UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-570-831
New Shipper Review
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June 7, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of the Semiannual 2017-2018 Antidumping Duty New Shipper Review: Fresh Garlic from the People's Republic of China

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I. SUMMARY

In response to a request from Jinxiang Infang Fruit & Vegetable Co., Ltd. (Infang), the Department of Commerce (Commerce) is conducting a new shipper review (NSR) of the antidumping duty (AD) order on fresh garlic from the People's Republic of China (China)[1] covering the period of review (POR) of November 1, 2017, though May 31, 2018. Commerce preliminarily determines that Infang's sale was made at less than normal value (NV).

If these preliminary results are adopted in our final results of review, Commerce 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 90 days from the date of publication of this notice pursuant to section 751(a)(2)(B)(iii) of the Tariff Act of 1930, as amended (the Act), unless extended.

II. BACKGROUND

On July 9, 2018, in response to a request from Infang,[2] Commerce published its notice of initiation of this NSR for the period November 1, 2017, to May 31, 2018.[3]

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[1] *See Antidumping Duty Order: Fresh Garlic from the People's Republic of China*, 59 FR 59209 (November 16, 1994).
[2] *See* Infang's letter, "Fresh Garlic from the People's Republic of China – Request for New Shipper Review," dated May 23, 2018.
[3] *See Fresh Garlic from the People's Republic of China: Initiation of Semiannual Antidumping Duty New Shipper Review; 2017-2018*, 83 FR 31734 (July 9, 2018).

On July 13, 2018, Commerce issued the initial questionnaire to Infang.[4] Between August 15, 2018, and August 27, 2018, Infang timely submitted responses to this questionnaire.[5] Between October 11, 2018, and March 18, 2019, Commerce issued supplemental questionnaires to Infang.[6] Infang timely submitted responses to these questionnaires between October 25, 2018, and April 1, 2019.[7]

On August 10, 2018, Commerce requested information and comments relating to the selection of a surrogate country and surrogate values for the NSR.[8] Commerce received timely filed comments and/or rebuttals from the petitioners[9] and Infang.[10] On May 6, 2019, the petitioners submitted further comments relating to the selection of a surrogate country and surrogate values.[11]

On December 18, 2018, Commerce extended the deadline for the preliminary results of this review.[12] Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.[13] After the extension and the tolling of the deadlines, the revised deadline for the preliminary results was June 5, 2019. On June 5, 2019, Commerce fully extended the deadline

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[4] *See* Commerce's letter, "Semiannual New Shipper Review of Fresh Garlic from the People's Republic of China – Initial Questionnaire for Infang," dated July 13, 2018.
[5] *See* Infang's August 15, 2018 Section A Questionnaire Response (Infang August 15, 2018 AQR); *see also* Infang's August 27, 2018 Sections C and D Questionnaire Response (Infang August 27, 2018 CDQR).
[6] *See* Commerce's letters, "Semiannual New Shipper Review of Fresh Garlic from the People's Republic of China – First Supplemental Questionnaire for Infang," dated October 11, 2018; "Semiannual New Shipper Review of Fresh Garlic from the People's Republic of China – Second Supplemental Questionnaire for Infang," dated December 18, 2018; "Semiannual New Shipper Review of Fresh Garlic from the People's Republic of China – Second {*sic*} Supplemental Questionnaire for Infang," dated March 18, 2019.
[7] *See* Infang's October 25, 2018 First Supplemental Questionnaire Response (Infang October 25, 2018 1SQR); *see also* Infang's February 4, 2019 Second Supplemental Questionnaire Response (Infang February 4, 2019 2SQR); Infang's April 1, 2019 Third Supplemental Questionnaire Response (Infang April 1, 2019 3SQR).
[8] *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 August 10, 2018 (SCSV Request Letter).
[9] The Fresh Garlic Producers Association (FGPA) and its individual members: Christopher Ranch L.L.C., The Garlic Company, and Valley Garlic (collectively, the petitioners).
[10] *See* the petitioners' letters, "27th New Shipper Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Surrogate Country and Surrogate Value Comments," dated September 17, 2018 (Petitioners' SCSV Comments); "27th New Shipper Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Rebuttal Comments Concerning Surrogate Country Selection and Surrogate Values," dated October 1, 2018 (Petitioners' Rebuttal SCSV Comments); *see also* Infang's letters, "Fresh Garlic from the People's Republic of China: Surrogate Country Comments and Surrogate Values for the Preliminary Results," dated September 17, 2018 (Infang's SCSV Comments); "Fresh Garlic from the People's Republic of China – Rebuttal Surrogate Country Comments and Surrogate Values for the Preliminary Results," dated October 1, 2018 (Infang's Rebuttal SCSV Comments).
[11] *See* the petitioners' letter, "27th New Shipper Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Submission of Supplemental Surrogate Value Information," dated May 6, 2019 (Petitioners' Supp SCSVs).
[12] *See* Memorandum, "Fresh Garlic from the People's Republic of China – Semiannual Antidumping Duty New Shipper Review (2017-2018): Extension of Deadline for the Preliminary Results," dated December 18, 2018 (Prelim Extension Memo).
[13] *See* Memorandum, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019 (Tolling Memo). All deadlines in this segment of the proceeding have been extended by 40 days.

for the preliminary results of this review.[14] The revised deadline for the preliminary results is now June 7, 2019.

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 0703.20.0000, 0703.20.0005, 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 and 2005.99.9700, and of the Harmonized Tariff Schedule of the United States (HTSUS).

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive. In order to be excluded from the antidumping duty 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

A. Bona Fides Analysis

Section 751(a)(2)(B)(iv) of the Act sets forth the criteria that Commerce will examine to determine if sales, such as the sale by Infang under review in this NSR, is *bona fide*. Any weighted-average dumping margin determined in an NSR shall be solely based on *bona fide* sales during the period of review.[15] In evaluating whether the sales in an NSR are commercially reasonable or typical of normal business practices, and, therefore, *bona fide*, Commerce considers, "depending on the circumstances surrounding such sales":

> (I) the prices of such sales; (II) whether such sales were made in commercial quantities; (III) the timing of such sales; (IV) the expenses arising from such sales; (V) whether the subject merchandise involved in such sales was resold in the United States at a profit; (VI) whether such sales were made on an arms-length basis; and (VII) any other factor {it} determines to be relevant as to

[14] *See* Memorandum, "Fresh Garlic from the People's Republic of China – Semiannual Antidumping Duty New Shipper Review (2017-2018): Extension of Deadline for the Preliminary Results," dated June 5, 2019.
[15] *See* section 751(a)(2)(B)(iv) of the Act.

> whether such sales are, or are not, likely to be typical of those the exporter or producer will make after completion of the review.[16]

Although some *bona fide* issues may share commonalities across various Commerce cases, Commerce examines the *bona fide* nature of a sale on a case-by-case basis, and the analysis may vary with the facts surrounding each sale. Accordingly, Commerce considers a number of factors in its *bona fides* analysis, "all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise."[17] In *TTPC*, the Court of International Trade (CIT) also affirmed Commerce's decision that any factor which indicated that the sale under consideration is not likely to be typical of those which the producer will make in the future is relevant,[18] and found that the weight given to each factor investigated will depend on the circumstances surrounding the sale.[19] Finally, in *New Donghua*, the CIT affirmed Commerce's practice of evaluating the circumstances surrounding an NSR sale; so that a respondent does not unfairly benefit from an atypical sale and obtain a lower dumping margin than the producer's usual commercial practice would dictate.[20] Commerce's practice makes clear that Commerce generally examines objective, verifiable factors to ensure that a sale is not being made to circumvent an antidumping duty order.[21] Thus, a respondent is on notice that it is unlikely to establish the *bona fides* of a sale merely by claiming to have sold in a manner representative of its future commercial practice.[22] Where Commerce finds that a sale is not *bona fide*, it will exclude the sale from its export price calculations.[23] When the respondent under review makes only one sale and Commerce finds the transaction atypical, "exclusion of that sale as non-*bona fide* necessarily must end the review, as no data will remain on the export price side of Commerce's antidumping duty calculation."[24]

Based on the totality of the circumstances, Commerce preliminarily finds that Infang's sale of subject merchandise during the POR was made on a *bona fide* basis. Specifically, Commerce preliminarily finds that: (1) the timing of the sale, by itself, does not indicate that the sale might not be *bona fide*; (2) record evidence indicates that the price and quantity of the sale is commercially reasonable and not atypical of normal business practices of fresh garlic exporters; (3) Infang did not incur any extraordinary expenses arising from the transactions; (4) Infang's unaffiliated U.S. customer appears to have made profit in the resale of subject merchandise; and (5) the new shipper sale was made between Infang and its respective unaffiliated U.S. customer

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[16] *Id*.
[17] *See Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1342 (CIT 2005) (*New Donghua*) (citing *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002)).
[18] *See Tianjin Tiancheng Pharmaceutical Co. v. United States*, 366 F. Supp. 2d 1246, 1250 (CIT 2005) (*TTPC*).
[19] *Id*. at 1263.
[20] *See New Donghua*, 374 F. Supp. 2d at 1344.
[21] *Id.* at 1339.
[22] *Id*.
[23] *See TTPC*, 366 F. Supp 2d at 1249.
[24] *Id*.

at arm's length.[25] Therefore, Commerce preliminarily finds that Infang's sale of subject merchandise to the United States is *bona fide* for the purposes of this NSR.

B. Non-Market Economy Status

Commerce considers China to be a non-market economy (NME) country.[26] 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.

C. Separate Rate Determination

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 assigned a single antidumping duty rate.[27] It is Commerce'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. Exporters can demonstrate this independence through the absence of both *de jure* (in law) and *de facto* (in fact) government control over export activities. Commerce analyzes each entity's export independence under a test first articulated in *Sparklers* and further developed in *Silicon Carbide*.[28]

Infang is the only respondent in this review, and it submitted information related to its separate rate status in its response to Commerce's initial questionnaire.[29]

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.[30]

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[25] For a complete discussion of the *Bona Fides* analysis, *see* Memorandum, "Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China: Jinxiang Infang Fruit & Vegetable Co., Ltd.," dated concurrently with this memorandum.
[26] *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 Preliminary Decision Memorandum (PDM), *China's Status as a Non-Market Economy*.
[27] *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, dated April 5, 2005, available at http://trade.gov/enforcement/policy/bull05-1.pdf.
[28] *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*).
[29] *See* Infang August 15, 2018, AQR at 2-9.
[30] *See Sparklers*, 56 FR at 20589.

The evidence placed on the record of the review by Infang demonstrates an absence of *de jure* government control under the criteria identified in *Silicon Carbide* and *Sparklers*.[31]

2. Absence of *De Facto* Control

Typically, Commerce considers four factors in evaluating whether a 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.[32] 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 this review by Infang demonstrates an absence of *de facto* government control under the criteria identified in *Silicon Carbide* and *Sparklers*.[33] Accordingly, Commerce has preliminary determined that Infang has demonstrated that it is eligible for a separate rate.

D. Surrogate Country and Surrogate Value Data

On August 10, 2018, Commerce sent interested parties in this NSR 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.[34] Commerce set deadlines of September 10, 2018, for comments on the selection of the primary surrogate country and surrogate values and September 24, 2018, for rebuttal comments.[35]

As noted, on December 18, 2018, Commerce extended the deadline for the preliminary results of the NSR to April 26, 2019,[36] and on January 28, 2019, Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.[37] Pursuant to 19 CFR 351.301(c)(3)(ii), the final deadline for submission of factual information to value factors of production was May 6, 2019.[38]

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[31] *See* Infang August 15, 2018 AQR at 3-5.
[32] *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).
[33] *See* Infang August 15, 2018 AQR at 2.
[34] *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 August 10, 2018 (Request for SCSV Information).
[35] *Id*.
[36] *See* Prelim Extension Memo.
[37] *See* Tolling Memo.
[38] *See* SCSV Request Letter.

1. Surrogate Country Comments and Rebuttal Comments

On September 17, 2018, the petitioners submitted comments on the record of the NSR.[39] In these submissions, the petitioners argue 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 Infang's factors of production (FOPs).[40] Specifically, the petitioners argue that Romania is at a level of economic development similar to China and is a significant producer of garlic.[41] Furthermore, the petitioners note that "Romania imported garlic from several countries, but did not import garlic from China during the POR" evidencing Romania's isolation from dumped Chinese garlic.[42] Finally, the petitioners 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.[43]

On September 17, 2018, Infang submitted comments requesting that Commerce select Mexico as the primary surrogate country.[44] Infang argues that Mexico is a suitable surrogate country because it meets all of Commerce's criteria for selection of a surrogate country. Namely, Mexico is at the same level of economic development as China, a significant producer of garlic, a major exporter of garlic to the United States, and has available high-quality data.[45]

On October 1, 2018, Infang submitted comments to rebut petitioners' surrogate country comments.[46] In this submission, Infang argued that Romania is not a significant producer of garlic because it is not a net exporter of garlic, and that Romanian garlic is not comparable with Chinese garlic.[47]

On October 1, 2018, the petitioners rebutted Infang's surrogate country comments.[48] In this submission, the petitioners argue that Mexico should not be selected.[49] 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.[50]

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[39] *See* Petitioners' SCSV Comments.
[40] *Id*. at 2.
[41] *Id*. at 2-9.
[42] *Id*. at 11 and Exhibit TDM-1.
[43] *Id*. at 9-10.
[44] *See* Infang's SCSV Comments.
[45] *Id*. at 1-2.
[46] *See* Infang's Rebuttal SCSV Comments.
[47] *Id*. at 1-2.
[48] *See* Petitioners' Rebuttal SCSV Comments.
[49] *Id*. at 2.
[50] *Id*. at 2-3.

2. Surrogate Value Comments and Rebuttal Comments

The petitioners submitted garlic bulb data sourced from the National Institute of Statistics of Romania (NISR) and the 2016 and 2017 financial statements from SC Boromir PROD S.A., a Romanian food company.[51]

Infang submitted the 2017 publicly-available financial statements of GRUMA, S.A.B DE C.V, which included its subsidiary GIMSA, a Mexican producer of comparable merchandise.[52] Infang also submitted garlic bulb data from the Mexican government's Agricultural Food and Fishing Information Service (SIAP) for 2012-2018.[53] Infang submitted information to value the other FOPs, namely water, electricity, freight, and labor.[54]

On October 1, 2018, Infang submitted rebuttal comments concerning Petitioners' SCSV Comments.[55] Infang argued against using Romanian SV data sources.[56] In addition, Infang argued that SC Boromir did not have comparable production for surrogate valuation.[57]

Also, on October 1, 2018, the petitioners submitted rebuttal comments concerning Infang's SCSV Comments.[58] Conversely, the petitioners argued that the Mexican garlic pricing data are limited in availability,[59] and that Mexican garlic bulbs are not physically comparable to those used by the respondent in this instant review.[60]

On May 6, 2019, the petitioners provided additional information and comments on the selection of surrogate values.[61] The petitioners submitted additional Romanian garlic prices, corrections to the previously-provided import statistics for packing materials and labor rates, updated electricity rates to include the relevant portions of 2018, and the 2017 financial statements of SC Boromir.[62]

E. 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 FOPs, valued in a surrogate market economy 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

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[51] *See* Petitioners' SCSV Comments at Attachment SV-1 and SV-2, Exhibit 1A; *see also* Petitioners' Supp SCSVs at Attachment 2 and Attachment 6.
[52] *See* Infang's SCSV Comments at Exhibit SV-13.
[53] *Id*. at Exhibits SV-3 and SV-4.
[54] *Id*. at Exhibits SV-7 through SV-12. We note that the entirety of Exhibit SV-2, which seems to contain the proposed surrogate values for other FOPs, is not translated into English as required by section 351.303(e) of Commerce's regulations.
[55] *See* Infang's Rebuttal SCSV Comments.
[56] *Id*. at 1-2 and Exhibits SV2-5, SV2-6, and SV2-10 through SV2-13.
[57] *Id*. at 2 and Exhibit SV2-14.
[58] *See* Petitioners' Rebuttal SCSV Comments.
[59] *Id*. at 3 and Attachment MEX-2.
[60] *Id*. at 2-3 and Attachments MEX-1A, MEX-1B, and MEX-1C.
[61] *See* Petitioners' Supp SCSVs.
[62] *Id*. at 1-2 and Attachments 2-6.

possible, the prices or costs of FOPs in one or more market economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.[63] 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.[64] Commerce has identified Brazil, Mexico, Romania, Malaysia, Russia, and Kazakhstan, as countries with per capita GNI that are at the same level of economic development as China.[65]

1. 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 Development Report.[66] Additionally, identifying potential surrogate countries based on GNI data has been affirmed by the CIT.[67]

As explained in Commerce's Policy Bulletin 04.1, "{t}he surrogate countries on the list are not ranked."[68] This absence of ranking reflects Commerce's longstanding practice that for the purpose of surrogate country selection, the countries on the list "should be considered equivalent"[69] 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 longstanding 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."[70] 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, Commerce considers that Brazil, Mexico, Romania, Malaysia, Russia, and Kazakhstan are at the same level as China in terms of economic development.[71] We consider all

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[63] *See* Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process, dated March 1, 2004, (Policy Bulletin 04.1) available at https://enforcement.trade.gov/policy/bull04-1.html.
[64] *Id*.
[65] *See* Request for SCSV Information at Attachment, page 2.
[66] *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 (April 7, 2014), and accompanying Issues and Decision Memorandum (IDM) at Comment I.A.
[67] *See Fujian Lianfu Forestry Co., Ltd. v. United States*, 638 F. Supp. 2d 1325 (CIT 2009).
[68] *See* Policy Bulletin 04.1.
[69] *Id*.
[70] *See* section 773(c)(4) of the Act.
[71] *See* Request for SCSV Information at Attachment, page 2.

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 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.[72]

2. 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 Policy Bulletin 04.1 for guidance on defining comparable merchandise. Policy Bulletin 04.1 states that "in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise."[73] Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.[74] Further, when selecting a surrogate country, the statute requires Commerce to consider the comparability of the merchandise, not the comparability of the industry.[75] "In cases where 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."[76] 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,

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[72] *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 PDM 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)).

[73] *See* Policy Bulletin 04.1.

[74] Policy Bulletin 04.1 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.

[75] *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.").

[76] *See* Policy Bulletin 04.1.

> comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.[77]

Further, the statute grants Commerce discretion to examine various data sources for determining the best available information.[78] Moreover, while the legislative history provides that the term "significant producer" includes any country that is a "significant net exporter,"[79] 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.

As explained below, there are no SV data or surrogate financial statements for Brazil, Malaysia, Russia, and Kazakhstan 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, Commerce is left to consider whether Mexico and Romania are significant producers of comparable merchandise.

Infang and the petitioners provided 2016 FAO garlic production data, which included Romania and Mexico.[80]

Economically-Comparable Countries	Garlic Production (MTs)
Mexico	75,987[81]
Romania	54,389[82]

As stated in prior administrative reviews of this Order, 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.[83] 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,[84] Commerce 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

[77] *Id*.
[78] *See* section 773(c) of the Act; *see also Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1999).
[79] *See* Omnibus Foreign Trade & Competitiveness Act of 1988, H.R. Rep. No. 100-576, at 590 (1988) (Conf. Rep.).
[80] *See* Infang's SCSV Comments at Exhibit SV-15; *see also* Petitioners' SCSV Comments at Exhibit FAO-1.
[81] *See* Infang's SCSV Comments at Exhibit SV-15.
[82] *See* Petitioners' SCSV Comments at Exhibit FAO-1; *see also* Infang's SCSV Comments at Exhibit SV-15.
[83] *See*, *e.g.*, *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) (*Garlic 22 Final*), and accompanying IDM.
[84] 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."

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 an NME producer's FOPs.

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. We note that Infang argued that since Romania is not a net exporter of garlic, it cannot be considered a significant producer.[85] Commerce has noted in previous reviews of this Order that "Policy Bulletin 04.1 does not state that a surrogate country must be a net exporter, merely that net exporters would be considered significant producers."[86]

Thus, we preliminarily find that the 2016 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.

3. Data Availability

The Policy Bulletin 04.1 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."[87] Section 773(c)(1) of the Act instructs Commerce to value the FOPs based upon the best available information from a market economy country or countries that Commerce considers 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.[88] There is no hierarchy among these criteria.[89] It is Commerce's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis.[90]

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[85] *See* Infang's Rebuttal SCSV Comments at 1.
[86] *See, e.g.*, *Fresh Garlic from the People's Republic of China: Preliminary Results, Preliminary Rescission, and Final Rescission, in Part, of the 22nd Antidumping Duty Administrative Review and Preliminary Results of the New Shipper Reviews; 2015-2016*, 82 FR 57718 (December 7, 2017), and accompanying PDM at 28 (unchanged in *Garlic 22 Final*, and accompanying IDM).
[87] *See* Policy Bulletin 04.1.
[88] *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.
[89] *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.
[90] *See* Policy Bulletin 04.1.

As noted above, there are no SV data or surrogate financial statements for Brazil, Malaysia, Russia, and Kazakhstan on the record of this NSR. We further note that while Infang submitted Mexican import statistics to value its FOPs, these import statistics were not translated, and therefore are unusable.[91] Therefore, these countries cannot be considered for primary surrogate country selection purposes. Thus, Commerce considers whether Romania is a suitable primary surrogate country.

4. Interested Party Comments on Surrogate Country

The petitioners argue Romania is the source of the best available information to value respondents' FOPs because the fresh garlic grown there is physically comparable to Chinese garlic and the price data is reliable.[92]

The petitioners contend that the Romanian garlic bulbs are physically comparable to garlic bulbs exported by Infang in the instant review.[93] 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."[94] 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 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 with diameters of approximately 60 mm weighing about 62 grams each (250 grams / 4 bulbs = 62.5 grams per bulb).[95]

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.[96] 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}."[97] The petitioners note that Commerce has come to the same conclusion in the final results of the previous three completed administrative reviews of this order.[98]

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[91] *See* Infang's SCSV Comments at Exhibit SV-2; *see also* 19 CFR 351.303(e).
[92] *See* Petitioners' SCSV Comments at 3-8 and 9-11.
[93] *Id*. at 3-8 and Exhibits ROM-1A, ROM-1B, ROM-2, PRC-2, PRC-4, and PRC-5.
[94] *Id*. at 3-4 (citing *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 13th Antidumping Duty Administrative Review and New Shipper Reviews*, 74 FR 29174 (June 19, 2009), and accompanying IDM at 7).
[95] *See* Petitioners' SCSV Comments at 4-5 and Exhibits ROM-1A, PRC-1, and PRC-2.
[96] *Id*. at 6-7.
[97] *Id*. at 8 (citing *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) (*Garlic 2012-2013 NSR*), and accompanying IDM at 5-6).
[98] *Id*. at 8.

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 NISR.[99] In addition, the petitioners explain that their comparison of the 2016 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.[100]

Infang notes that the Romanian garlic bulb data are not farm gate prices.[101] Infang also provides exhibits indicating that the European Union imposed a quota on imported garlic allegedly affecting garlic prices in the Romanian market.[102]

F. Surrogate Country Selection

The garlic bulb is the single most important SV used to calculate normal value in this review. As an initial matter, Commerce has determined that the Romanian data set serves as one source of the United Nations Food and Agriculture Organization's (UN FAO) data.[103] Commerce has relied on UN FAO data in the past and continues to 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.[104]

Commerce has 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.[105] 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.[106] In a prior new shipper review of this Order, 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}."[107] Moreover, in the two most recently completed administrative reviews, Commerce found that Romanian garlic bulbs are "similar in size to the input garlic bulbs consumed in the production of subject merchandise."[108]

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[99] *Id*. at 10 and Exhibit ROM-3.
[100] *Id*. at 10 and Exhibits ROM-3 and ROM-4.
[101] *See* Infang's Rebuttal SCSV Comments at 2 and Exhibits SV2-9 and SV2-10.
[102] *Id*. at Exhibits SV2-5, SV2-6, and SV2-13.
[103] *See*, *e.g.*, *Garlic 22 Final*, and accompanying IDM at 41.
[104] *Id*.
[105] *See*, *e.g.*, *Fresh Garlic from the People's Republic of China: Preliminary Results, Preliminary Rescission, and Final Rescission, in Part, of the 22nd Antidumping Duty Administrative Review and Preliminary Results of the New Shipper Reviews; 2015-2016*, 82 FR 57718 (December 7, 2017), and accompanying PDM at 28 (unchanged in *Garlic 22 Final*, and accompanying IDM).
[106] *See* Petitioners' SCSV Comments at 3-8 and Exhibits ROM-1A, ROM-1B, ROM-2, PRC-1, PRC-2, PRC-3, PRC-4, and PRC-5.
[107] *See Garlic 2012-2013 NSR*, and accompanying IDM at 5.
[108] *See 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 (June 14, 2017), and accompanying IDM at 46-47; *see also Garlic 22 Final*, and accompanying IDM at 37.

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.[109] There is no information on the record to support Infang's claims 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, 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. 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.

G. Date of Sale

Commerce's regulations at 19 CFR 351.401(i) state:

> 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.[110]

Information on the record of this review indicates that Infang sets the material terms of sale on invoice date. Infang reported invoice date as its date of sale.[111]

H. Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c), in order to determine whether Infang's sale of the subject merchandise from China to the United States were made at less than normal value, Commerce 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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[109] *See*, *e.g.*, *Fresh Garlic from the People's Republic of China: Final Results and Final Rescission of the 20th Antidumping Duty Administrative Review; 2013-2014*, (June 20, 2016), and accompanying IDM at 14.

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

[111] *See* Infang August 27, 2018 CDQR at C-8.

1. 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 determines 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 and new shipper reviews, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative and new shipper reviews is, in fact, analogous to the issue in less-than-fair-value investigations.[112] In 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.[113] 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 new shipper 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 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.

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[112] *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).

[113] *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).

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.

2. Results of the Differential Pricing Analysis

Based on the results of the differential pricing analysis, Commerce preliminarily finds that 0 percent of the value of Infang's U.S. sales pass the Cohen's *d* test.[114] 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 Infang.

I. Export Price

Pursuant to section 772(a) of the Act, the export price (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.

Commerce considers the U.S. price of Infang's sale 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 EP based on the sales price to unaffiliated purchaser(s) in the United States.

The details of Infang's sales terms are BPI.[115] In accordance with section 772(c)(2)(A) of the Act, where appropriate, we made deductions from the sales price for various Chinese expenses such as foreign inland freight, and brokerage and handling. For those expenses that were provided by a market economy provider and paid for in a market economy currency, Commerce used the reported expense. For a detailed description of all adjustments made to Infang's U.S. price, *see* Infang's Preliminary Analysis Memo.[116]

[114] *See* Memorandum, "New Shipper Review of Fresh Garlic from the People's Republic of China: Calculation Memorandum for the Preliminary Results for Infang," dated concurrently with this memorandum (Infang Preliminary Analysis Memorandum).
[115] *See* Infang August 27, 2018 CDQR.
[116] *See* Infang Preliminary Analysis Memorandum.

J. Value-Added Tax

Since 2012, Commerce has included an adjustment of any un-refunded (herein "irrecoverable") value-added tax (VAT) in the calculation of EP and CEP, in certain NMEs in accordance with section 772(c)(2)(B) of the Act.[117] 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 constructed export price (CEP) prices accordingly, by the amount of the tax, duty or charge paid, but not rebated.[118] Where the irrecoverable VAT is a fixed percentage of EP or CEP, 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.[119]

The Chinese VAT schedule placed on the record of this review by Infang indicates that the standard VAT levy is zero percent, and the rebate rate for subject merchandise is zero percent.[120] For the purposes of these preliminary results, therefore, we did not remove irrecoverable VAT from U.S. price.[121]

K. 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 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 Infang 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 Infang's reported FOPs for materials, energy, and labor.

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[117] *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).
[118] *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.
[119] *Id.*
[120] *See* Infang August 27, 2018 CDQR at C-27 to C-28 and Exhibit C-3.
[121] *Id.*

L. Surrogate Values

In accordance with section 773(c) of the Act, for subject merchandise produced by Infang, Commerce calculated NVs based on the FOPs reported by Infang for the POR. Commerce used Romanian import data and other publicly available Romanian data in order to calculate SVs for Infang's FOPs. To calculate NVs, Commerce multiplied Infang's reported per-unit FOP quantities by publicly available SVs.[122] 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.[123]

As appropriate, Commerce adjusted input prices by including freight costs to render them delivered prices. Specifically, we 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*.[124] Additionally, where necessary, Commerce adjusted SVs for inflation and exchange rates, and converted all applicable FOPs to a per-kilogram basis.

For the preliminary results, Commerce 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, Commerce used Romanian import prices reported in the Trade Data Monitor (TDM).[125] 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.[126]

We valued electricity based on information from Eurostat's reporting of electricity rates,[127] and we valued water using information from the National Regulating Authority for the Public Utility Services of Romania Statistics.[128]

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

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[122] *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).
[123] *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.
[124] *See Sigma Corp.*, 117 F.3d at 1408.
[125] *See* https://www.tradedatamonitor.com/.
[126] *See* Petitioners' SCSV Comments at Attachment SV-2 Exhibit 2.
[127] *Id*. at Attachment SV-2 Exhibit 4A; *see also* Petitioners' Supp SCSV Comments at Attachment 5.
[128] *See* Petitioners' SCSV Comments at Attachment SV-2 Exhibit 4B.

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.[129]

In *Labor Methodologies*, Commerce determined that the best methodology to value labor is to use industry-specific labor rates from the primary surrogate country.[130] Commerce does not, however, preclude all other sources from evaluation for use in labor costs.[131] 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 NISR for the manufacture of food products in Romania. The NISR data is from 2016. 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.[132]

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, a Romanian food processor.[133] 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.

M. Currency Conversion

Where necessary, we 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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[129] *Id*. at Attachment SV-2, Exhibits 5A and B.

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

[131] *See Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013*, 80 FR 13332 (March 13, 2015) and accompanying IDM at 11.

[132] *See* Preliminary SV Memo.

[133] *See* Petitioners' SCSV Comments at Attachment SV-1; *see also* Petitioners' Supp SCSVs at Attachment 6.

V. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

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Agree Disagree

6/7/2019

X

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance