

and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake rotors limit their use to the following types of motor vehicles: automobiles, all-terrain vehicles, vans, recreational vehicles under "one ton and a half," and light trucks designated as "one ton and a half."

Finished brake rotors are those that are ready for sale and installation without any further operations. Semi-finished rotors are those rotors which have undergone some drilling and on which the surface is not entirely smooth. Unfinished rotors are those which have undergone some grinding or turning.

These brake rotors are for motor vehicles and do not contain in the casting a logo of an original equipment manufacturer ("OEM") which produces vehicles sold in the United States (e.g., General Motors, Ford, Chrysler, Honda, Toyota, and Volvo). Brake rotors covered in this review are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake rotors that are made of gray cast iron which contain a steel plate but otherwise meet the above criteria. Excluded from the scope of the order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, with a diameter less than 8 inches or greater than 16 inches (less than 20.32 centimeters or greater than 40.64 centimeters) and a weight less than 8 pounds or greater than 45 pounds (less than 3.63 kilograms or greater than 20.41 kilograms).

Brake rotors are classifiable under subheading 8708.39.5010 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

#### Successorship and Final Results

The Department received no case or rebuttal briefs by parties to this changed circumstances review. On the basis of the record developed in this proceeding, we continue to determine that Huanri Group is the successor-in-interest to Huanri Group General for purposes of determining antidumping duty liability. We note that in the seventh administrative review of brake rotors from the PRC, we concluded that Huanri Group General is not entitled to a separate rate for purposes of the final results of that proceeding. See *2003/2004 Issues and Decision Memorandum*.

Therefore, effective as of the date of these final results, we will instruct CBP to assign Huanri Group the same

antidumping duty cash-deposit rate applicable to Huanri Group General. The cash-deposit requirement will be effective upon publication of this notice of final results of changed circumstances review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date.

This notice also serves as a final reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to timely notify the Department in writing of the return/destruction of APO material is a sanctionable violation.

We are issuing and publishing this finding and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.221(c)(3) and 19 CFR 351.216.

Dated: November 7, 2005.

**Stephen J. Claeys,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 05-22894 Filed 11-17-05; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-831]

#### **Fresh Garlic from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Preliminary Results of New Shipper Reviews**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** In response to requests from interested parties, the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on fresh garlic from the People's Republic of China ("PRC"). The period of review ("POR") for this administrative review is November 1, 2003, through October 31, 2004. The Department is also conducting new shipper reviews for two exporters/producers. The POR for the new shipper reviews is also November 1, 2003, through October 31, 2004.

One company named in the initiation of this review made no exports or sales of the subject merchandise during the POR and, consequently, we are preliminarily rescinding the review for

this company. In addition, we are preliminarily rescinding the review for four companies because the requesting party withdrew its request for reviews of those companies. Therefore, this review covers nineteen producers/exporters of the subject merchandise.

We preliminarily determine that thirteen of these companies have made sales in the United States at prices below normal value. Further, we preliminarily determine that the remaining six companies are not entitled to separate rates and have assigned them the rate for the PRC-wide entity. If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on entries of subject merchandise during the POR for which the importer-specific assessment rates are above *de minimis*.

We invite interested parties to comment on these preliminary results. Parties who submit comments are requested to submit with each argument a statement of the issue and a brief summary of the argument. We will issue the final results no later than 120 days from the date of publication of this notice.

**EFFECTIVE DATE:** November 18, 2005.

**FOR FURTHER INFORMATION CONTACT:** Blanche Ziv or Steve Williams, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4207 and (202) 482-4619, respectively.

**SUPPLEMENTARY INFORMATION:**

#### **Background**

On November 16, 1994, the Department published in the **Federal Register** the antidumping duty order on fresh garlic from the PRC. See *Antidumping Duty Order: Fresh Garlic From the People's Republic of China*, 59 FR 59209 (November 16, 1994). On November 1, 2004, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on fresh garlic from the PRC for the period November 1, 2003, through October 31, 2004. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 69 FR 63359 (November 1, 2004). In November 2004, the petitioners<sup>1</sup> requested an

<sup>1</sup> The petitioners are the members of the Fresh Garlic Producers Association: Christopher Ranch L.L.C.; The Garlic Company; Valley Garlic; and Vessey and Company, Inc.

administrative review of 21 companies pursuant to section 751(a) of the Tariff Act of 1930, as amended (“the Act”).<sup>2</sup> In November 2004, Weifang Shennong Foodstuff Co., Ltd. (“WSFC”), Shanghai LJ International Trading Co., Ltd. (“Shanghai LJ”), Hongda, Dong Yun, Harmoni, Linshu Dading, Sunny, Shanyang, and Ziyang, requested administrative reviews of their sale(s) to the United States during the POR.

On November 22, 2004, we received a request for a new shipper review from Zhangqui Qingyuan Vegetable Co., Ltd. (“Qingyuan”). On November 30, 2004, we received requests for new shipper reviews from Shanghai LJ and Huaiyang Huamei Foodstuff Co., Ltd.

(“Huamei”).<sup>3</sup> Pursuant to section 751(a)(2)(B) of the Act, and 19 CFR 351.214(d)(1), we initiated the following three new shipper reviews for shipments of fresh garlic from the PRC:

- (1) grown and exported by Qingyuan
- (2) grown and exported by Huamei, and
- (3) grown by San Li and exported by Shanghai LJ.

On December 27, 2004, the Department published in the **Federal Register** a notice of the initiation of the antidumping duty administrative review of fresh garlic from the PRC in which it initiated an administrative review of this order for the period November 1, 2003, through October 31, 2004. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 69 FR 77181 (December 27, 2005).

<sup>2</sup> The names of these companies are as follows: (1) Clipper Manufacturing Ltd. (“Clipper”); (2) Fook Huat Tong Kee Pte., Ltd. (“FHTK”); (3) H&T Trading Company (“H&T”); (4) Heze Ever-Best International Trade Co., Ltd. (“Ever-Best”); (5) Huaiyang Hongda Dehydrated Vegetable Company (“Hongda”); (6) Jinan Yipin Corporation, Ltd. (“Jinan Yipin”); (7) Jining Trans-High Trading Co., Ltd. (“Trans-High”); (8) Jining Yun Feng Agriculture Products Co., Ltd. (“Yun Feng”); (9) Jinxiang Dong Yun Freezing Storage Co., Ltd. (“Dong Yun”); (10) Jinxiang Hongyu Freezing and Storing Co., Ltd. (“Hongyu”); (11) Jinxiang Shanyang Freezing and Storage Co., Ltd. (“Shanyang”); (12) Linshu Dading Private Agricultural Products Co., Ltd. (“Linshu Dading”); (13) Linyi Sanshan Import & Export Trading Co., Ltd. (“Linyi”); (14) Pizhou Guangda Import and Export Co., Ltd. (“Guangda”); (15) Shandong Jining Jishan Textile Co., Ltd. (“Shandong Jining”); (16) Shanghai Ever Rich Trade Company (“Ever Rich”); (17) Sunny Import & Export Limited (“Sunny”); (18) Taian Ziyang Food Co., Ltd. (“Ziyang”); (19) Tancheng Country Dexing Foods Co., Ltd. (“Tancheng”); (20) Xiangcheng Yisheng Foodstuffs Co., Ltd. (“Yisheng”); and (21) Zhengzhou Harmoni Spice Co., Ltd. (“Harmoni”).

<sup>3</sup> Shanghai LJ requested an administrative and a new shipper review for its sales made during the POR. Because its request satisfied the requirements pursuant to section 751(a)(2)(B) of the Act, and 19 CFR 351.214(d)(1), we initiated a new shipper review for Shanghai LJ rather than an administrative review.

On January 5, 2005, the Department published a notice of the initiation of the new shipper reviews of Qingyuan, Shanghai LJ, and Huamei. See *Notice of Initiation of New Shipper Antidumping Duty Reviews: Fresh Garlic from the People's Republic of China*, 70 FR 779 (January 5, 2005).

In January 2005, we issued antidumping duty questionnaires to all companies noted above. On February 9, 2005, we received a timely filed submission from the petitioners withdrawing their request for review of Linyi, Shandong Jining, Tancheng, and Yisheng. On February 11, 2005, Ever Rich submitted a statement to the Department that it made no sales of subject merchandise during the POR.

In February and March 2005, we received questionnaire responses from WSFC, Dong Yun, Hongda, Harmoni, Jinan Yipin, Linshu Dading, Shanyang, Sunny, Trans-High, FHTK, Ziyang, Qingyuan, and Shanghai LJ. The Department issued supplemental questionnaires to and received responses from the above-mentioned companies from April through September 2005. Guangda, H&T, Hongyu, Yun Feng, Clipper, and Ever-Best did not respond to the Department's questionnaire. For the reasons discussed in the section below entitled “The PRC-Wide Rate and Use of Facts Otherwise Available,” we have determined that Guangda, H&T, Hongyu, Yun Feng, Clipper, and Ever-Best do not qualify for a separate rate and are instead part of the PRC entity.

On May 25, 2005, due to lack of participation, the Department rescinded the new shipper review with respect to Huamei. See *Fresh Garlic From the People's Republic of China; Notice of Rescission of Antidumping Duty New Shipper Review*, 70 FR 30081 (May 25, 2005).

In May and June 2005, the Department conducted harvest verifications for the following six companies: FHTK, Hongda, Shanghai LJ, Sunny, Trans-High, and Ziyang. On July 5, 2005, the Department published a notice in the **Federal Register** extending the time limit for the preliminary results of the new shipper reviews until October 25, 2005. See *Fresh Garlic From the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of New Shipper Reviews*, 70 FR 38656 (July 5, 2005). On August 3, 2005, we extended the deadline for the issuance of the preliminary results of the administrative review by 100 days, until November 10, 2005. See *Fresh Garlic From the People's Republic of China: Extension of Time Limit for the Preliminary Results*

*of Antidumping Duty Administrative Review*, 70 FR 44563 (August 3, 2005).

In September 2005, pursuant to 19 CFR 351.214(j)(3), the two new shipper respondents (*i.e.*, Shanghai LJ and Qingyuan) and the petitioners agreed to waive the time limits applicable to the new shipper reviews and to permit the Department to conduct the new shipper reviews concurrently with the administrative review. See Memorandum to the file, “Fresh Garlic from the People's Republic of China - Request for Alignment of the 11/01/03-10/31/04 Annual Administrative and New Shipper Reviews” dated September 16, 2005. We are conducting these reviews in accordance with section 751(a)(1) of the Act.

#### Period of Review

The POR is November 1, 2003, through October 31, 2004.

#### Scope of the Order

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

The scope of this order does not include the following: (a) garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 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 this 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 CBP to that effect.

### Preliminary Partial Rescissions of Administrative Reviews

Ever Rich claimed that it did not make shipments of subject merchandise to the United States during the POR. We conducted a data query of CBP entry information on subject merchandise and found no information indicating that there were U.S. entries during the POR of subject merchandise exported by Ever Rich. Therefore, for the reasons mentioned above and based on the results of our CBP query, we are preliminarily rescinding the administrative review with respect to Ever Rich because we found no evidence that it made shipments of the subject merchandise during the POR in accordance with 19 CFR 351.213(d)(3).

As noted above, the petitioners were the only parties to request an administrative review of Linyi, Shandong Jining, Tancheng, and Yisheng. Thus, because no other parties requested a review of these companies and the petitioners have withdrawn their request, we are also preliminarily rescinding the administrative review with respect to these companies in accordance with 19 CFR 351.213(d)(1).

### Non-market Economy Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a non-market economy ("NME") country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results 2001-2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003). None of the parties to this proceeding has contested such treatment. Accordingly, we calculated normal value ("NV") in accordance with section 773(c) of the Act, which applies to NME countries.

### Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production ("FOPs"), valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department

shall utilize, to the extent 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. The sources of the surrogate factor values are discussed under the "Normal Value" section below and in the "Factors Valuations for the Preliminary Results of the Administrative Review and New Shipper Reviews" memorandum, dated November 10, 2005 ("*Factor Valuation Memo*"), which is on file in the Central Records Unit ("CRU"), Room B-099 of the main Department building.

The Department has determined that India, Indonesia, Sri Lanka, the Philippines, and Egypt are countries comparable to the PRC in terms of economic development. *See the "Antidumping Duty Administrative Review of Fresh Garlic from the People's Republic of China (PRC): Request for a List of Surrogate Countries"* memorandum, dated January 24, 2005, which is on file in the CRU.

In addition to being among the countries comparable to the PRC in economic development, India is a significant producer of the subject merchandise. Therefore, we have used India as the surrogate country and, accordingly, have calculated NV using Indian prices to value the PRC producers' FOPs, when available and appropriate. *See the "Administrative Review of the Antidumping Duty Order of Fresh Garlic from the People's Republic of China: Selection of a Surrogate Country"* memorandum, dated October 20, 2005 ("*Surrogate Country Memo*"), which is on file in the CRU. We also invited parties to submit comments on the surrogate country selection for water valuation. For a detailed discussion of these comments, *see Factor Valuation Memo*. We have obtained and relied upon publicly available information wherever possible.

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in an antidumping administrative review and a new shipper review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results.

### Separate Rates

The Department has treated the PRC as an NME country in all past antidumping investigations. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China*, 65 FR 33805 (May 25, 2000), and *Notice of*

*Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China*, 65 FR 19873 (April 13, 2000). A designation as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act. Accordingly, there is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate.

It is the Department's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by the *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*").

For the reasons discussed in the section below entitled "The PRC-Wide Rate and Use of Facts Otherwise Available," we have determined that Guangda, H&T, Hongyu, Yun Feng, Clipper, and Ever-Best do not qualify for a separate rate and are instead part of the PRC entity.

Dong Yun, FHTK, Hongda, Harmoni, Linshu Dading, Sunny, Ziyang, Jinan Yipin, Trans-High, WSFC, Shanyang, Shanghai LJ, and Qingyuan all provided the requested separate-rate information in their responses to our original and supplemental questionnaires. Accordingly, consistent with *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 56570 (April 30, 1996), we performed separate-rates analyses to determine whether each producer/exporter is independent from government control.

#### A. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; and (2) any legislative enactments decentralizing control of companies.

With the exception of Guangda, H&T, Hongyu, Yun Feng, Clipper, and Ever-Best, each respondent has placed on the record a number of documents to demonstrate absence of *de jure* control including the “Foreign Trade Law of the People’s Republic of China” and the “Administrative Regulations of the People’s Republic of China Governing the Registration of Legal Corporations.” The Department has analyzed such PRC laws and found that they establish an absence of *de jure* control. See, e.g., *Preliminary Results of New Shipper Review: Certain Preserved Mushrooms From the People’s Republic of China*, 66 FR 30695 (June 7, 2001). We have no information in this proceeding that would cause us to reconsider this determination. Thus, we believe that the evidence on the record supports a preliminary finding of an absence of *de jure* government control based on: (1) an absence of restrictive stipulations associated with the exporter’s business license; and (2) the legal authority on the record decentralizing control over the respondent.

#### B. Absence of De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. See *Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People’s Republic of China*, 63 FR 72255 (December 31, 1998). Therefore, the Department has determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates. The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the exporter sets its own export prices independent of the government and without the approval of a government authority; (2) whether the respondent has the 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 its 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.

FHTK and Harmoni reported that they are wholly owned by foreign entities. Sunny, Ziyang, WSFC, Qingyuan, and Shanyang reported that they are

limited-liability companies owned by private investors. Hongda, Dong Yun, Jinan Yipin, Linshu Dading, Trans-High, and Shanghai LJ reported that they are limited-liability companies. Each has asserted the following: (1) There is no government participation in setting export prices; (2) sales managers and authorized employees have the authority to bind sales contracts; (3) they do not have to notify any government authorities of management selections; (4) there are no restrictions on the use of export revenue; (5) each is responsible for financing its own losses. The questionnaire responses of FHTK, Hongda, Jinan Yipin, Trans-High, Dong Yun, Linshu Dading, Sunny, Ziyang, Harmoni, WSFC, Shanghai LJ, Shanyang, and Qingyuan do not suggest that pricing is coordinated among exporters. During our analysis of the information on the record, we found no information indicating the existence of government control. Consequently, we preliminarily determine that FHTK, Hongda, Jinan Yipin, Trans-High, Dong Yun, Linshu Dading, Sunny, Ziyang, Harmoni, WSFC, Shanghai LJ, Shanyang, and Qingyuan have met the criteria for the application of a separate rate.

#### The PRC-Wide Rate and Use of Facts Otherwise Available

All respondents were given the opportunity to respond to the Department’s questionnaire. As explained above, we received questionnaire responses from FHTK, Hongda, Jinan Yipin, Trans-High, Dong Yun, Linshu Dading, Sunny, Ziyang, Harmoni, WSFC, Shanghai LJ, Shanyang, and Qingyuan. We have calculated a separate rate for each of these respondents. The PRC-wide rate applies to all other entries of subject merchandise except for entries from companies that have received their own rate based on the final results of a prior segment of this proceeding (e.g., Sunny).

Guangda, H&T, Hongyu, Yun Feng, Clipper, and Ever-Best, on the other hand, did not respond to the Department’s questionnaire. On January 4, 2005, the Department issued its antidumping duty questionnaire to Guangda, H&T, Hongyu, Yun Feng, Clipper, and Ever-Best. We have confirmed that the questionnaires we sent to these companies were each delivered and accepted. See Memorandum to the file, “2003/2004 Administrative Review and New Shipper Reviews of the Antidumping Duty Order on Fresh Garlic From the People’s Republic of China: Responses to Questionnaire,” dated November 7, 2005 (“*Questionnaire Response*

*Memo*”). Section 776(a)(2) of the Act provides that, if an interested party or any other person (A) withholds information that has been requested by the administering authority, or (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, the Department shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title. Furthermore, under section 782(c) of the Act, a respondent has the responsibility not only to notify the Department if it is unable to provide requested information, but also to provide a “full explanation and suggested alternative forms.” However, these respondents did neither. Because Guangda, H&T, Hongyu, Yun Feng, Clipper, and Ever-Best did not respond to the questionnaire, we preliminarily find that, in accordance with sections 776(a)(2)(A) and (B) of the Act, the use of total facts available is appropriate. See, e.g., *Final Results of Antidumping Duty Administrative Review for Two Manufacturers/Exporters: Certain Preserved Mushrooms from the People’s Republic of China*, 65 FR 50183, 50184 (August 17, 2000).

Section 776(b) of the Act provides that, if the Department finds that an interested party “has failed to cooperate by not acting to the best of its ability to comply with a request for information,” the Department may use information that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.” See Statement of Administrative Action (“SAA”) accompanying the Uruguay Round Agreements Act, H. Doc. No. 103-316, at 870 (1994). Section 776(b) of the Act authorizes the Department to use as adverse facts available information derived from the petition, the final determination from the less-than-fair-value (“LTFV”) investigation, a previous administrative review, or any other information placed on the record.

As noted above, Guangda, H&T, Hongyu, Yun Feng, Clipper, and Ever-Best did not respond to the Department’s questionnaire. Because they did not provide responses to the Department’s questionnaire, the Department is unable to determine whether Guangda, H&T, Hongyu, Yun Feng, Clipper, and Ever-Best are eligible for separate rates. Thus, Guangda, H&T, Hongyu, Yun Feng, Clipper, and Ever-Best have not rebutted the presumption

of government control and are presumed to be part of the PRC entity.

The PRC entity (including Guangda, H&T, Hongyu, Yun Feng, Clipper, and Ever-Best) failed to cooperate to the best of its ability in this administrative review, thus making the use of an adverse inference appropriate. Therefore, in accordance with the Department's practice, as adverse facts available, we have preliminarily assigned to the PRC entity the rate of 376.67 percent from the LTFV investigation, the highest rate determined in the current or any previous segment of this proceeding.

#### Corroboration of Secondary Information

Section 776(c) of the Act requires that the Department corroborate, to the extent practicable, a figure which it applies as facts available that is based on secondary information. To corroborate information, the Department examines whether it is both reliable and relevant. Throughout the history of this proceeding, the highest rate ever determined has been 376.67 percent; it is currently the PRC-wide rate and was calculated based on information contained in the petition. See *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Garlic from the People's Republic of China*, 59 FR 49058, 49059 (September 26, 1994). The information contained in the petition was corroborated, to the extent practicable, for the preliminary results of the first administrative review. See *Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review*, 61 FR 68229, 68230 (December 27, 1996). Further, it was corroborated in subsequent reviews to the extent that the Department referred to the history of corroboration and found that the Department received no information that warranted revisiting the issue. See *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). Similarly, no information has been presented in the current review that calls into question the reliability of this information. Thus, the Department finds that the information is reliable.

With respect to the relevance aspect of corroboration, the Department stated in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of*

*Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) ("TRBs"), that it will "consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin." See *TRBs*, 61 FR at 57392. See also *Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (disregarding the highest margin in the case as best information available because the margin was based on another company's uncharacteristic business expense resulting in an extremely high margin).

To assess the relevancy of the rate used, the Department compared the margin calculations of all respondents in these reviews with the current PRC-wide rate (i.e., 376.67 percent). The Department found that the margin of 376.67 percent was within the range of the highest margins calculated on the record of these reviews. See memorandum to the file, "2003-2004 Antidumping Duty Administrative Review of Fresh Garlic from the People's Republic of China: Corroboration of the PRC-Wide Adverse Facts-Available Rate," dated November 10, 2005. Because the record of this administrative review contains margins within the range of 376.67 percent, we determine that the rate from the investigation continues to be relevant for use in these reviews.

The rate we are using for this review is the rate currently applicable to all exporters subject to the PRC-wide rate. Further, there is no information on the administrative record of the current review that indicates the application of this rate would be inappropriate or that the margin is not relevant. Therefore, for all sales of subject merchandise exported by Guangda, H&T, Hongyu, Yun Feng, Clipper, Ever-Best and all other non-reviewed PRC exporters, we have applied as adverse facts available, the 376.67 percent margin from the LTFV investigation and have satisfied the corroboration requirements under section 776(c) of the Act. See *Persulfates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 66 FR 18439, 18441 (April 9, 2001) (employing a petition rate used as adverse facts available in a previous segment as adverse facts available in the current review).

#### Export Price

For FHTK, Trans-High, Dong Yun, Linshu Dading, Sunny, Shanghai LJ, Qingyuan, WSFC, Shanyang, Hongda, and Ziyang, we based the U.S. price on export price ("EP"), in accordance with section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation and CEP was not otherwise warranted by the facts on the record. We calculated EP based on the packed price from the exporter to the first unaffiliated customer in the United States.

For Sunny, we deducted foreign inland freight, foreign brokerage and handling, international ocean freight, U.S. brokerage and handling, import duties, U.S. warehousing expenses, demurrage charges, and U.S. inland freight expenses from the gross unit price, in accordance with section 772(c) of the Act.

For Dongyun, we deducted foreign inland freight, foreign brokerage and handling, international ocean freight, and marine insurance from the gross unit price, in accordance with section 772(c) of the Act.

For Trans-High, FHTK, WSFC, Hongda, and Ziyang, we deducted foreign inland freight and foreign brokerage and handling from the gross unit price, in accordance with section 772(c) of the Act.

For Linshu Dading, we deducted foreign inland freight, international ocean freight, foreign brokerage and handling, marine insurance, U.S. brokerage and handling, and U.S. import duties from the gross unit price, in accordance with section 772(c) of the Act.

For Shanghai LJ, we deducted foreign inland freight, and foreign brokerage and handling from the gross unit price, in accordance with section 772(c) of the Act.

For Shanyang, we only deducted foreign inland freight expenses from the gross unit price, in accordance with section 772(c) of the Act, because Shanyang reported that all shipments were FOB Qingdao and all other shipping and handling expenses were paid by the U.S. customer.

For Qingyuan, we deducted foreign inland freight, U.S. brokerage and handling, and international freight expenses from the gross unit price, in accordance with section 772(c) of the Act.

#### Constructed Export Price

In accordance with section 772(b) of the Act, we used CEP methodology when the first sale to an unaffiliated purchaser occurred after importation of

the merchandise into the United States. We calculated the CEP for Jinan Yipin and Harmoni based on the sales made by their U.S. affiliates to unaffiliated U.S. customers. We based CEP on delivered prices to the first unaffiliated purchaser in the United States.

For Jinan Yipin, we made adjustments to the gross unit price for foreign inland freight from processing facility to port of exit, international ocean freight, U.S. inland freight from port to customer, demurrage charges, U.S. brokerage and handling expenses, U.S. inspection charges, and U.S. import duties. In accordance with section 772(d)(1) of the Act, we also deducted those selling expenses associated with economic activities occurring in the United States, including credit expenses, billing adjustments and indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

For Harmoni, we made adjustments to the gross unit price for foreign inland freight, international ocean freight, U.S. FDA inspection charges, U.S. brokerage and handling expenses, and U.S. import duties. In accordance with section 772(d)(1) of the Act, we also deducted those selling expenses associated with economic activities occurring in the United States, including credit expenses and indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

As all foreign inland freight, foreign warehouse expenses, foreign brokerage and handling, and marine insurance expenses (where applicable) were provided by PRC service providers or paid for in renminbi, we valued these services using Indian surrogate values (see "Factor Valuations" section below for further discussion). Where applicable, we used the reported expense for international freight because the respondents used market economy freight carriers and paid in a market economy currency. See *Factor Valuation Memo*. For a more detailed explanation of the company-specific adjustments that we made in the calculation of the dumping margins for these preliminary results, see the company-specific preliminary results analysis memoranda, dated November 10, 2005, on file in the CRU.<sup>4</sup>

<sup>4</sup> See Memorandum to the file entitled, "Analysis for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Sunny Import & Export Co. Ltd.," dated November 10, 2005, Memorandum to the file entitled, "Analysis for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Fook

## Normal Value

### 1. Methodology

The Department's general policy, consistent with section 773(c)(1)(B) of the Act, is to calculate NV using each of the FOPs that a respondent consumes in the production of a unit of the subject merchandise. There are circumstances, however, in which the Department will modify its standard FOP methodology, choosing to apply a surrogate value to an intermediate input instead of the individual FOPs used to produce that intermediate input. In some cases, a respondent may report factors used to produce an intermediate input that accounts for an insignificant share of total output. When the potential increase in accuracy to the overall calculation that results from valuing each of the FOPs is outweighed by the

Huat Tong Kee Pte., Ltd.," dated November 10, 2005, Memorandum to the file entitled, "Analysis for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Huaiyang Hongda Dehydrated Vegetable Company," dated November 10, 2005, Memorandum to the file entitled, "Analysis for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Jinan Yipin Corporation, Ltd.," dated November 10, 2005, Memorandum to the file entitled, "Analysis for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Jining Trans-High Trading Co., Ltd.," dated November 10, 2005, Memorandum to the file entitled, "Analysis for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Jinxiang Dong Yun Freezing Storage Co., Ltd.," dated November 10, 2005, Memorandum to the file entitled, "Analysis for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Jinxiang Shanyang Freezing and Storage Co., Ltd.," dated November 10, 2005, Memorandum to the file entitled, "Analysis for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Linshu Dading Private Agricultural Products Co., Ltd.," dated November 10, 2005, Memorandum to the file entitled, "Analysis for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Taian Ziyang Food Co., Ltd.," dated November 10, 2005, Memorandum to the file entitled, "Analysis for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Zhengzhou Harmoni Spice Co., Limited," dated November 10, 2005, Memorandum to the file entitled, "Analysis for the Preliminary Results of the New Shipper Review of Fresh Garlic from the People's Republic of China: Zhangqui Quingyuan Vegetable Co., Ltd.," dated November 10, 2005, Memorandum to the file entitled, "Analysis for the Preliminary Results of the New Shipper Review of Fresh Garlic from the People's Republic of China: Shanghai LJ International Trading Co., Ltd.," dated November 10, 2005, and Memorandum to the file entitled, "Analysis for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Weifang Shennong Foodstuff Co., Ltd.," dated November 10, 2005.

resources, time, and burden such an analysis would place on all parties to the proceeding, the Department has valued the intermediate input directly using a surrogate value. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China*, 68 FR 4753 (August 11, 2003), and accompanying Issues and Decision Memorandum at Comment 1 ("PVA") (which cites to *Certain Preserved Mushrooms from the People's Republic of China: Final Results of First New Shipper Review and First Antidumping Duty Administrative Review*, 66 FR 31204 (June 11, 2001), and accompanying Issues and Decision Memorandum at Comment 2 ("Mushrooms")).

Also, there are circumstances in which valuing the FOPs used to yield an intermediate product would lead to an inaccurate result because the Department would not be able to account for a significant element of cost adequately in the overall factors buildup. In this situation, the Department would also value the intermediate input directly. For example, in a recent case, the Department determined that, if it were to value the respondent's factors used in extracting iron ore, an input to wire rod, it would not account sufficiently for the associated capital costs, given that the surrogate company it used for valuing overhead did not have a mining operation. See *Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Ukraine*, 67 FR 55785 (August 30, 2002), and *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China*, 66 FR 49632 (September 28, 2001). See also *Mushrooms* at Comment 2.

In other cases, after careful consideration of the record, the Department has determined that valuing the intermediate input for the production of subject merchandise leads to a more accurate result than valuing the individual FOPs. See *Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam*, 68 FR 498, 449 (January 31, 2003), and *Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic*



of Vietnam, 68 FR 37116 (June 23, 2003).

For the final results of the previous administrative review,<sup>5</sup> the Department expressed its concern that based on the information on the record, we might not be accurately capturing the complete costs of producing fresh garlic. We concluded that many questions remained unanswered pertaining to the adequacy of the methodology applied therein, and its ability to accurately record and substantiate the complete costs of growing garlic. We further identified concerns regarding the potential limitations in confirming reported FOP usage rates through verification in cases in which the respondents' books and records do not track this data. Thus, in light of these concerns and the numerous unresolved issues pertaining to the production of fresh garlic, the Department stated that it would fully examine all of these issues, and consider the appropriateness of alternative calculation methodologies in subsequent administrative reviews of this antidumping duty order.

In the course of this review proceeding, the Department has requested and obtained a vast amount of detailed information from the respondents with respect to each company's garlic production practices. Based on our analysis of the information on the record and for the reasons outlined in the memorandum to the file titled, "2003-2004 Administrative and New Shipper Reviews of the Antidumping Duty Order on Fresh Garlic From the People's Republic of China: Intermediate Input Methodology," dated November 10, 2005 ("Intermediate Product Memo"), we believe that the respondents are unable to accurately record and substantiate the complete costs of growing garlic.

Specifically, evidence on the record indicates that the respondents' records are deficient in recording reported labor usage. The processes required for growing, harvesting, and processing fresh garlic in the PRC are very labor-intensive. From planting, tending (e.g., taking care of plants), maintenance, harvesting, transporting from one area to another, to processing into subject merchandise, PRC garlic producers rely on a sizeable workforce, which incurs many man-hours to carry out these activities. In May and June 2005, the Department conducted a harvest verification of six companies (i.e.,

Sunny, FHTK, Hongda, Shanghai LJ, Trans High, and Ziyang).<sup>6</sup> Our verification findings included major discrepancies between the harvesting labor reported and that observed during verification for all six verified companies.<sup>7</sup> The Department's harvest verification demonstrated that five of the six companies significantly under-reported harvesting labor while the remaining company over-reported harvesting labor. The Department issued a series of supplemental questionnaires to all respondents in the instant segments of this proceeding, both to those companies that were verified and those that were not, in order to address several concerns which were raised during the course of the previous administrative review with respect to the companies' reported growing- and harvesting-related labor FOPs. Based on the responses to these questionnaires, and on the information gathered during verification, we conclude that, in general, the respondents in this industry do not track actual labor hours incurred for these activities and, thus, do not maintain appropriate records which would allow them to quantify, report and substantiate this information. For further discussion, see *Intermediate Product Memo* and *Harvest Verification Reports*.

Further, we found significant problems with respondents' ability to report yield loss that results from the shrinkage that occurs during the production of garlic due to the loss of water weight and the discarding of roots, stems, and skins during processing. In the Department's margin calculations, a yield loss adjustment factor (i.e., yield loss ratio) must be applied to the respondents' reported

direct materials, labor, energy, and by-product FOPs to reflect the yield loss that occurs from the time the garlic is harvested through the production and sale of the final product because, as discussed above, significant yield loss or shrinkage occurs during the production of the subject merchandise. In order to derive a complete and accurate yield loss ratio, the respondents' books and records must record the products' weight at a series of specific points in the production cycle.

Based on our analysis of the information provided by the respondents, and gathered at verification, we found that each of the garlic producers in the PRC record garlic production quantities at different points during the harvesting and processing of garlic. We found that the respondents calculated these ratios on partial values, or at inconsistent and incomplete points in the production cycle. Thus, we found that the reported yield loss figures varied significantly among respondents, are not an accurate reflection of the losses incurred by the PRC garlic producers, and that the NVs calculated using these yield loss figures are understated. For further discussion, see *Intermediate Product Memo*.

We also noted that there are many unknown variables that may affect or influence reported FOPs which are not accounted for in the respondents' books and records. The respondents' ability to measure and report accurate FOPs to the Department is greatly diminished by the fact that they lease the land on which the garlic is grown. Respondents in these reviews typically lease the land used for growing garlic for a period of nine months (i.e., the garlic growing season). The remaining three months are referred to as the "off-season." Most respondents report no specific or detailed knowledge of either the off-season crops produced on such leased land, crops produced on this leased land concurrently with the garlic, or the impact that residual inputs (e.g., nutrients, pesticide, herbicide, water) may have on their garlic crops. For further discussion, see *Intermediate Product Memo*.

We found that the respondents also differed significantly in how each reported its garlic seed usage. For example, some respondents purchased all of the seed required for planting, others used seed exclusively reserved from the previous harvest, while the remaining companies used both purchased and reserved seed. Among the respondents that used reserved seed, some reported the amount of seed actually planted (i.e., the "net" amount

<sup>5</sup> See *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 34082 (June 13, 2005) and accompanying Issues and Decisions Memorandum at Comment 1.

<sup>6</sup> See "Harvest Verification of Taiyan Ziyang Food Company, Ltd. in the 2003/2004 Administrative Review of Fresh Garlic from the People's Republic of China," dated November 9, 2005, "Harvest Verification of Taian Fook Huat Tong Kee Foodstuffs Co., Ltd. in the 2003/2004 Administrative Review of Fresh Garlic from the People's Republic of China," dated November 9, 2005, "Harvest Verification of Jining Trans-High Trading Company, Ltd. in the 2003/2004 Administrative Review of Fresh Garlic from the People's Republic of China," dated November 9, 2005, "Harvest Verification of Huaiyang Hongda Dehydrated Vegetable Co., Ltd. in the 2003/2004 Administrative Review of Fresh Garlic from the People's Republic of China," dated November 10, 2005, "Harvest Verification of Sunny Import and Export Co., Ltd. in the 2003/2004 Administrative Review of Fresh Garlic from the People's Republic of China," dated November 10, 2005, and "Harvest Verification of Henan Xiang Cheng Sunny (San Li) Foodstuff Factory, the Supplier of Shanghai LJ International Trading Co., Ltd. in the 2003/2004 New Shipper Review of Fresh Garlic from the People's Republic of China," dated November 10, 2005 (collectively, "Harvest Verification Reports"), on file in the CRU.

<sup>7</sup> See *Harvest Verification Reports*.

exclusive of skins, bulb plates, etc.) while others reported the total amount of seed reserved from the previous harvest (i.e., the "gross" amount with the skins, bulb plates, etc. still intact). In addition, we note that there appear to be varying levels of "gross" and "net" quantities that have a specific and different meaning for each respondent. "Net" for some respondents means the quantity of cloves planted in the ground while for others, "net" means the quantity of garlic, saved from the previous harvest, that is pulled from inventory for planting. In those instances where a respondent reported the net amount of seed used, we have determined that NV is understated because the respondent incurred a cost for the gross amount of seed either reserved or purchased for planting that is not accounted for in the FOP reported for seed consumption. For further discussion, see *Intermediate Product Memo*.

Finally, the Department conducts verification in administrative and new shipper reviews to confirm the accuracy of the data reported by the respondents to the Department in a proceeding. As part of verification in cases involving NMEs, the Department must be able to reconcile the data submitted in the questionnaire responses to the respondent's books and records, and, observe on-site production activities during verification. When the respondent's books and records do not contain a level of detail sufficient to substantiate the information required to report accurate FOP data, there is, in essence, no document trail through which the Department can conduct such a verification. We find that the PRC garlic industry has adopted and accepted a practice of maintaining either very basic records of its farms' growing and harvesting activities or, as detailed in the *Intermediate Product Memo*, no records at all. This record-keeping is sufficient for farmers in the PRC garlic industry to successfully grow and harvest garlic. However, the combination of lack of detailed records, unclear schedules, and the multi-staged production process occurring over several months as it relates to planting, tending, and harvesting activities significantly inhibits the Department's ability to conduct a meaningful verification of reported information.

In the previous administrative review, several concerns were raised with respect to the companies' reported growing and harvesting-related FOPs. To address these concerns, the Department issued a series of supplemental questionnaires to all respondents in the instant segments of

this proceeding, both to those companies that were verified and those that were not. In response to those questionnaires, and based on information gathered at verification, the Department has determined that the books and records maintained by the respondents do not report or account for all of the relevant information and do not allow the respondents to identify all of the FOPs necessary to grow and harvest garlic. See *Intermediate Product Memo*. Further, the respondents' books and records (e.g., inventory ledgers) do not allow us or the respondents themselves to derive accurate factor usage rates, which are necessary to the NME calculation methodology for NV. In addition, actual farms operated by each respondent are difficult to identify and locate as the respondents cannot provide detailed maps clearly marking the territories of their farms. Thus, the only way to derive complete and precise FOP data, without sufficiently detailed records, is for the Department to physically measure and observe each of these various production activities as they occur, as part of verification. As this would require the Department to be present throughout every day of planting, tending, and harvesting for each respondent, the calculation (and verification) of accurate and complete FOPs is a virtual impossibility. Given that garlic is grown and harvested in one production cycle over a nine-month period, the Department can only verify the one growing/harvesting activity that is occurring at a particular point in the growing season.

Thus, in these reviews, in order to eliminate the distortions in our calculation of NV for all of the reasons identified above and described in the *Intermediate Product Memo*, we applied an "intermediate-product valuation methodology" to all companies for these preliminary results of review. Using this methodology, we calculated NV by starting with a surrogate value for the garlic bulb (i.e., the "intermediate product"), adjusted for yield losses during the processing stages, and adding the respondents' processing costs, which were calculated using their reported usage rates for processing fresh garlic. For a complete explanation of the Department's analysis, and for a more detailed analysis of these issues with respect to each respondent, see *Intermediate Product Memo*.

In future reviews, should a respondent be able provide sufficient factual evidence that it maintains the necessary information in its internal books and records that would allow us to establish the completeness and accuracy of the reported FOPs, we will

revisit this issue and consider whether to use its reported FOPs in the calculation of NV. For further details, see *Intermediate Product Memo*.

## 2. Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on the intermediate product value and processing FOPs reported by the respondents for the POR. To calculate NV, we multiplied the reported per-unit factor quantities by publicly available surrogate values in India with the exception of the surrogate value for ocean freight, which we obtained from an international freight company. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. We calculated these freight costs based on the shorter of the reported distance from the domestic supplier to the factory or the distance from the port in accordance with the decision in *Sigma Corporation v. United States*, 117 F. 3d 1401, 1407-08 (Fed. Cir. 1997). 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. sale(s) as certified by the U.S. Federal Reserve Bank. For a detailed description of all the surrogate values we used, see the *Factor Valuation Memo*.

For those Indian rupee values not contemporaneous with the POR, we adjusted for inflation using wholesale price indices for India published in the International Monetary Fund's *International Financial Statistics*. Surrogate-value data or sources to obtain such data were obtained from the petitioners, the respondents, and the Department's research.

Except as specified below, we valued the intermediate and processing inputs using the weighted-average unit import values derived from the *World Trade Atlas*, provided by the Global Trade Information Services, Inc. The source of these values, contemporaneous with the POR, was the Directorate General of Commercial Intelligence and Statistics of the Indian Ministry of Commerce and Industry.

*Garlic Bulb:* We reviewed several data sources submitted to the record of these reviews by respondents and the petitioners. Although the data sources were submitted by interested parties for consideration as the surrogate value for garlic seed, we reviewed the sources to evaluate their use to value the intermediate bulb (i.e., the intermediate product) as well as for seed. Our review of information on the administrative



record for this proceeding indicates that garlic values sourced from the National Horticultural Research and Development Foundation 2003 ("NHRDF") in India are specific to seed and are not appropriate for valuation of the intermediate bulb. Research conducted by the Department revealed that the garlic sold by NHRDF is intended only for use as seed for planting rather than for processing. See "Memorandum to the File from Steve Williams," dated October 21, 2005, available in the CRU. We continue to believe that the pricing information of the NHRDF represents the most appropriate surrogate seed values for the type of high-quality garlic produced by the respondents in these reviews. However, because we are not using the respondents' reported growing FOPs (e.g., seed, herbicide, pesticide, fertilizer, etc.) used to produce the intermediate bulb, we find that the NHRDF values are not the most appropriate data for use as a value for the intermediate bulb.

While we believe that the import values for garlic derived from the *World Trade Atlas* do not allow us to ascertain the quality or nature of the garlic products (i.e., bulbs, loose cloves, etc.) entered under the applicable Indian Harmonized Tariff Schedule ("HTS") category, we find that they are the best publicly available data on the record of this proceeding to value the intermediate bulb. Thus, we used the POR weighted-average unit import values for garlic derived from the *World Trade Atlas* to value the intermediate bulb for these preliminary results. We invite interested parties to submit publicly available information to value the garlic bulb for consideration for the final results of this proceeding. This information and other surrogate value submissions are due within 20 days after the date of publication of these preliminary results.

In addition, if a respondent reported that it purchased its garlic from an unaffiliated supplier prior to processing, we included a freight cost from the garlic bulb supplier to the company's processing facility. We did not include a freight cost for the garlic bulb if the respondent grew and processed its own garlic. For further details, see *Factor Valuation Memo*.

**Energy and Water:** To value electricity and diesel, we used values from the International Energy Agency to calculate a surrogate value for each in India for 2000, and adjusted for inflation. To value water, we used the rates from the website maintained by the Maharashtra Industrial Development Corporation (<http://www.midcindia.org/>), which

shows industrial water rates from various areas within the Maharashtra Province, India ("Maharashtra Data"). The Maharashtra data is publicly available and contemporaneous with the POR.

**Packing:** The respondents reported packing inputs consisting of plastic nets/mesh bags, paper cartons, plastic packing bands, tape, wood used for producing pallets, nails used for producing pallets, plastic jars, plastic jar lids, plastic jar inserts, plastic tubes, nitrogen gas, antiseptic, metal clips, labels, glue, and cardboard. All of these inputs were valued using import data from the *World Trade Atlas* that covered the POR.

**Labor:** We valued labor, consistent with 19 CFR 351.408(c)(3), using the PRC regression-based wage rate as reported on Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in November 2005, and posted to Import Administration's website at <http://ia.ita.doc.gov/wages>. The source of this wage rate data on Import Administration's web site is the Yearbook of Labour Statistics 2003, International Labor Office, (Geneva: 2003), Chapter 5B: Wages in Manufacturing (<http://laborsta.ilo.org>). The years of the reported wage rates range from 1998 to 2003. Because this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by the respondent. See *id.*

**Land Value and Cold Storage:** We find that, based on the use of intermediate product, the market value of the intermediate product (i.e., the garlic bulb) already accounts for the cost of leasing the land used to grow garlic as well as any cold storage costs incurred prior to processing. Therefore, we did not value land or cold storage for these preliminary results of review because doing so might result in double counting of these costs.

**By-product:** The respondents claimed an adjustment for revenue earned on the sale of garlic sprouts. We find that because the market value of the intermediate product (i.e., the garlic bulb) already accounts for the experience of the grower's sale of any by-product produced while growing garlic, we have not made a by-product offset amount from NV.

**Movement Expenses:** We valued the truck rate based on an average of truck rates that were published in the Indian publication *Chemical Weekly* during the POR. We valued foreign brokerage and handling charges based on an average

value calculated in *Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From India*, 66 FR 50406 (October 3, 2001), and *Notice of Final Determination of Sales at Less than Fair Value: Carbazole Violet Pigment 23 from India*, 69 FR 67306 (November 17, 2004). We adjusted data not contemporaneous with the POR when appropriate. For ocean freight, we used the rate quotes from the website maintained by Maersk Sealand ([www.maersksealand.com](http://www.maersksealand.com)) for the movement of refrigerator containers from the PRC to the east and west coasts of the United States because it is publicly available and contemporaneous with the POR. We used these quotes to calculate a surrogate freight rate for each coast. For marine insurance, we relied on rate quotes from RJG Consultants ([www.rjgconsultants.com](http://www.rjgconsultants.com)) dating from the POR for the movement of refrigerated containers from the PRC to the east and west coasts of the United States. We used this data because it is publicly available and contemporaneous with the POR.

**Financial Expenses:** As discussed in the *Factor Valuation Memo*, the respondents submitted the publicly available financial information of four companies. The petitioners did not submit any financial statements for these preliminary results. Because we are using an intermediate methodology for all respondents in these reviews, it is important to use financial ratios derived from a surrogate company whose financial expenses do not include upstream costs (i.e., growing costs) to avoid double-counting factory overhead, selling, general and administrative expenses, and profit. We preliminarily conclude that the financial information of Preethi Tea Industry Private Limited ("Preethi") and Limtex India Limited ("Limtex"), tea producers in India, are most representative of the financial experiences of the respondent companies because they process an intermediate product prior to its sale. We are not using the financial information of The Moran Tea Co. (India) Ltd. because this company appears to grow the majority of its raw materials, and thus, the information reflects the financial experience of a fully-integrated company. We also are not using the financial information of Dakash Foods because it does not contain enough information from which to ascertain whether the company is comparable to the PRC respondents.

Thus, to value factory overhead, and selling, general and administrative expenses, we used rates based on data

taken from the 2002/2003 and 2003/2004 financial statements of Preethi and Limtex for these preliminary results. Preethi's 2002/2003 financial statement did not report a profit. Therefore, for purposes of these preliminary results we excluded the profit ratio that was reported on its 2002/2003 financial statement. See *Factor Valuation Memo* for a more complete discussion of the Department's analysis.

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to value FOPs, but when a producer sources an input from a market economy and pays for it in market economy currency, the Department will normally value the factor using the actual price paid for the input. See 19 CFR 351.408(c)(1). See also *Lasko Metal Products v. United States*, 43 F.3d 1442, 1445-46 (Fed. Cir. 1994). However, when the Department has reason to believe or suspect that such prices may be distorted by subsidies, the Department will disregard the market economy purchase prices and use surrogate values to determine the NV. See *Notice of Amended Final Determination of Sales at Less than Fair Value: Automotive Replacement Glass Windshields from the People's Republic of China ("PRC")*, 67 FR 11670 (March 15, 2002).

**Preliminary Results of the Administrative and New Shipper Reviews**

We preliminarily find that the following weighted-average dumping margins exist for the period November 1, 2003, through October 31, 2004:

Producer/Manufacturer/Exporter	Weighted-Average Percent Margin
Jinan Yipin Corporation, Ltd. ....	13.86
Jinxiang Dong Yun Freezing Storage Co., Ltd. ....	0.04 ( <i>de minimis</i> )
Fook Huat Tong Kee Pte., Ltd. ..	0.64
Huaiyang Hongda Dehydrated Vegetable Company .....	0.00
Linshu Dading Private Agricultural Products Co., Ltd. ....	23.17
Sunny Import & Export Limited ..	3.96
Taian Ziyang Food Co., Ltd .....	0.45 ( <i>de minimis</i> )
Jining Trans-High Trading Co., Ltd. ....	0.00
Zhengzhou Harmoni Spice Co., Ltd. ....	0.00
Weifang Shennong Foodstuff Co., Ltd. ....	0.00
Jinxiang Shanyang Freezing and Storage Co., Ltd. ....	27.82
Shanghai LJ International Trading Co., Ltd. ....	0.00

Producer/Manufacturer/Exporter	Weighted-Average Percent Margin
Zhangqiu Qingyuan Vegetable Co., Ltd. ....	11.48
PRC-Wide Entity <sup>8</sup> .....	376.67

<sup>8</sup>The PRC-wide entity includes: Guangda, H&T, Hongyu, and Yun Feng.

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. See 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication of these preliminary results of review. See 19 CFR 351.309(d).

Any interested party may request a hearing within 30 days of publication of these preliminary results. See 19 CFR 351.310(c). Requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If we receive a request for a hearing, we plan to hold the hearing seven days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Department will issue the final results of this administrative review and new shipper reviews, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

**Assessment Rates**

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of this administrative review. If these preliminary results are adopted in our final results of review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an exporter/importer (or customer)-specific assessment rate or value for

merchandise subject to this review. For these preliminary results we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each applicable importer. In these reviews, we will direct CBP to assess importer (or customer)-specific assessment rates based on the resulting per-unit (*i.e.*, per kilogram) amount on each entry of the subject merchandise during the POR.

**Cash Deposit Requirements**

Bonding will no longer be permitted to fulfill security requirements for shipments of fresh garlic from the PRC produced by San Li and exported by Shanghai LJ, and produced and exported by Qingyuan that are entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these new shipper reviews. The following cash deposit requirements will be effective upon publication of the final results of these new shipper reviews for all shipments of subject merchandise from Shanghai LJ and Qingyuan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise produced by San Li and exported by Shanghai LJ, and produced and exported by Qingyuan, the cash deposit rate will be that stipulated in the final results of review, except, no cash deposit will be required if the cash deposit rate calculated in the final results is zero or *de minimis*; (2) for subject merchandise exported by Shanghai LJ but not manufactured by San Li, the cash deposit rate will continue to be the PRC-wide rate (*i.e.*, 376.67 percent); and (3) for subject merchandise exported by Qingyuan, but manufactured by any other party, the cash deposit rate will be the PRC-wide rate.

The following cash deposit requirements will be effective upon publication of the final results of the administrative review for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, also as provided by section 751(a)(2)(C) of the Act: (1) for subject merchandise exported by Dong Yun, FHTK, Hongda, Jinan Yipin, Linshu Dading, Sunny, Ziyang, Trans-High, Harmoni, WSFC, and Shanyang, the cash-deposit rate will be that established in these final results of review (except where the rate is *de minimis*, *i.e.*, less than 0.5 percent, no cash deposit will be required); (2) for anyone that is not reviewed here but has a separate rate from a prior segment, the

rate will be from that segment; (3) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 376.67 percent; (4) for all non-PRC exporters of subject merchandise, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

#### Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative and these new shipper reviews and this notice are in accordance with sections 751(a)(1), 751(a)(2)(B), and 777(i) of the Act, and 19 CFR 351.213(g), 351.214(h) and 352.221(b)(4).

Dated: November 10, 2005.

**Stephen J. Claeys,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E5-6391 Filed 11-17-05; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-580-825]

#### Notice of Extension of Time Limit for Final Results of Administrative Review: Oil Country Tubular Goods, Other Than Drill Pipe, from Korea

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** November 18, 2005.

**FOR FURTHER INFORMATION CONTACT:** Scott Lindsay or Nicholas Czajkowski, Office of AD/CVD Operations 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-0780 and (202) 482-1395, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On September 22, 2004, the Department of Commerce ("the Department") published in the **Federal Register** the notice of initiation of the administrative review of the antidumping duty order on oil country tubular goods, other than drill pipe, from Korea, covering the period August 1, 2003, through July 31, 2004 (69 FR 56745). On September 8, 2005, the Department published the preliminary results of this administrative review. See *Oil Country Tubular Goods, Other Than Drill Pipe, from Korea: Preliminary Results of Antidumping Duty Administrative Review* (70 FR 53340).

#### Extension of Time Limits for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an antidumping duty order for which a review is requested and issue the final results within 120 days after the date on which the preliminary results are published. However, if the Department finds it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Due to the complexity of issues related to the cost of production and because the Department intends to verify respondents' SeAH Steel Corporation's and Husteel Company, Ltd.'s questionnaire responses, the Department finds that it is not practicable to complete the final results in this administrative review of oil country tubular goods, other than drill pipe, from Korea by January 6, 2006. Therefore, the Department is extending the time limit for completion of the final results until no later than March 7, 2006, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(1), 751(a)(3)(A), and 777(i)(1) of the Act.

Dated: November 10, 2005.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E5-6390 Filed 11-17-05; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

#### Information Security and Privacy Advisory Board: Request for Nominations

**AGENCY:** National Institute of Standards and Technology (NIST), DOC.

**ACTION:** Request for nominations of members to serve on the Information Security and Privacy Advisory Board.

**SUMMARY:** NIST invites and requests nominations of individuals for appointment to the Information Security and Privacy Advisory Board (ISPAB). NIST will consider nominations received in response to this notice for appointment to the Board, in addition to nominations already received.

**DATES:** The nomination period is open-ended.

**ADDRESSES:** Please submit nominations to Pauline Bowen, NIST, 100 Bureau Drive, M.S. 8930, Gaithersburg, MD 20899-8930. Nominations may also be submitted via fax to 301-975-4007, Attn: ISPAB Nominations.

Additional information regarding the Board, including its charter and current membership list, may be found on its electronic home page at: <http://csrc.nist.gov/ispab/>.

**FOR FURTHER INFORMATION CONTACT:** Pauline Bowen, ISPAB Designated Federal Official, NIST, 100 Bureau Drive, M.S. 8930, Gaithersburg, MD 20899-8930; telephone 301-975-2938; fax: 301-965-2938; or via e-mail at [pauline.bowen@nist.gov](mailto:pauline.bowen@nist.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. ISPAB Information

The ISPAB was originally chartered as the Computer System Security and Privacy Advisory Board (CSSPAB) by the Department of Commerce pursuant to the Computer Security Act of 1987 (Pub. L. 100-235). As a result of the E-Government Act of 2002 (Pub. L. 107-347), Title III, the Federal Information Security Management Act of 2002, Section 21 of the National Institute of Standards and Technology Act (15 U.S.C. 278g-4) the Board's charter was amended. This amendment included the name change of the Board.

##### *Objectives and Duties*

The objectives and duties of the ISPAB are:

1. To identify emerging managerial, technical, administrative, and physical safeguard issues relative to information security and privacy.