A-570-831
Administrative Review
POR: 11/01/2016-10/31/2017
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July 18, 2019

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

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

**SUBJECT:** Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review: Fresh Garlic from the People's Republic of China; 2016-2017

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## I. SUMMARY

The Department of Commerce (Commerce) analyzed the case briefs and rebuttal briefs submitted by interested parties in the 23rd administrative review of the antidumping duty order on fresh garlic from the People's Republic of China (China). As a result of this analysis, we have made changes to the *Preliminary Results*.[1] We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

Comment 1: Whether Sea-line Provided Reliable Sales Information to Calculate a Dumping Margin
Comment 2: Whether Romania is the Appropriate Surrogate Country
Comment 3: Whether Commerce Double-Counted Chemicals in Sea-line's Calculation

## II. BACKGROUND

On December 10, 2018, Commerce published the *Preliminary Results* of this administrative review.[2] We preliminarily found that the mandatory respondents, Shandong Jinxiang Zhengyang Import & Export Co., Ltd. (Zhengyang) and Qingdao Sea-line International Trading Co., Ltd. (Sea-line) sold subject merchandise to the United States at less than normal value (NV). Furthermore, we found that two companies certified that they made no shipments during the period of review (POR) and that six companies qualified for separate rate status.

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[1] *See Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 63479 (December 10, 2018) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).
[2] *Id*.

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.[3] If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The tolled, unextended, deadline for these final results was May 20, 2019.

On January 9, 2019, and February 19, 2019, the petitioners[4] and Zhengzhou Harmoni Spice Co., Ltd., and its U.S. affiliate Harmoni International Spice Inc. (collectively, Harmoni), filed requests to participate in any public hearing held by Commerce in this administrative review in the event that there was an affirmative request for a hearing.[5] Since there were no affirmative requests for a hearing on the administrative record, Commerce did not hold a hearing.

On February 14, 2019, the petitioners withdrew their request to verify the mandatory respondents.[6]

On February 15, 2019, we established the deadlines for submitting case and rebuttal briefs in the administrative review.[7] On February 28, 2019, in response to a request from the petitioners,[8] we extended the deadline to submit case and rebuttal briefs by one week.[9] Between March 8, 2019, and March 11, 2019, Zhengyang,[10] Sea-line,[11] and the petitioners[12] submitted their respective

[3] *See* Memorandum to the Record from 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, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[4] The petitioners are the Fresh Garlic Producers Association and its individual members: Christopher Ranch L.L.C.; The Garlic Company; and Valley Garlic.

[5] *See* Petitioners' Letter, "23rd Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Request to Participate in Any Public Hearing Authorized by the Department," dated January 9, 2019; *see also* Harmoni's Letter, "Request to Participate in Hearing, 23rd Administrative Review of Antidumping Duty Order on Fresh Garlic from the People's Republic of China," dated February 19, 2019.

[6] *See* Petitioners' Letter, "23rd Administrative Review of Antidumping Order on Fresh Garlic from the People's Republic of China - Petitioners' Withdrawal of Verification Request," dated February 14, 2019.

[7] *See* Memorandum, "23rd Administrative Review of Fresh Garlic from the People's Republic of China: Briefing Schedule," dated February 15, 2019.

[8] *See* Petitioners' Letter, "23rd Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China - Petitioners' Request for Extension of Deadline for Submission of Case Briefs," dated February 28, 2019.

[9] *See* Memorandum, "23rd Administrative Review of Fresh Garlic from the People's Republic of China: Extension of Briefing Schedule," dated February 28, 2019.

[10] *See* Zhengyang's Letter, "Fresh Garlic from the People's Republic of China – Case Brief," dated March 8, 2019 (Zhengyang's Case Brief).

[11] *See* Sea-line's Letter, "Fresh Garlic from the PRC: Case Brief of Qingdao Sea-line International Trading Co., Ltd.," dated March 8, 2019 (Sea-line's Case Brief).

[12] *See* Petitioners' Letter, "Fresh Garlic from the People's Republic of China: Petitioners' Case Brief," dated March 11, 2019 (Petitioners' Case Brief).

case briefs.  On March 12 and 14, 2019, in response to requests from the petitioners[13] and Sea-line,[14] we extended the deadline for interested parties to submit rebuttal briefs by five days.[15]  On March 20, 2019, Sea-line and the petitioners submitted rebuttal briefs.[16]

On May 10, 2019, Commerce extended the deadlines for the final results of this administrative review from 120 days to 180 days after the publication of the *Preliminary Results*.  The new deadline is now July 18, 2019.[17]

## III. SCOPE OF THE ORDER

The products covered by the order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing.  The differences between grades are based on color, size, sheathing, and level of decay.  The scope of the order does not include the following:  (a) Garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.  The subject merchandise is used principally as a food product and for seasoning.  The subject garlic is currently classifiable under subheadings:  0703.20.0000, 0703.20.0005, 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, 2005.99.9700, of the Harmonized Tariff Schedule of the United States (HTSUS).[18]

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.

[13] *See* Petitioners' Letter, "23rd Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Request for Extension of Deadline for Submission of Rebuttal Case Briefs," dated March 12, 2019.
[14] *See* Sea-line's Letter, "Fresh Garlic from the PRC:  Extension Request for Submission of Rebuttal Brief on Behalf of Qingdao Sea-Line International Trading Co., Ltd.," dated March 14, 2019.
[15] *See* Memorandum, "23rd Administrative Review of Fresh Garlic from the People's Republic of China:  Extension of Rebuttal Briefing Schedule," dated March 14, 2019.
[16] *See* Sea-line's Letter, "Fresh Garlic from the PRC:  Rebuttal Brief of Qingdao Sea-line International Trading Co., Ltd.," dated May 20, 2019 (Sea-line's Rebuttal Brief); *see also* Petitioners' Letter, "Fresh Garlic from the People's Republic of China:  Petitioners' Rebuttal Brief," dated March 20, 2019 (Petitioners' Rebuttal Brief).
[17] *See* Memorandum, "Fresh Garlic from the People's Republic of China – 23rd Administrative Review:  Extension of Deadline for the Final Results of Review," dated May 10, 2019.
[18] *See Antidumping Duty Order:  Fresh Garlic from the People's Republic of China*, 59 FR 59209 (November 16, 1994).

## IV. FINAL DETERMINATION OF NO SHIPMENTS

In the *Preliminary Results*, we noted that each company listed in Appendix III of the *Federal Register* notice timely filed a "no shipment" certification stating that it had no entries of subject merchandise during the POR.[19] Commerce subsequently asked CBP to conduct a query on potential shipments made by these companies during the POR; CBP provided no evidence that contradicted their claims of no shipments during the POR. Based on the certifications by these companies and our analysis of CBP information, we preliminarily determined that the companies listed in Appendix III of the *Preliminary Results* did not have any reviewable transactions during the POR. There is no information on the record to warrant reconsideration of our preliminary findings. As such, for these *Final Results*, Commerce finds that the two companies listed in Appendix III of the *Preliminary Results* had no shipments during the POR.

## V. USE OF FACTS AVAILABLE AND ADVERSE FACTS AVAILABLE (AFA)

### A. Legal Authority

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

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

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

Section 782(e) of the Act states that Commerce shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable

[19] *See Preliminary Results*, 83 FR at 63480-82.

determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Section 776(b) of the Act provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, Commerce is not required to determine, or make any adjustments to, a weighted average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. Section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. In addition, the SAA explains that Commerce may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[20] Further, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.[21]

**B. Application of Facts Available to Sea-line**

As discussed in detail in Comment 1 below, and in Sea-line's Final Analysis Memorandum,[22] Sea-line reported inconsistent and irreconcilable information regarding the terms of its sales to the United States. Specifically, when queried by Commerce, Sea-line failed to consistently report and substantiate the amount that Sea-line charged to and received from its U.S. customers for its U.S. sales during the POR.

Accordingly, we find that necessary information is missing from the record within the meaning of section 776(a)(1) of the Act. Specifically, there are no reliable U.S. sales prices on the record of the instant review. Furthermore, we find that Sea-line withheld information that had been requested by Commerce, and significantly impeded the proceeding within the meaning of sections 776(a)(2)(A) and (C) of the Act, respectively. In addition, because the missing information involves Sea-line's U.S. sales values, and information related to the payment of its U.S. sales, we note that this information is core to Commerce's ability to calculate Sea-line's dumping margin. The information that is missing renders the information that Sea-line has provided to Commerce so incomplete that it cannot serve as a reliable basis for our dumping margin analysis.[23] Consequently, we are relying on the facts otherwise available to determine Sea-line's estimated weighted-average dumping margin.

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[20] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. 1 (1994) at 870 (SAA).

[21] *See, e.g., Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1382-84 (Fed. Cir. 2003) (*Nippon Steel*); and *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27340 (May 19, 1997) (*Preamble*).

[22] *See* Memorandum, "23rd Administrative Review of Fresh Garlic from the People's Republic of China: Final Analysis Memorandum for Qingdao Sea-line International Trading Co., Ltd.," dated concurrently with this memorandum (Sea-line's Final Analysis Memorandum).

[23] *See Grain-Oriented Electrical Steel from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 59226 (October 1, 2014), and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

### C. Use of Adverse Inferences

In *Nippon Steel*, the U.S. Court of Appeals for the Federal Circuit (CAFC) clarified that the "best of its ability" standard of section 776(b) of the Act means that a respondent must put forth its maximum effort to provide Commerce with full and complete answers to all inquiries.[24] We note that the information in question is the type of information that an international corporation, such as Sea-line, should reasonably be able to provide.[25] We further note that, in accordance with section 782(d) of the Act, Commerce provided Sea-line, through its supplemental questionnaires, an opportunity to remedy its significant deficiencies.[26] Since we do not have a reliable U.S. price, we cannot verify the accuracy of Sea-line's books and records.[27] We further find that Sea-line would have been able to provide this information if it had made the appropriate effort when it received Commerce's initial questionnaire, and was notified that it was required to report its complete U.S. sales price.[28] Sea-line's failure to provide payment information and consistent, and, thus, accurate U.S. prices demonstrates that it has failed to cooperate to the best of its ability. Therefore, and pursuant to section 776(b) of the Act, we find that the application of adverse inferences is appropriate in selecting from among the facts available to determine Sea-line's dumping margin. We continue to find, however, that because the inconsistencies in Sea-line's reporting occurred in its responses regarding its U.S. sales, rather than in the responses concerning our separate rate determination, that Sea-line continues to qualify for a separate rate.

### D. Selection and Corroboration of AFA Rate

Where Commerce applies AFA because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b)(2) of the Act authorizes Commerce to rely on information derived from the petition, the final determination from the investigation, a previous administrative review, or any other information placed on the record.[29] In selecting a rate based on AFA, Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.[30] Under section 776(d)(1)(B) of the Act, Commerce may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins.[31] In this case, we are applying $4.71 per kilogram, the highest rate calculated in proceedings under this order, as Sea-line's

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[24] *See Nippon Steel*, 337 F. 3d at 1382.
[25] *See* Sea-line's Final Analysis Memorandum.
[26] *See* Sea-line's October 22, 2018 Supplemental Questionnaire Response (Sea-line's October 22, 2018 SQR); *see also* Sea-line's November 19, 2018 Supplemental Questionnaire Response (Sea-line's November 19, 2018 SQR); Sea-line's November 29, 2018 Supplemental Questionnaire Response; and Sea-line's December 4, 2018 Supplemental Questionnaire Response.
[27] *See* Sea-line's Final Analysis Memorandum.
[28] *See Nippon Steel*, 337 F. 3d at 1382-84 (explaining that while the "best of its ability" standard "does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.").
[29] *See also* 19 CFR 351.308(c)(l) and (2).
[30] *See* SAA at 870.
[31] *See* section 776(d)(2) of the Act.

AFA rate.[32] Based on our evaluation of the record, there are no facts suggesting the highest rate is not appropriate.[33]

Section 776(c) of the Act provides that, when Commerce relies on secondary information (such as the petition), rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.[34] Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.[35] To corroborate means that Commerce will satisfy itself that the secondary information to be used has probative value.[36] Nonetheless, under section 776(c)(2) of the Act, Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding. To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used.[37] Nonetheless, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party.[38]

Because the AFA rate applied to Sea-line is a rate calculated in a previous administrative review of this order, it is not secondary information.[39] Therefore, it is unnecessary for Commerce to corroborate it.[40] In sum, Commerce has assigned the highest calculated dumping margin in this proceeding, $4.71 per kilogram, to Sea-line as an AFA rate.

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[32] *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 (June 14, 2017) (*Garlic 21 Final*), and accompanying IDM.

[33] *See* section 776(d)(2) of the Act.

[34] *See also* 19 CFR 351.308(d).

[35] *See* SAA at 870.

[36] *Id.*

[37] *See, e.g.*, *Truck and Bus Tires from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Critical Circumstances, and Postponement of Final Determination*, 81 FR 61186 (September 6, 2016), and accompanying PDM at 20-214 ("Selection and Corroboration of the AFA Rate"), unchanged in *Truck and Bus Tires from the People's Republic of China: Final Affirmative Determinations of Sales at Less Than Fair Value and Critical Circumstances*, 82 FR 8599 (January 27, 2017), and accompanying IDM.

[38] *See* section 776(d)(3)(B) of the Act.

[39] *See, e.g.*, *Garlic 21 Final* IDM.

[40] *See* section 776(c) of the Act; *see also Certain Uncoated Paper from Indonesia: Final Determination of Sales at Less Than Fair Value*, 81 FR 3101 (January 20, 2016), and accompanying IDM at Comment 1.

## VI. DISCUSSION OF THE ISSUES

### Comment 1: Whether Sea-line Provided Reliable Sales Information to Calculate a Dumping Margin

*Petitioners' Case Brief*

- Because the administrative record makes clear that the U.S. prices reported by Sea-line are not accurate and reliable, Commerce should assign Sea-line a margin based on total AFA.[41]
- In the 18th-20th administrative reviews, Commerce found that certain exporters had conducted unlawful "licensing" or "funneling" schemes, whereby a "licensing" exporter entered substantial volumes of Chinese fresh garlic at its zero/near-zero cash deposit rate that actually was produced and/or exported by another Chinese company that was subject to a relatively high cash deposit rate.[42]
- These schemes are best characterized as cash deposit evasion schemes because when CBP eventually assessed substantial final AD duties on the entries two or more years later, the U.S. importers disappeared and/or ignored CBP's bills for the difference.[43]
- Following the publication of the 20th administrative review of garlic,[44] Sea-line's cash deposit rate of 1.28/kg – determined in the final results of its new shipper review[45] – became the second-lowest of all Chinese cash deposit rates.
- The record indicates that Sea-line and its U.S. customers agreed to a cash deposit evasion scheme that insulated its U.S. customers from the collection of additional antidumping duties owed at the completion of an administrative review.[46]
- Sea-line has not submitted any documentation to support the values reported as the "total negotiated price" with any of its nine customers.[47]
- Commerce issued multiple questionnaires to Sea-line in attempts to resolve issues related to Sea-line's U.S. prices, however, reliable U.S. prices are not available on the record.[48]
- By withholding information requested by Commerce, Sea-line has "significantly impeded" the conduct of this segment. Further, by not submitting accurate and reliable U.S. prices and making unreliable claims regarding its payment terms absent any

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[41] *See* Petitioners' Case Brief at 2.
[42] *Id*. at 7 (citing *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 18th Antidumping Duty Administrative Review: 2011-2012*, 79 FR 36721 (June 30, 2014); *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 (June 15, 2015); *Fresh Garlic from the People's Republic of China: Final Results and Final Rescission of the 20th Antidumping Duty Administrative Review; 2013-2014*, 81 FR 39897 (June 20, 2016) (*Garlic 20 Final*)).
[43] *See* Petitioners' Case Brief at 7-8.
[44] *Id*. at 6-7 (citing *Garlic 20 Final*).
[45] *Id*. at 6 (citing *Fresh Garlic from the People's Republic of China: Final Results of New Shipper Review*, 75 FR 61130 (October 4, 2010)).
[46] *Id*. at 8-12. The terms of Sea-line's sales are proprietary in nature. For a proprietary discussion of this issue, *see* Sea-line's Final Analysis Memorandum.
[47] *See* Petitioners' Case Brief at 23.
[48] *Id*. at 24.

supporting evidence, Sea-line did not act to the best of its ability in supplying information on its U.S. prices.[49]

- Because Commerce cannot calculate a dumping margin for Sea-line without reliable U.S. prices, Commerce should assign Sea-line an antidumping duty rate based on total AFA.[50]

*Sea-line's Case Brief*

- Commerce failed to use the correct total U.S. price in its calculation in the *Preliminary Results*.[51]
- Sea-line has repeatedly explained that its U.S. price has two components. The first component represents the value and transportation of the garlic. The second component consisted of a proprietary increase of the price.[52]
- Sea-line has provided written proof of each of the various customers' payment of the supplemental price component. "Both portions of the total price were negotiated by the parties for the garlic sold during the POR; both portions of the total price were paid by the customers; and both portions were received by Sea-line for its benefit."[53]
- By excluding the second price component from its dumping calculations, Commerce significantly exaggerated Sea-line's preliminary dumping margin. "Especially since the U.S. customers agreed to the additional price surcharge represented by the second price component precisely to increase the price to a level they believed would be certain to avoid dumping, it is particularly improper and illogical for {Commerce} to have ignored the increase in price in the dumping calculation."[54]

*Petitioners' Rebuttal Brief*

- Sea-line failed to submit any of its customers' financial statements, and the sample sales documentation that it did submit suffers from numerous, fundamental deficiencies, and does not support the company's claims.[55]
- Sea-line's claim that Commerce should include a U.S. price that "incorporates the additional payment component Sea-line negotiated with its customers," is unsupported by record evidence.[56]

*Sea-line's Rebuttal Brief*

- Sea-line responded assiduously and comprehensively to the Department's questionnaires and numerous supplemental questionnaires, and accordingly, there is no justification for the petitioners' demand for punitive adverse assumptions against Sea-line.[57]

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[49] *Id*.
[50] *Id*. at 25.
[51] *See* Sea-line's Case Brief at 8.
[52] *Id*.
[53] *Id*. at 11-12 (citing Sea-line's November 19, 2018 SQR at Exhibits 2S-5 through 2S-14).
[54] *Id*. at 12.
[55] *See* Petitioners' Rebuttal Brief at 28-29 (citing Sea-line's December 4, 2018 SQR at 1).
[56] *Id*. at 24-30.
[57] *See* Sea-line's Rebuttal Brief at 2.

- Sea-line contended that "{t}he petitioners may be deluded, or they might be malicious, but in any case they are dead wrong" in making allegations about Sea-line based solely on the fact that Sea-line served as the importer of record for most of the entries.[58]
- Sea-line acted as the importer of record because its U.S. customers usually are small family distributor/brokers, with virtually no assets, who arrange the sales to other downstream customers, and take a very small markup.[59]

**Commerce's Position:** For these final results, we are relying on facts otherwise available based on an adverse inference in order to determine Sea-line's final dumping margin.

As explained below, Sea-line reported inconsistent and irreconcilable information regarding the terms of its U.S. sales, making them unreliable for purposes of the calculation of a dumping margin. Specifically, when repeatedly asked by Commerce, Sea-line failed to consistently report and substantiate the amount that Sea-line charged to and received from its U.S. customer for its U.S. sales during the POR.

In Sea-line's initial questionnaire response, its U.S. sales database did not include payment dates, as requested by Commerce.[60] In its supplemental questionnaire response, we requested that Sea-line substantiate its reported payment amounts and dates with accounting and bank documentation, including but not limited to, invoices, shipping bills, bank receipts, and accounting entries.[61] In its response, Sea-line stated that it "has records for sales and receipts. Sea-line can identify the payment for a particular sale based on the accumulative sales amount and the accumulative amount of payment received from the same customer."[62] Sea-line also stated that it "provide{d} a list of the three largest sales for each U.S. customer, along with the relevant documents," however, although the accompanying sales list restated the information reported to Commerce in Sea-line's U.S. sales database, the source documentation did not reconcile with any listed values. For certain invoices, the reported values and payment dates could not be tied to those reported by Sea-line.[63]

Moreover, the poor quality of certain scanned documents resulted in bank documentation that was illegible for use in reconciling the payment dates, bank account numbers, charges or payments to the U.S. sales database. For certain invoices, the words and numbers on the bank documents submitted to support these data are too blurry to discern, and thus, both the payment amounts and dates are unverifiable.[64]

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[58] *Id*. at 3.
[59] *Id*. at 4.
[60] *See* Sea-line's August 10, 2018 Section C Questionnaire Response (Sea-line's August 10, 2018 CQR) at Exhibit C-1.
[61] *See* Sea-line's October 22, 2018 SQR at 10 and Exhibit S-13.
[62] *Id*. at 10.
[63] *Id*.
[64] *Id.* at Exhibit S-13.

In its initial questionnaire response, Sea-line reported invoice price as its U.S. price and that, for certain sales, it served as the importer of record.[65] However, this information was not supported by its sales reconciliation or financial statements. In a supplemental questionnaire response, when asked to reconcile reporting discrepancies, Sea-line indicated that its U.S. price was not solely the invoice price, as reported in its initial questionnaire response, but that its U.S. price was a "total negotiated price," which included two components: a price component for the garlic itself,[66] and a supplemental price increase.[67]

Sea-line's supporting documentation did not clearly contradict or confirm Sea-line's assertions regarding the composition of the supplemental price increase.[68] Moreover, while Sea-line's narrative claimed that U.S. price was a "total negotiated price," Sea-line continued to report its U.S. price as invoice price in its second U.S. sales database.[69]

As a result of the continued inconsistencies in Sea-line's reporting regarding its payment date and sales value, we requested that Sea-line again report and substantiate the amount that it charged to and received from its U.S. customers for its sales to the United States during the POR. In addition, we requested financial statements, payment documentation, and that Sea-line submit a reconciliation of the reported supplemental price increase. Sea-line failed to submit the requested reconciliation and provided a summary of payment documentation that was neither tied to the U.S. sales database nor its individual sales.[70] Accordingly, the reported supplemental price increase is unsupported by record evidence.

Sea-line's recommendation that Commerce calculate the supplemental price increase based on record information is misguided, since Sea-line's recommended calculation would cause undue difficulties within the meaning of section 782(e)(5) of the Act. Rather than submitting the purported total value of its U.S. price, Sea-line's claim that the "price increase for each sales observation is stated on the record already," even assuming *arguendo* that it is correct, would require Commerce to conduct numerous individual calculations in order to deduce its U.S. price.[71] Lastly, and most importantly, Sea-line's recommended calculation is not supported by record evidence.[72]

Due to the repeated inconsistencies and the irreconcilable nature of Sea-line's sales information, we find that reliable information concerning the amount that Sea-line charged to and received from its U.S. customers, for its sales to the United States during the POR, is not present on the record. Accordingly, we find that the necessary information is missing from the record within the meaning of section 776(a)(1) of the Act. Specifically, there are no reliable U.S. sales prices

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[65] *See* Sea-line's July 18, 2018 Section A Questionnaire Response (Sea-line's July 18, 2018 AQR) at 28; *see also* Sea-line's August 10, 2018 CQR at 27 and Exhibit C-1.
[66] *See* Sea-line's October 22, 2018 SQR at 3 (made public in Sea-line's Case Brief at 8).
[67] *Id*. at 4 and Exhibit S-4.
[68] *See* Sea-line's October 22, 2018 SQR at Exhibit S-4.
[69] *Id*. at Exhibit S-14.
[70] *See* Sea-line's December 4, 2018 SQR at Exhibits 2S-5 – 2S-14.
[71] *See* Sea-line's October 22, 2018 SQR at Exhibit S-14.
[72] *See* Sea-line's Final Analysis Memorandum for the business proprietary discussion of these issues.

on the record of the instant review. Furthermore, because Sea-line repeatedly submitted inconsistent and irreconcilable information in numerous supplemental questionnaire responses,[73] we find that Sea-line withheld information that had been requested by Commerce, and significantly impeded the proceeding under sections 776(a)(2)(A) and (C) of the Act, respectively. In addition, because the missing information involves Sea-line's U.S. sales values, and information related to the payment of its U.S. sales, this information is core to Commerce's ability to calculate Sea-line's dumping margin. The information that is missing renders the information that Sea-line provided to Commerce too incomplete to serve as a reliable basis for our dumping margin analysis. Consequently, we will rely on the facts available to determine Sea-line's estimated weighted-average dumping margin.

Furthermore, we find that Sea-line did not put forth the maximum effort to provide full and complete answers to all inquiries.[74] Moreover, Sea-line was given multiple opportunities to report the amount charged to and collected from its U.S. customers for its U.S. sales during the POR, in accordance with section 782(d) of the Act, including its July 18, 2018, Section A Questionnaire Response, August 10, 2018, Section C Questionnaire Response, October 22, 2018 Supplemental Questionnaire Response, November 19, 2018 Supplemental Questionnaire Response, and December 4, 2018 Supplemental Questionnaire Response. Sea-line's failure to provide accurate U.S. prices and payment information demonstrates that it has failed to cooperate to the best of its ability. Therefore, and pursuant to section 776(b) of the Act, we find that the application of adverse inferences is appropriate in selecting from among the facts available to determine Sea-line's dumping margin. Thus, interested parties' arguments regarding the proper calculation of Sea-line's dumping margin are moot.

Lastly, the petitioners' argument regarding a cash deposit evasion scheme between Sea-line and its U.S. customers points primarily to circumstantial evidence.[75] Accordingly, we find that there is insufficient evidence to make a finding with respect to these allegations for the final results.

**Comment 2: Whether Romania is the Appropriate Surrogate Country**

*Zhengyang's Case Brief*

- Commerce's policy bulletin states that the "trade in" comparable merchandise is one aspect in determining which countries are "significant producers."[76]
- In 2017, Romanian exports of garlic were minuscule compared to Mexican exports (33,674 kgs vs 14,407,678 kgs for Mexico). In addition, Romania did not export any garlic to the United States.[77]

[73] *See* Sea-line's July 18, 2018 AQR; *see also* Sea-line's August 10, 2018 CQR; Sea-line's October 22, 2018 SQR; Sea-line's November 19, 2018 SQR; and Sea-line's December 4, 2018 SQR.
[74] *See Nippon Steel*, 337 F. 3d at 1382.
[75] *See, e.g.*, Petitioners' Case Brief at 8-12.
[76] *See* Zhengyang's Case Brief at 3 (citing Policy Bulletin 04.1, "Non-Market Economy Surrogate Country Selection Process," dated March 1, 2004 (Policy Bulletin 04.1)).
[77] *Id*. at 3.

- Both the Court of International Trade (CIT) and the Court of Appeals for the Federal Circuit (CAFC) have found that the concept of being a significant producer indicates that the country is likely to have an influence or effect on the world market.[78]
- Mexico is a net exporter of garlic, and it is also the greatest source of garlic imported into the United States after China. "Mexico is a more significant producer of garlic on the world market, while Romania can have little to no effect on the world garlic market."[79]
- Much of the garlic produced in Romania is not comparable to Chinese garlic. Two of the five types of Romanian garlic identified by the petitioners are planted in the spring. "Thus, 40 percent (2/5) of Romania {sic} garlic is not comparable."[80]
- After applying that percentage to Romania's total production of garlic, we can conclude that Romania only produced 48,275 kgs of "fall" garlic.[81]
- Furthermore, since only two of the nine sizes of garlic produced in Romania are comparable to Chinese garlic bulb sizes, the problem of Romania not having sufficient comparable merchandise is compounded.[82]
- After applying that percentage to the amount of fall garlic assumed to be produced in Romania, we are left with only 10,728 kgs of comparably-sized fall garlic, which pales in comparison to Mexico's 15,058,753 kgs.[83]
- Mexico only exports large-size garlic. Romania did not export garlic to the United States, so Romanian garlic did not compete with U.S. or Chinese garlic in the United States.[84]
- SC Boromir PROD S.A.'s (Boromir) financial statements show that milled products were only 13 percent of its total sales in 2017, thus 87 percent of Boromir's sales represented further prepared and highly-processed cooked food.[85]
- On the other hand, GIMSA's milled corn accounted for 96 percent of its total sales.[86]
- The expenses incurred by Boromir do not reflect Zhengyang's situation during the POR as Boromir has at least 15 retail locations, and its financial statement shows large expenses for fixed assets and depreciation.[87]
- Boromir also incurred large advertising and promotional expenses. Zhengyang did not incur any of these expenses.[88]

[78] *Id*. at 4 (citing *Fresh Garlic Producers Ass'n v. United States*, 180 F. Supp. 3d 1233, 1238 (CIT 2016) (*FGP*); *Dupont Teijin Films v. United States*, 997 F. Supp. 2d 1338, 1342 (CIT 2014) (*Dupont Teijin*); *Shandong Rongxin Imp. & Exp. Co. v. United States*, 774 F. Supp. 2d 1307, 1316 (CIT 2011) (*Rongxin*), aff'd, 466 F. Appx. 881 (CAFC 2012)).
[79] *Id*. at 4.
[80] *Id*. at 5.
[81] *Id*.
[82] *Id*. at 5-6.
[83] *Id*. at 6.
[84] *Id*.
[85] *Id*. at 7 and Exhibit 11.
[86] *Id*. at 7 and Exhibit 10.
[87] *Id*. at 7-8 and Exhibit 11.
[88] *Id*. at 8 and Exhibit 11.

- Commerce has consistently found that the FAOSTAT prices are tax and duty exclusive and representative of the broadest market average of farmgate prices.[89]
- Commerce has also successfully defended its preference for farmgate prices over wholesale prices to value respondents' garlic inputs in the CIT.[90]
- The garlic bulb price data for Romania on the record is a wholesale price, and thus "includes numerous expenses not contained in the farmgate price, including processing costs incurred by Zhengyang to prepare its garlic for sale in the wholesale market."[91]
- Zhengyang also purchases garlic from warehouses, however, that garlic is identical to the garlic that Zhengyang purchases directly from the farmers.[92]
- The Romanian garlic bulb source is not a reasonable option to value Zhengyang's input garlic bulb.[93]
- The farmgate price of garlic in China includes drying and initial cutting of the stems and roots, which is the standard procedure.[94]
- Zhengyang's processing included further cutting the roots and stems, peeling the outer layers, and packing the garlic in mesh bags and cartons. Therefore, Zhengyang's purchases were before the first marketing stage, as Zhengyang does not buy garlic at the wholesale market level.[95]
- The CIT has found that different levels of trade cannot be compared, especially when it results in double-counting.[96]
- "Zhengyang engaged in substantial operations and did not simply buy pre-processed garlic from farmers and resell it."[97]
- If Commerce continues to use the non-comparable and unreliable Romanian prices, it is double-counting all of the expenses incurred by Zhengyang in producing the finished garlic, thus creating dumping margins where none exist.[98]
- The typical diameter of Chinese garlic ranges from 40-60 mm. Romanian garlic does not get close to 60 mm in diameter.[99]
- Mexican garlic is graded and sold at sizes larger than 70 mm. With diameters of 40 mm and above being considered commercial grade garlic.[100]

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[89] *Id*. at 8-9 (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) (*Jinxiang and Cangshan NSR*), and accompanying IDM at 8 (citing *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 36168 (June 17, 2013) (*Garlic 17 Final*) and accompanying IDM at 13-16)).
[90] *See* Zhengyang's Case Brief at 9; *see also Fresh Garlic Producers Ass'n v. United States*, 83 F. Supp. 3d 1330 (CIT 2015).
[91] *See* Zhengyang's Case Brief at 9-10.
[92] *Id*. at 10.
[93] *Id*.
[94] *Id*.
[95] *Id*. at 10-11.
[96] *Id*. (citing *Shenzhen Xinboda Industrial Co., Ltd. v. United States*, 279 F. Supp. 3d 1265, 1294 (CIT 2017) (*Shenzhen Xinboda*)).
[97] *Id*. at 12.
[98] *Id*. at 12-13.
[99] *Id*. at 13 and Exhibits 12 and 13.
[100] *Id*. at 13 and Exhibit 1.

- Commerce did not find that the Mexican garlic was dissimilar. In fact, 14 of the 16 varieties of Mexican garlic have a size larger than 40 mm.[101]
- Commerce cannot simply ignore the "mountain of independent record data, which is vastly more substantiated than the speculation of data available for large bulb garlic production in Romania."[102]
- As Mexico is the second largest exporter of fresh garlic to the United States, it must be comparable to Chinese garlic. Therefore, the record contains substantial information on the large sizes of Mexican garlic and its suitable comparability to Chinese garlic.[103]
- Commerce has reliably concluded that the FAOSTAT prices for garlic are based on broad market averages and are tax and duty exclusive. Therefore, the Mexican bulb source fulfills all of Commerce's criteria for the primary input.[104]
- Finally, Commerce failed to make any FOP-specific findings that each Romanian SV was the best available information on the record. Commerce should "revisit this issue and find that all of the SVs, especially, the price for garlic bulb and financial ratios, in Mexico represent the best available information."[105]

*Sea-line's Case Brief*

- Mexico is the appropriate choice as a surrogate country, and should be selected by Commerce for the Final Results.[106]
- Commerce has found that both Romania and Mexico are significant producers of garlic, with good data, and are at the same level of economic development as China. There is no valid reason to reject Mexico in preference for Romania.[107]
- Commerce's methodology for non-market economies requires an acceptance that China, the world's largest exporting country, sells at negative profit margins that generate massive losses that must necessarily put any company out of business.[108]
- Mexico is an important producer and exporter of garlic and is the second largest exporter of garlic to the United States. Romania exports very little garlic, and it does not export garlic to the United States.[109]
- It is essential that the surrogate garlic bulb be similar to the Chinese garlic bulbs at issue, and the size of the bulb is the most relevant factor. The Mexican garlic bulbs are similar in size to Sea-line's, while the Romanian bulbs are much smaller.[110]
- Of the five classifications of Romanian garlic provided by the petitioners, two are "spring bulbs" which are not grown in China, and two others are much smaller (2-3.5 cm), while Chinese garlic is generally 4cm or larger.[111]

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[101] *Id*. at 16-17.
[102] *Id*. at 18.
[103] *Id*. at 18-19.
[104] *Id*. at 19.
[105] *Id*. at 21-22.
[106] *See* Sea-line's Case Brief at 2.
[107] *Id*.
[108] *Id*. at 4.
[109] *Id*. at 5.
[110] *Id*.
[111] *Id*.

- All of Sea-line's garlic bulbs sold to customers in the United States were between 4.5cm and 5.5cm in diameter, comparable to Mexican garlic, but much larger than nearly all Romanian garlic. This should disqualify Romanian garlic as a surrogate value and confirms that Mexico is the appropriate choice for the surrogate country in this review.[112]
- Sea-line's supplier purchases raw, unprocessed garlic at the "farm gate" level of trade, which is in line with Mexico's reported prices. However, the Romanian prices are at the wholesale level of trade. This leads to the Romanian prices being much higher, as they reflect the more advanced level of trade.[113]
- In relation to the financial data utilized, Boromir is an inappropriate surrogate for estimating the production costs and overhead expenses of producing garlic; it is an industrial bakery and food processor that produces a highly processed range of baked products for retail consumers, engages in advertising, retail operations, third-party expenses, and operations related to the production of a line of finished baked goods.[114]
- The garlic purchased by Sea-line is minimally processed, and thus Sea-line's producer does not have the expenses related to production of a full line of baked goods that Boromir experiences.[115]
- The Mexican company, GIMSA, performs minimal processing of an agricultural product, milling of corn, with no baking, no complicated processing, no retail packaging, and no advertising.[116]
- Sea-line and Juxinyuan are profitable companies that operate entirely on commercial, market-based principles. Using Mexican surrogate values is more appropriate in this proceeding because it would lead to margins that reflect the reality that Sea-line is not losing $4.60 for every kilogram of garlic it sells.[117]

*Petitioners' Case Brief*

- In the *Preliminary Results*, Commerce erroneously stated that Mexican prices for input garlic bulbs are specific to the input bulbs consumed by respondents in China and are contemporaneous with the POR.[118]
- Two of the three sources for Mexican garlic bulb data are annual, and, by definition, not contemporaneous. The third source, which involves monthly pricing data, does not serve as the source for the United Nations Food and Agriculture Organization (UN FAO), as stated by Commerce, and does not include December 2016, so is not contemporaneous.[119]

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[112] *Id*. at 6.
[113] *Id*.
[114] *Id*. at 7.
[115] *Id*.
[116] *Id*.
[117] *Id*. at 8.
[118] *See* Petitioners' Case Brief at 25 (citing *Preliminary Results* PDM at 12-19).
[119] *Id*. at 26-27 (citing Zhengyang's Letter, "Fresh Garlic from the People's Republic of China – Surrogate Country Comments and Surrogate Values for the Preliminary Results," dated May 2, 2018 (Zhengyang's SCSV Comments) at Exhibits SV-3-SV-5).

- As Commerce determined in the two previous reviews, the Mexican garlic bulbs are not specific, since the physical characteristics of Mexico's input bulbs are not comparable to the input bulbs consumed by respondents in China during the relevant PORs.[120]
- Rather, as Commerce noted, the fresh garlic bulbs sold at the farm gate in Mexico: (1) were "generally harvested as whole plants;" (2) were often "sold as 'wet bulbs' in large open sacks;" and, as a result (3) would have "require{d} significant processing to produce fresh garlic products."[121]
- In contrast to the input bulbs grown in Mexico and reflected in Mexican pricing sources, Chinese input bulbs undergo significant post-harvest transportation, storage, and processing by both the harvesting farmers and intermediate processors, and also require the final processor to "finish" and pack the fresh garlic products for export.[122]

*Sea-line's Rebuttal Brief*

- Sea-line's supplier is a producer/processor that purchases raw, unprocessed garlic that has not had any significant post-harvest transportation, storage, or processing at all.[123]
- Juxinyuan's processing includes taking the raw garlic bulbs from the farmers, cleaning, skinning, removing the stems, and trimming the roots of the bulbs. The petitioners attribute those actions to "the harvesting farmers and intermediate processors."[124]
- The petitioners' arguments only confirm Sea-line's position that Mexican garlic is most like Chinese garlic. Therefore, Commerce should discard the inappropriate wholesale prices from Romania, and use the more accurate farm-gate prices from Mexico.[125]

*Petitioners' Rebuttal Brief*

- Policy Bulletin 04.1 states that, in relation to whether a potential surrogate country is a significant producer of comparable merchandise, the production levels of a potential surrogate country "should not be judged against the NME country's production level or the comparative production of the five or six countries on the Office of Policy's surrogate country list."[126]
- Zhengyang claims that Romania is not a significant producer because Romania is not a net exporter of fresh garlic, and Mexico is. While being a significant net exporter would qualify as a significant producer, "neither the statute, nor the legislative history, provide that a country that is not a net exporter is not a significant producer."[127]

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[120] *Id*. at 26-28 (citing *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 22nd Antidumping Duty Administrative Review and Final Results and Rescission, in Part, of the New Shipper Reviews; 2015-2016*, 83 FR 27949 (June 15, 2018), and accompanying IDM (*Garlic 22 Final*) at 37 and 41; *see also Garlic 21 Final* IDM at 47).
[121] *See* Petitioners' Case Brief at 27 (citing *Garlic 22 Final* IDM at 37).
[122] *Id*. at 28 (citing Petitioners' Letter, "23rd Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Surrogate Country and Value Rebuttal Comments," dated May 9, 2018 (Petitioners' Rebuttal SCSV Comments) at Attachment MEX-1A).
[123] *See* Sea-line's Rebuttal Brief at 9; *see also* Sea-line's August 16, 2018 Section D Questionnaire Response at Exhibit D-1.
[124] *See* Sea-line's Rebuttal Brief at 9 (citing Petitioners' Case Brief at 27).
[125] *Id*. at 9-10.
[126] *See* Petitioners' Rebuttal Brief at 7 (citing Policy Bulletin 04.1 at 3).
[127] *Id*. at 8; *see also* Policy Bulletin 04.1 at 1.

- Policy Bulletin 04.1 also shows Commerce's preference for using production data, not trade data, to evaluate whether a potential surrogate country is a significant producer of comparable merchandise.[128]
- Zhengyang's argument that Mexico is a superior choice to Romania because it is a "more" significant producer has been rejected by the CIT.[129]
- Where two or more countries are economically comparable and significant producers of comparable merchandise, Commerce's practice is to evaluate the countries by comparing the quality of the available data from those countries.[130]
- Commerce values FOPs based on the best available information as stated in the statute. As the term is not defined, Commerce has "broad discretion to determine what constitutes the best available information."[131]
- To make this determination, Commerce evaluates the degree to which the data are publicly available, contemporaneous with the POR, tax and duty exclusive, representative of a broad market average, and product-specific.[132]
- Zhengyang cites to an article placed on the record by the petitioners to support its argument that Romanian garlic is "not even close to the Chinese average size of 6.2 cm."[133] However, that article, "like nearly every article Zhengyang has placed on the record regarding Mexican garlic, concerns a cultivation experiment, and addresses only a single variety of Romanian garlic."[134]
- However, that article demonstrates that the 1 gram to 1-millimeter ratio used by Commerce to determine that the Romanian garlic bulbs are similar in size to Chinese bulbs is conservative.[135]
- The evidence on the record that Commerce relied upon to make its determination that Romanian garlic bulbs are similar in size and quality to Chinese bulbs is almost identical to what Commerce relied on in its remand redetermination of the 20th administrative review, which was sustained by the CIT.[136]
- Zhengyang argues that the Romanian article that Commerce relied on "cannot be meaningfully distinguished" from the articles it submitted in support of its claim that

[128] *See* Petitioners' Rebuttal Brief at 8-9 (citing Policy Bulletin 04.1 at 3); *see also* section 773(c)(4) of the Act.
[129] *See* Petitioners' Rebuttal Brief at 9; *see also Juancheng Kangtai Chem. Co. v. United States*, 2017 Ct. Intl Trade LEXIS 3, 11-12 (CIT 2017) (rejecting a respondent's claim that the statute requires the selection of the "most" significant producer).
[130] *See* Petitioners' Rebuttal Brief at 9-10; *see also* Policy Bulletin 04.1 at 4 ("if more than one country has survived the selection process to this point, the country with the best factors data is selected as the primary surrogate country.").
[131] *Id.* at 11 (citing *Qingdao Sea-line Trading Co. v. United States*, 766 F.3d 1378, 1386 (CAFC 2014) (*Qingdao Sea-line*); and sections 773(c)(1) and 773(c)(3)(A)-(D) of the Act).
[132] *Id.* (citing Policy Bulletin 04.1 at 4; *Baoding Mantong Fine Chemistry Co. v. United States*, 222 F. Supp. 3d 1231, 1247 (CIT 2017); and *Qingdao Sea-line*, 766 F.3d at 1386).
[133] *Id.* at 12 (citing Zhengyang's Case Brief at 14 (citing Petitioners' Letter, "23rd Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Surrogate Country and Initial Surrogate Value Comments," dated May 2, 2018 (Petitioners' SCSV Comments) at Exhibit ROM-1B)).
[134] *See* Petitioners' Rebuttal Brief at 13; *see also* Petitioners' SCSV Comments at Exhibit ROM-1B.
[135] *See* Petitioners' Rebuttal Brief at 13; *see also* Petitioners' SCSV Comments at Exhibit ROM-1B.
[136] *See* Petitioners' Rebuttal Brief at 13; *see also Shenzhen Xinboda Indus. Co. v. United States*, 357 F. Supp. 3d 1295, 1307-08 (CIT 2018) (*Shenzhen Xinboda II*).

garlic grown in Mexico is similar to garlic grown in China.[137] However, the Romanian article does not recite the results of a scientific experiment, but rather, it identifies the various varieties of garlic grown in Romania, as well as their size.[138]

- Zhengyang's reliance on an article entitled "Garlic Productivity and Profitability as Affected by Seed Cloves," has already been rejected by the CIT, as it only relates to one variety of garlic, and the sizes listed are simply commercial classifications.[139]
- Commerce should again reject respondents' arguments that the NISR prices should be rejected since they are "wholesale" prices.[140]
- The Mexican price data is not contemporaneous with the POR, as it only covers two months of this segment's POR.[141] The monthly aggregated pricing data is neither contemporaneous with the POR, nor a broad market average, as pricing data is missing for December 2016, and prices for February 2017 are from producers located in one Mexican state.[142]
- In the two previous administrative reviews, Commerce determined that the garlic grown in Mexico is not comparable to the input bulbs consumed by the respondents in China. The record of this administrative review continues to support that determination.[143]
- Zhengyang has demonstrated that the Mexican farmgate garlic is not representative of the input bulbs it purchases.[144]
- Evidence on the record demonstrates that, "more than half of the garlic bulbs produced each year in Zacatecas," the Mexican state with the largest production of garlic, "are sold immediately after being pulled from the ground," which means that the Mexican garlic prices represent bulbs that have not been dried or cured, and have not been "cleaned of field debris such as dirt that clings to unclipped roots, and extended unclipped stems."[145]
- The record shows that the Mexican farmgate garlic prices are greatly understated, since they are based on a garlic bulb weight that includes unclipped stems and roots.[146]
- All of Zhengyang's input garlic bulbs undergo significant post-harvest processing, transport, and storage, and therefore, are very different from the Mexican bulbs sold at the farmgate.[147]
- The CIT has sustained Commerce's level of trade finding relating to garlic respondents' input bulb purchases.[148]

[137] *See* Petitioners' Rebuttal Brief at 14 (citing Zhengyang's Case Brief at 16).
[138] *Id*. at 14.
[139] *Id*. at 14-15 (citing Zhengyang's SCSV Comments at Exhibit SV-6; and *Shenzhen Xinboda II*, 357 F. Supp. 3d at 1303-04).
[140] *Id.* at 15.
[141] *Id*. at 16 (citing Zhengyang's SCSV Comments at Exhibits SV-4 and SV-5).
[142] *Id.* at 16 (citing Zhengyang's SCSV Comments at Exhibit SV-3).
[143] *Id.* at 16-17 (citing *Garlic 21 Final* IDM at 47; *Garlic 22 Final* IDM at 37 and 41; and Petitioners' May 9, 2018 Rebuttal SCSV Comments at Exhibit MEX-1A).
[144] *Id.* at 17 (citing Zhengyang's Case Brief at 10, "The farmgate price in China includes drying and initial cutting of stems and roots. This is standard procedure. The garlic cannot be removed from the ground and sold by the farmers otherwise. Processors, such as Zhengyang, cannot use wet garlic with all the roots and stems attached.").
[145] *Id*. at 17-18 (citing Petitioners' Rebuttal SCSV Comments at Exhibit MEX-1A).
[146] *Id*. at 18.
[147] *Id*. (citing Zhengyang's November 7, 2018 Supplemental Questionnaire Response (Zhengyang's November 7, 2018 SQR) at 1).
[148] *Id.* at 19 (citing *Shenzhen Xinboda II*, 357 F. Supp. 3d at 1308-10).

- Respondents' arguments concerning the surrogate financial statements from Boromir are also misplaced. Both the CIT and CAFC have affirmed Commerce's practice of selecting the surrogate country that provides the best available information to value purchases of input garlic bulbs.[149]
- Commerce "should continue to select Romania as the primary surrogate country, regardless of which financial statement – Boromir's or GIMSA's – is superior."[150]
- There is no record evidence to support Zhengyang's arguments concerning Boromir's expenses for depreciation of fixed assets, sales at the retail level of trade, along with advertising and promotional expenses.[151]
- In addition, GIMSA's financial statement shows that it also makes a significant portion of its sales through retail channels.[152]
- Furthermore, the respondents only submitted the 2016 financial statement for GIMSA, which only covers two months of this POR. The record contains copies of both the 2016 and 2017 financial statements for Boromir, allowing Commerce to calculate financial ratios that are completely contemporaneous with this POR.[153]
- In its argument that Commerce failed to compare the Mexican and Romanian information for all FOPs, Zhengyang failed to specifically identify or evaluate information for any FOPs other than input bulbs and financial ratios. Commerce's regulations state that interested parties are required to "present all arguments that continue in the submitter's view to be relevant to {Commerce's}…final results."[154]
- It is Commerce's practice to value FOPs using import statistics that are inclusive of international freight and foreign brokerage and handling charges.[155]
- The Romanian import statistics are on a CIF basis,[156] while Commerce has found that Mexican import statistics are generally reported on an FOB basis.[157]

**Commerce's Position**

When Commerce examines imports from an NME country, section 773(c)(1) of the Act directs Commerce to determine the value of factors of production (FOPs), for NV, based on the "best available information" of such factors in a market economy country or countries considered to be appropriate. Pursuant to section 773(c)(4) of the Act, in valuing FOPs, Commerce shall utilize to

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[149] *Id*. at 19-20 (citing *Fresh Garlic Producers Ass'n v. United States*, 2017 Ct Intl Trade LEXIS 128 (CIT 2017) (*Fresh Garlic Producers*) at 20, n. 13; *Jiaxing Brother Fastener Co. v. United States*, 822 F.3d 1289, 1301 (CAFC 2016)).
[150] *Id*. at 20.
[151] *Id*. at 20-21.
[152] *Id*. at 21 (citing Zhengyang's SCSV Comments at Exhibit SV-13).
[153] *Id*. at 21-22.
[154] *Id*. at 22 (citing 19 CFR 351.309(c)(2); and *Weishan Hongda Aquatic Food Co. v. United States*, 273 F. Supp. 3d 1279, 1287-89 (CIT 2017)).
[155] *See* Petitioners' Rebuttal Brief at 23 (citing Policy Bulletin 10.2, Inclusion of International Freight Costs When Import Prices Constitute Normal Value, dated November 1, 2010).
[156] *Id*. at 23 (citing Petitioners' SCSV Comments at Exhibit 2A).
[157] *Id*. (citing *e.g., Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018), and accompanying IDM at 13-14; *Fine Denier Polyester Staple Fiber from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 24740 (May 30, 2018), and accompanying IDM at 14).

the extent possible, the prices or costs of FOPs in one or more market economy country that are (A) at a level of economic development comparable to that of the NME country, and (B) significant producers of comparable merchandise. Furthermore, under 19 CFR 351.408(c)(2), Commerce normally values all factors using data from a single surrogate country.

For the *Preliminary Results*, we selected Romania as the surrogate country from a list of countries at a level of economic development comparable to China including Romania, Mexico, Brazil, Bulgaria, Thailand, and South Africa.[158] We determined that Romania was at a comparable level of economic development and was a significant producer of comparable merchandise.[159] We also found that there were publicly available Romanian data for all FOPs on the record of this review.[160] Finally, we determined that the Romanian data were superior to Mexican data in a number of respects, and therefore, constituted the best available information.[161]

In the *Preliminary Results*, Commerce determined that nine countries were considered economically comparable to China, pursuant to section 773(c)(4)(A) of the Act.[162] No parties commented on the economic comparability of Romania and Mexico in their briefs, and there is no information on the record that warrants reconsideration of this finding. Accordingly, Commerce determines that these nine countries, including Romania and Mexico, are at a level of economic development comparable to China.

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 Act or Commerce's regulations provide further guidance on what may be considered comparable merchandise. However, Policy Bulletin 04.1 explains that "{i}n all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise.[163] Although fresh garlic from both Romania and Mexico is identical merchandise, *i.e.*, fresh garlic, and therefore comparable, we continue to find, as we did in the *Preliminary Results*, that the record supports a finding that Romanian garlic bulbs are more comparable to input garlic bulbs consumed in the production of subject merchandise because they are similar in size to the input garlic bulbs identified on the record. Moreover, garlic in Romania is stored and sold throughout the year, while information on the record indicates that garlic grown in Mexico is generally harvested as whole plants sold immediately after being pulled from the ground, many of which are sold as "wet bulbs" in large open sacks, and are not differentiated by size.[164] Garlic harvested in this manner would require significant processing to produce fresh garlic products.[165] Chinese input bulbs undergo significant processing by the intermediate processors, and require only minimal further

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[158] *See* Memorandum, "Request for a list of Surrogate Countries for an Administrative Review of the Antidumping Order on Fresh Garlic ("Garlic") from the People's Republic of China ("China")," dated February 8, 2018.
[159] *Preliminary Results* PDM at 12-19.
[160] *Id.* at 19.
[161] *Id.*
[162] *Id.* at 12-13.
[163] *See* Policy Bulletin 04.1.
[164] *See* Petitioners' SCSV Rebuttal Comments at Exhibit MEX-1A.
[165] *Id.*; *see also Garlic 22 Final* IDM at 37.

processing to produce fresh garlic products.[166] For these reasons, we continue to find that the fresh garlic produced in Romania is more physically similar than the garlic produced in Mexico to the Chinese subject merchandise.

Zhengyang and Sea-line argue that Mexico is the largest supplier of fresh garlic to the United States after China. We determine that this argument is not relevant. Policy Bulletin 04.1 explains that "{t}he extent to which a country is a significant producer should not be judged against the NME country's production level or the comparative production of the five or six countries on the OP's surrogate country list."[167] Thus, the appropriate analysis is not which surrogate country produces an amount closest to the NME country's production level. Moreover, in the present case, Commerce cannot compare potential surrogate country data to the amount of fresh garlic produced in China, because China is by far the largest producer of fresh garlic in the world – approximately 80 percent of world production, and over 15 times larger than the next largest producing country.[168] Given this disparity, it is not useful to make a judgment, under these circumstances, about whether a surrogate country's production is comparable to the amount of production in China and "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,[169] 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 surrogate values (SV) reflecting the commercial market reality of producing the subject merchandise in that country.

Here, Romania's and Mexico's 2016 production amounts are each noticeably and measurably large – 54,389 and 75,987 metric tons,[170] respectively, such that it is reasonable to assume the quantity reflects an adequate number of garlic producers that are commercially viable, and therefore provide data reflecting market-based transactions. Neither Zhengyang nor Sea-line has offered any meaningful distinction between the significance of Romanian and Mexican 2016 production levels.

Zhengyang's reliance on *Shenzhen Xinboda* is misplaced.[171] While we agree that Commerce cannot double count processing expenses, we disagree that we have done so in this proceeding. As explained further below, the input garlic purchased by Zhengyang is at a further processed stage than the garlic sold in Mexico.

Zhengyang's reliance on court cases to argue that "Mexico is a more significant producer of garlic on the world market, while Romania can have little to no effect on the world garlic

[166] *See* Petitioners' SCSV Rebuttal Comments at Exhibit MEX-1A.
[167] *Id*.
[168] *See* Zhengyang's SCSV Comments at Exhibit SV-15.
[169] *See* Policy Bulletin 04.1 (acknowledging the need for flexibility and the use of discretion because the "meaning of 'significant producer' can differ significantly from case to case.").
[170] *See Preliminary Results* PDM at 15.
[171] *See* Zhengyang's Case Brief at 10-11 (citing *Shenzhen Xinboda*, 279 F. Supp. 3d at 1294).

market" is unpersuasive.[172] Policy Bulletin 04.1 explains that "{b}ecause the meaning of 'significant producer' can differ significantly from case to case, fixed standards such as 'one of the top five producers' have not been adopted." Here, both countries produce amounts that are noticeably and measurably large (54,389 metric tons, for Romania, and 75,987 metric tons, for Mexico) and appear comparably significant.

Zhengyang also argues that because Romania is not a net exporter of garlic, it may not be considered a significant producer.[173] This argument is unpersuasive. Policy Bulletin 04.1 does not require that a surrogate country must be a net exporter, merely that a country that is a net exporter could be considered a significant producer, "even though the selected surrogate producer may not be one of the world's top producers."[174] Here, both Romania and Mexico produce similarly large amounts of garlic. Commerce determines that, because both Romania and Mexico produce a significant amount of garlic and each export garlic,[175] both countries may be considered significant producers of comparable merchandise. Thus, Commerce determines that both countries are significant producers of comparable merchandise.

*Which Country Presents the Best SV Data*

As explained above, both Romania and Mexico satisfy the requirements of section 773(c)(4) of the Act. "When more than one country has survived the selection process . . ., the country with the best factors data is selected as the primary surrogate country."[176] In selecting the "best available information," under section 773(c)(1) of the Act, Commerce evaluates SVs based on a well-established set of criteria that includes "a strong preference for valuing all FOPs in the primary surrogate country, as well as a preference for prices which are period-wide, representative of a broad market average, specific to the input in question, net of taxes and import duties, contemporaneous with the period under consideration, and publicly available."[177] Commerce also, according to 19 CFR 351.408(c)(2), normally will value all factors in a single surrogate country.

We continue to rely on the SV information from Romania for these final results. We also continue to determine that the wholesale Romanian garlic bulb data are representative of garlic inputs purchased by Zhengyang, because the record of this review shows that Zhengyang purchases its garlic on a "wholesale" basis. Specifically, the price paid by Zhengyang includes further processing (*e.g.*, cold storage or controlled atmosphere (CA) facilities in order to remain viable for processing outside of the summer harvest months).[178] This finding with respect to

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[172] *Id.* at 4 (citing *FGP*, 180 F. Supp. 3d at 1238; *Dupont Teijin*, 997 F. Supp. 2d at 1342; and *Rongxin*, 774 F. Supp. 2d at 1316).
[173] *See* Zhengyang's Case Brief at 4-5.
[174] *See* Policy Bulletin 04.1 ("a country that is a net exporter, even though the elected surrogate country may not be one of the world's top producers.").
[175] *See* Zhengyang's SCSV Comments at Exhibit SV-15.
[176] *See* Policy Bulletin 04.1.
[177] *See Preliminary Results* PDM at 16; *see also 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; and Policy Bulletin 04.1.
[178] *See* Zhengyang's November 7, 2018 SQR at 1-2.

Zhengyang is consistent with the prior reviews of this order, where Commerce has also relied on surrogate information from Romania, and found that Romanian garlic is priced at the wholesale level.[179] Accordingly, we continue to find that the wholesale price of Romanian garlic is a reliable SV for Zhengyang's purchases of garlic bulbs.

In their briefs, Sea-line and Zhengyang argue that the wholesale price of Romania's garlic bulb pricing data makes them unsuitable for SV use.[180] Zhengyang alleges that, although the price reported to the UN FAO by the Romanian National Institute of Statistics (INSSE) is intended to represent a "farmgate" price, it is actually more appropriate to consider it a wholesale price.[181] Zhengyang points to the UN FAO country notes, indicating that for several vegetables, including garlic, the prices reported by INSSE to UN FAO are actually "wholesale," not farmgate prices.[182] Indeed, Commerce previously determined that the Romanian garlic bulb data prices were not farmgate prices, as the garlic was sold throughout the year. Commerce has found "{g}iven that Romanian garlic is also semi-perishable, any raw garlic sold in Romania from October through early July would also require either cold storage or controlled {atmosphere } storage facilities in order to remain viable."[183] Thus, CA storage is one example of a cost indicating that Romanian garlic is not sold at farmgate prices, but, rather, wholesale prices.

Moreover, Zhengyang argues that because Commerce has used farmgate prices in the new shipper reviews for Jinxiang Merry Vegetable Co., Ltd. (Jinxiang) and Cangshan Qingshui Vegetable Foods Co., Ltd (Cangshan), Commerce should also use Mexican garlic farmgate prices in the instant review.[184] However, there is no information on the record of this review with respect to Jinxiang's or Cangshan's respective garlic purchasing and production practices (*e.g.*, what month they purchased/processed garlic in China).[185] Here, Zhengyang purchased and processed garlic that had been further processed, cold stored and or CA-stored throughout the POR.[186] Information on this record indicates that Mexico sells the vast majority of its garlic during a 4 to 6-month time range each year.[187] As such, Mexican farmgate garlic prices are less reflective of the price paid by Zhengyang for Chinese garlic than the Romanian garlic data because Mexican prices do not include further processing, cold storage and or CA storage costs.

Furthermore, while we agree with Sea-line and Zhengyang's argument that the Mexican garlic bulb data may be reliable because they are the source for the UN FAO data, the Romanian data is more contemporaneous.[188] Commerce has relied on the UN FAO data in the past, and continues to find that the UN FAO data on the record for Mexico are, generally, reliable because they are (1) specific; (2) based on a broad market average; (3) exclusive of taxes and duties; and (4)

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[179] *See, e.g., Garlic 20 Final* IDM at 28-29.
[180] *See* Zhengyang's Case Brief at 9-10; *see also* Sea-line's Case Brief at 6.
[181] *See* Zhengyang's Case Brief at 9.
[182] *Id.*
[183] *See Garlic 20 Final* IDM at 28-29; *see also Garlic 21 Final* IDM at 50-53; *Garlic 22 Final* IDM at 40-42.
[184] *See* Zhengyang's Case Brief at 8-9.
[185] *See Jinxiang and Cangshan NSR* at 8 (citing *Garlic 17 Final* IDM at 13-16); *see also Fresh Garlic Producers Ass'n v. United States*, 83 F Supp. 3d 1330 (CIT 2015).
[186] *See* Zhengyang's November 7, 2018 SQR at 1-2.
[187] *See* Petitioners' SCSV Rebuttal Comments at Attachment MEX-1A.
[188] *See* Zhengyang's Case Brief at 9; *see also* Sea-line's Case Brief at 6.

publicly available.[189] We further note, however, that the Romanian garlic data is reported by the INSSE to the UN FAO, and it is (1) specific; (2) based on a broad market average; (3) contemporaneous; (4) exclusive of taxes and duties; and (5) publicly available.[190] Because the Romanian data is contemporaneous with the POR and the Mexican data is not fully contemporaneous with this segment's POR,[191] the Romanian data is superior in this respect. In response to Zhengyang's arguments concerning the size and season of the garlic grown in Romania, we note that the CIT has sustained our findings from the 20th administrative review, which included almost identical record evidence as this review.[192] Thus, Commerce continues to rely on Romanian SV data for the instant determination.

Finally, Commerce also continues to find that the two financial statements for Boromir constitute the best information available, pursuant to 19 CFR 351.408(c)(4).[193] As explained in the Preliminary Surrogate Values Memorandum, in accordance with 19 CFR 351.408(c)(2), Commerce normally values all factors from a single surrogate country, and will resort to a secondary surrogate country only if data from the primary surrogate country are unavailable or unreliable.[194] Consistent with this practice, in valuing FOPs from an NME country, Commerce's preference is to use financial data gathered from the primary surrogate country, provided the data are accurate, complete, contemporaneous, and representative and are not distorted or otherwise unreliable.[195] For this reason we have relied on Boromir's Romanian financial data. Commerce further notes that none of the financial statements originate from companies that produce fresh garlic; Boromir and Grupo Industrial Maseca SAB de CV (GIMSA), the Mexican company whose financial data is on the record, are both flour producers.[196] Moreover, only the 2016 financial statement for GIMSA, covering just two months of the POR, is on the record of this review. In contrast, the petitioners have provided the 2016 and 2017 financial statements from Boromir, which cover the entire POR. In response to Zhengyang's arguments that Boromir makes a significant amount of sales through retail channels and that Boromir incurred large expenses for fixed assets and depreciation, we note that GIMSA's financial statement also indicate that GIMSA makes sales to and through retailers and wholesalers.[197] In addition, GIMSA's financial statement also shows that it incurred significant expenditures on equipment

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[189] *See Preliminary Results* PDM at 18-19.
[190] *Id*.
[191] *See* Zhengyang's SCSV Comments at Exhibits SV-4 and SV-5. Annual prices from the UN FAO are for 2011-2016 and from SAGARPA are for 2012-2016. Thus, Mexican data only covers two months of the POR. Furthermore, the monthly data in Exhibit SV-3 is missing data for December 2016. Alternatively, Romanian data is available for the entire POR.
[192] *See Shenzhen Xinboda II*, 357 F. Supp. 3d 1295, 1304-03, 1307-08 (sustaining Commerce's finding that Romanian garlic is of similar size to Chinese garlic and that there is a lack of record evidence to determine that Mexican garlic is similar in size to Chinese garlic).
[193] *See* Petitioners' SCSV Comments at SV-1.
[194] *See* Memorandum, "Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Preliminary Surrogate Values Memorandum," dated November 30, 2018 (Preliminary Surrogate Values Memorandum) at 12 (citing *Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, and Revocation of the Order, in Part*, 76 FR 66036 (October 25, 2011), and accompanying IDM at 10).
[195] *See* Preliminary Surrogate Values Memorandum at 12.
[196] *See* Petitioners' SCSV Comments at SV-1; *see also* Zhengyang's SCSV Comments at SV-13.
[197] *See* Zhengyang's SCSV Comments at SV-13.

and property.[198] Thus, because Romania is the primary surrogate country, Boromir's financial statements are more contemporaneous than GIMSA's, and there is no distinction between the expenses in Boromir's and GIMSA's financial data, Commerce, as in the *Preliminary Results*, has relied on Boromir's Romanian financial statements.

For the foregoing reasons, there is no information on the record which causes us to reconsider our finding that the experience of Boromir, a flour producer, presents the best information available on the record.[199]

**Comment 3: Whether Commerce Double-Counted Chemicals in Sea-line's Calculation**

*Sea-line's Case Brief*

- Commerce regarded sodium hypochlorite and sodium erythorbate as direct materials in its NV build-up. Commerce also applied an overhead factor from a bakery/food processor identified in the surrogate country. This resulted in a double-counting of these chemicals.[200]
- These chemicals are overhead, not direct materials because (1) they are classified as overhead in the normal course of Juxinyuan's business; (2) they are not physically incorporated into the subject merchandise; and (3) they play an insignificant role in Juxinyuan's manufacturing operations.[201]
- Furthermore, these incidental chemicals are fully consumed in the production process, and as such, are already recognized as factory overhead which is added to the NV through the surrogate overhead ratio.[202]
- The chemicals at issue are, in one case, a disinfectant, and in the other case, an antioxidant.[203]
- Commerce should follow its normal practice and treat these incidental chemicals as overhead in line with *OTR Tires from China*, wherein Commerce treated thirty-four incidental materials as overhead.[204]
- In this case, the incidental materials fit perfectly within Commerce's stated policy for overhead treatment. Commerce should not separately value the chemicals as direct

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[198] *Id*.
[199] *See* Petitioners' SCSV Comments at SV-1; *see also* Zhengyang's SCSV Comments at SV-13 (In previous administrative and new shipper reviews, Commerce has relied on financial data from producers of other products, for example tea, because processing of tea is similar to garlic in that it is highly processed or preserved prior to sale. *See, e.g., Fresh Garlic from the People's Republic of China: Preliminary Results of, Partial Rescission of, and Intent to Rescind, in Part, the 15th Antidumping Duty Administrative Review*, 75 FR 80458, 80464-65 (December 22, 2010) (relying on financial data from a tea producer); and *Fresh Garlic from the People's Republic of China: Final Results and Final Rescission, in Part, of the 2008-2009 Antidumping Duty Administrative Review*, 76 FR 37321 (June 27, 2011), and accompanying IDM at Comment 6).
[200] *See* Sea-line's Case Brief at 15.
[201] *Id*.
[202] *Id*.
[203] *Id*.
[204] *Id*. at 16 (citing *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2018) (*OTR Tires from China*) and accompanying IDM at 88-90).

material factors in Sea-line's NV build up, as they are included in the overhead ratio, which is added to NV as a surrogate financial expense.[205]

*Petitioners' Rebuttal Brief*

- The statute specifically states that quantities of raw materials, such as sodium hypochlorite and sodium erythorbate, utilized in the production of the subject merchandise are factors of production.[206]
- Commerce's inclusion of these chemicals as material inputs is consistent with its practice in prior segments of this proceeding, as well as with its NV calculation for Zhengyang, and proceedings involving other products.[207]
- Commerce has previously verified that chemicals are consumed in the production of garlic in China.[208]
- Zhengyang reported its cleaning agents (sodium erythorbate, citric acid, and chlorine dioxide) as raw materials in this segment.[209]
- In *Mushrooms from China*, Commerce rejected similar arguments finding that soil and water "represent production inputs which carry an economic worth and are used for more than incidental purposes in the mushroom production process." Commerce also found that the respondents "failed to establish that either input has been captured elsewhere" in the factors of production responses.[210]
- Commerce further found that since water had been "used for more than incidental workplace activities" in the production of mushrooms, it had not double-counted it in its NV calculations.[211]
- The two chemicals are essential to the production process of garlic and are not incidental. Sea-line stated that sodium hypochlorite is a disinfectant required to clean the peeled garlic cloves to ensure that they do not contain harmful contaminants.[212]
- Furthermore, Juxinyuan treats its peeled cloves with sodium erythorbate to maintain freshness and extend the shelf life of the cloves.[213]
- Sea-line's reliance on *OTR Tires from China* is misplaced. In *OTR Tires from China*, Commerce found that the materials in question were used for the machinery and equipment that made the subject tires. Since the materials were not incorporated into the tires, Commerce found that they were not essential to the production of, or required for, a particular portion of the production process.[214]

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[205] *Id*. at 17.
[206] *See* Petitioners' Rebuttal Brief at 31 (citing section 773(c)(3) of the Act).
[207] *See* Petitioners' Rebuttal Brief at 31-32.
[208] *Id*. at 32; *see also* Petitioners' Rebuttal SCSV Comments at Exhibit Verification-1.
[209] *See* Petitioners' Rebuttal Brief at 32; *see also* Zhengyang's April 19, 2018 Section D Questionnaire Response at Appendix VI.
[210] *See* Petitioners' Rebuttal Brief at 32-33 (citing *Certain Preserved Mushrooms from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014; and Partial Rescission of Review*, 80 FR 32355 (June 8, 2015) (*Mushrooms from China*) and accompanying IDM at 7-8).
[211] *Id*. (citing *Mushrooms from China* IDM at 8).
[212] *Id*. at 33 (citing Sea-line's November 19, 2018 SQR at 1 and Exhibit 2S-1).
[213] *Id*. (citing Sea-line November 19, 2018 SQR at 1 and Exhibit 2S-1).
[214] *Id*. at 34 (citing *OTR Tires from China* IDM at Comment 27).

- In this case, "the chemicals in question *are* necessary for the production of the subject merchandise and *are* utilized in the production of each jar or peeled garlic, not merely consumed by production equipment or used inconsistently for testing."[215]
- Sea-line has also failed to demonstrate that sodium hypochlorite and sodium erythorbate are included in its overhead costs. "The burden of placing information on the record to support this assertation was on Sea-line, and it failed to meet that burden."[216]

**Commerce's Position**

Because Sea-line's dumping margin has been determined based on total AFA, these arguments are no longer pertinent to this review.

## VII. RECOMMENDATION

We recommend adopting the above positions. If these recommendations are accepted, we will publish the *Final Results* of this administrative review in the *Federal Register*.

☒ Agree ☐ Disagree

7/18/2019

X

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

[215] *Id*. at 34.
[216] *Id*. at 35 (citing *QVD Food Co. v. United States*, 658 F.3d 1318, 1324 (CAFC 2011) ("The burden of creating an adequate record lies with the interested parties.")).