

would have no impact on FTZ 272's authorized subzone.

In accordance with the Board's regulations, Kathleen Boyce of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is December 19, 2011. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to January 3, 2012.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230-0002, and in the "Reading Room" section of the Board's Web site, which is accessible via <http://www.trade.gov/ftz>. For further information, contact Kathleen Boyce at [Kathleen.Boyce@trade.gov](mailto:Kathleen.Boyce@trade.gov) or (202) 482-1346.

Dated: October 13, 2011.

**Andrew McGilvray,**  
Executive Secretary.

[FR Doc. 2011-27213 Filed 10-19-11; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-831]

#### **Fresh Garlic From the People's Republic of China: Partial Preliminary Results, Rescission of, and Intent To Rescind, in Part, the 2009-2010 Administrative Review**

**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) covering the period of review (POR) of November 1, 2009, through October 31, 2010. The Department initiated this review for 112 producers/exporters (companies).<sup>1</sup> The

Department is issuing partial preliminary results for the PRC-wide entity only, which includes the seven companies listed in Appendix III. Based on timely withdrawals of requests for review, the Department is now rescinding the review with respect to 84 companies which are listed in Appendix I. The Department also preliminarily determines that a rescission of the administrative review is warranted with respect to 14 companies which each timely submitted a "no shipment" certification. The intent to rescind is applicable to the companies listed in Appendix II. In addition, there are seven companies which the Department determines are subject to the PRC-wide entity rate and which are subject to these partial preliminary results. These seven companies are listed in Appendix III. Accordingly, 21 companies are subject to these partial preliminary results and the intent to rescind the administrative review and are listed in Appendix IV.

The Department is issuing these partial preliminary results based on unique circumstances that have raised concerns with respect to enforcement of the antidumping duty order. Specifically, there are two mandatory respondents who are not participating in this review. Because these two companies have failed to establish their eligibility for a separate rate, the Department preliminarily determines that each of these companies are part of the PRC-wide entity. Thus, each company's current cash deposit rate is much lower than the rate preliminarily determined to be applicable to their entries. While such circumstances do not normally warrant issuance of partial preliminary results, there are unique and serious enforcement concerns that warrant issuing preliminary results for certain companies at this time. A more detailed explanation of the disposition of each of the above companies is set forth below.<sup>2</sup> The remaining seven companies under review will be covered in a separate partial preliminary results of review, and are listed in Appendix V.

Dadi is its affiliated producer. As such, we will address Zhengzhou Dadi in the context of our analysis of Shenzhen Xinboda. We do not include Zhengzhou Dadi in our company counts in this notice.

<sup>2</sup> The specific facts underlying the Department's decision for issuing these partial preliminary results are business proprietary. See Memorandum to The File, Through Barbara E. Tillman, Director, AD/CVD Operations, Office 6, Import Administration, and Thomas Gilgunn, Program Manager, AD/CVD Operations, Office 6, From: Scott Lindsay, Case Analyst, AD/CVD Operations, Office 6, Subject: Discussion of Business Proprietary Information for Partial Preliminary Results of Administrative Review for Fresh Garlic from the People's Republic of China, dated concurrently with this notice.

The preliminary results of review for these seven remaining companies are currently due November 10, 2011.

The Department invites interested parties to comment on these partial preliminary results for the PRC-wide entity and on our intent to rescind the administrative review of the 14 companies which certified "no shipments." If the partial preliminary results for the PRC-wide entity are adopted in the partial final results, the Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise during the POR.

**DATES:** *Effective Date:* October 20, 2011.

**FOR FURTHER INFORMATION CONTACT:** Scott Lindsay or Lingjun Wang, AD/CVD Operations, Office 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) 482-2316.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On November 16, 1994, the Department published in the **Federal Register** the antidumping duty order on fresh garlic from the PRC.<sup>3</sup> On November 1, 2010, 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, 2009, through October 31, 2010.<sup>4</sup> On November 16, 26, 29, and 30, 2010, eight companies timely requested the Department to review their exports of subject merchandise: (1) Chengwu County Yuanxiang Industry & Commerce Co., Ltd.; (2) Hebei Golden Bird Trading Co., Ltd. (Golden Bird); (3) Henan Weite Industrial Co., Ltd.; (4) Jinan Farmlady Trading Co., Ltd. (Farmlady); (5) Qingdao Xintianfeng Foods Co., Ltd.; (6) Shenzhen Xinboda Industrial Co., Ltd. (Xinboda); (7) Weifang Hongqiao International Logistic Co., Ltd. (Hongqiao); (8) Zhengzhou Harmoni Spice Co., Ltd. (Harmoni).

On November 30, 2010, the Fresh Garlic Producers Association (FGPA) and its individual members<sup>5</sup> (collectively, Petitioners) timely

<sup>3</sup> See *Antidumping Duty Order: Fresh Garlic From the People's Republic of China*, 59 FR 59209 (November 16, 1994).

<sup>4</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity To Request Administrative Review*, 75 FR 67079 (November 1, 2010).

<sup>5</sup> The individual members of the FGPA are Christopher Ranch L.L.C., The Garlic Company, Valley Garlic, and Vessey and Company, Inc.

<sup>1</sup> We also initiated a review of Zhengzhou Dadi. However, the responses of Shenzhen Xinboda, a mandatory respondent, indicate that Zhengzhou

requested that the Department conduct an administrative review of 112 companies.<sup>6</sup> On December 28, 2011, the Department published a notice of initiation of administrative review with respect to 112 companies.<sup>7</sup>

On March 28, 2011, Petitioners timely withdrew their requests to review 84 of the 112 companies they initially requested, including Harmoni. See Attachment I. Harmoni also withdrew its own review request. On March 31, 2011, Hongqiao also withdrew its own review request and claimed that Petitioners also withdrew their request to review Hongqiao. On April 5, 2011, Petitioners responded to Hongqiao's withdrawal, stating that Petitioners did not withdraw their review request for Hongqiao. On April 15, 2011, the Department notified Hongqiao that it continues to be included in the review.<sup>8</sup>

On November 30, 2010, Jining Yongjia Trade Co., Ltd. (Yongjia), Qingdao Tiantaixing Foods Co., Ltd. (QTF), Weifang Chenglong Import & Export Co., Ltd. (Chenglong), Jining Yifa Garlic Produce Co., Ltd. (Yifa), Jinxiang Hejia Co., Ltd. (Hejia), Qingdao Sea-line International Trading Co., Ltd. (Sea-line), Shenzhen Bainong Co., Ltd. (Bainong) each timely certified that it had no shipments during the POR. On this same date, Yantai Jinyan Trading Co., Ltd. (Yantai) certified that it made no shipments during the period June 1, 2010, through October 31, 2010. On January 18, 2011, Jinxiang Chengda Import & Export Co., Ltd. (Chengda), Jinxiang Yuanxin Import & Export Co., Ltd. (Yuanxin), and Zhengzhou Yuanli Trading Co., Ltd. (Yuanli) each timely certified that it had no shipments during the POR. On January 24, 2011, Shandong Wonderland Organic Food Co., Ltd. (Wonderland) and XuZhou Simple Garlic Industry Co., Ltd. (Simple) each timely certified that it had no shipments during the POR. On February 3, 2011, Shanghai LJ International Trading Co., Ltd. (Shanghai LJ) timely certified that it had no shipments during the POR. On February 24, 2011, Zhengzhou Huachao Industrial Co., Ltd. (Huachao) timely certified that it had no shipments during the POR.

On January 5, 2011, the Department released CBP data for U.S. garlic imports from the PRC during the POR under

Administrative Protective Order (APO), and invited comments regarding the data and respondent selection. No parties commented. On March 4, 2011, the Department selected five companies as mandatory respondents: (1) Golden Bird; (2) Longtai; (3) Xinboda; (4) Hongqiao; (5) Harmoni.<sup>9</sup>

On March 14, 2011, the Department issued the Non-Market Economy Antidumping Duty Questionnaire (Initial Questionnaire) to the five mandatory respondents. On March 30, 2011, Harmoni notified the Department that it would not submit a questionnaire response because it anticipated that the Department would rescind its review since Petitioners and Harmoni had each withdrawn their requests for review with respect to Harmoni (on March 28, 2011 and March 31, 2011, respectively). On April 25 and May 18, 2011, Golden Bird and Xinboda each submitted responses to Section A, C and D of the questionnaire.<sup>10</sup> On April 25, 2011, Hongqiao informed the Department that it would not respond to the Initial Questionnaire.<sup>11</sup> Longtai did not respond to the Initial Questionnaire nor did it request any extension of time to respond to the questionnaire.

On April 6, 2011, Petitioners placed on the record the CBP data that the Department released in the new shipper review which covered the first six months of the POR. On April 7, 2011, the Department placed additional CBP data on the record. On April 15, 2011, Petitioners met with the Department regarding the possible selection of additional mandatory respondents.<sup>12</sup> On May 9, 2011, Petitioners requested the Department to select additional mandatory respondents.<sup>13</sup> On May 17, 2011, Farmlady opposed Petitioners' request to select it as one of the additional mandatory respondents. On May 25, 2011, Yantai requested to be a mandatory respondent. The Department did not select any additional mandatory respondents.

<sup>9</sup> See Memorandum to Barbara E. Tillman, Through Thomas Gilgunn, From Nicholas Czajkowski, Re: Antidumping Administrative Review of Fresh Garlic from the People's Republic of China: Respondent Selection Memorandum (March 4, 2011).

<sup>10</sup> The Department granted several extensions for various sections of the Initial Questionnaire.

<sup>11</sup> See Hongqiao's April 25, 2011 letter to the Department.

<sup>12</sup> See Memorandum to the File, Re: Meeting with Counsel for the Petitioners: Administrative Review of the Antidumping duty Order on Fresh Garlic from China (11/01/09–10/30/10) (April 18, 2011).

<sup>13</sup> Petitioners argued that the Department should select the three next largest exporters, during the POR, to serve as mandatory respondents in this review.

## Scope of the Order

The products covered by the order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay. The scope of 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 0703.20.0010, 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, our written description of the scope of the order is dispositive. In order to be excluded from the order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to U.S. Customs and Border Protection to that effect.

## Partial Rescission of the Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.

For all but one of the 84 companies, Petitioners were the only party that requested the review. The remaining company, Harmoni, also self-requested a review. As mentioned above, on March 28, 2011 and March 31, 2011, within the 90 days of publication of the notice of initiation, Petitioners and Harmoni each timely withdrew their respective review requests for Harmoni.<sup>14</sup> Therefore, the

<sup>14</sup> On March 31, 2011, Golden Bird urged the Department to determine whether Harmoni had any business dealings with Petitioners before any final

<sup>6</sup> These 112 companies include the eight companies that requested their own reviews.

<sup>7</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 75 FR 81565, 81568–81569 (December 28, 2010) (*Initiation Notice*).

<sup>8</sup> See the Department's April 15, 2011 letter to Hongqiao.

Department is rescinding this review with respect to 84 companies in accordance with 19 CFR 351.213(d)(1). See Appendix I.

#### **Intent To Rescind, in Part, the Administrative Review**

Pursuant to 19 CFR 351.213(d)(3), the Department may rescind a review where there are no exports, sales, or entries of subject merchandise during the respective POR. In the *Initiation Notice*, the Department stated that any company named in the notice of initiation that had no exports, sales, or entries during the POR should notify the Department within 60 days of publication of the *Initiation Notice* in the **Federal Register**. The Department stated that it would consider rescinding the review only if the company submitted a properly filed and timely statement certifying that it had no exports, sales, or entries of subject merchandise during the POR. See *Initiation Notice*. The deadline to submit “no shipment” certifications was February 26, 2011.

When examining a no-shipment certification, the Department’s practice is to: (1) Review the respondent’s no shipment claim; (2) examine CBP entry data to determine whether these data are consistent with the claim; and (3) send a “No Shipment Inquiry” to CBP requesting that CBP notify the Department if it has evidence of shipments from the company making the claim. If, after taking these three steps, the Department finds no evidence to indicate that the companies at issue had exports, entries, or sales of subject merchandise under the order during the POR, the Department preliminarily rescinds its review, pursuant to 19 CFR 351.213(d)(3).<sup>15</sup>

As noted above, (1) Yongjia, (2) QTF, (3) Chenglong, (4) Yifa, (5) Hejia, (6) Sea-line, (7) Bainong, (8) Chengda, (9) Yuanxin, (10) Yuanli, (11) Wonderland, (12) Simple, (13) Shanghai LJ, and (14) Huachao each timely certified that it had no shipments during the POR. Yantai also submitted a no-shipment certification covering the period June 1, 2010, through October 31, 2010. However, during the period November

1, 2009, through May 31, 2010, subject merchandise produced/exported by Yantai did enter the United States for consumption.<sup>16</sup> As such, the Department is not intending to rescind the review with respect to Yantai.

The Department has reviewed all relevant no-shipment claims, has examined the CBP entry data, and sent no-shipment inquiries to CBP for each of these companies. In the no-shipment inquiries, we requested CBP to provide any information regarding entries by these companies during the POR within 10 days. We did not receive any responses from CBP to our no-shipment inquiries. After taking these steps, we have found no evidence that any of the above-noted fourteen companies made shipments during the POR. Therefore, pursuant to 19 CFR 351.213(d)(3), the Department is preliminarily rescinding the review with respect to Yongjia, QTF, Chenglong, Yifa, Hejia, Sea-line, Bainong, Chengda, Yuanxin, Yuanli, Wonderland, Simple, Shanghai LJ, and Huachao.

#### **PRC-Wide Entity**

Hongqiao and Longtai were selected as mandatory respondents in this review. In this review, Hongqiao timely filed a Separate Rate Certification, but did not respond to the Initial Questionnaire.<sup>17</sup> Longtai neither filed a Separate Rate Certification nor responded to the Initial Questionnaire. Therefore, the Department finds that Hongqiao and Longtai failed to establish eligibility for separate rate status and thus are properly considered part of the PRC-wide entity for purposes of these partial preliminary results.<sup>18</sup>

In addition, the Department initiated a review of five companies which were not selected as mandatory respondents and which did not file a Separate Rate Certification or Separate Rate Application to demonstrate eligibility for separate rate status. Furthermore, none of these five companies properly filed a timely statement certifying that it had no exports, sales, or entries of subject merchandise during the POR. Therefore, the Department finds that

these companies are part of the PRC-wide entity.<sup>19</sup> See Appendix III for a complete list of companies that are part of the PRC-wide entity.

#### **Use of Facts Otherwise Available and Adverse Facts Available (AFA)**

Section 776(a) of the Act provides that the Department shall apply “facts otherwise available” if (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act provides that the Department “shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority” if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information

rescission. The regulations are clear that so long as the parties that requested the review timely withdraw the request, the Secretary will rescind the review. Since both withdrawal requests were timely, the Department has no basis to evaluate the reasoning behind a party’s decision to withdraw its request. Furthermore, Golden Bird provided no evidence to support its claim that there have been business dealings between Petitioners and Harmoni.

<sup>15</sup> See, e.g., *Fresh Garlic From the People’s Republic of China: Final Results and Partial Rescission of the 13th Antidumping Duty Administrative Review and New Shipper Reviews*, 74 FR 29174 (June 19, 2009)(*Garlic 13*).

<sup>16</sup> See *Fresh Garlic From the People’s Republic of China: Final Rescission of New Shipper Reviews of Jining Yifa Garlic Produce Co., Ltd., Shenzhen Bainong Co., Ltd., and Yantai Jinyan Trading Inc.*, 76 FR 52315 (August 22, 2011).

<sup>17</sup> As discussed above, Hongqiao informed the Department that it would not participate in this review on April 25, 2011.

<sup>18</sup> The *Initiation Notice* states “for exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate-rate status unless they respond to all parts of the questionnaire as mandatory respondents.”

<sup>19</sup> See, e.g., *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) (*Garlic 15*) (finding non-respondent companies to be part of the PRC-wide entity).

supplied if it can do so without undue difficulties.

### Application of AFA to the PRC-Wide Entity

Hongqiao and Longtai were selected as mandatory respondents, but neither company responded to the Initial Questionnaire. As such, neither company has established its eligibility for separate rate status, and thus both companies are properly considered part of the PRC-wide entity for purposes of these preliminary results. Moreover, because the PRC-wide entity, which includes these two companies, withheld or failed to timely provide requested information, the information necessary for the Department to conduct the analysis is not available on the record. Moreover, the decision to not respond to the Initial Questionnaire constitutes a refusal to participate in the review and significantly impeded the proceeding. The PRC-wide entity, which includes Hongqiao and Longtai, neither requested an extension nor stated it was having difficulties in responding to the Initial Questionnaire. In fact, Hongqiao clearly announced its intent to not participate in this review by its letter of April 25, 2011.

Had the PRC-wide entity, which includes Hongqiao and Longtai, participated in the review, the Department may have had the opportunity to calculate a margin. Pursuant to section 776(a) of the Act, however, as a result of the PRC-wide entity's failure to participate, the Department shall use facts otherwise available to reach the applicable determination.

Because of the PRC-wide entity's complete failure to respond to the Initial Questionnaire, the Department finds that it has failed to cooperate by not acting to the best of its ability to comply with the Department's request for information. Pursuant to section 776(b) of the Act, the Department shall use an inference that is adverse to the interest of this entity.

The PRC-wide entity, which includes Hongqiao and Longtai, has failed to provide requested information, which was in the sole possession of each respondent and could not be obtained otherwise. The refusal to provide the requested information constitutes circumstances under which it is reasonable to conclude that less than full cooperation has been shown.<sup>20</sup>

<sup>20</sup> See *Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1383 (Fed. Cir. 2003), where the Court of Appeals for the Federal Circuit (CAFE) provided an explanation of the "failure to act to the best of its ability" standard noting that the Department need not show intentional conduct

Therefore, the Department preliminarily determines to use an adverse inference in selecting from among the facts otherwise available. By using an inference that is adverse to the interests of the PRC-wide entity, the Department ensures the companies which comprise the entity will not obtain a more favorable result by failing to cooperate than had they cooperated fully in the review.

### Selection of AFA Rates

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) provide that the Department may rely on information derived from (1) The petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. The Department's practice is to select an AFA rate that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner" and that ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."<sup>21</sup> Specifically, in reviews, the Department's practice in selecting a rate as total AFA is to use the highest rate on the record of the proceeding which, to the extent practicable, can be corroborated (assuming the rate is based on secondary information).<sup>22</sup> The Court of International Trade (CIT) and the CAFC have affirmed decisions to select the highest margin from any prior segment of the proceeding as the AFA

existed on the part of the respondent, but merely that a "failure to cooperate to the best of a respondent's ability" existed (*i.e.*, information was not provided "under circumstances in which it is reasonable to conclude that less than full cooperation has been shown").

<sup>21</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8911 (February 23, 1998); see also *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review*, 70 FR 69937, 69939 (November 18, 2005) and the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 316, 103d Cong., 2d Sess. at 870 (SAA).

<sup>22</sup> See *Glycine From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 15930, 15934 (April 8, 2009), unchanged in *Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 41121 (August 14, 2009); see also *Fujian Lianfu Forestry Co., Ltd. v. United States*, 638 F. Supp. 2d 1325, 1336 (CIT August 10, 2009) ("Commerce may, of course, begin its total AFA selection process by defaulting to the highest rate in any segment of the proceeding, but that selection must then be corroborated, to the extent practicable.").

rate on numerous occasions.<sup>23</sup> In choosing the appropriate balance between providing a respondent with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior margin reflects "a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less."<sup>24</sup> Therefore, as AFA, the Department has assigned the PRC-wide entity a dumping margin of \$4.71 per kilogram, the highest per-unit rate on the record of any segment of this proceeding.<sup>25</sup>

### Corroboration of Secondary Information Used as AFA

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.<sup>26</sup> To corroborate means that the Department will satisfy itself that the secondary information to be used has probative value.<sup>27</sup> To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.<sup>28</sup> Independent sources used to

<sup>23</sup> See, e.g., *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (affirming a 73.55 percent total AFA rate, the highest available dumping margin calculated for a different respondent in the investigation); *Kompass Food Trading International v. United States*, 24 CIT 678, 683-84 (2000) (affirming a 51.16 percent total AFA rate, the highest available dumping margin for a different, fully cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd. v. United States*, 360 F. Supp. 2d 1339, 1348 (CIT 2005) (affirming a 223.01 percent total AFA rate, the highest available dumping margin for a different respondent in a previous administrative review).

<sup>24</sup> See *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (CAFC 1990).

<sup>25</sup> See *Garlic 13 and accompanying Issues and Decision Memorandum at Comment 8*.

<sup>26</sup> See SAA.

<sup>27</sup> See *id.*

<sup>28</sup> See *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*: Continued

corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.<sup>29</sup>

As discussed above, the \$4.71 per kilogram is the highest rate on the record of any segment of the antidumping duty order. This rate was calculated using the *ad valorem* rate contained in the petition in the original investigation of garlic from the PRC and was applied to the PRC-wide entity in the immediately preceding administrative review,<sup>30</sup> and was not challenged. Furthermore, no information has been presented in this review that calls into question the reliability of the information. Because this rate, calculated using the *ad valorem* rate in the original investigation, was also applied in the two most recently completed reviews of this order, and the PRC-wide rate has not been challenged in court, and because no party has placed evidence on the record questioning the reliability of this rate in this review, the Department finds that the selected rate is reliable. Moreover, the rate selected is the rate currently applicable to the PRC-wide entity. The CAFC has held that the Department “is permitted to use a ‘common sense inference that the highest prior margin is the most probative evidence of current margins because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.’”<sup>31</sup>

*Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outsider Diameter, and Components Thereof, From Japan: Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

<sup>29</sup> See *Notice of Preliminary Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators From Japan*, 68 FR 35627 (June 16, 2003), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators From Japan*, 68 FR 62560 (November 5, 2003); and *Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada*, 70 FR 12181, 12183–84 (March 11, 2005).

<sup>30</sup> The \$4.71 PRC-wide entity rate was calculated in *Garlic 13*, and subsequently applied in both *Garlic 14* and *Garlic 15*. See *Fresh Garlic From the People's Republic of China: Final Results and Partial Rescission of the 14th Antidumping Duty Administrative Review*, 75 FR 34976 (June 21, 2010) (*Garlic 14*) and (*Garlic 15*).

<sup>31</sup> See *KYD, Inc. v. United States*, 607 F.3d 760 (Fed. Cir. 2010) (quoting *Rhone Poulenc, Inc. v. United States*, 899 F.2d at 1190).

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin.<sup>32</sup> Similarly, the Department does not apply a margin that has been discredited.<sup>33</sup> None of these circumstances are present with respect to the rate being used here.

In fact, where the Department has found a mandatory respondent part of the PRC-wide entity, the Department need not corroborate the PRC-wide rate with respect to information specific to that respondent because there is “no requirement that the PRC-wide entity rate based on AFA relate specifically to the individual company.”<sup>34</sup> The Department’s permissible determination that Hongqiao and Longtai are part of the PRC-wide entity means that inquiring into Hongqiao’s and Longtai’s separate sales behavior ceases to be meaningful.

As this rate is both reliable and relevant, we determine that it has probative value, and is thus in accordance with the requirement under section 776(c) of the Act, that secondary information be corroborated to the extent practicable.

#### Assessment Rates

The Department will instruct CBP to assess antidumping duties on all appropriate entries. For all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption during the POR by the companies for whom the Department is rescinding reviews (see Appendix I), antidumping duties will be assessed on entries at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue these assessment instructions directly to CBP 15 days

<sup>32</sup> See, e.g., *Fresh Cut Flowers From Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996).

<sup>33</sup> See *D&L Supply Co. v. United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated).

<sup>34</sup> See *Watanabe v. United States*, Slip Op. 2010–139 Court No. 09–00520 (Dec. 22, 2010) (citing *Peer Bearing Co.-Changshan v. United States*, 587 F. Supp. 2d 1319, 1327 (CIT 2008)); *Shandong Mach. Imp. & Exp. Co. v. United States*, Slip Op. 09–64, 2009 Ct. Intl. Trade LEXIS 76, 2009 WL 2017042, at \*8 (CIT June 24, 2009) (Commerce has no obligation to corroborate the PRC-wide rate as to an individual party where that party has failed to qualify for a separate rate).

after the publication of the partial rescission final results in the **Federal Register**.

If these partial preliminary rescission of and preliminary results of review are adopted in the final results, then antidumping duties will be assessed as follows. For all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption during the POR by the companies: 1) who certified no shipments (see Appendix II), antidumping duties will be assessed on entries at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i); 2) that are part of the PRC-wide entity (including those listed in Appendix III), antidumping duties will be assessed at the PRC-wide entity rate of \$4.71 per kilogram. The Department intends to issue assessment instructions directly to CBP 15 days after the publication of the partial rescission final results in the **Federal Register**.

#### Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of this partial rescission of administrative review. For all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act by the companies for whom the Department is rescinding reviews (see Appendix I), the cash deposit rate will continue to be the rate currently in effect for that company. These requirements, when imposed, shall remain in effect until further notice.

If these partial preliminary results are adopted in the final results, then the following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the companies that certified no shipments (see Appendix II), the rate continues to be the rate currently in effect for that company; (2) for the PRC-wide entities (including those companies identified in Appendix III), the cash deposit rate will be the PRC-wide entity rate of \$4.71 per kilogram. These requirements, when imposed, shall remain in effect until further notice.

## Comments

Since no calculations were performed for these partial preliminary results, no disclosure is required under 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing will be held 37 days after the publication of this notice, or the first business day thereafter unless the Department alters the date pursuant to 19 CFR 351.310(d). Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, pursuant to the Department's e-filing regulations.<sup>35</sup> Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 19 CFR 351.309(c)(1)(ii). As part of the case brief, parties are encouraged to provide a summary of the arguments and a table of authorities cited in accordance with 19 CFR 351.309(c)(2). Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed in accordance with 19 CFR 351.309(d). All briefs must be filed in accordance with the Department's e-filing regulations.<sup>36</sup> If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief in accordance with 19 CFR 351.310(c). Parties should confirm by telephone the time, date, and place of the hearing within 48 hours before the scheduled time. The Department will issue the final results of this review, which will include the results of its analysis of issues raised in the briefs, not later than 120 days after the date of publication of this notice in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

## Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR

351.402(f)(2) 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.

We are issuing and publishing these partial preliminary results in accordance with sections 751(a)(2)(B) and 777(i) of the Act, and 19 CFR 351.214(h) and 351.221(b)(4).

Dated: October 13, 2011.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

## Appendix I—Companies For Which the Administrative Review Is Being Rescinded

The following companies were named in our *Initiation Notice*. Subsequently, interested parties timely withdrew all requests for review of these companies. Therefore, pursuant to 19 CFR 351.213(d)(1), we are rescinding this administrative review with respect to these companies.

1. APM Global Logistics (Shanghai) Co., Ltd.
2. American Pioneer Shipping
3. Anhui Dongqian Foods Ltd
4. Anqiu Friend Food Co., Ltd.
5. Anqiu Haoshun Trade Co., Ltd.
6. APS Qingdao
7. Chiping Shengkang Foodstuff Co., Ltd.
8. CMEC Engineering Machinery Import & Export Co., Ltd.
9. Dongying Shunyifa Chemical Co., Ltd.
10. Dynalink Systems Logistics (Qingdao) Inc.
11. Feicheng Acid Chemicals Co., Ltd.
12. Frog World Co., Ltd.
13. Golden Bridge International, Inc.
14. Hangzhou Guanyu Foods Co., Ltd.
15. Heze Ever-Best International Trade Co., Ltd. (f/k/a Shandong Heze International Trade and Developing Company)
16. Hongqiao International Logistics Co.
17. Intecs Logistics Service Co., Ltd.
18. IT Logistics Qingdao Branch
19. Jinan Solar Summit International Co., Ltd.
20. Jinan Yipin Corporation Ltd.
21. Jining Highton Trading Co., Ltd.
22. Jining Jiulong International Trading Co., Ltd.
23. Jining Tiankuang Trade Co., Ltd.
24. Jining Trans-High Trading Co., Ltd.
25. Jinxiang County Huaguang Food Import & Export Co., Ltd.
26. Jinxiang Dacheng Food Co., Ltd.
27. Jinxiang Dongyun Freezing Storage Co., Ltd. (a/k/a Jinxiang Eastward Shipping Import and Export Limited Company).
28. Jinxiang Fengsheng Import & Export Co., Ltd.
29. Jinxiang Jinma Fruits Vegetables Products Co., Ltd.
30. Jinxiang Meihua Garlic Produce Co., Ltd.
31. Jinxiang Shanyang Freezing Storage Co., Ltd.
32. Jinxiang Tianheng Trade Co., Ltd.
33. Jinxiang Tianma Freezing Storage Co., Ltd.
34. Juye Homestead Fruits and Vegetables Co., Ltd.
35. Kingwin Industrial Co., Ltd.
36. Laiwu Fukai Foodstuff Co., Ltd.
37. Laizhou Xubin Fruits and Vegetables
38. Linyi City Heding District Jiuli Foodstuff Co.
39. Linyi Tianqin Foodstuff Co., Ltd.
40. Ningjin Ruifeng Foodstuff Co., Ltd.
41. Qingdao Apex Shipping Co., Ltd.
42. Qingdao BNP Co., Ltd.
43. Qingdao Cherry Leather Garment Co., Ltd.
44. Qingdao Chongzhi International Transportation Co., Ltd.
45. Qingdao Lianghe International Trade Co., Ltd.
46. Qingdao Saturn International Trade Co., Ltd.
47. Qingdao Sino-World International Trading Co., Ltd.
48. Qingdao Winner Foods Co., Ltd.
49. Qingdao Yuan kang International
50. Qufu Dongbao Import & Export Trade Co., Ltd.
51. Rizhao Huasai Foodstuff Co., Ltd.
52. Samyoung America (Shanghai) Inc.
53. Shandong Chengshun Farm Produce Trading Co., Ltd.
54. Shandong CHINA Bridge Imports
55. Shandong Dongsheng Eastsun Foods Co., Ltd.
56. Shandong Garlic Company
57. Shandong Jinxiang Zhengyang Import & Export Co., Ltd.
58. Shandong Sanxing Food Co., Ltd.
59. Shandong Xingda Foodstuffs Group Co., Ltd.
60. Shandong Yipin Agro (Group) Co., Ltd.
61. Shanghai Ever Rich Trade Company.
62. Shanghai Goldenbridge International Co., Ltd.
63. Shanghai Great Harvest International Co., Ltd.
64. Shenzhen Fanhui Import & Export Co., Ltd.
65. Shanghai Yijia International Transportation Co., Ltd.
66. T&S International, LLC.
67. Taian Eastsun Foods Co., Ltd.
68. Taian Fook Huat Tong Kee Pte. Ltd.
69. Taian Solar Summit Food Co., Ltd.
70. Tianjin Spiceshi Co., Ltd.
71. Taiyan Ziyang Food Co., Ltd.
72. U.S. United Logistics (Ningbo) Inv.
73. V.T. Impex (Shandong) Limited
74. Weifang Jinbao Agricultural Equipment Co., Ltd.
75. Weifang Naike Foodstuffs Co., Ltd.
76. Weifang Shennong Foodstuff Co., Ltd.
77. Weihai Textile Group Import & Export Co., Ltd.
78. WSSF Corporation (Weifang)
79. Xiamen Huamin Import Export Company
80. Xiamen Keep Top Imp. and Exp. Co., Ltd.
81. Xinjiang Top Agricultural Products Co., Ltd.
82. You Shi Li International Trading Co., Ltd.
83. Zhangzhou Xiangcheng Rainbow Greenland Food Co., Ltd.

<sup>35</sup> See <https://iaaccess.trade.gov/help/IA%20ACCESS%20User%20Guide.pdf>.

<sup>36</sup> *Id.*

84. Zhengzhou Harmoni Spice Co., Ltd.

#### Appendix II—Companies That Have Certified No-Shipments

1. Jining Yifa Garlic Produce Co., Ltd.
2. Jining Yongjia Trade Co., Ltd.
3. Jinxiang Chengda Import & Export Co., Ltd.
4. Jinxiang Hejia Co., Ltd.
5. Jinxiang Yuanxin Import & Export Co., Ltd.
6. Qingdao Sea-Line International Trading Co., Ltd.
7. Qingdao Tiantaixing Foods Co., Ltd.
8. Shandong Wonderland Organic Food Co., Ltd.
9. Shanghai LJ International Trading Co., Ltd.
10. Shenzhen Bainong Co., Ltd.
11. Weifang Chenglong Import & Export Co., Ltd.
12. XuZhou Simple Garlic Industry Co., Ltd.
13. Zhengzhou Huachao Industrial Co., Ltd.
14. Zhengzhou Yuanli Trading Co., Ltd.

#### Appendix III—Companies Subject to the PRC-Wide Entity Rate

The following companies are subject to these partial preliminary results and subject to the PRC-wide entity rate.

1. Linshu Dading Private Agricultural Products Co., Ltd.
2. Linyi City Kangfa Foodstuff Drinkable Co., Ltd.
3. Shandong Chenhe Int'l Trading Co., Ltd.
4. Shenzhen Greening Trading Co., Ltd.
5. Sunny Import & Export Limited
6. Shandong Longtai Fruits and Vegetables Co., Ltd.
7. Weifang Hongqiao International Logistic Co., Ltd.

#### Appendix IV

The following companies are subject to these partial preliminary results (companies that the Department preliminarily considers to be part of the PRC-wide entity or are subject to the Department's intent to rescind the administrative review).

1. Jining Yifa Garlic Produce Co., Ltd.
2. Jining Yongjia Trade Co., Ltd.
3. Jinxiang Chengda Import & Export Co., Ltd.
4. Jinxiang Hejia Co., Ltd.
5. Jinxiang Yuanxin Import & Export Co., Ltd.
6. Qingdao Sea-Line International Trading Co., Ltd.
7. Qingdao Tiantaixing Foods Co., Ltd.
8. Shandong Wonderland Organic Food Co., Ltd.
9. Shanghai LJ International Trading Co., Ltd.
10. Shenzhen Bainong Co., Ltd.
11. Weifang Chenglong Import & Export Co., Ltd.
12. XuZhou Simple Garlic Industry Co., Ltd.
13. Zhengzhou Huachao Industrial Co., Ltd.
14. Zhengzhou Yuanli Trading Co., Ltd.
15. Linshu Dading Private Agricultural Products Co., Ltd.
16. Linyi City Kangfa Foodstuff Drinkable Co., Ltd.

17. Shandong Chenhe Int'l Trading Co., Ltd.

18. Shenzhen Greening Trading Co., Ltd.
19. Sunny Import & Export Limited
20. Shandong Longtai Fruits and Vegetables Co., Ltd.
21. Weifang Hongqiao International Logistic Co., Ltd.

#### Appendix V—Companies Under Review That Are Not Subject to the Partial Preliminary Results

Companies that remain covered by the second partial preliminary results portion of the administrative review.

1. Chengwu County Yuanxiang Industry & Commerce Co., Ltd.
2. Hebei Golden Bird Trading Co., Ltd.
3. Henan Weite Industrial Co., Ltd.
4. Jinan Farmlady Trading Co., Ltd.
5. Qingdao Xintianfeng Foods Co., Ltd.
6. Shenzhen Xinboda Industrial Co., Ltd./ (Zhengzhou Dadi Garlic Industry Co., Ltd.)
7. Yantai Jinyan Trading Co., Ltd.

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BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-552-802]

#### Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Extension of Preliminary Results of Antidumping Duty Administrative Review

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

**DATES:** Effective Date: October 20, 2011.

**SUMMARY:** The Department of Commerce (the "Department") has decided to extend the time limit for the preliminary results of the sixth administrative review of the antidumping duty order on certain frozen warmwater shrimp ("shrimp") from the Socialist Republic of Vietnam ("Vietnam") to January 30, 2012. The period of review ("POR") is February 1, 2010, through January 31, 2011.

**FOR FURTHER INFORMATION CONTACT:** Toni Dach or Seth Isenberg, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-1655 and (202) 482-0588, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On March 31, 2011, the Department published in the **Federal Register** a notice of initiation of the administrative review of the antidumping duty order on certain frozen warmwater shrimp

from Vietnam. *See Initiation of Antidumping Duty Administrative Reviews, Requests for Revocation in Part, and Deferral of Administrative Review*, 76 FR 17825 (March 31, 2011) ("Initiation Notice"). The preliminary results are currently due no later than October 31, 2011.

#### Statutory Time Limits

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

#### Extension of Time Limit of Preliminary Results

We determine that it is not practicable to complete the preliminary results of this administrative review within the original time limit because the Department requires additional time to analyze the questionnaire responses which include substantial sales and factor information, issue supplemental questionnaires, and to evaluate surrogate value submissions.

Therefore, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213 (h)(2), the Department is extending the time limit for the preliminary results by 90 days, until January 30, 2012. The final results continue to be due 120 days after the publication of the preliminary results.

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

Dated: October 12, 2011.

**Christian Marsh,**

*Deputy Assistant Secretary of Antidumping and Countervailing Duty Operations.*

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