

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: December 1, 2003.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-831]

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

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

**ACTION:** Notice of preliminary results of antidumping duty administrative review and new shipper reviews.

**SUMMARY:** In response to requests from interested parties, the Department of Commerce is conducting an administrative review and new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China. The period of review for the administrative review and the new shipper reviews is November 1, 2001, through October 31, 2002. The reviews cover six manufacturers/exporters.

With respect to the administrative review, we preliminarily determine that Jinan Yipin Corporation, Ltd., has made sales in the United States at prices below normal value and Shandong Heze International Trade and Developing Company has made sales in the United States at prices not below normal value. With respect to the new shipper reviews, we preliminarily determine that Jining Trans-High Trading Co., Ltd., and Zhengzhou Harmoni Spice Co., Ltd., have made sales in the United

States at prices not below normal value. Further, we preliminarily determine that Top Pearl Ltd. and Wo Hing (H.K.) Trading Co. are not entitled to separate rates and have assigned them the rate for the country-wide entity.

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.

**EFFECTIVE DATE:** December 10, 2003.

**FOR FURTHER INFORMATION CONTACT:**

Minoo Hatten or Mark Ross, Office of Antidumping/Countervailing Duty Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482-1690 or (202) 482-4794, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On November 1, 2002, the Department of Commerce (the Department) published a notice of opportunity to request an administrative review of the antidumping duty order on fresh garlic from the People's Republic of China (PRC). *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 67 FR 66612. On December 26, 2002, we published in the **Federal Register** the *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews* (67 FR 78772) in which we initiated the administrative review of the antidumping duty order on fresh garlic from the PRC.

We published a notice of initiation of new shipper antidumping duty reviews for Jining Trans-High Trading Co., Ltd. (Trans-High), Zhengzhou Harmoni Spice Co., Ltd. (Harmoni), and Xiangcheng Yisheng Foodstuffs Co., Ltd., on January 6, 2003. *See Notice of Initiation of New Shipper Antidumping Duty Reviews: Fresh Garlic from the People's Republic of China*, 68 FR 542.

On January 24, 2003, the petitioners (the Fresh Garlic Producers Association and its individual members) submitted a request for alignment of the new shipper and administrative reviews. On February 12, 21, and March 5, 2003, each respondent in the new shipper reviews responded in writing to the request for alignment, agreeing to waive the statutory time limits in the new shipper reviews. As all three of the respondents agreed to waive the time limits, we decided to grant the request for alignment of the reviews pursuant to

19 CFR 351.214(j)(3). *See* memorandum to the file from Jennifer Moats entitled "Request Regarding Alignment of New Shipper and Administrative Reviews," dated March 10, 2003.

One company named in the notice of initiation for the administrative review, Fook Huat Tong Kee Pte., Ltd., had no exports or sales of the subject merchandise during the period of review and, consequently, we rescinded the review of this company. In addition, the review requests for Clipper Manufacturing Ltd., Huaiyang Hongda Dehydrated Vegetable Company, Golden Light Trading Company, Ltd., Good Fate International, Phil-Sino International Trading Inc., and Mai Xuan Fruitex Co., Ltd., were withdrawn subsequent to the initiation of the administrative review and, therefore, we rescinded the review of these six companies. *See Fresh Garlic From The People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review*, 68 FR 46580 (August 6, 2003).

On August 7, 2003, we extended the deadline for the issuance of the preliminary results of the administrative and new shipper reviews by 90 days, until October 31, 2003 (68 FR 47020).

On August 15, 2003, we issued supplemental questionnaires in which we requested information from the U.S. customers for the sales involved in the new shipper reviews of Trans-High and Harmoni. We received responses from Trans-High's and Harmoni's U.S. customers on August 29, 2003, and on September 5, 2003, respectively. As detailed in the memorandum from Brian Ellman to the File dated November 25, 2003, we have so far been unable to contact Trans-High's U.S. customer by telephone, facsimile, or Federal Express regarding its incomplete response. As such, we intend to continue to evaluate the information on the record with respect to Trans-High for the final results of review.

On September 26, 2003, the Department determined preliminarily that, based on the use of adverse facts available, the new shipper Xiangcheng Yisheng Foodstuffs Co., Ltd., sold subject merchandise to the United States at prices below normal value. *See Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review for Xiangcheng Yisheng Foodstuffs Co., Ltd.*, 68 FR 55583 (September 26, 2003). On October 23, 2003, the Department extended the deadline for issuing the preliminary results for the other companies in these administrative and new shipper reviews until December 1, 2003. *See Fresh Garlic From the People's Republic of China: Notice of*

*Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews*, (68 FR 60640).

The petitioners have submitted recent pre-preliminary comments concerning Jinan Yipin. We continue to evaluate these comments and we will consider them for the final results of review.

#### 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 proceeding is dispositive. In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to U.S. Customs and Border Protection (Customs) to that effect.

#### Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), we verified information provided by certain respondents using standard verification procedures, including on-site inspection of the producers' facilities, the examination of relevant sales and financial records, and the selection of original documentation containing relevant information. Our verification results are outlined in the

public versions of the verification reports, which are on file in the Central Records Unit (CRU). With respect to Shandong Heze International Trade and Developing Company (Shandong Heze), the verification took place recently and, therefore, the report is still pending completion and not yet on file. We will issue the report shortly after the issuance of these preliminary results of review and parties can comment on the applicability of the verification findings to our calculations. Following issuance of these preliminary results, we intend to verify the factors-of-production (FOP) information which Jinan Yipin has submitted.

#### Separate Rates

The Department has treated the PRC as a non-market-economy (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)) and in prior segments of this proceeding. 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) (Sparklers), 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 titled "The PRC-Wide Rate and Use of Facts Otherwise Available", we have determined that Top Pearl Ltd. (Top Pearl) and Wo Hing (H.K.) Trading Co. (Wo Hing) do not qualify for a separate rate and are

deemed to be covered by the PRC-entity rate.

Jinan Yipin Corporation Ltd. (Jinan Yipin), Shandong Heze, Trans-High, and Harmoni provided separate-rate information in their responses to our original and supplemental questionnaires. Accordingly, we performed separate-rates analyses to determine whether each producer/exporter is independent from government control (see *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)).

#### 1. 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; (2) any legislative enactments decentralizing control of companies; (3) any other formal measures by the government decentralizing control of companies.

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, 30696 (June 7, 2001). We have no information in this proceeding that would cause us to reconsider this determination.

#### 2. Absence of De Facto Control

Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. See *Silicon Carbide* at 22587.

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 *Silicon Carbide* at 22586–22587. 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 governmental control which would preclude the Department from assigning separate rates.

Jinan Yipin reported that it is a limited-liability company owned by private investors. Shangdong Heze and Trans-High reported that they are limited-liability companies. Harmoni reported that it is a privately owned company. 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. Jinan Yipin's, Shangdong Heze's, Trans-High's, and Harmoni's questionnaire responses 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 Jinan Yipin, Shangdong Heze, Trans-High, and Harmoni 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 Jinan Yipin, Shandong Heze, Trans-High, and Harmoni, and we have calculated a separate rate for each of these companies. The PRC-wide rate applies to all 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., Jinan Yipin). As discussed below, Top Pearl and Wo Hing are appropriately considered part of the PRC-wide entity.

Top Pearl and Wo Hing did not respond to the Department's questionnaire. 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 a 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." Because Top Pearl and Wo Hing did not respond to the questionnaire, we 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 URAA, 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.

On December 30, 2002, the Department issued its antidumping duty questionnaire to Top Pearl and Wo Hing via Federal Express. On January 6, 2003, the questionnaire issued to Top Pearl was returned to the Department by Fed Ex because it had been unable to deliver the package. We were able to obtain a correct address for Top Pearl and re-issued the questionnaire on January 14, 2003. We confirmed that the questionnaire was signed for and received on January 16, 2003. See memorandum to file regarding questionnaire for Top Pearl, Ltd., dated January 15, 2003, and memorandum from Mark Ross, Program Manager, to Laurie Parkhill, Office Director, entitled "Responses to Questionnaire" dated June 27, 2003 (*Status of Questionnaire Responses Memorandum*). We also confirmed that Wo Hing signed for and received the questionnaire on January 2,

2003. See *Status of Questionnaire Responses Memorandum*. Because Top Pearl and Wo Hing did not provide responses to the Department's questionnaire, the Department is unable to determine Top Pearl's and Wo Hing's eligibility for a separate rate. Thus, Top Pearl and Wo Hing have not rebutted the presumption of government control and are presumed to be part of the PRC entity.

The PRC entity (including Top Pearl and Wo Hing) 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 (including Top Pearl and Wo Hing) the PRC-entity rate of 376.67 percent.

Section 776(c) of the Act requires that the Department corroborate, to the extent practicable, a figure which it applies as facts available. To be considered corroborated, information must be found to be both reliable and relevant. Throughout the history of this proceeding, the highest rate ever calculated is 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 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). The rate used is the rate currently applicable to Top Pearl, Wo Hing, and 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 Top Pearl and Wo Hing, we have applied, as adverse facts available, the 376.67 percent margin from a prior administrative review of this order 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).

With respect to Jinan Yipin, the use of adverse facts available is warranted because it has not provided information critical to the calculation of an antidumping duty margin and impeded the conduct of the administrative review by not providing correct and thorough responses to our questions, before, during, and following verification. These inadequacies relate to two issues: (1) whether Jinan Yipin reported some sales to an affiliated party as unaffiliated-party sales and (2) whether Jinan Yipin captured all of its indirect selling expenses on U.S. sales in its response.

We find that, pursuant to section 776(a)(2)(A) of the Act, Jinan Yipin withheld information concerning the relationship between American Yipin's (Jinan Yipin's U.S. affiliate) sales manager, Edward Lee, and one of its

customers. As described in detail in the memorandum from Laurie Parkhill, Office Director, AD/CVD Enforcement 3, to Jeffrey May, Deputy Assistant Secretary, Import Administration, dated December 1, 2003 (*Jinan Yipin Facts-Available Memorandum*), the verification team requested information from Edward Lee and American Yipin several times but was given inadequate, incomplete, or incorrect responses. Although American Yipin finally provided answers to many of the questions which the Department requested, it did so only after the Department did a great deal of its own research and presented facts to American Yipin which contradicted earlier statements the company had made. Nonetheless, after all of these questions and responses, new and further issues pertaining to affiliations between affiliates of both American Yipin and the U.S. customer now exist on the record. Thus, with respect to section 776(a)(2)(C) of the Act, the inadequate responses we received throughout the administrative review from Jinan Yipin impeded our process significantly. Thus, pursuant to these provisions, the use of facts otherwise available is warranted in this case.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of the review. In this administrative review, the Department issued its standard questionnaire and, in response to inadequate responses and information provided by Jinan Yipin, eventually it supplemented the record with three additional questionnaires. The Department also asked numerous questions during verification as new information came to light throughout the verification. Accordingly and pursuant to section 782(d) of the Act, the Department provided Jinan Yipin with numerous opportunities to remedy or explain deficiencies on the record.

Pursuant to section 776(b) of the Act, the Department has determined that the use of an adverse inference is warranted in this case. Jinan Yipin and its U.S. affiliate, American Yipin, did not act to the best of their abilities in providing the information necessary to conduct this administrative review. Indeed, we learned much of the information now on the record only during or after verification and we were thus unable to

evaluate the information completely by the time of issuance of these preliminary results of review. Thus, absent the necessary information on the record and the respondents' repeated failure to act to the best of its ability to provide the information we need for our calculations and analysis, the application of partial adverse facts available is warranted for all of the transactions to Jinan Yipin's U.S. customer in question. We have selected a rate of 376.67 percent to apply to those transactions.

As discussed above, a number used as adverse facts available must be corroborated, pursuant to section 776(c) of the Act. The number is corroborated if it is found to be both reliable and relevant. To determine whether the rate of 376.67 percent is both a relevant and reliable rate to apply to Jinan Yipin's sales to the customer in question (in other words, whether the rate is indicative of the disparity in the respondent's pricing or has probative value), we examined individual U.S. sales made by Jinan Yipin to customers other than the customer in question in the current review and the dumping margins on those transactions. As a result of our analysis, we found sales in commercial quantities with dumping margins near or exceeding 376.67 percent. See the output of the margin program attached to the December 1, 2003, analysis memorandum of the preliminary results of review of Jinan Yipin. There is no information on the record that demonstrates that 376.67 percent rate is an inappropriate adverse facts-available rate for Jinan Yipin's sales involving the customer in question. Therefore, we consider the selected rate to be reliable for Jinan Yipin's sales to this customer and to reflect an appropriate adverse inference.

We also find that Jinan Yipin withheld certain information pertinent to the calculation of indirect selling expenses and, thus, the calculation of an antidumping margin. At verification, we found that Edward Lee and two other employees of American Yipin also worked for another company as well and that, for the first three months of American Yipin's operations in Westwego, Louisiana, these employees did not receive any compensation from American Yipin but were, however, paid by the other company consistently.

As discussed in detail in the *Jinan Yipin Facts-Available Memorandum*, where a respondent has failed to provide information we requested, pursuant to section 776(a)(2)(A) of the Act, we must rely on adverse facts available in determining the antidumping duty margin. Section

776(b) of the Act, provides that the Department may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's request for information. The Department has determined that the use of an adverse inference is warranted in this case because Jinan Yipin did not act to the best of its ability in providing the necessary or accurate information on indirect selling expenses.

With respect to Jinan Yipin's failure to provide critical information for the calculation of U.S. indirect selling expenses, as adverse facts available we were able to rely on a primary source of information. Because we can rely on a primary source of information, section 776(c) of the Act regarding corroboration of the information we use as adverse facts available does not apply. We have identified payroll-related expenses in the other company's 2002 Income Statement and added this amount to American Yipin's indirect expenses and calculated an indirect selling expense factor which we have applied to all of American Yipin sales, thus accounting for the additional indirect selling expenses applicable to U.S. sales of the subject merchandise. Use of this information about indirect selling expenses is adverse to the interests of Jinan Yipin because, had it cooperated to the best of its ability, the amount of indirect selling expenses we would have deducted from the constructed export price would have been less. Moreover, the use of this data is inherently reliable and reasonable because it is based on actual selling expenses incurred in support of the respondent's sales of the subject merchandise during the current period of review. See section 776(c) of the Act. For a detailed discussion of the application of partial adverse facts available, please see the *Jinan Yipin Facts-Available Memorandum*.

### Export Price

In accordance with section 772(a) of the Act, we used the export-price methodology when the first sale to an unaffiliated purchaser was made outside the United States before importation of the merchandise into the United States. We calculated the export price based on prices from Shandong Heze and Trans-High to unaffiliated U.S. customers. We made deductions, where appropriate, from the gross unit price to account for movement expenses such as foreign inland freight, international freight, customs duties, and brokerage and handling. Because certain domestic charges, such as those for foreign inland freight, were provided by NME

companies, we valued those charges based on surrogate rates from India. See "Memorandum to the File" regarding the factors valuation for the preliminary results of the new shipper and administrative reviews (December 1, 2003) (*FOP Memorandum*).

### Constructed Export Price

In accordance with section 772(b) of the Act, we used constructed-export-price methodology when the first sale to an unaffiliated purchaser occurred after importation of the merchandise into the United States. We calculated the constructed export price based on prices from Jinan Yipin and Harmoni to unaffiliated U.S. customers. We made deductions, where appropriate, from the gross unit price to account for movement expenses such as foreign inland freight, international freight, customs duties, and brokerage and handling. Because some movement expenses were provided by NME companies, we valued those charges based on surrogate rates from India. See *FOP Memorandum*.

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 December 1, 2003, on file in the CRU, Room B-099.

### Normal Value

#### 1. Surrogate Country

When investigating imports from an NME country, section 773(c)(1) of the Act directs the Department to base normal value, in most circumstances, on the NME producer's factors of production 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 use, to the extent practicable, the prices or costs of factors of production in one or more market-economy countries that are at a level of economic development comparable to the NME country and are significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the "Factor Valuations" section below.

The Department has determined that India, Pakistan, Indonesia, Sri Lanka, and the Philippines are countries comparable to the PRC in terms of economic development. See "Memorandum to Laurie Parkhill" regarding the request for a list of surrogate countries (May 30, 2003). In

addition to being among the countries comparable to the PRC in economic development, India is a significant producer of the subject merchandise. We have used India as the surrogate country and, accordingly, have calculated normal value using Indian prices to value the PRC producers' factors of production, when available and appropriate. We have obtained and relied upon publicly available information. See "Memorandum to the File" regarding the selection of a surrogate country (December 1, 2003).

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

#### 2. Factors of Production

Section 773(c)(1) of the Act provides that the Department shall determine the normal value using a factors-of-production methodology if (1) the merchandise is exported from an NME country and (2) the information does not permit the calculation of normal value using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Factors of production include the following elements: (1) hours of labor required, (2) quantities of raw materials employed, (3) amounts of energy and other utilities consumed, and (4) representative capital costs. We used factors of production reported by the respondents for materials, energy, labor, and packing. We valued all the input factors using publicly available, published information, as discussed in the "Surrogate Country" and "Factor Valuations" sections of this notice.

#### 3. Factor Valuations

In accordance with section 773(c) of the Act, we calculated normal value based on factors of production reported by the respondents for the period of review. To calculate normal value, we multiplied the reported per-unit factor quantities by publicly available surrogate values from 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 shortest reported distance from the domestic supplier to the factory and Indian

surrogate values. This adjustment is in accordance with the decision in *Sigma Corporation v. United States*, 117 F. 3d 1401, 1407-08 (CAFC 1997). For a detailed description of all the surrogate values used, see the FOP Memorandum.

For those Indian rupee values not contemporaneous with the period of review, 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 Departmental research.

Except as specified below, we valued raw material 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 period of review, was the Directorate General of Commercial Intelligence and Statistics of the Indian Ministry of Commerce and Industry. We valued garlic seed based on pricing data from the *NHRDF News Letter*, published by India's National Horticultural Research and Development Foundation. We valued diesel fuel and electricity based on data from the International Energy Agency's *Energy Prices & Taxes: Quarterly Statistics* (Third Quarter, 2003). We valued water using the averages of municipal water rates from Asian Development Bank's *Second Water Utilities Data Book: Asian and Pacific Region* (October 1997).

The respondents reported packing inputs consisting of mesh bags, cartons,

plastic bands, tape, plastic jars, plastic jar lids, and metal clips. All of these inputs were valued using import data from the *World Trade Atlas* that covered the period of review.

For labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rate that appears on the website for Import Administration (<http://ia.ita.doc.gov/wages/corrected00wages/corrected00wages.htm>). The source of the wage-rate data for the Import Administration's website is the International Labor Organization's *Yearbook of Labour Statistics 2001* (Geneva, 2001), chapter 5B: Wages in Manufacturing.

The respondents claimed an adjustment for revenue earned on the sale of garlic sprouts. We find that sprouts are a by-product of garlic and deducted an offset amount from normal value. As a surrogate value for the sale of sprouts in the PRC, we used an average of Indian wholesale prices for green onions published by the Azadpur Agricultural Produce Marketing Committee.

We valued the truck rate based on an average of truck rates that were published in the Indian publication *Chemical Weekly* during the period of review. We valued foreign brokerage and handling charges based on a value calculated for the LTFV investigation of certain hot-rolled carbon steel flat products from India. For ocean freight, we obtained rate quotes from Maersk Sealand ([www.maersksealand.com](http://www.maersksealand.com)) dating from the period of review for the movement of refrigerated containers

from the PRC to the east and west coasts of the United States. We used these quotes to calculate a surrogate freight rate for each coast.

As discussed in the *FOP Memorandum*, the respondents and the petitioners submitted the publicly available financial information of six companies. We concluded that the financial information of four of the companies reflected costs incurred for highly processed food products and that this processing was not comparable with the operations of the respondent garlic companies. We concluded that the financial information for a fifth company was not representative of the financial experiences of the respondent companies because this company did not grow the agricultural products that it sold and, in some cases, performed no processing on these products. We found that the financial information of a tea company was most representative of the financial experiences of the respondent companies because it produced and processed a product that was not highly processed or preserved prior to its sale. Thus, to value factory overhead, selling, general and administrative expenses, and profit, we used rates based on data taken from the 2001/2002 financial statements of Parry Agro Industries Limited.

**Preliminary Results of the Reviews**

For the administrative review, we preliminarily determine that the following dumping margins exist for the period November 1, 2001, through October 31, 2002:

Exporter	Weighted-average percentage margin
Jinan Yipin Corporation, Ltd. ....	168.06
Shandong Heze International Trade and Developing Company .....	0.00
PRC-wide rate (including Top Pearl and Wo Hing) .....	376.67

For the new shipper reviews we preliminarily determine that the following dumping margins exist for the

period November 1, 2001, through October 31, 2002:

Producer and Exporter Combinations	Weighted-average percentage margin
Grown By Jining Yun Feng Agriculture Products Co., Ltd. and Exported By Jining Trans-High Trading Co., Ltd. ...	0.00
Grown and Exported By Zhengzhou Harmoni Spice Co., Ltd. ....	0.00

Case briefs or other written comments in at least six copies must be submitted to the Assistant Secretary for Import Administration no later than one week after the issuance of the Department's last verification report in these reviews.

Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs are due no later than five days after the submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs

submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. In accordance with 19 CFR 351.310, we will hold a public hearing to afford interested parties an opportunity to

comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If we receive a request for a hearing, we plan to hold the hearing three days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of the preliminary results of these reviews in the **Federal Register**. 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.

The Department will publish the final results of these reviews, including its analysis of issues raised in any case or rebuttal briefs, not later than 120 days after the date of publication of this notice. See section 751(a)(3) of the Act and 19 CFR 351.213(h)(1).

#### Assessment Rates

Upon completion of this administrative review and the new shipper reviews, the Department will determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to Customs upon completion of these reviews. If these preliminary results are adopted in our final results of review, we will direct Customs to assess the resulting rates against the entered customs value for the subject merchandise on each of the entries of each exporters' importer/customer during the period of review.

#### Cash-Deposit Requirements

The following cash-deposit requirements will be effective upon publication of the final results of the administrative review and new shipper reviews for 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 subject merchandise exported by Jinan Yipin or Shangdong Heze, grown by Jining Yun Feng Agriculture Products Co., Ltd., and exported by Trans-High, or grown and exported by Zhengzhou Harmoni Spice Co., Ltd., the cash-deposit rate will be that established in the final results of these

reviews; (2) for all other subject merchandise exported by Trans-High or Harmoni but not grown by Jining Yun Feng Agriculture Products Co., Ltd., or Zhengzhou Harmoni Spice Co., Ltd., respectively, the cash-deposit rate will be the PRC countrywide rate, which is 376.67 percent; (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, when imposed, shall remain in effect until publication of the final results of the next administrative review.

#### Notification to Interested Parties

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 the period of these reviews. 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 preliminary results of reviews in accordance with sections 751(a)(2)(B)(iv), 751(a)(3), and 777(i) of the Act.

Dated: December 1, 2003.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

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**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 100903A]

#### Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Construction and Operation of Offshore Oil and Gas Facilities in the Beaufort Sea

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of issuance of a letter of authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act

(MMPA), as amended, and implementing regulations, notice is hereby given that NMFS has issued a letter of authorization (LOA) to BP Exploration (Alaska), Inc. (BPXA) to take marine mammals incidental to the production of offshore oil and gas at the Northstar development in the Beaufort Sea off Alaska.

**DATES:** This LOA is effective from December 4, 2003, through December 3, 2004.

**ADDRESSES:** A copy of BPXA's letter, a list of monitoring reports, and/or the LOA may be obtained by writing to the Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or by telephoning one of the contacts listed here.

#### FOR FURTHER INFORMATION CONTACT:

Kenneth R. Hollingshead (301) 713-2055, ext. 128, or Bradley Smith (907) 271-5006.

**SUPPLEMENTARY INFORMATION:** Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made by NMFS and regulations are issued. Under the MMPA, the term "take" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notice and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals, and will not have an unmitigable adverse impact on the availability of the species or stock(s) of marine mammals for subsistence uses. In addition, NMFS must prescribe regulations setting forth the permissible methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses. The regulations also must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of marine mammals incidental to construction and operation of the offshore oil and gas facility at Northstar in the Beaufort Sea were published and made effective on May 25, 2000 (65 FR 34014), and remain in effect until May 25, 2005. These regulations include mitigation, monitoring, and reporting requirements.