A-570-831
Administrative Review
11/01/2016 – 10/31/2017
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DATE: November 30, 2018

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results and Final Rescission, In Part, of the 2016-2017 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 (Commerce) is conducting an administrative review (AR) of the antidumping duty (AD) order on fresh garlic (garlic) from the People's Republic of China (China)[1] covering the period of review (POR) of November 1, 2016, though October 31, 2017. The mandatory respondents in the above referenced administrative review are Qingdao Sea-Line International Trading Co., Ltd. (Sea-line) and Shandong Jinxiang Zhengyang Import & Export Co., Ltd. (Zhengyang).

Commerce preliminarily finds that Zhengyang and Sea-line sold subject merchandise to the United States at less than normal value. We are also preliminarily granting a separate rate to six 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. We also preliminarily determine that two companies made no shipments during the POR.

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

If these preliminary results are adopted in our final results of administrative review, Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. We intend to issue final results of this review no later than 120 days from the date of publication of this notice pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.221.

II. BACKGROUND

On November 1, 2017, Commerce published a notice of opportunity to request an administrative review of the AD order on garlic from China.[2] Between November 5, and November 30, 2017, interested parties submitted requests for review.[3] On January 11, 2018, Commerce initiated the twenty-third administrative review of fresh garlic from China with respect to 53 companies.[4]

Four companies timely submitted "no shipment" certifications, attesting that they had no entries of subject merchandise during the POR: (1) Jining Shengtai Fruits & Vegetables Co., Ltd. (Shengtai);[5] (2) Qingdao Tiantaixing Foods Co., Ltd. (QTF); [6] (3) Qingdao Lianghe International Trade Co., Ltd.(Lianghe);[7] and (4) Qingdao Xintianfeng Foods Co., Ltd. (QXF).[8] On October 22, 2018, we issued a memorandum clarifying QTF, Lianghe, and QXF were constituent members of the QTF-Entity, as previously defined in the twenty first administrative review.[9] On the same date, we issued a supplemental questionnaire regarding the no shipment status of the QTF-Entity.[10] On October 29, 2018, the QTF-Entity certified that none of its members had entries of subject merchandise during the POR.[11]

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[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 81 FR 50620 (November 1, 2017).
[3] *See* Chengwu's Letter, "Request for Administrative Review," dated November 15, 2017; CFTG's Letter, "CFTG's Request for 23rd Antidumping Administrative Review of Fresh Garlic from the People's Republic of China," dated November 27, 2017; Huamei's Letter, "Request for Antidumping Administrative Reviews for the 23rd Period of Review (11/01/2016-10/31/2017)," dated November 28, 2017; Sea-line's Letter, "Administrative Review Request by Qingdao Sea-Line International Trading Co., Ltd.," dated November 30, 2017; Zhengyang *et. al.* Letter, "Request for Review," dated November 30, 2017; Best Buy's Letter, "Request for Annual Review," dated November 30, 2017; Harmoni's Letter, "Request for Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China," dated November 30, 2017; Petitioners' Letter, "Petitioners' Request for Administrative Review," dated November 30, 2017.
[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 1329 (January 11, 2018).
[5] *See* Shengtai's Letter, "No Sales Statements in Connection with the Garlic 23 (2016-2017) Administrative Review," dated February 1, 2018;
[6] *See* QTF-Entity's Letter, "No Shipment Notifications," dated February 3, 2018.
[7] *Id*.
[8] *Id*.
[9] The QTF-Entity includes Lianghe; QXF; QTF; Qingdao Tianhefeng Foods Co., Ltd. (QTHF); Qingdao Beixing Trading Co., Ltd. (QBT); Hebei Golden Bird Trading Co., Ltd.; and Huamei Consulting. *See* Memorandum, "23rd Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Status of the QTF-Entity," dated October 22, 2018 at Attachment
[10] *See* Commerce's Letter, "23rd Administrative Review of Fresh Garlic from the People's Republic of China – Supplemental Questionnaire Concerning QTF's No Shipment Certification," dated October 22, 2018.
[11] *See* QTF-Entity's Letter, "No Shipment Notifications," dated October 29, 2018.

Eight companies subject to this review timely submitted a separate rate status certification or application: (1) Chengwu County Yuanxiang Industry & Commerce Co., Ltd. (Chengwu);[12] (2) Jining Alpha Food Co., Ltd. (Jining Alpha);[13] (3) Qingdao Maycarrier Import & Export Co., Ltd. (Maycarrier);[14] (4) Shandong Chenhe International Trading Co., Ltd. (Chenhe);[15] (5) Shandong Happy Foods Co., Ltd. (Happy Foods);[16] (6) Weifang Hongqiao International Logistics Co., Ltd. (Hongqiao);[17] (7) Sea-line;[18] and (8) Zhengyang.[19]

On January 23, 2018, we issued a memorandum tolling all deadlines for this review by three days due to the shutdown of the federal government.[20]

On February 28, 2018, we issued a memorandum indicating that we would examine the two largest exporters of subject merchandise by volume, Harmoni and Zhengyang.[21] On March 5, 2018, Commerce issued questionnaires to Harmoni and Zhengyang.[22] Between April 2, 2018 and November 13, 2018, Zhengyang timely submitted responses to Commerce's questionnaires.[23]

Between March 27, and April 12, 2018, the petitioners,[24] Harmoni,[25] and Best Buy Produce International, Inc.[26] each withdrew its request for review for certain companies, including mandatory respondent, Harmoni. Because all valid review requests of Harmoni were timely

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[12] *See* Chengwu's Letter, "Separate Rate Certification," dated February 7, 2018 (Chengwu's SRC).
[13] *See* Jining Alpha's Letter, "Separate Rates Certificate," dated February 9, 2018 (Jining Alpha's SRC).
[14] *See* Maycarrier's Letter, "Qingdao Maycarrier Separate Rate Certification," dated February 12, 2018 (Maycarrier's SRC).
[15] *See* Chenhe's Letter, "Separate Rate Certification – Shandong Chenhe International Trading Co., Ltd.," dated February 7, 2018 (Chenhe's SRC).
[16] *See* Happy Foods' Letter, "Separate Rate Application – Shandong Happy Foods Co.," dated February 9, 2018 (Happy Foods' SRA).
[17] *See* Hongqiao's Letter, "Separate Rate Certification," dated February 9, 2018 (Hongqiao's SRC).
[18] *See* Sea-line's Letter, "Separate Rate Certification of Qingdao Sea-line International Trading Co., Ltd.," dated February 6, 2018 (Sea-line's SRC).
[19] *See* Zhengyang's Letter, "Separate Rate Certification – Shandong Jinxiang Zhengyang Import & Export Co., Ltd.," dated February 9, 2018.
[20] All deadlines in this segment of the proceeding have been extended by 3 days. *See* Memorandum, "Deadlines Affected by the Shutdown of the Federal Government," dated January 23, 2018 (Tolling Memorandum).
[21] *See* Memorandum, "Selection of Respondents for Individual Examination," dated February 28, 2018.
[22] *See* Commerce Letter re: Antidumping Duty Questionnaire, dated March 5, 2018 (Initial AD Questionnaire).
[23] *See* Zhengyang's April 2, 2018 Section A Questionnaire Response (Zhengyang April 2, 2018 AQR); *see also* Zhengyang's April 19, 2018 Section C-D Questionnaire Response (Zhengyang April 21, 2017 CDQR); *see also* Zhengyang's August 21, 2018 Supplemental Questionnaire Response (Zhengyang August 21, 2018 SQR); *see also* Zhengyang's November 7, 2018 Supplemental Questionnaire Response (Zhengyang November 7, 2018 SQR); *see also* Zhengyang's November 13, 2018 Supplemental Questionnaire Response (Zhengyang's November 13, 2018 SQR).
[24] The petitioners are the Fresh Garlic Producers Association and its individual members: Christopher Ranch L.L.C., The Garlic Company, and Valley Garlic. *See* Petitioners' Letter, "Petitioners' Withdrawal of Review Request with Respect to Harmoni," dated April 6, 2018; *see also* Petitioners' Letter, "Petitioners' Partial Withdrawal of Review Request," dated April 12, 2018.
[25] *See* Harmoni's Letter, "Harmoni's Withdrawal of Review Request," dated April 6, 2018.
[26] *See* Best Buy's Letter, "Partial Withdrawal of Request for Administrative Review," dated March 27, 2018; *see also* Best Buy's Letter, "Partial Withdrawal of Request for Administrative Review," dated April 3, 2018; *see also* Best Buy's Letter, "Clarified Withdrawal of Request for Administrative Review," dated April 6, 2018.

withdrawn, on June 27, 2018, we issued a memorandum stating our intention to rescind the review with respect to Harmoni and select a new mandatory respondent for individual examination,.[27] On the same day, we issued a questionnaire to Sea-line.[28] Between July 18, 2018, and November 19, 2018, Sea-line submitted responses to Commerce's questionnaires.[29] On November 14 and 16, 2018, Commerce issued supplemental questionnaires to Sea-line, for which the deadlines fall directly prior or following the date of the preliminary results.[30] Accordingly, these responses will not be analyzed for the preliminary results.

On February 8, and August 10, 2018, we requested information and comments relating to the selection of surrogate country and surrogate values for this review.[31] Commerce received timely filed comments and/or rebuttals from the petitioners[32] and Zhengyang.[33]

On July 26, and October 3, 2018, we extended the deadline for the preliminary results of this review.[34] On November 16, 2018, the petitioners filed pre-preliminary comments.[35]

III. Scope of the Order

The products covered by the order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay. The scope of the order

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[27] *See* Memorandum, "Selection of Additional Respondent for Individual Examination," dated June 27, 2018.
[28] *See* Commerce Letter re: Antidumping Duty Questionnaire, dated June 27, 2018 (Initial AD Questionnaire)
[29] *See* Sea-line's July 18, 2018 Section A Questionnaire Response (Sea-line July 18, 2018 AQR); *see also* Sea-line's August 10, 2018 Section C Questionnaire Response (Sea-line August 10, 2018 CQR); *see also* Sea-line's August 16, 2018 Section D Questionnaire Response (Sea-line August 16, 2018 DQR); *see also* Sea-line's October 22, 2018 Supplemental Questionnaire Response (Sea-line October 22, 2018 SQR); *see also* Sea-line's November 19, 2018 Supplemental Questionnaire Response (Sea-line November 19, 2018 SQR).
[30] *See* Commerce Letter, "Second Supplemental Questionnaire for Qingdao Sea-line International Trading Co., Ltd.," dated November 14, 2018; *see also* Commerce's Letter, "Second Supplemental Questionnaire for Qingdao Sea-line International Trading Co., Ltd.," dated November 16, 2018.
[31] *See* Commerce's Letter, "Fresh Garlic from the People's Republic of China: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," dated February 8, 2018 (February 8, 2018 SV Request); *see also* Commerce's Letter, "Fresh Garlic from the People's Republic of China: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," dated August 10, 2018 (August 10, 2018 SV Request).
[32] *See* Petitioners' Letter, "Petitioners' Surrogate Country and Initial Surrogate Value Comments," dated May 2, 2018 (Petitioners' May 2, 2018 SVs); *see also* Petitioners' Letter, "Petitioners' Surrogate Country and Value Rebuttal Comments" dated May 9, 2018 (Petitioners' May 9, 2018 SVs); *see also* Petitioners' Letter, "Petitioners' Comments on New OP List and Supplemental Surrogate Country and Value Comments," dated August 24, 2018 (Petitioners' August 24, 2018 SVs); *see also* Petitioners' Letter, "Petitioners' Final Surrogate Value Submission," dated October 31, 2018 (Petitioners' October 31, 2018 SVs).
[33] *See* Zhengyang's Letter, "Surrogate Country Comments and Surrogate Values for the Preliminary Results," dated May 2, 2018 (Zhengyang's May 2, 2018 SVs);
[34] *See* Memorandum, "23rd Administrative Review (2016-2017): Extension of Deadline for the Preliminary Results of the Review," dated July 26, 2018; *see also* Memorandum, "23rd Administrative Review (2016-2017): Extension of Deadline for the Preliminary Results of the Review," dated October 3, 2018.
[35] *See* Petitioners' Letter, "23rd Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Pre-Preliminary Comments on the Selection of Surrogate Values," dated November 16, 2018 (Petitioners' Pre-Preliminary Comments).

does not include the following: (a) Garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed. The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings: 0703.20.0000, 0703.20.0010, 0703.20.0015, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, 0711.90.6500, 2005.90.9500, 2005.90.9700, 2005.99.9700, and of the Harmonized Tariff Schedule of the United States (HTSUS).[36]

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 (CBP) to that effect.

IV. RESCISSION OF ADMINISTRATIVE REVIEW

Pursuant to 19 CFR 351.213(d)(1), Commerce 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.[37] As noted above, between March 27, and April 12, 2018, the petitioners,[38] Harmoni,[39] and Best Buy Produce International, Inc. (Best Buy)[40] withdrew their review requests for certain companies. Accordingly, we are rescinding the administrative review with respect to these 12 companies.[41]

V. PRELIMINARY DETERMINATION OF NO SHIPMENTS

As discussed in the background section above, four companies subject to this review timely filed "no shipment" certifications stating that they had no entries of subject merchandise during the POR. As discussed below, three companies that timely filed no shipment certifications are part of the QTF-Entity.

In the two preceding administrative reviews, Commerce found that QTF, QXF, Lianghe, QTHF, QBT, Golden Bird, and Huamei Consulting were affiliated, and collapsed these companies into

[36] *See Antidumping Duty Order*, 59 at 59209.
[37] *See* 19 CFR 351.213(d)(1); *see also* Tolling Memorandum.
[38] The petitioners are the Fresh Garlic Producers Association and its individual members: Christopher Ranch L.L.C., The Garlic Company, and Valley Garlic. *See* Petitioners' Letter, "Petitioners' Withdrawal of Review Request with Respect to Harmoni," dated April 6, 2018; *see also* Petitioners' Letter, "Petitioners' Partial Withdrawal of Review Request," dated April 12, 2018 (Petitioners' Second Review Withdrawal).
[39] *See* Harmoni's Letter, "Harmoni's Withdrawal of Review Request," dated April 6, 2018.
[40] *See* Best Buy's Letter, "Partial Withdrawal of Request for Administrative Review," dated March 27, 2018; *see also* Best Buy's Letter, "Partial Withdrawal of Request for Administrative Review," dated April 3, 2018; *see also* Best Buy's Letter, "Clarified Withdrawal of Request for Administrative Review," dated April 6, 2018.
[41] As discussed in the "Preliminary Determination of No Shipments" section, QTF is a member of the QTF-Entity, for which there are valid review requests. Accordingly, all members of the QTF-Entity are subject to this review.

the QTF-Entity.[42] As noted above, the QTF-Entity submitted no shipment certifications for only three of these companies: QTF, QXF and Lianghe. On October 22, 2018, we issued a supplemental questionnaire regarding the no shipment status of the QTF-Entity.[43] On October 29, 2018, the QTF-Entity certified that none of its members had entries of subject merchandise during the POR.[44]

Commerce asked CBP to conduct a query on potential shipments made by the QTF-Entity and the remaining company that certified no shipments during the POR, Shengtai. CBP has provided no evidence that contradicted the companies' claims of no shipments during the POR. Based on these companies' certifications and our analysis of CBP information, we preliminarily determine that the companies listed in Appendix III of the *Preliminary Results* did not have any shipments of subject merchandise during the POR. In addition, Commerce finds that, consistent with its assessment practice in non-market economy (NME) cases, further discussed below, it is appropriate not to rescind the review in part, in these circumstances, but to complete the review with respect to these companies and issue appropriate instructions to CBP based on the final results of the review.[45]

VI. DISCUSSION OF METHODOLOGY

Non-Market Economy Status

Commerce considers China to be an NME country.[46] 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 Commerce. Therefore, we continue to treat China as an NME country for purposes of these preliminary results.

Separate Rate Determination

In the *Initiation Notice*, Commerce notified parties of the application process by which exporters and producers may apply for separate rate status in NME reviews.[47] In proceedings involving NME countries, Commerce has a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed at a single antidumping duty rate.[48] It is Commerce's policy to assign all exporters of subject merchandise in an NME

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[42] *See* Memorandum, "23rd Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Status of the QTF-Entity," dated October 22, 2018 at Attachment.
[43] *See* Commerce's Letter, "23rd Administrative Review of Fresh Garlic from the People's Republic of China – Supplemental Questionnaire Concerning QTF's No Shipment Certification," dated October 22, 2018.
[44] *See* QTF-Entity's Letter, "No Shipment Notifications," dated October 29, 2018.
[45] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011). *See also* "Assessment Rates" section below.
[46] *See Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination*, 82 FR 50858, 50861 (November 2, 2017) and accompanying decision memorandum, *China's Status as a Non-Market Economy*.
[47] *See Initiation Notice*.
[48] *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.

country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.[49] Exporters can demonstrate this independence through the absence of both *de jure* (in law) and *de facto* (in fact) governmental control over export activities.[50] Commerce analyzes each entity's export independence under a test first articulated in *Sparklers* and as further developed in *Silicon Carbide*.[51]

In order to demonstrate separate-rate status eligibility, Commerce normally requires an entity, for which a review was requested, and which was assigned a separate rate in a previous segment, to submit a separate-rate certification stating that it continues to meet the criteria for obtaining a separate rate.[52] For entities that were not assigned a separate rate in a previous segment, however, Commerce requires a separate rate application.[53]

Separate Rate Applications and Certifications

As noted under the "Background" section of this memorandum, eight companies subject to the administrative review timely submitted separate rate status certifications or applications. As discussed above, Zhengyang and Sea-line were selected as mandatory respondents. The remaining timely-filed separate rate certifications came from: (1) Chengwu; (2) Jining Alpha; (3) Maycarrier; (4) Chenhe; (5) Happy Foods; and (6) Hongqiao.

Each company certified that it had suspended entries during the POR.[54]

1. Absence of *De Jure* Control

Commerce 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.[55]

The evidence placed on the record of the instant administrative review by Zhengyang, Sea-line, Chengwu, Jining Alpha, Maycarrier, Chenhe, Happy Foods, and Hongqiao demonstrates an absence of *de jure* government control under the criteria identified in *Silicon Carbide* and *Sparkler*s.

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[49] *Id.*
[50] *Id.*
[51] *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*).
[52] *See Initiation Notice*.
[53] *Id.*
[54] *See* Chengwu's SRC; *see also* Jining Alpha's SRC; *see also* Maycarrier's SRC; *see also* Chenhe's SRC; *see also* Happy Foods' SRA; *see also* Hongqiao's SRC.
[55] *See Sparklers*, 56 FR at 20589.

2. Absence of *De Facto* Control

Typically, Commerce 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.[56] Commerce 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 Commerce from granting a separate rate.

The evidence placed on the record of the instant administrative review by Zhengyang, Sea-line, Chengwu, Jining Alpha, Maycarrier, Chenhe, Happy Foods, and Hongqiao demonstrates an absence of *de facto* government control under the criteria identified in *Silicon Carbide* and *Sparklers*. Accordingly, Commerce has preliminarily determined that these seven 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, Commerce 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 Zhengyang and Sea-line as the mandatory respondents in this review.[57]

As discussed above, Chengwu, Jining Alpha, Maycarrier, Chenhe, Happy Foods, and Hongqiao have demonstrated eligibility for a separate rate, but were not selected for individual examination in this review. The statute and Commerce's regulations do not directly address the establishment of a rate to be applied to companies not selected for individual examination where Commerce limited its examination in an AR pursuant to section 777A(c)(2) of the Act. Commerce'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.[58]

In the administrative review, Commerce calculated a weighted-average dumping margin for Sea-line and Zhengyang. Therefore, Commerce preliminarily determines that Sea-line and

[56] *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).
[57] *See* Memorandum, "Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: 2015-2016: Selection of Respondents for Individual Examination" dated March 7, 2017.
[58] *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).

Zhengyang's calculated weighted-average dumping margin will be weight averaged and assigned to Chengwu, Jining Alpha, Maycarrier, Chenhe, Happy Foods, Hongqiao as the separate rate. We preliminarily determine that the applicable separate rate is $3.61 per kilogram.[59]

Margin for Companies Not Receiving a Separate Rate

As noted above, we initiated administrative reviews for 53 producers/exporters of garlic, rescinded the reviews of 12 producers/exporters, granted separate rates to 6 non-selected producers/exporters, and determined that Zhengyang and Sea-line were mandatory respondents and were each eligible for a separate rate. In addition, we have preliminarily confirmed that Shengtai and the QTF-Entity (of which four members were named in the *Initiation Notice*) had no shipments of subject merchandise during the POR.[60] Therefore, there are 28 entities which do not fall within the abovementioned categories that are still subject to the administrative review. For these remaining 28 entities that did not demonstrate their eligibility for separate rate status, Commerce finds that they have not rebutted the presumption of government control and, therefore, are considered to be part of the China-wide entity.

The China-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.[61] In NME proceedings, "'rates' may consist of a single dumping margin applicable to all exporters and producers."[62] As explained above in the "Separate Rates" section, all companies within China 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 are not subject to government control.[63] In this regard, no record evidence indicates that such government influence is no longer present or that our treatment of the China-wide entity is otherwise incorrect.

Commerce's policy regarding conditional review of the China-wide entity applies to this review.[64] Under this policy, the China-wide entity will not be under review unless a party

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[59] *See* Memorandum, "Calculation of the Preliminary Dumping Margin for Separate Rate Recipients," dated November 30, 2018.
[60] *See Initiation Notice*.
[61] The separate-rate application and certification are available at: http://enforcement.trade.gov/nme/nme-sep-rate.html.
[62] *See* 19 CFR 351.107(d).
[63] *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 (IDM) at Comment 2.
[64] *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).

specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the China-wide entity in this review, the entity is not under review, and the entity's rate is not subject to change. As such, the China-wide rate from the previous review remains unchanged, and the China-wide entity remains subject to a dumping rate of $4.71 per kilogram.[65]

Surrogate Country and Surrogate Value Data

On February 8, 2018,[66] we 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. On August 2, 2018, Commerce's Office of Policy (OP) published an updated list of countries determined to be at a level of economic development comparable to that of China and on August 10, 2018,[67] we sent a letter to interested parties inviting comments on the new list of potential SCs as well as SV data.

On October 3, 2018, Commerce extended the deadline for the preliminary results of the administrative review to November 30, 2018.[68] Pursuant to 19 CFR 351.301(c)(3)(ii), the deadline for submission of factual information to value factors of production was extended to October 31, 2018.

1. Surrogate Country Comments and Rebuttal Comments

On May 2, 2018, the petitioners submitted comments arguing that Commerce should choose Romania as the primary surrogate country because it satisfies all surrogate country selection criteria, and has the best available information to value respondents' factors of production (FOPs).[69] Specifically, the petitioners argue that Romania is at a level of economic development similar to China and is a significant producer of garlic.[70] Furthermore, the 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.[71]

On May 2, 2018, Zhengyang submitted comments arguing that Commerce should select Mexico as the primary surrogate country because it meets all of Commerce's criteria for selection of a

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[65] *See, e.g., id.*; *see also 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).
[66] Commerce determined that Brazil, Mexico, Romania, Bulgaria, South Africa, and Thailand are countries whose per capita gross national incomes (GNI) are comparable to China in terms of economic development. *See* February 8, 2018 SV Request.
[67] On August 2, 2018, Commerce published an updated list of countries determined to be at a level of economic development comparable to that of China. These countries included Romania, Malaysia, Russia, Mexico, Brazil, and Kazakhstan. *See* August 10, 2018 SV Request.
[68] *See* Memorandum, "Fresh Garlic from the People's Republic of China: 23rd Administrative Review (2016-2017): Extension of Deadline for the Preliminary Results of the Review" dated October 3, 2018.
[69] *See* Petitioners' May 2, 2018 SVs.
[70] *See* Petitioners' May 2, 2018 SVs at 2-3.
[71] *Id*. at Attachment 1, page 9-11.

surrogate country.[72] Moreover, Zhengyang argues that Mexico is a significant producer and exporter of garlic and because Mexico also has high quality, comparable garlic bulb data.[73] On May 9, 2018, the petitioners rebutted Zhengyang's surrogate country comments.[74] In this submission, the petitioners argue that Mexico should not be selected.[75] The petitioners argue that Mexico's input garlic bulbs are smaller than those used by the Chinese producers in this review, and that various market influences distort its price.[76]

On August 24, 2018, the petitioners submitted supplemental SV comments further arguing that Romania should be selected as the primary SC in this review.[77] Specifically, the petitioners argue that Romania continues to satisfy Commerce's SC selection criteria and provides the best available information to value the respondents' factors of production, even considering the updated OP country list.

2. Surrogate Value Comments and Rebuttal Comments

The petitioners submitted 2016 garlic bulb data sourced from the National Institute of Statistics of Romania (NISR), the 2016 and 2017 financial statements from SC Boromir PROD S.A. (SC Boromir), a Romanian food company, tariff-specific data for direct and packing materials from the TDM, Eurostat electricity data, National Public Utility Regulation Authority (ANRSC) water data, World Bank truck freight, brokerage, and handling data, and ocean freight data from Maersk Line.[78]

Zhengyang submitted the 2015 and 2016 publicly-available financial statements of GIMSA, a Mexican producer of comparable merchandise.[79] Zhengyang also submitted monthly garlic bulb data from the Mexican government's Agricultural Food and Fishing Information Service (SIAP) for 2016-2018, along with yearly garlic bulb data from SIAP for 2012-2016.[80] Finally, Zhengyang submitted National Water Commission water data, electricity data from the International Energy Agency (IEA), World Bank truck freight, brokerage, and handling data, and 2016 labor data from the National Institute of Statistic and Geography of Mexico.[81]

On May 9, 2018, the petitioners submitted rebuttal comments on Zhengyang's surrogate country and surrogate value submissions.[82] The petitioners argued that Mexican garlic bulbs are not physically comparable to those used by the respondents in this instant review.[83] The petitioners

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[72] *See* Zhengyang's May 2, 2018 SVs at 2.
[73] *Id*. at 2.
[74] *See* Petitioners' May 9, 2018 SVs.
[75] *Id*.
[76] *Id*. at 8-20.
[77] *See* Petitioners' August 24, 2018 SVs.
[78] *See* Petitioners' May 2, 2018 SVs at SV-1-5B; *see also* Petitioners' October 31, 2018 SVs at Attachments SV-3-2A, 2B, 3, 5C, and 6.
[79] *See* Zhengyang's May 2, 2018 SVs at Exhibit SV-13.
[80] *Id*. at Exhibits SV-3 and SV-4.
[81] *Id*. at Exhibits SV-7 through SV-12.
[82] *See* Petitioners' May 9, 2018 SVs.
[83] *Id*. at 2-4.

also submitted declarations from a partner in a Mexican garlic business.[84] The petitioners submitted monthly Mexican import statistics arguing that Mexico lacks adequate cold storage for year-round garlic availability.[85] In addition, the petitioners submitted information showing that the pricing data in Mexico is limited in availability, along with information about the Mexican garlic market, the climates of China, Romania, and Mexico, and population data for Argentina, Chile, Peru, and Mexico.[86] Finally, the petitioners' submission contains information relating to certification requirements for garlic imported into Mexico, Trade Data Monitor (TDA) garlic import and export statistics for Argentina, Chile, China, Mexico, Peru, and the United States, updated population data for Argentina, Chile, Mexico, and Peru, and the public versions of Commerce's verification reports from the 17th and 18th administrative reviews.[87]

On August 24, 2018, and October 31, 2018, the petitioners provided additional information and comments on the selection of surrogate values.[88] The petitioners submitted Romanian import statistics for certain inputs and packaging, Romanian labor rates for the POR, and updated international freight data and financial statements.[89]

Surrogate Country Analysis

When Commerce 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, valued in a surrogate ME country or countries considered to be appropriate by Commerce. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, Commerce 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.[90] Reading sections 773(c)(1) and (c)(4) of the Act in concert, it is Commerce's practice to select an appropriate surrogate country based on the availability and reliability of data.[91] Commerce identified Brazil, Mexico, Romania, Bulgaria, South Africa, Thailand, Russia, Malaysia, and Kazakhstan, as countries with per capita GNI that are at the same level of economic development as China during the POR.[92]

A. Economic Comparability

Section 773(c)(4)(A) of the Act is silent with respect to how Commerce may determine that a country is economically comparable to the NME country. As such, Commerce's longstanding practice has been first to identify those countries which are at the same level of economic development as China based on per capita GNI data reported in the World Bank's World

[84] *Id*. at Attachment MEX-1A.
[85] *Id*. at Attachment MEX-1B.
[86] *Id*. at Attachments MEX-2, FP-1 to FP-4, POPULATION-1, and CLIMATE 1 through CLIMATE 7.
[87] *Id*. at Attachments MEX-2, TRADE-1 through TRADE-6, and VERIFICATION-1 and VERIFICATION 2.
[88] *See* Petitioners' August 24, 2018 SVs; *see also* Petitioners' October 31, 2018 SVs.
[89] *Id*.
[90] *See* Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004).
[91] *Id.*
[92] *See* February 8, 2018 SV Request; *see also* August 10, 2018 SV Request.

Development Report.[93] We note that identifying potential surrogate countries based on GNI data has been affirmed by the CIT.[94]

As explained in Commerce's *Policy Bulletin*, "{t}he surrogate countries on the list are not ranked."[95] This absence of ranking reflects Commerce's long-standing practice that for the purpose of surrogate country selection, the countries on the list "should be considered equivalent"[96] from the standpoint of their level of economic development based on GNI as compared to China's level of economic development and recognition of the fact that the 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."[97] 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.

Commerce identified Brazil, Mexico, Romania, Bulgaria, South Africa, Thailand, Russia, Malaysia, and Kazakhstan, as countries with per capita GNI that are at the same level of economic development as China during the POR.[98] We consider all nine countries identified on the Surrogate Country Lists 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 China are given equal consideration for the purposes of selecting a surrogate country. As a general rule, Commerce 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 these two considerations outweigh the difference in levels of economic development.[99]

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[93] *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.
[94] *See Fujian Lianfu Forestry Co., Ltd. v. United States*, 638 F. Supp. 2d 1325 (CIT 2009).
[95] *See Policy Bulletin*.
[96] *Id.*
[97] *See* section 773(c)(4) of the Act.
[98] *See* August 10, 2018 SV Request; *see also* February 8, 2018 SV Request.
[99] *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).

B. Significant Producers of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires Commerce to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor Commerce's regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, Commerce 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."[100] Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.[101] Further, when selecting a surrogate country, the statute requires Commerce to consider the comparability of the merchandise, not the comparability of the industry.[102] "In cases where the identical merchandise is not produced, Commerce must determine if other merchandise that is comparable is produced. How Commerce does this depends on the subject merchandise."[103] In this regard, Commerce 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.[104]

Further, the statute grants Commerce discretion to examine various data sources for determining the best available information.[105] Moreover, while the legislative history provides that the term "significant producer" includes any country that is a "significant net exporter,"[106] 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, Commerce has preliminarily relied on the United Nations Food and Agriculture Organization (FAO) production data for fresh garlic, as it has in past reviews.

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[100] *See Policy Bulletin* at 2.
[101] 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.
[102] *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.").
[103] *See Policy Bulletin* at 2.
[104] *Id.* at 3.
[105] *See* section 773(c) of the Act; *see also Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1990).
[106] *See* Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988).

As noted below, there are no SV data or surrogate financial statements for Brazil, Bulgaria, South Africa, Thailand, Russia, Malaysia, or Kazakhstan on the record of this review. Therefore, we preliminarily determine that 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, on this record, Commerce preliminarily considered whether Mexico and Romania are significant producers of comparable merchandise. Zhengyang and the petitioners provided 2016 FAO garlic production data, which included Romania and Mexico (Sea-line did not provide SV data for consideration).[107]

Economically-Comparable Countries	**Garlic Production (MTs)**
Romania	54,389[108]
Mexico	75,987[109]

As noted in the two prior administrative reviews, we note that China's production level of fresh garlic is by far the largest in the world – approximately 80 percent of world production which represents a production level over 15 times greater than the next largest producing country.[110] 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,[111] Commerce has evaluated the garlic production data from Romania and Mexico to determine whether the production was noticeably and measurably 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.

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."

Here, Romania's and Mexico's 2016 production amounts are so noticeably and measurably large – 54,389 and 75,987 metric tons, respectively, 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.

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[107] *See* Zhengyang's May 2, 2018 SVs at Exhibit SV-15; *see also* Petitioners' May 2, 2018 SVs at Exhibit FAO-1.
[108] *See* Petitioners' May 2, 2018 SVs at Exhibit FAO-1.
[109] *See* Zhengyang's May 2, 2018 SVs at Exhibit SV-15.
[110] *See, e.g., Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 21st Antidumping Duty Administrative Review; 2014-2015*, 82 FR 27230, accompanying IDM (*Garlic 21 Final*) at 47; *see also Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 22nd Antidumping Duty Administrative Review and Final Result and Rescission, in Part, of the New Shipper Reviews; 2015-2016*, 83 FR 27949 (June 15, 2018), and accompanying IDM (*Garlic 22 Final*); *see also* Zhengyang's May 2, 2018 SVs at Exhibit SV-15.
[111] Policy Bulletin 04.1 acknowledges and emphasizes the need for flexibility and the use of discretion because the "meaning of 'significant producer' can differ significantly from case to case."

Thus, the 2016 FAO data demonstrates that Romania and Mexico are significant producers of identical merchandise in that each country produces a "noticeably or measurably 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."[112] Section 773(c)(1) of the Act instructs Commerce to value the FOPs based upon the best available information from an ME country or countries that Commerce consider appropriate. When evaluating the best available information, Commerce considers several factors including whether the SV is publicly available, contemporaneous with the POR, represents a broad-market average, tax and duty-exclusive, and specific to the input.[113] There is no hierarchy among these criteria.[114] It is Commerce's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis.[115]

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

1. Romania

The petitioners 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 Chinese garlic and the price data is reliable.[116]

The petitioners contend that the Romanian garlic bulbs are physically comparable to garlic bulbs exported by respondents in the instant review.[117] The petitioners note that in previous AD determinations of garlic from China, Commerce established that diameter of garlic grown in China "typically ranges between 40-60mm."[118] The 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

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[112] *See Policy Bulletin*.
[113] *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 IDM at Comment 1.
[114] *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 IDM at Comment 1.
[115] *See Policy Bulletin*.
[116] *See* Petitioners' May 2, 2018 SVs at 3-9.
[117] *Id*.
[118] *Id*. at 4 (*citing 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)).

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 bulbs = 62.5 grams per bulb)."[119]

The 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 China by drawing parallels between the moderate, large-sized, and very large-sized varietals available in the two garlic markets.[120] The petitioners cite a completed new shipper review on the garlic AD order where Commerce determined that "the petitioners have provided sufficient evidence to establish that the garlic produced in Romania is comparable to the sizes of garlic bulbs produced in China."[121]

Regarding the reliability of the Romanian data, the 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).[122] The petitioners assert that the garlic bulb data on the record for Romania is contemporaneous, tax-free, monthly, and publicly-available.[123] In addition, the petitioners explain that their comparison of the 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.[124]

The petitioners note that Commerce 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.[125]

In a preceding administrative review farm gate pricing was defined as garlic that "is priced to reflect its state immediately following the harvest," and the petitioners argue the input garlic bulbs used by the respondent are not "farm gate," but instead reflect "significant post-harvest processing and handling."[126] The petitioners 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.[127]

[119] *Id*. at 4-5.
[120] *Id*. at 6-7.
[121] *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 (NSR 21 IDM), cited in Petitioners' May 2, 2018 SVs at 8.
[122] *See* Petitioners' May 2, 2018 SVs at 10.
[123] *Id*.
[124] *Id*. at 10-11 and Exhibits ROM-3 and ROM-4.
[125] *Id*. at 9.
[126] *See 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' May 2, 2018 SVs at 8).
[127] *Id*.

Zhengyang did not rebut the petitioners' surrogate country or surrogate value comments.

2. Mexico

Zhengyang argues that Mexico's fresh garlic is physically comparable to Chinese garlic bulbs, and that Mexican price data is reliable.[128] Zhengyang 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.[129]

In response, the petitioners provide articles in Spanish (with English translations) and in English as well as a declaration from the owner of a Mexican garlic company.[130] By comparing imported Chilean garlic prices to the export price of Mexican garlic, the petitioners information seems to show that there is a connection between the international demand for Mexican garlic and the size of the garlic bulb.[131] Additionally, the petitioners argue that Mexico's national climate is very different from that of China's main garlic growing regions, and that Romania, in contrast, shares four of its five major sub-climactic zones under the same Köppen designations of the Chinese growing regions.[132] The petitioners also provide evidence of market conditions which may have influenced the price of the Mexican garlic during the POR.[133]

Regarding the reliability of the data, Zhengyang asserts that the Mexican data are reliable.[134] In order to argue the reliability of the Mexican garlic bulb data, Zhengyang submitted FAO data to correlate with the SIAP data.[135]

The petitioners argue that Mexico's garlic bulb data are not the most reliable on the record of this review because certain Mexican pricing data are limited in availability.[136]

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, Commerce has determined that both the Romanian and Mexican data sets serve as the source for the United Nations Food and Agriculture Organization (UN FAO).[137] Commerce has relied on UN FAO data in the past and continues to

[128] *See* Zhengyang's May 2, 2018 SVs at 2.
[129] *See* Zhengyang's May 2, 2018 SVs at Exhibit SV-6. We note that some of the articles are illegibly translated.
[130] *See* Petitioners' May 9, 2018 Rebuttal SVs at Attachments MEX-1A, MEX-1B, and MEX-2.
[131] *Id*. at Attachments TRADE1-TRADE6.
[132] *Id*. at Attachments CLIMATE1-CLIMATE7.
[133] *Id*. at Attachments MEX 1-3 and FP-1 to FP-5.
[134] *See* Zhengyang's May 2, 2018 SVs at 2 and Exhibits SV-3, SV4, and SV-15.
[135] *Id*. at Exhibit SV-5.
[136] *See* Petitioners' May 9, 2018 Rebuttal SVs at 3 and Attachment MEX-2.
[137] *See Garlic 22 Final*, IDM at 41.

find that UN FAO data are (1) specific; (2) based on a broad market average; (3) contemporaneous; (4) exclusive of taxes and duties; and (5) publicly available.[138]

However, Commerce has also repeatedly determined that size and quality are the most important characteristics of fresh garlic exported from China to the United States, because the price of the bulb varies with its size and quality.[139] 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 China and sold in the United States.[140] In a recently concluded new shipper review, Commerce determined that there was "sufficient evidence to establish that the garlic produced in Romania is comparable to the sizes of garlic bulbs produced in China."[141] Moreover, in the two previous administrative reviews, Commerce found that Romanian garlic bulbs are "similar in size to the input garlic bulbs consumed in the production of subject merchandise."[142]

Commerce preliminarily finds Romania to be the primary surrogate country for this review, because Romania: (1) is at a comparable level of economic development to China; (2) is a significant producer of comparable merchandise that is physically similar to the garlic produced in China; and (3) provides sufficient reliable sources of data from which to derive SVs, including demonstrating that the size and quality of the Romanian garlic bulbs are similar to that of the input garlic bulbs consumed in the production of subject merchandise. Finally, there is publicly available data from Romania for all FOPs on the record of this review. Commerce therefore 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.

Date of Sale

Commerce'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.[143]

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[138] *Id*.
[139] *See, e.g., Garlic 2009-2010 AR Final Results* IDM at 17.
[140] *See* Petitioners' May 2, 2018 SVs at 4-9, and Exhibits ROM-1A, ROM-1B, ROM-2, PRC-1, PRC-3, PRC-4, and PRC-5.
[141] *See* NSR 21 IDM, cited by Petitioners' May 2, 2018 SVs at 8.
[142] *See Garlic 21 Final*, IDM at 46-47; *see also Garlic 22 Final*, IDM at 37.
[143] *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 IDM 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).

Information on the record of this review indicates that Zhengyang and Sea-line set the material terms of sale on invoice date and reported invoice date as date of sale.[144] We therefore preliminarily determine to use the reported dates of sale for both Zhengyang and Sea-line.

Comparisons to Normal Value

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

A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce 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, Commerce 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 Commerce's examination of this question in the context of administrative reviews, Commerce 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.[145] In recent investigations, Commerce 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.[146] Commerce 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. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce 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

[144] *See* Zhengyang's April 19, 2018 CDQR at C-9-C-10; *see also* Sea-line's August 10, 2018 CQR at 4.
[145] *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).
[146] *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); *see also 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); *see also Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

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 Commerce uses in making comparisons between export price (or constructed export price) and normal value for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* 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, Commerce examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, Commerce 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 Zhengyang, based on the results of the differential pricing analysis, Commerce preliminarily finds that 83.6 percent of the value of U.S. sales passes the Cohen's *d* test.[147] There is no difference between the weighted-average margin using the average-to-average method compared to the average-to-transaction method. Accordingly, Commerce preliminarily determines to apply the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Zhengyang.

For Sea-line, based on the results of the differential pricing analysis, Commerce preliminarily finds that 57.7 percent of the value of U.S. sales passes the Cohen's *d* test. There is no difference between the weighted-average margin using the average-to-average method compared to the average-to-transaction method. Accordingly, Commerce preliminarily determines to apply the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Sea-line.

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.

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[147] *See* Memorandum, "Administrative Review of Fresh Garlic from the People's Republic of China: Calculation Memorandum for the Preliminary Results of Zhengyang" dated concurrently with this memorandum (Zhengyang Preliminary Analysis Memorandum).

Commerce considers the U.S. prices of all sales by Zhengyang and Sea-line to be export prices 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 U.S. We calculated EPs based on the sales price to unaffiliated purchaser(s) in the U.S.

The details of Zhengyang's and Sea-line's sales terms are business proprietary information (BPI).[148] In accordance with section 772(c)(2)(A) of the Act, where appropriate, we made deductions from the sales price for various expenses that were provided in China and paid for in an NME currency, 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, Commerce used the reported expense. For a detailed description of Zhengyang and Sea-line's preliminary calculations, *see* Zhengyang's and Sea-line's Preliminary Analysis Memoranda.[149]

Value-Added Tax

It is Commerce's practice with respect to the calculation of EP and CEP to include an adjustment of any un-refunded (herein "irrecoverable") value-added tax (VAT) in certain NMEs in accordance with section 772(c)(2)(B) of the Act.[150] 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, Commerce will reduce the respondent's EP and CEP prices accordingly, by the amount of the tax, duty or charge paid, but not rebated.[151] Where the irrecoverable VAT is a fixed percentage of EP or CEP, Commerce 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.[152]

The Chinese VAT schedule placed on the record of this review by Zhengyang and Sea-line indicates that the standard VAT levy is zero percent, and the rebate rate for subject merchandise is zero percent.[153] For the purposes of these preliminary results, therefore, we did not deduct irrecoverable VAT from U.S. price.[154]

Normal Value

Section 773(c)(1) of the Act provides that Commerce 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, Commerce will base NV on FOPs, because the presence of government controls on various

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[148] *See* Zhengyang's April 19, 2018 CDQR; *see also* Sea-line's August 10, 2018 CQR.
[149] *See* Zhengyang's Preliminary Analysis Memorandum; *see also* Sea-line's Preliminary Analysis Memorandum.
[150] *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).
[151] *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 IDM at Comment 5.A.
[152] *Id.*
[153] *See* Zhengyang's April 19, 2018 CDQR at Appendix C-7; *see also* Sea-line's August 10, 2018 CQR at Exhibit C-7.
[154] *Id.*

aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. Commerce'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.

Commerce 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 the respondents 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. Commerce based NV on Zhengyang's and Sea-line's reported FOPs for materials, energy, and labor, except as noted in each respondents' preliminary calculation memorandum, if applicable.[155]

Factor Valuations

In accordance with section 773(c) of the Act, for subject merchandise produced by the respondents, Commerce calculated NVs based on the FOPs reported by the respondents for the POR. Commerce used Romanian import data and other publicly available Romanian data in order to calculate SVs for each respondent's FOPs. To calculate NVs, Commerce multiplied each respondents' reported per-unit FOP quantities by publicly available SVs.[156] Commerce'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.[157]

As appropriate, Commerce adjusted input prices by including freight costs to render them delivered prices. Specifically, Commerce 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*.[158] Additionally, where necessary, Commerce adjusted SVs for inflation and exchange rates, and Commerce converted all applicable FOPs to a per-kilogram basis.

For the preliminary results, Commerce valued garlic inputs using data from the Romanian NISR. Consistent with the *Garlic 22 Final*, we determine that this data: (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.

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[155] *See* Memorandum, "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) (Preliminary SV Memo); *see also* Sea-line's Preliminary Analysis Memorandum.
[156] *Id*.
[157] *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 IDM at Comment 2.
[158] *See Sigma Corp. v. United States*, 117 F.3d 1401, 1408 (Fed. Cir. 1997) (*Sigma Corp.*).

For all other raw material and packing inputs, Commerce used Romanian import prices reported in the TDM.[159] 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.[160]

We valued electricity based on information from Eurostat's reporting of electricity rates,[161] and we valued water using information from the National Regulating Authority for the Public Utility Services of Romania Statistics.[162]

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 2017 Romania* (*Doing Business Romania 17*) report. These reports covered inland transportation and handling relating to importing and exporting a standardized cargo of goods.[163]

In *Labor Methodologies*, Commerce determined that the best methodology to value labor is to use industry-specific labor rates from the primary surrogate country.[164] Commerce does not, however, preclude all other sources from evaluation for use in labor costs.[165] 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 Romanian National Institute of Statistics (NISR) for the manufacture of food products in Romania.[166] The NISR data is from 2017.

To value factory overhead, selling, general and administrative expenses (SG&A), and profit, we used information from the 2016 and 2017 financial statements of SC Boromir PROD SC, a Romanian food processor.[167] 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.

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[159] *See* https://www.tradedatamonitor.com/.
[160] *See*, *e.g.*, Petitioners' May 2, 2018 SVs at Exhibit 2A.
[161] *See* Petitioners' August 24, 2018 SVs at Attachment SV2-4.
[162] *Id.* at Attachment SV2-5.
[163] *See* Petitioners' May 2, 2018 SVs at Exhibit 5A.
[164] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor,* 76 FR 36092 (June 21, 2011) (*Labor Methodologies*).
[165] *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 IDM 11.
[166] *See* Petitioners' October 31, 2018 SVs at Exhibit 3.
[167] *See* Petitioners' May 2, 2018 SVs at Attachment SV-1; *see also* Petitioners' October 31, 2018 SVs at Attachment 6.

Currency Conversion

Where necessary, Commerce 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.

VII. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

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Agree Disagree

11/30/2018

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Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary of Enforcement and Compliance