we provided the opportunity for all companies upon which the review was initiated to complete either the separate-rate application or certification.[62] In NME proceedings, "'rates' may consist of a single dumping margin applicable to all exporters and producers."[63] 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 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 provided sufficient evidence to establish that they operate freely with respect to their export activities.[64] In this regard, no record evidence indicates that such government influence is no longer present or that our treatment of the PRC-wide entity is otherwise incorrect.

The Department's policy regarding conditional review of the PRC-wide entity applies to this review.[65] Under this policy, the PRC-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. Because no party requested a review of the PRC-wide entity in this review, the entity is not under review, and the entity's rate is not subject to change. As such, the PRC-wide rate from the previous review remains unchanged, and the PRC-wide entity is receiving a margin of $4.71 per kilogram.[66]

Application of Facts Available and Use of Adverse Inferences

Section 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that if necessary information is not available on the record or if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified as provided for in section 782(i) of the Act, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

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[62] The separate-rate application and certification are available at: http://enforcement.trade.gov/nme/nme-sep-rate.html.
[63] *See* 19 CFR 351.107(d).
[64] *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Final Results of 2005-2006 Administrative Review and Partial Rescission of Review,* 72 FR 56724 (October 4, 2007) and accompanying Issues and Decision Memorandum at Comment 2.
[65] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963, 65970 (November 4, 2013).
[66] *See, e.g., id.*; and *Fresh Garlic From the People's Republic of China: Final Results and Partial Rescission of the 19th Antidumping Duty Administrative Review; 2012-2013*, 80 FR 34141, 34142 (June 15, 2015).

Section 782(c)(1) of the Act provides that if an interested party "promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information requested in the requested form and manner," the Department shall consider the ability of the interested party and may modify the requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person an opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states 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 the applicable requirements established by the administering authority if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

On June 29, 2015, the President of the United States signed into law the TPEA, which made numerous amendments to the AD and CVD law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.[67] The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.[68]

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a weighted average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. Section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. In addition, the SAA explains that the Department may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate

[67] *See* Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) (TPEA). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments to section 771(7) of the Act, which relate to determinations of material injury by the International Trade Commission. *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*).
[68] *Id.*, 80 FR at 46794-95. The 2015 amendments may be found at https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.

than if it had cooperated fully."[69] Further, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.[70] Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information 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. Further, and under the TPEA, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.

Finally, under section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins. The TPEA also makes clear that when selecting an adverse facts available (AFA) margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party.

In selecting a rate based on adverse facts available, the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.[71] The Department's practice is to select, as an AFA rate, the higher of: (1) the highest dumping margin alleged in the petition, or (2) the highest calculated dumping margin calculated in any segment of this proceeding. As AFA, we will assign a rate of $4.71 per kilogram, which is the highest rate calculated in any segment of this proceeding.

1. Harmoni

Harmoni filed a Separate Rate Certification on February 8, 2016.[72] However, as discussed above in the "Background" section, Harmoni was selected as a mandatory respondent and issued a questionnaire, including a Section A that sought detailed information regarding the company's eligibility for a separate rate, including its organization, accounting practices, markets, and merchandise. Harmoni failed to respond to this Section A questionnaire. Therefore, we find that Harmoni withheld information that was requested by the Department, failed to provide information by the deadlines for a submission of the information, and significantly impeded the proceeding under sections 776(a)(2)(A), (B), and (C) of the Act. By not responding to our questionnaire, we find that Harmoni failed to cooperate to the best of its ability under section 776(b) of the Act. Given the lack of a Section A questionnaire response (or any questionnaire

[69] *See Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Rep. 103-316, Vol. 1, 103d Cong. at 870 (1994) (SAA).
[70] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products From Japan*, 65 FR 42985 (July 12, 2000); *Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (CAFC 2003) (*Nippon Steel*).
[71] *See* SAA at 870.
[72] *See* Harmoni SRC.

response) from Harmoni, we are not relying on information in Harmoni's Separate Rate Certification as the basis for granting separate rate status to Harmoni. Therefore, Harmoni is considered to be part of the PRC-wide entity.

2. QTF

The record of this administrative review shows that QTF provided incomplete information with respect to its affiliations. In its original questionnaire response, QTF reported that it had no affiliated producers or exporters of subject merchandise, and that it did not share any managers or owners with any other entity.[73] However, as noted in the "Affiliations" section above, the Department has determined that QTF is affiliated with QTHF, QBT, QXF, and Lianghe.

We note that information concerning a mandatory respondent's affiliations, relationships, and connections with other foreign producers or exporters of subject merchandise constitutes the type of "core" information that the Department requires when determining whether a respondent should be collapsed with such producers/exporters. This information is critical to the Department's calculation of an accurate dumping margin for that respondent. Given QTF's submission of false and incomplete information regarding these matters, QTF withheld information that had been requested by the Department and significantly impeded the proceeding under sections 776(a)(2)(A) and (C) of the Act. For the preliminary results, we also find that QTF failed to cooperate to the best of its ability under section 776(b) of the Act; therefore, adverse facts available is warranted. Using AFA, we have inferred that QTF and its affiliated companies – QTHF, QXF, QBT, and Lianghe – should be collapsed into a single entity (the QTF-entity) pursuant to 19 CFR 351.401(f). QTF's failure to provide complete information regarding its affiliations prevented us from fully investigating the collapsing factors under section 351.401(f), but the record indicates that some of these affiliates engage in garlic production and that there may be a significant potential for the manipulation of price or production. QTF should not benefit from its failure to provide requested information; therefore, an adverse inference that its affiliates should be collapsed is appropriate. Using AFA, we have assigned the QTF-entity a rate of $4.71 per kilogram, the highest margin of the record of this proceeding. Pursuant to section 776(c)(2) of the Act, it is not necessary to corroborate this margin, because it has been applied in prior segments of this proceeding.

Surrogate Country and Surrogate Value Data

On May 9, 2016, the Department sent interested parties a letter inviting comments on the concurrently released list of potential surrogate countries and primary surrogate country (SC) selection, as well as surrogate value (SV) data.[74] The Department set deadlines of June 23, 2016,

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[73] *See* QTF's Section A Response at A-2 to 3.

[74] *See* Letter from the Department, "2014-2015 Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Request for Surrogate Country and Surrogate Value Comments and Information," (May 9, 2016). *See also* Memorandum from Carole Showers, Director, Office of Policy, Enforcement and Compliance, "Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Fresh Garlic ("Garlic") from the People's Republic of China ("China")," (April 27, 2016) (OP Memorandum). The Department determined that Mexico, Romania, South Africa, Bulgaria, Ecuador, and Thailand

for comments on the selection of the primary surrogate country and June 30, 2016, for rebuttal comments, respectively. The deadline for comments on the selection of surrogate values was set as July 11, 2016, and July 21, 2016 for rebuttal comments.

On May 24, 2016, Petitioners requested that the Department extend the deadlines for the submission of comments and rebuttal comments on surrogate country and surrogate values information.[75] In response, on June 16, 2016, the Department extended the deadlines for all interested parties to submit surrogate country and surrogate value information to July 22, and 29, 2016, (surrogate country comments and rebuttals) and August 9, and 19, 2016 (for surrogate value and rebuttal comments).[76]

On October 18, 2016, the Department extended the deadline for the Preliminary Results of the administrative review to December 5, 2016.[77] Pursuant to 19 CFR 351.301(c)(3)(ii), the deadline for submission of factual information to value factors of production was extended to November 7, 2016.

1. Surrogate Country Comments and Rebuttal Comments

On May 16, 2016, QTF submitted comments requesting that the Department consider Mexico or alternatively, Thailand as the primary surrogate country because both countries are at a level of "commensurate" GNI, are significant producers, and have producers who sell comparable merchandise.[78]

On July 22, 2016, Petitioners, NMGGC, and Xinboda each submitted timely comments on the selection of the primary SC.[79] Petitioners argue that the Department should select Romania as the primary SC; NMGGC aligned itself with Petitioners' position.[80] Petitioners argue that Romania is at a level of economic development similar to the PRC and is a significant producer of garlic.[81] Furthermore, Petitioners also argue that the quality and reliability of the Romanian data are superior because they include tax-free, monthly, POR-specific price information for input garlic bulbs, the single most important factor in production.[82]

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are countries whose per capita gross national incomes (GNI) are comparable to the PRC in terms of economic development.

[75] *See* Letter from Petitioners, "21st Administrative Review of Fresh Garlic from the People's Republic of China – Petitioners' Request to Extend Deadlines for Filing Affirmative and Rebuttal Comments on the Selection of a Surrogate Country and Surrogate Values," (May 24, 2016).

[76] *See* Letter from the Department, "2014-2015 (21st) Administrative Review of Fresh Garlic from the People's Republic of China (PRC)," (June 16, 2016).

[77] *See* Memorandum, "Fresh Garlic from the People's Republic of China -21st Administrative Review (2014-2015): Extension of Deadline for the Preliminary Results of the Review," (October 18, 2016).

[78] *See* QTF's SC Comments at 3. We note that QTF, nor any other interested party submitted Thai data to the record of this review.

[79] *See* NMGGC's SC Comments. *See also* Petitioners' SC Comments. *See also* Xinboda's SC Comments.

[80] *See* NMGGC's SC Comments at 2. *See also* Petitioners' SC Comments at 2.

[81] *See* Petitioners' SC Comments at 2-9.

[82] *Id*. at 9-11.

In its July 22, 2016, comments, Xinboda argues that the Department should select Mexico or India as the primary SC.[83] Xinboda argues that Mexico is both economically comparable and a significant producer of subject merchandise.[84] Because of its expansive agricultural sector and corresponding government agricultural division, Xinboda speculates that Mexico's data are reliable and easy to find.[85]

Alternatively, Xinboda maintains that the Department has relied on Indian garlic bulb prices in past segments because, in part, Indian price data covers large-sized garlic bulbs similar to those grown in China.[86] Moreover, the Indian data are reliable and publicly available.[87]

On August 5, 2016, QTF, Xinboda, and Petitioners each timely filed SC rebuttal comments.[88] QTF argues that Romanian garlic is not comparable with Chinese garlic because of its distinct growing methods, bulb sizes, production, and quality.[89] QTF also argues that Mexico and India grow similar varieties of garlic using the same growing method as that of China, and both meet the Department's criteria for surrogate countries as outlined in the Department's Policy Bulletin 04.1.[90] Petitioners rebut QTF's claim that Thailand is a significant producer of fresh garlic that is physically comparable to the fresh garlic grown in PRC, citing to comments made in the 18th administrative review.[91] Specifically, Petitioners argue that Thai garlic bulbs are not similar in size to the garlic bulbs in the PRC due to Thailand's geographic location and the related growing conditions and that the Thai market is heavily influenced by smuggled Chinese garlic.[92]

Petitioners also rebut Xinboda's arguments that Mexico or India should be selected.[93] Petitioners argue that Mexico's input garlic bulbs are smaller than those used by the producers in this review, and that various market influences distort its price.[94] Petitioners then argue that India is not economically comparable to the PRC, that the vast majority of garlic produced in India is not comparable to the input garlic bulbs consumed by the respondents in PRC, and that the quality of garlic pricing information in India is limited and likely outdated.[95] Petitioners reiterate their opposition to selecting Thailand as the primary surrogate country, arguing that Thai garlic bulbs are not physically comparable to Chinese bulbs and that the Thai garlic bulb market is influenced by smuggling from the PRC.[96]

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[83] *See* Xinboda's SC Comments at 1.
[84] *Id*. at 2-3.
[85] *Id*.
[86] *Id.* at 2. We note, however, Xinboda nor any other party placed Indian SV data on the record of this review.
[87] *Id.*
[88] *See* Xinboda's Rebuttal SC Comments. *See also* Petitioners' Rebuttal SC Comments. *See also* Petitioners' 2nd Rebuttal SC Comments. *See also* QTF's Rebuttal SC Comments.
[89] *See* QTF's Rebuttal SC Comments at 2.
[90] *See* QTF's Rebuttal SC Comments at 1, 2, and 5.
[91] *See* Petitioners' Rebuttal SC Comments.
[92] *Id*. at Attachment 1.
[93] *See* Petitioners' 2nd Rebuttal SC Comments.
[94] *Id*. at 8-20.
[95] *Id*. at 4.
[96] *Id.* at 8.

2. Surrogate Value Comments and Rebuttal Comments

On August 9, 2016, Petitioners and Xinboda each provided information and comments on the selection of surrogate values.[97] Petitioners submitted data reported by the Romanian government's National Institute of Statistics, arguing that they provide contemporaneous, tax-free, and representative pricing information for input garlic bulbs.[98] Petitioners also submitted the 2014 financial statements from SC Legume Fructe Buzau S.A., a vegetable processor and reseller, and SC Boromir PROD S.A (SC Boromir), a flour producer.[99]

Xinboda submitted garlic bulb data sourced from the Mexican government's Agricultural Food and Fishing Information Service (SIAP) and publicly-available financial statements from five Mexican producers of comparable merchandise.[100]

On August 19, 2016, Xinboda and Petitioners each submitted rebuttal comments on interested parties' surrogate value submissions.[101] Xinboda argued against using Romanian SV data sources.[102] In addition, Xinboda argued that SC Boromir did not have comparable production for surrogate valuation.[103] Conversely, Petitioners argued that the Mexican garlic pricing data for the year closest to the POR are "aberrationally low,"[104] and reiterated its argument that Mexican garlic bulbs are not physically comparable to those used by the processors in the instant review.[105]
On October 4, 2016, Xinboda and Petitioners each submitted additional surrogate value data and comments.[106] Xinboda submitted further information regarding the suitability of Romania and Mexico as primary surrogate countries and the 2015 financial statements from a Mexican company.[107] Petitioners submitted the 2015 financial statements from SC Boromir and argued that together with the 2014 original submission, these financial statements were complete and contemporaneous with the POR.[108]

On October 14, 2016, Petitioners submitted rebuttal comments and information relating to Xinboda's October 4th submission.[109] In these comments, Petitioners provided information regarding the farm and market structure in the PRC to respond to Xinboda's submission of Romanian data on the same subject. Also, Petitioners provided information with respect to the differences in fresh garlic and dehydrated garlic farming techniques in the PRC.[110]

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[97] *See* Xinboda's SV Submission. *See also* Petitioners' SV Submission.
[98] *See* Petitioners' SV Submission at 2-4.
[99] *Id*. at 8-9.
[100] *See* Xinboda's SV Submission.
[101] *See* Xinboda's Rebuttal SV Submission. *See also* Petitioners' Rebuttal SV Submission.
[102] *Id*. at Exhibits 2-4.
[103] *See* Xinboda's Rebuttal SV Submission, Exhibit 1.
[104] *See* Petitioners' Rebuttal SV Submission at 2.
[105] *Id*. at 2-3.
[106] *See* Xinboda's 2nd SV Submission. *See also* Petitioners' 2nd SV Submission.
[107] *See* Xinboda's 2nd SV Submission.
[108] *See* Petitioners' 2nd SV Submission at 2.
[109] *See* Petitioners' 2nd SV Rebuttal.
[110] *Id*. at 2-3.

On November 7, 2016, Petitioners submitted additional surrogate value information regarding Romanian pricing data on packing materials.[111] Xinboda submitted pre-preliminary comments, reiterating its arguments against Romania as the primary surrogate country.[112] In particular, Xinboda argues that Romania is not a suitable surrogate country because it is not a net exporter, or significant exporter of garlic on the world market, because its market is distorted by a protectionist tariff quota, and the garlic bulb pricing data is not comparable.[113]

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production (FOP), 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 the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.[114] Reading sections 773(c)(1) and (c)(4) of the Act in concert, it is the Department's practice to select an appropriate surrogate country based on the availability and reliability of data.[115] The Department has identified Mexico, Romania, Bulgaria, South Africa, Ecuador, and Thailand, as countries with per capita GNI that are at the same level of economic development as the PRC.[116]

A. Economic Comparability

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 longstanding practice has been first to identify those countries which are at the same level of economic development as the PRC based on per capita GNI data reported in the World Bank's World Development Report.[117] We note that identifying potential surrogate countries based on GNI data has been affirmed by the CIT.[118]

As explained in the Department's *Policy Bulletin*, "{t}he surrogate countries on the list are not ranked."[119] This absence of ranking reflects the Department's long-standing practice that for the purpose of surrogate country selection, the countries on the list "should be considered equivalent"[120] from the standpoint of their level of economic development based on GNI as compared to the PRC's level of economic development and recognition of the fact that the

[111] *See* Petitioners' 3rd SV Submission
[112] *See* Letter from Xinboda, "Fresh Garlic from the People's Republic of China: Pre-Preliminary Comments," (Xinboda's Pre-Prelim Comments) (November 7, 2016).
[113] *Id.*
[114] *See* Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004).
[115] *Id.*
[116] *See* OP Memorandum.
[117] *See, e.g., Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2011-2012*, 79 FR 19053 at Comment I.a.
[118] *See Fujian Lianfu Forestry Co., Ltd. v. United States*, 638 F. Supp. 2d 1325 (CIT 2009).
[119] *See Policy Bulletin*.
[120] *Id.*

concept of "level" in an economic development context necessarily implies a range of GNIs, not a specific GNI. This long-standing practice of providing a non-exhaustive list of countries at the same level of economic development as the NME country fulfills the statutory requirement to value FOPs using data from "one or more market economy countries that are at a level of economic development comparable to that of the nonmarket economy country."[121] In this regard, "countries that are at a level of economic development comparable to that of the nonmarket economy country" necessarily include countries that are at the same level of economic development as the NME country.

As discussed above, the Department considers that Mexico, Romania, Bulgaria, South Africa, Ecuador, and Thailand are at the same level as the PRC in terms of economic development.[122] We consider all six countries identified on the Surrogate Country List as having met this prong of the surrogate country selection criteria.

Countries on the segment record that are at the same level of economic development as the PRC are given equal consideration for the purposes of selecting a surrogate country. As a general rule, the Department selects a surrogate country that is at the same level of economic development as the NME unless it is determined that none of the countries are viable options because they: (a) are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available SV data, or are not suitable for use based on other reasons. Surrogate countries that are not at the same level of economic development as the NME country are selected only to the extent that data considerations outweigh the difference in levels of economic development.[123]

B. Significant Producers of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires the Department to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor the Department's regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, the Department looks to other sources such as the *Policy Bulletin* for guidance on defining comparable merchandise. The *Policy Bulletin* states that "in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise."[124] Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.[125] Further, when selecting a surrogate country, the statute requires

[121] *See* section 773(c)(4) of the Act.
[122] *See* OP Memorandum.
[123] *See e.g., Certain Cased Pencils From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent Not To Revoke Order In Part; 2010-2011*, 78 FR 2363 (January 11, 2013) and accompanying Preliminary Decision Memorandum at 6, unchanged in *Certain Cased Pencils From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Determination To Revoke Order In Part; 2010-2011*, 78 FR 42932 (July 18, 2013).
[124] *See Policy Bulletin* at 2.
[125] The *Policy Bulletin* also states that "if considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise." *Id.* at note 6.

the Department to consider the comparability of the merchandise, not the comparability of the industry.[126] "In cases where the identical merchandise is not produced, the Department must determine if other merchandise that is comparable is produced. How the Department does this depends on the subject merchandise."[127] In this regard, the Department recognizes that any analysis of comparable merchandise must be done on a case-by-case basis:

> In other cases, however, where there are major inputs, *i.e.*, inputs that are specialized or dedicated or used intensively, in the production of the subject merchandise, *e.g.*, processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.[128]

Further, the statute grants the Department discretion to examine various data sources for determining the best available information.[129] Moreover, while the legislative history provides that the term "significant producer" includes any country that is a "significant net exporter,"[130] it does not preclude reliance on additional or alternative metrics.

When considering whether any of the countries contained in the OP Surrogate Country List are also significant producers of comparable merchandise, the Department has preliminarily relied on the United Nations Food and Agriculture Organization (FAO) production data for fresh garlic, as it has in past reviews.

As noted below, there are no SV data or surrogate financial statements for Bulgaria, South Africa, Thailand, or Ecuador on the record of this review. Therefore, it is unnecessary to determine whether these countries are significant producers of comparable merchandise since they cannot be considered for primary surrogate country selection purposes. Thus, the Department is left to consider whether Mexico and Romania are significant producers of comparable merchandise. Xinboda, QTF, and Petitioners provided 2013 FAO garlic production data, which included Romania and Mexico.[131]

Economically-Comparable Countries	**Garlic Production (MTs)**
Romania	62,156
Mexico	59,015

[126] *See Sebacic Acid from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 65674, 65676 (December 15, 1997) ("{T}o impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute.").
[127] *See Policy Bulletin* at 2.
[128] *Id.* at 3.
[129] *See* section 773(c) of the Act. *See also Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1990).
[130] *See* Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988).
[131] *See* Xinboda's SC Comments at Exhibit 2. *See also* QTF's SC Comments at Attachment 1. *See also* Petitioners' SC Comments at Exhibit FAO-1.

Xinboda also provided 2012 FAO production data on the record of this proceeding.[132] However, we will be relying on the 2013 FAO data, which is more contemporaneous with the POR. As stated in the prior administrative review, we note that the PRC's production level of fresh garlic is by far the largest in the world – approximately 80 percent of world production which represents over 15 times larger than the next largest producing country.[133] Given this disparity, it is not useful to make a judgment "consistent with the characteristics of world production of, and trade in, comparable merchandise," as suggested in Policy Bulletin 04.1. Rather, based on the unique circumstances of this case,[134] the Department has evaluated the garlic production data from Romania and Mexico to determine whether the production was sufficiently large in volume such that price data from either country could provide reliable SVs reflecting the commercial market reality of producing the subject merchandise in that country. This interpretation follows from the underlying purpose of section 773(c)(4) of the Act to identify reliable market-based prices upon which to value a NME producer's factors of production.

Here, Romania's and Mexico's 2013 production amounts are so noticeably and measurably large –62,156 and 59,015 metric tons– that it is reasonable to conclude the quantity reflects an adequate number of garlic producers that are commercially viable, and therefore provide data reflecting market-based transactions. We note that Xinboda argued that Mexico constitutes a significant producer of comparable merchandise, and has not offered any meaningful distinction between the significance of Romanian and Mexican 2013 production levels.
China's production level is not relevant to judging the significance of the potential SC's production of comparable merchandise. Policy Bulletin 04.1 provides that "the extent to which a country is a significant producer should not be judged against the NME country's production level." The NME country is under review to determine whether its sales are dumped sales.

Thus, this 2013 FAO data demonstrates that Romania and Mexico are significant producers of identical merchandise in that each country produces a "noticeably or measurable large amount" of fresh garlic.

C. Data Availability

The *Policy Bulletin* states that, if more than one country meets the economic comparability and significant producer of comparable merchandise criteria, "then the country with the best factors data is selected as the primary surrogate country."[135] Section 773(c)(1) of the Act instructs the Department to value the FOPs based upon the best available information from an ME country or a countries that the Department considers appropriate. When evaluating the best available information, the Department considers several factors including whether the SV is publicly available, contemporaneous with the POR, represents a broad-market average, tax and duty-

[132] *See* Xinboda's SC Comments at Exhibit 2.
[133] *See Fresh Garlic from the People's Republic of China: Final Results and Final Rescission of the 20th Antidumping Duty Administrative Review; 2013-2014*, 81 FR 39897 (June 20, 2016) and accompanying Issues and Decision Memorandum at 10 (AR20 IDM).
[134] Policy Bulletin 04.1 acknowledges the need for flexibility and the use of discretion because the "meaning of 'significant producer' can differ significantly from case to case."
[135] *See Policy Bulletin*.

exclusive, and specific to the input.[136] There is no hierarchy among these criteria.[137] It is the Department's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis.[138]

As noted above, there are no SV data or surrogate financial statements for Bulgaria, South Africa, Thailand, or Ecuador on the record of this review. Therefore, these countries cannot be considered for primary surrogate country selection purposes. Thus, the Department is left to consider Romania or Mexico for selection as the primary surrogate country.

1. Romania

Both Petitioners and NMGGC argue Romania is the source of the best available information to value respondents' factors of production because the fresh garlic grown is physically comparable to PRC garlic and the price data is reliable.[139]

Petitioners contend that the Romanian garlic bulbs are physically comparable to garlic bulbs exported by respondents in the instant review.[140] Petitioners note that in previous AD determinations of garlic from the PRC, the Department established that diameter of garlic grown in PRC "typically ranges between 40-60mm."[141] Petitioners explain that "{t}he three main fall-planted varieties of garlic grown in Romania yield bulbs that are medium to large in size, with per-bulb weights ranging from 40-60 grams, 25-35 grams, and 40-50 grams…. Public information provided by Chinese exporters reflects that, in general, the relationship between weight and size is 1 mm bulb diameter for each 1 gram of fresh garlic bulb (*e.g.*, a 250-gram bag of fresh garlic contains 4 bulbs of 60 mm diameter weighing about 62 grams each (250/4 grams), noted as "0.06" kilograms)."[142]

Petitioners further argue that the different varieties of Romanian garlic have physical characteristics that correspond closely with the range of garlic bulb sizes grown in the PRC by drawing parallels between the moderate, large-sized, and very large-sized varietals available in the two garlic markets.[143] Petitioners cite a recently completed new shipper review where the

[136] *See, e.g., Utility Scale Wind Towers From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value*, 77 FR 75984 (December 26, 2012) and accompanying Issues and Decision Memorandum at Comment 1.
[137] *See, e.g., Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006) and accompanying Issues and Decision Memorandum at Comment 1.
[138] *See Policy Bulletin*.
[139] *See* Petitioners' SC Comments. *See also* NMGGC's SC Comments.
[140] *See* Petitioners' SC Comments.
[141] *See Fresh Garlic from the People's Republic of China: Issues and Decisions Memorandum for the Final Results of the 13th Antidumping Duty Administrative and New Shipper Reviews and Rescission, In Part, the Antidumping Duty Administrative and New Shipper Reviews*, at 7 (June 8, 2009).
[142] *See* Petitioners' SC Comments at Exhibit PRC-1.
[143] *Id*. at 7.

Department determined that "{P}etitioners have provided sufficient evidence to establish that the garlic produced in Romania is comparable to the sizes of garlic bulbs produced in the PRC."[144] QTF argues that Romanian and Chinese garlic bulbs differ significantly.[145] Specifically, Romanian garlic is produced biennially and annually, while Chinese garlic is produced primarily biennially.[146] QTF also argues that the larger Romanian leaf size and the existence of flower stems should designate the garlic bulbs as distinct varieties, and not comparable merchandise.[147]

Regarding the reliability of the Romanian data, Petitioners contend that Romania has the highest quality data for garlic bulbs, provided by the Romanian government, specifically the National Institute of Statistics of Romania (NISR).[148] Petitioners assert that the garlic bulb data on the record for Romania is contemporaneous, tax-free, monthly, and publicly-available.[149] In addition, Petitioners explain that their comparison of the 2013 garlic bulb prices for Romania, which are separately published by NISR and FAO, show that the price data are identical, indicating that FAO data are based on NISR data.[150]

Petitioners note that the Department has previously determined that the NISR data were: (1) specific; (2) based on a broad market average; (3) contemporaneous; (4) exclusive of taxes and duties; and (5) publicly available.[151] With updated NISR data to align with the POR for the instant review, the NISR data still meet these criteria.
Petitioners also assert that the NISR data are "farm gate" pricing.[152] Although, in a preceding administrative review farm gate pricing was defined as garlic that "is priced to reflect its state immediately following the harvest," Petitioners argue the input garlic bulbs used by the respondent are not "farm gate," but instead reflect "significant post-harvest processing and handling."[153] They additionally provide a description of the Romanian garlic bulb data that states that NISR prices "reflect the first marketing stage, they do not include transport or storage costs etc." to demonstrate the similarity between the Romanian and Chinese garlic input bulbs.[154]

Xinboda's submission of rebuttal information attempts to demonstrate that the European Union-imposed tariffs on imported garlic have distorted garlic prices in the Romanian market.[155] In its

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[144] *See 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*, 78 FR 62103 (October 16, 2014) and accompanying Issues and Decisions Memorandum at 5-6 (NSR19 IDM), cited by Petitioners' SC Comments at 8.
[145] *See* QTF's Rebuttal SC Comments.
[146] *Id*. at 3-4.
[147] *Id.* at 4-5.
[148] *See* Petitioners' SC Comments at 9.
[149] *See* Petitioners' SV Submission.
[150] *See* Petitioners' SC Comments at Exhibit ROM-4, Exhibit ROM-5.
[151] *See* AR20 IDM at 12.
[152] *Id*. at 3.
[153] *Id*. at 4. *See also 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) and the accompanying Issues and Decisions Memorandum at 19, cited by Petitioners' SV Submission.
[154] *See* Petitioners' SV Submission at 3.
[155] *See* Xinboda's Rebuttal SC. *See also* Xinboda's 2nd SV Submission.

Pre-Prelim comments, Xinboda argues that the Romanian data are not reliable, because the Romanian garlic market is distorted by a protectionist tariff quota and subsequent smuggling.[156]

2. Mexico

Xinboda and QTF argue that Mexico's fresh garlic is physically comparable to Chinese garlic bulbs, and that Mexican price data is reliable.[157]

Xinboda argues that Mexico produces large bulb garlic that is physically comparable to garlic bulbs produced in the PRC.[158] QTF supports Xinboda's argument that Mexico's garlic bulbs are comparable, noting that Mexico grows similar varieties of garlic and uses the same growing method as that of the PRC.[159] QTF and Xinboda supported these claims with various academic articles that appear to discuss scientific research on different cultivation techniques for garlic, rather than the general physical or cultivation characteristics of Mexican garlic.[160]

In response, Petitioners contend that Mexican garlic bulbs are smaller than those used by the producers in this review.[161] In support of this allegation, Petitioners provide articles in Spanish (with English translations) and in English as well as a declaration from the owner of a Mexican garlic company.[162] By comparing imported Chilean garlic prices to the export price of Mexican garlic, Petitioners contend that there is a connection between the international demand for Mexican garlic and the size of the garlic bulb.[163] Additionally, Petitioners argue that Mexico's national climate is very different from that of the PRC's main garlic growing regions, stating, "Of Mexico's five predominant sub-climactic zones, *only one*, BSk, the least common such zone in Mexico, is shared with those of the garlic growing provinces of China…Romania, in contrast, shares four of its five major sub-climactic zones under the same Köppen designations of the Chinese growing regions."[164] Petitioners also provide evidence of market conditions which may have influenced the price of the Mexican garlic during the POR.[165]

Regarding the reliability of the data, Xinboda asserts that "the garlic bulb source provided by Xinboda {SIAP} is a farmgate price, comparable to Xinboda's purchasing experience, {and} from a reliable government agency which reports the information to FAO for publication."[166] In order to argue the reliability of the Mexican garlic bulb data, Xinboda submitted FAO data to correlate with the SIAP data.[167] Xinboda did not provide further substantiation of the reliability of the garlic bulb data.

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[156] *See* Xinboda's Pre-Prelim Comments at 4.
[157] *See* Xinboda's Pre-Prelim Comments. *See also* QTF's Rebuttal SC Comments at 1, 2, and 5.
[158] *See* Xinboda's Pre-Prelim Comments.
[159] *See* QTF's Rebuttal SC Comments.
[160] *See i.e.* QTF's Rebuttal SC Comments at RSC-7; *and see* Xinboda's SV Submission at Exhibit 6; *and see* Xinboda's 2nd SV Submission at Exhibit 13. We note that some of the articles are illegibly translated.
[161] *See* Petitioners' 2nd Rebuttal SC Comments
[162] *See* Petitioners' Rebuttal SV Submission at Attachment 3, Attachment 5A, Attachment 5B.
[163] *Id*. at 16-17.
[164] *Id*. at 17-18.
[165] *Id*. at 18-20.
[166] *See* Xinboda's Pre-Prelim Comments at 10.
[167] *See* Xinboda's SV Submission at Exhibit SV-3, Exhibit SV-5.

Petitioners argue that Mexico's garlic bulb data are not the most reliable on the record because the garlic pricing data for the year closest to the period of review are "aberrationally low," pointing to the SIAP data submitted by Xinboda. [168] Beyond resubmitting the data, Petitioners do not explain what metric they use to determine that the data are aberrational in character.

Surrogate Country Selection

The garlic bulb is the single most important SV used to calculate normal value in this administrative review. As an initial matter, the Department has repeatedly determined that size and quality are the most important characteristics of fresh garlic exported from the PRC to the United States, because the price of the bulb varies with its size.[169] Information on the record of this review indicates that the diameter of garlic bulbs produced in Romania is physically similar to the diameter of the bulbs grown in the PRC and sold in the United States.[170] In a recently concluded new shipper review, the Department determined that there was "sufficient evidence to establish that the garlic produced in Romania is comparable to the sizes of garlic bulbs produced in the PRC."[171] Moreover, in the previous administrative review, the Department found that Romanian garlic bulbs are "similar in size to the input garlic bulbs consumed in the production of subject merchandise."[172] By contrast, there is not substantial record evidence to conclude that Mexico's garlic bulbs are identical or more comparable to the garlic bulbs from the PRC. Although the data submitted by Xinboda is monthly and contemporaneous with the POR, it is unclear whether the Mexican data is exclusive of duties and taxes, or represents a broad market average. In contrast, the SV information on the record for Romania has been determined to be (1) specific; (2) based on a broad market average; (3) contemporaneous; (4) exclusive of taxes and duties; and (5) publicly available.[173]

Finally, consistent with past practice, we find that the mere existence of tariffs and quotas on imports of a product cannot be presumed to have an effect on prices of domestic production, unless there is information on the record suggesting an effect.[174] In the instant case, Xinboda has provided information which indicates that Romanian garlic imports, exports, and prices changed after Romania joined the EU in 2007.[175] However, there is no information on the record to support Xinboda's claim[176] that EU-imposed tariffs and quotas on imported Chinese garlic have distorted garlic prices in the Romanian market. We find no evidence that the Government of Romania undertook steps to interfere or to distort garlic prices during the POR.

Therefore, the Department preliminarily finds Romania to be the primary surrogate country for this review, because Romania is at a comparable level of economic development to the PRC and

[168] *See* Petitioners' Rebuttal SV Submission at 2.
[169] *See, e.g., Garlic 2009-2010 AR Final Results* IDM at 17.
[170] *See* Petitioners' SC Comments at Exhibit PRC-1
[171] *See* NSR19 IDM, cited by Petitioners' SC Comments at 8.
[172] *See* AR20 IDM at 10.
[173] *Id.* at 12.
[174] *See 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) and accompanying Issues and Decision Memorandum at Comment 1.
[175] *See* Xinboda's Pre-Prelim Comments at 4-6.
[176] *Id*.

is a significant producer of comparable merchandise that is physically similar to the garlic produced in China. Finally, there is publicly available data from Romania for all FOPs on the record of this review. The Department preliminarily selects Romania as the primary surrogate country for this review. A detailed explanation of the SVs used is provided below in the "Normal Value" section of this notice.

As discussed above, Xinboda argued that the Department should consider using India as the primary surrogate country. As an initial matter, there is no SV information from India on the record of this review. Moreover, as noted above, the Department only departs from the countries on the OP list if we find that none of the countries on the list are significant producers of identical or comparable merchandise, or there are issues regarding the availability of SVs from the countries on the list. As discussed above, we have determined that at least two countries identified on the Surrogate Country List are significant producers of identical or comparable merchandise, and that Romania provides sufficient reliable sources of data from which to derive SVs. Therefore, we have not considered using India as the primary surrogate country, and have not considered the potential SV information from that country.

Date of Sale

The Department's regulations at 19 CFR 351.401(i) state as follows:

> In identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.[177]

Information on the record of this review indicates that Xinboda set the material terms of sale on invoice date. Xinboda reported invoice date as its date of sale. [178]

Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c), in order to determine whether Xinboda's sales of the subject merchandise from the PRC to the United States were made at less than normal value, the Department compared the export price to the normal value as described in the export price and "Normal Value" sections of this memorandum.

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[177] *See* 19 CFR 351.401(i). *See also 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; *Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-1092 (CIT 2001) (upholding the Department's rebuttable presumption that invoice date is the appropriate date of sale).

[178] *See* Letter from Xinboda, "Fresh Garlic from the People's Republic of China - Section C Response - Shenzhen Xinboda" (April 14, 2016) (Xinboda's Section C Response), at 8.

A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average normal values to weighted-average export prices (or constructed export prices) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, the Department examines whether to compare weighted-average normal values with the export prices (or constructed export prices of individual sales (*i.e.*, the average-to-transaction 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 the Department's examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) (2012) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.[179] In recent investigations, the Department applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.[180] The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in these preliminary results requires a finding of a pattern of export prices (or constructed export prices) for comparable merchandise that differ 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 used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported customer codes. 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 based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region and time period, that the Department uses in making comparisons between export price (or constructed export price) and normal value for the individual dumping margins.

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[179] *See Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012).

[180] *See, e.g., Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar From Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); or *Welded Line Pipe From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

In the first stage of the differential pricing analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen's *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period 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 used to evaluate the extent to which the prices to the particular purchaser, region or time period differ significantly from the 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 (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the "ratio test" 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 accounts for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average 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 average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method, and application of the average-to-average 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 average-to-average 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, the Department examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative comparison 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 average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison 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 margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications 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 Xinboda, based on the results of the differential pricing analysis, the Department preliminarily finds that 100 percent of the value of U.S. sales passes the Cohen's *d* test.[181] There is no difference between the weighted-average margin using the average-to-average method compared to the average-to-transaction method. Accordingly, the Department preliminarily determines to apply the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Xinboda.

Export Price

Pursuant to section 772(a) of the Act, the EP is "the price at which subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the 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. The Department considers the U.S. prices of all sales by Xinboda to be EP in accordance with section 772(a) of the Act because they were the prices at which the subject merchandise was first sold before the date of importation by the exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States. We calculated EPs based on the sales price to unaffiliated purchaser(s) in the United States.

The details of Xinboda's sales terms are BPI.[182] In accordance with section 772(c)(2)(A) of the Act, where appropriate, we made deductions from the sales price for various PRC expenses such as foreign inland freight, brokerage and handling. For those expenses that were provided by an ME provider and paid for in an ME currency, the Department used the reported expense. For a detailed description of all adjustments made to Xinboda's U.S. price, *see* Xinboda's Preliminary Analysis Memo.[183]

Value-Added Tax

In 2012, the Department announced a change of methodology with respect to the calculation of EP and CEP to include an adjustment of any un-refunded (herein "irrecoverable") value-added

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[181] *See* Memorandum to the File, "Administrative Review of Fresh Garlic from the People's Republic of China: Calculation Memorandum for the Preliminary Results of Shenzhen Xinboda Industrial Co., Ltd.," (dated concurrently with the instant memorandum) (Xinboda's Preliminary Analysis Memorandum).
[182] *See* Xinboda's Section C Response, at C-1.
[183] *See* Xinboda Preliminary Analysis Memorandum.

tax ("VAT") in certain NMEs in accordance with section 772(c)(2)(B) of the Act.[184] The Department explained that when an NME government imposes an export tax, duty, or other charge on subject merchandise, or on inputs used to produce subject merchandise, from which the respondent was not exempted, the Department will reduce the respondent's EP and CEP prices accordingly, by the amount of the tax, duty or charge paid, but not rebated.[185] Where the irrecoverable VAT is a fixed percentage of EP or CEP, the Department explained that the final step in arriving at a tax neutral dumping comparison is to reduce the U.S. EP or CEP downward by this same percentage.[186]

The Chinese VAT schedule placed on the record of this review by Xinboda indicates that the standard VAT levy is zero percent, and the rebate rate for subject merchandise is zero percent.[187] For the purposes of these preliminary results, therefore, we did not remove irrecoverable VAT from U.S. price.[188]

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if: (1) the merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(e) of the Act. When determining NV in an NME context, the Department will base NV on FOPs, because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. The Department's questionnaire requires that a respondent provide information regarding the weighted-average FOPs across all of the company's plants and/or suppliers that produce the merchandise under consideration, not just the FOPs from a single plant or supplier.

The Department calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). Under section 773(c)(3) of the Act, FOPs used by Xinboda in the production of garlic include, but are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. The Department based NV on Xinboda's reported FOPs for materials, energy, and labor.

Factor Valuations

In accordance with section 773(c) of the Act, for subject merchandise produced by Xinboda, the Department calculated NVs based on the FOPs reported by Xinboda for the POR. The

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[184] *See Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481 (June 19, 2012).
[185] *Id. See also Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014) and accompanying Issues and Decision Memorandum at Comment 5.A.
[186] *Id.*
[187] *See* Xinboda's Section C Response at 28 and Exhibit C-3 (The Interim VAT Regulation).
[188] *Id.*

Department used Romanian import data and other publicly available Romanian data in order to calculate SVs for Xinboda's FOPs. To calculate NVs, the Department multiplied Xinboda's reported per-unit FOP quantities by publicly available SVs.[189] The Department's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, SVs which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.[190]
As appropriate, the Department adjusted input prices by including freight costs to render them delivered prices. Specifically, the Department added to Romanian import 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 it relied on an import value. This adjustment is in accordance with the decision of the Federal Circuit in *Sigma Corp. v. United States*, 117 F.3d 1401, 1408 (Fed. Cir. 1997). Additionally, where necessary, the Department adjusted SVs for inflation and exchange rates, and the Department converted all applicable FOPs to a per-kilogram basis.

For the preliminary results, the Department valued garlic inputs using data from NISR. This source, which is from the primary surrogate country, (1) is product-specific; (2) represents a broad market average; (3) is publicly available; (4) spans the POR; and (5) is exclusive of taxes and duties.

For all other raw material and packing inputs, the Department used Romanian import prices reported in the Global Trade Atlas (GTA) published by Global Trade Information Services.[191] The record shows that data in the Romanian import statistics, as well as those from the other sources, are generally product-specific, representative of a broad market average, publicly available, contemporaneous with the POR, and tax- and duty-exclusive.[192]

We valued electricity based on information from Eurostat's reporting of electricity rates,[193] and we valued water using information from the National Regulating Authority for the Public Utility Services of Romania Statistics.[194]

We valued brokerage and handling (B&H) using information in the World Bank's *Doing Business 2015 Romania* (*Doing Business Romania*) report, and truck freight using information in the World Bank's *Doing Business 2016 Romania* (*Doing Business Romania 16*) report. These

[189] *See* Memorandum to the File, "Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Preliminary Surrogate Value Memorandum," (dated concurrently with this memorandum) (Prelim SV Memo).
[190] *See, e.g., Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008) and accompanying Issues and Decision Memorandum at Comment 2.
[191] http://www.gtis.com/GTA.htm.
[192] *See* Exhibit 4A of Petitioners' Letter to the Department, "21st Administrative Review of Fresh Garlic from the People's Republic of China – Petitioners' Surrogate Values from Romania," (August 9, 2016).
[193] *Id.* at Exhibit 4A.
[194] *Id.* at Exhibit 4B.

reports covered inland transportation and handling relating to importing and exporting a standardized cargo of goods.[195]

In *Labor Methodologies*, the Department determined that the best methodology to value labor is to use industry-specific labor rates from the primary surrogate country.[196] The Department does not, however, preclude all other sources from evaluation for use in labor costs.[197] Rather, we continue to follow our practice of selecting the best available information to determine SVs for inputs such as labor. In this case, we valued labor using data reported by the International Labor Organization Statistics (ILOSTAT) for the manufacture of food products in Romania. The ILOSTAT data is from 2013. For this value, which was not contemporaneous with the POR, we adjusted for inflation using data published by the International Monetary Fund's International Financial Statistics.[198]

To value factory overhead, selling, general and administrative expenses ("SG&A"), and profit, we used information from the 2014 and 2015 financial statements of SC Boromir PROD SC, a Romanian food processor.[199] From these Romanian financial statements, we were able to determine factory overhead as a percentage of the total raw materials, labor, and energy (ML&E) costs; SG&A as a percentage of ML&E plus overhead (*i.e.*, cost of manufacture); and the profit rate as a percentage of the cost of manufacture plus SG&A.

For a complete listing of all the inputs and a detailed discussion about our SV selections, *see* the Preliminary SV Memo.

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.

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[195] *Id.* at Exhibits 5A and B.

[196] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing The Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (*Labor Methodologies*).

[197] *See Steel Wire Garment Hangers From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012–2013*, 79 FR 65616 (November 5, 2014) and Issues and Decision Memorandum at 11.

[198] *See* Prelim SV Memo.

[199] *See* Letter from Petitioners, "21st Administrative Review of Fresh Garlic from the People's Republic of China - Petitioners' Submission of Additional Romanian Surrogate Value Information," at Attachments 1 and 2 (October 4, 2016).

V. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

☒	☐
Agree	Disagree

12/5/2016

X ______________________

Signed by: PAUL PIQUADO