

**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 Rescission in Part**

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

**SUMMARY:** In response to requests from interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on fresh garlic from the People's Republic of China (PRC). The period of review for this administrative review is November 1, 2002, through October 31, 2003.

Three companies named in the initiation of this review made no exports or sales of the subject merchandise during the period of review and, consequently, we are rescinding the review for these companies. In addition, we are rescinding our review of a fourth company because the petitioners withdrew their request for a review of that company. We are also rescinding our review of a fifth company because its sale to the United States is not eligible for review. Therefore, this review covers twelve manufacturers/exporters of the subject merchandise.

We preliminarily determine that nine of these companies have made sales in the United States at prices below normal value. Further, we preliminarily determine that the remaining three companies are not entitled to separate rates and have assigned them the rate for the PRC-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 7, 2004.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:****Background**

On November 3, 2003, the Department published a notice of opportunity to

request an administrative review of the antidumping duty order on fresh garlic from the PRC. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 68 FR 62279. On December 24, 2003, we published the *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews* (68 FR 74550), in which we initiated the 2002-2003 administrative review of the antidumping duty order on fresh garlic from the PRC.

On July 15, 2004, we extended the deadline for the issuance of the preliminary results of the administrative review by 120 days, until November 29, 2004 (69 FR 42418). We are conducting this review in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (the Act).

**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 (CBP) to that effect.

**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), as amplified by the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

For the reasons discussed in the section below entitled "The PRC-Wide Rate and Use of Facts Otherwise Available," we have determined that Jinxiang Hongyu Freezing and Storing Co., Ltd. (Hongyu), Linyi Sanshan Import and Export Trading Co., Ltd. (Linyi Sanshan), and Tancheng County Dexing Foods Co., Ltd. (Dexing Foods) do not qualify for a separate rate and are instead part of the PRC entity.

Jinxiang Dong Yun Freezing Storage Co., Ltd. (Dong Yun), Fook Huat Tong Kee Pte., Ltd. (FHTK), Huaiyang Hongda Dehydrated Vegetable Company (Hongda), Jinan Yipin Corporation, Ltd. (Jinan Yipin), Linshu Dading Private Agricultural Products Co., Ltd. (Linshu Dading), Sunny Import & Export Limited (Sunny), Taian Ziyang Food Co., Ltd (Ziyang), Jining Trans-High Trading Co., Ltd. (Trans-High), and Zhengzhou Harmoni Spice Co., Ltd. (Harmoni), all provided the requested

separate-rate information in their responses to our original and supplemental questionnaires. Accordingly, consistent with 61 FR 56570 (April 30, 1996), we performed separate-rates analyses to determine whether each producer/exporter is independent from government control.

#### 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.

With the exception of Hongyu, Lingi Sanshan, and Dexing Foods, each respondent has placed on the record a number of documents to demonstrate absence of *de jure* control including the "Foreign Trade Law of the People's Republic of China" and the "Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations." The Department has analyzed such PRC laws and found that they establish an absence of *de jure* control. See, e.g., *Preliminary Results of New Shipper Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 30695 (June 7, 2001). We have no information in this proceeding that would cause us to reconsider this determination.

#### 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.

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

#### Partial Rescission of Administrative Review

In response to our December 30, 2003, letter requesting quantity and value information, three companies responded that they had made no exports of the subject merchandise during the period of review (POR). These companies were Clipper Manufacturing Ltd. (Clipper), Shandong Heze International Trade and Developing Co. (Shandong Heze), and Shanghai Ever Rich Trade Company (Ever Rich). These individual responses are discussed in and attached to the *Questionnaire Response Memorandum to Laurie Parkhill*, dated November 29, 2004 (*Questionnaire Response Memo*). Each of the companies responded that they were not producers or exporters of the subject merchandise during the POR. We examined CBP data to confirm that none of them was listed as a manufacturer or exporter of the subject merchandise on entries during the POR. In addition, there is no information on the record to indicate that these companies had sales or exports of subject merchandise during the POR. As a result, we find that Clipper, Shandong Heze, and Ever Rich made no entries, exports, or sales of the subject

merchandise during the POR that are subject to the administrative review. Therefore, in accordance with 19 CFR 351.213(d)(3), we are rescinding our review with respect to these three companies.

On January 13, 2004, the petitioners withdrew their request for an administrative review of Xiangcheng Yisheng Foodstuffs Co. (Yisheng). Therefore, we are rescinding our review of Yisheng for this POR, pursuant to 19 CFR 351.213(d)(1).

We are also rescinding our review of H&T Trading Company (H&T). H&T requested a new shipper review and administrative review at the same time. In the course of our initial examination of the new shipper request, we discovered that H&T was a Hong Kong-based exporter that purchased the subject merchandise from a Chinese supplier, Jining Jinshan. Additional information demonstrated that Jining Jinshan had knowledge H&T would export the subject merchandise it purchased to the United States. Pursuant to section 772(a) of the Act, the first party in the chain of distribution with knowledge of its U.S. destination is the appropriate party to review. See *Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Administrative Review, and Intent to Rescind Administrative Review in Part*, 68 FR 4758, 4759 (January 30, 2003). Because of this knowledge and the fact that the sale between Jining Jinshan and H&T was the first non-intra-NME sale in the chain of distribution, the transaction between Jining Jinshan and H&T is the appropriate basis for determining the export price. Therefore, review of H&T is not appropriate and the Department is now rescinding its initiation of the review of H&T. Further, the Department did not receive a request for an administrative review of Jining Jinshan prior to or during the anniversary month of the publication of the antidumping duty order. See 19 CFR 351.214(d). See *Memorandum from Mark Ross to Laurie Parkhill Regarding Intent to Rescind the Administrative Review with Respect to H&T Trading Company* (January 29, 2004).

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

All respondents were given the opportunity to respond to the Department's questionnaire. As explained above, we received questionnaire responses from FHTK, Hongda, Jinan Yipin, Trans-High, Dong Yun, Linshu Dading, Sunny, Ziyang,

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, we have decided to treat Hongyu, Linyi Sanshan, and Dexing Foods as part of the PRC-wide entity.

Hongyu, Linyi Sanshan, and Dexing Foods 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 the responsibility not only to notify the Department if it is unable to provide requested information but also to provide a "full explanation and suggested alternative forms." Because Hongyu, Linyi Sanshan, and Dexing Foods 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 Uruguay Round Agreements Act (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, 2003, the Department issued its antidumping duty questionnaire to Hongyu, Linyi Sanshan, and Dexing Foods. We confirmed that the questionnaires we sent to Hongyu and Linyi Sanshan were delivered and accepted on January 6, 2004. We also confirmed that a representative of Dexing Foods picked up its questionnaire from the main Commerce building. See *Questionnaire Response Memo*. Because they did not provide responses to the Department's questionnaire, the Department is unable to determine whether Hongyu, Linyi Sanshan, and Dexing Foods are eligible for a separate rate. Thus, Hongyu, Linyi Sanshan, and Dexing Foods have not rebutted the presumption of government control and are presumed to be part of the PRC entity.

The PRC entity (including Hongyu, Linyi Sanshan, and Dexing Foods) failed to cooperate to the best of its ability in this administrative review, thus making the use of an adverse inference appropriate. Therefore, in accordance with the Department's practice, as adverse facts available, we have preliminarily assigned to the PRC entity the rate of 376.67 percent.

Section 776(c) of the Act requires that the Department corroborate, to the extent practicable, a figure which it applies as facts available. To corroborate information, the Department examines whether it is both reliable and relevant. Throughout the history of this proceeding, the highest rate ever determined 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, to the extent practicable, for the preliminary results of the first administrative review. See *Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review*, 61 FR 68229, 68230 (December 27, 1996). Further, it was corroborated in subsequent reviews to the extent that the Department referred to the history of corroboration and found that the Department received no information that warranted revisiting the issue. See *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002).

Similarly, no information has been presented in the current review that calls into question the reliability of this information. Thus, the Department finds that the information is reliable.

With respect to the relevance aspect of corroboration, the Department stated in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) (TRBs), that it will "consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin." See TRBs, 61 FR at 57392. See also *Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (disregarding the highest margin in the case as best information available because the margin was based on another company's uncharacteristic business expense resulting in an extremely high margin). The rate we are using for this review is the rate currently applicable to Hongyu, Linyi Sanshan, Dexing Foods, 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 Hongyu, Linyi Sanshan, and Dexing Foods 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).

#### Export Price

For FHTK, Hongda, Trans-High, Dong Yun, Linshu Dading, Sunny, and Ziyang we based the U.S. price on export price (EP), in accordance with section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior

to importation and constructed export price (CEP) was not otherwise warranted by the facts on the record. We calculated EP based on the packed price from the exporter to the first unaffiliated customer in the United States.

For FHTK, we made no adjustments to the gross unit price.

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

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

For Dong Yun, we deducted foreign inland freight from production facility to port of exit, brokerage and handling expenses, international freight, and marine insurance expenses.

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

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

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

As all foreign inland freight, foreign warehousing, foreign brokerage and handling, and marine insurance expenses (where applicable) were provided by PRC service providers or paid for in renminbi, we valued these services using Indian surrogate values (see "Factors of Production" section below for further discussion). Where applicable, we used the reported expense for international freight because the respondents used market-economy freight carriers and paid in a market-economy currency. See "Memorandum to the File" regarding the factors valuation for the preliminary results of the administrative review (November 29, 2004) (*FOP Memorandum*).

### Constructed Export Price

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

purchaser occurred after importation of the merchandise into the United States. We calculated the CEP for Jinan Yipin and Harmoni because the sales were made by their U.S. affiliates to unaffiliated U.S. customers. We based CEP on packed, delivered, or ex-warehouse prices to the first unaffiliated purchaser in the United States.

For Jinan Yipin, we made adjustments to the gross unit price for foreign inland freight from processing facility to port of exit, international ocean freight, U.S. inland freight from port to customer, other U.S. transportation expenses, U.S. brokerage and handling expenses, U.S. warehousing expenses, and U.S. import duties.

In accordance with section 772(d)(1) of the Act, we also deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses, credit expenses, billing adjustments, inventory carrying costs and indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

For Harmoni, we made deductions, where appropriate, from the gross unit price to account for movement expenses, foreign inland freight from plant to distribution warehouse, foreign brokerage and handling, international ocean freight, and U.S. brokerage and handling expenses.

In accordance with section 772(d)(1) of the Act, we also deducted those selling expenses associated with economic activities occurring in the United States, including credit expenses, commissions, inventory carrying costs, and indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

Because some movement expenses were provided by NME companies, we valued those charges based on surrogate values in 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 memorandum, dated November 29, 2004, on file in the Central Records Unit (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, Indonesia, Sri Lanka, the Philippines, Morocco, and Egypt are countries comparable to the PRC in terms of economic development. See *Memorandum to Laurie Parkhill from Ron Lorentzen* regarding the request for a list of surrogate countries (June 18, 2004). 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 Laurie Parkhill Re: Selection of Surrogate Country* (November 29, 2004).

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. Methodology

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

outweighed by the resources, time, and effort such an analysis would place on all parties to the proceeding, the Department has valued the intermediate input directly using a surrogate value. See, e.g., *Final Determination of Sales at Less Than Fair Value: Coumarin From the People's Republic of China*, 59 FR 66895–01 (December 28, 1994).

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

In other cases, after careful consideration of the record, the Department has determined that valuing the intermediate input for the production of subject merchandise will lead to a more accurate result than valuing the individual FOPs. See *Certain Frozen Fillets from the Socialist Republic of Vietnam: Notice of Preliminary Determination of Sales at Less Than Fair Value* 68 FR 498, 449 (January 31, 2003), and *Certain Frozen Fillets from the Socialist Republic of Vietnam: Notice of Final Determination of Sales at Less Than Fair Value*, 68 FR 37116 (June 16, 2003).

In this review, we determine that it is appropriate to apply a modified FOP methodology with respect to certain respondents. We conducted a full analysis of the information put on the record by the interested parties and conducted independent research into standard garlic-growing procedures in the PRC. See *Memorandum from Steve Williams to the File Re: Research on Chinese Production and Costs* (November 29, 2004) (*Research Memo*). Based on the information discussed in this memo, as well as all the information currently on the record, the divergent usage rates provided by

certain respondents do not appear to be realistic or credible.

More specifically, the Department has determined that the FOPs pertaining to the usage of pesticides, herbicides, and/or seed by certain respondents were extremely questionable and, in some instances, not credible. Two internet-published articles regarding garlic production in the PRC, *Garlic Production Technology Regulations*, produced by the Kuming Tong Safe Science and Technology Company, and *Environmentally Safe Garlic Production Technology Regulations*, produced by Hebei Standards, provided objective ranges for the common commercial usage of these particular factors. See *Research Memo* at Attachments 1 and 2. In addition, the Department observed major discrepancies among the FOPs reported by different respondents. The Department also found large differences in the water-usage factors reported by certain respondents located in the same area, but it could not find reliable third-party data with which to compare the factors. It is the Department's position that, if FOPs reported to the Department appear highly improbable and lack credibility, it has an obligation to address the resultant inadequacy in its calculations.

In light of the above, the Department finds that the FOP methodology is insufficient to provide an accurate result for certain respondents, based on the unreliability of their reported FOP usage rates. In order to calculate a more accurate margin for these companies, the Department has chosen to apply the intermediate-product FOP methodology to those respondents with questionable FOPs. The respondents affected are Trans-High, Ziyang, Dong Yun, FHTK, and Hongda. For a complete explanation of the Department's analysis, see *Memorandum from Edward Yang to Barbara E. Tillman Re: Modification of Factors-of-Production Methodology* (November 29, 2004).

The Department is re-opening the record of this segment to the interested parties for 21 days after the publication of these preliminary results in order to obtain additional independent third-party information regarding the disparate usage rates which these five respondents have provided. The Department will fully consider any additional information before completing the final results of this administrative review.

With respect to the remaining respondents, we find that the standard FOP analysis remains appropriate. See *Certain Preserved Mushrooms from the People's Republic of China: Final Results of Sixth Antidumping Duty New*

*Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review*, 69 FR 54635 (September 9, 2004), and accompanying Issues and Decision Memorandum at Comment 3 (concerning the application of a modified analysis only to certain respondents, as appropriate).

### 3. Factors of Production

Section 773(c)(1) of the Act provides that the Department shall determine the normal value using a FOP 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. Except as discussed above, we used FOPs 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.

### 4. Factor Valuations

In accordance with section 773(c) of the Act, we calculated normal value based on FOPs reported by the respondents for the POR. To calculate normal value, we multiplied the reported per-unit factor quantities by publicly available surrogate values in India with the exception of the surrogate value for ocean freight, which we obtained from an international freight company. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. We calculated these freight costs based on the 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 (Fed. Cir. 1997). We converted prices reported in Indian rupees (Rs) to US dollars (USDs) using the average exchange rate obtained from the official Import Administration Web site (<http://ia.ita.doc.gov/exchange/india.txt>). For a detailed description of all the surrogate values we used, see the FOP Memorandum.

For those Indian rupee values not contemporaneous with the POR, we

adjusted for inflation using wholesale price indices for India published in the International Monetary Fund's *International Financial Statistics*. Surrogate-value data or sources to obtain such data were obtained from the petitioners, the respondents, and the Department's research.

Except as specified below, we valued 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 POR, 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 based on data from the International Energy Agency's *Energy Prices & Taxes: Quarterly Statistics* (Third Quarter, 2003). We valued electricity based on data from the International Energy Agency's *Energy Prices & Taxes: Quarterly Statistics* (First Quarter, 2003). We valued water using the water tariff rate reported on the Municipal Corporation of Greater Mumbai's Web site. See <http://www.mcgm.gov.in/Stat%20&%20Fig/Revenue.htm>.

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

For labor, consistent with 19 CFR 351.408(c)(3), we used the most recent 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 Web site is the International Labor Organization's *Yearbook of Labour Statistics 2002* (Geneva, 2002), chapter 5B: Wages in Manufacturing.

For land, we used the value published in the Punjab State Development Report. We valued cold storage using the surrogate electricity value if the cold-storage facility was located at the production facility. If the respondent's cold storage was located off-site, we used a value based on a rate from "Local traders to import generator fitted

containers," an article from Dawn Wire Service (May 19, 1995).

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 in its February 17, 2003, March 21, 2003, April 25, 2003, and May 30, 2003, *Azadpur Agricultural Produce Marketing Committee Bulletins*.

We valued the truck rate based on an average of truck rates that were published in the Indian publication *Chemical Weekly* during the POR. We valued foreign brokerage and handling charges based on a value calculated for the LTFV investigation of certain hot-rolled carbon steel flat products from India. For ocean freight, we used the value provided by Linshu Dading from Maersk Sealand ([www.maersksealand.com](http://www.maersksealand.com)) in its November 1, 2002, through April 30, 2003, new shipper review and this administrative review for the movement of 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. For marine insurance, we relied on rate quotes from RJG Consultants ([www.rjgconsultants.com](http://www.rjgconsultants.com)) dating from the POR for the movement of refrigerated containers from the PRC to the east and west coasts of the United States.

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 Parry Agro Industries Limited ("Parry Agro"), a tea producer in India, was most representative of the financial experiences of the respondent companies for which we applied the FOP methodology because it produced and processed a product that was not highly processed or preserved prior to its sale. Thus, to value factory overhead, and selling, general and administrative expenses we used rates based on data taken from the 2003/2004 financial statements of Parry Agro. Parry Agro's 2002/2003 and 2003/2004 financial statements did not report a profit. Thus, for purposes of these preliminary results we are applying the profit ratio that was reported on its 2001/2002 financial statements. We also concluded that the financial information of Mahabaleshwar Honey Producers Co-Operative Society

Ltd. ("MHPC"), a non-integrated Indian honey processor, was most representative of the financial experiences of the respondents for which we applied the intermediate-product FOP methodology because it is the only company on record which we know with certainty processes an intermediate product. Thus, to value factory overhead, selling, general, and administrative expenses, and profit, we used rates based on data taken from the 2003-2004 financial statements of MHPC. See the *FOP Memorandum* for a more complete discussion of the Department's analysis.

#### Preliminary Results of the Review

We preliminarily determine that the following dumping margins exist for the period November 1, 2002, through October 31, 2003:

#### FRESH GARLIC FROM THE PEOPLE'S REPUBLIC OF CHINA

Manufacturer/Exporter	Weighted-average percentage margin
Jinan Yipin Corporation, Ltd. 36.75.	
Jinxiang Dong Yun Freezing Storage Co., Ltd. ....	101.51
Fook Huat Tong Kee Pte., Ltd. ....	90.27
Huaiyang Hongda Dehydrated Vegetable Company ....	33.52
Linshu Dading Private Agricultural Products Co., Ltd. ....	58.26
Sunny Import & Export Limited ....	27.24
Taian Ziyang Food Co., Ltd. ....	61.43
Jining Trans-High Trading Co., Ltd. ....	26.18
Zhengzhou Harmoni Spice Co., Ltd. ....	41.28
PRC-wide rate* ....	376.67

\*Includes Jinxiang Hongyu Freezing and Storing Co., Ltd., Linyi Sanshan Import and Export Trading Co., Ltd., and Tancheng County Dexing Foods Co., Ltd.

Case briefs or other written comments in at least six copies must be submitted to the Assistant Secretary for Import Administration no later than 30 days after new factual information is submitted for the record. 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. 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 this review 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. 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, NW, Washington, DC 20230.

#### **Extension of Time for the Final Results of Administrative Review**

The issues in these preliminary results of review present a number of complex factual and legal questions pertaining to the Department's methods of calculating the antidumping duties in this case. Therefore, it is not practicable to complete the review within the time limits mandated by section 751(a)(3)(A) of the Act. Consequently, we are extending the time limit for the completion of the final results of this review, including our analysis of issues raised in any case or rebuttal briefs, until May 30, 2005. See section 751(a)(3) of the Act and 19 CFR 351.213(h)(1).

#### **Assessment Rates**

Upon completion of this administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated, whenever possible, an exporter/ importer (or customer)-specific assessment rate or value for merchandise subject to this review. With respect to CEP sales for which entered values were reported, for these preliminary results we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each applicable importer. For duty-assessment rates calculated on this basis, we will direct the CBP to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of the applicable

importer's/customer's entries during the review period.

With respect to sales for which entered values were not reported, for these preliminary results, we divided the total dumping margins for each exporter's importer/customer by the total number of units the exporter sold to that importer/customer. For assessment amounts calculated on this basis, we will direct CBP to assess the resulting per-unit dollar amount against each unit of merchandise in each of that importer's/customer's entries during the review period.

#### **Cash-Deposit Requirements**

The following cash-deposit requirements will be effective upon publication of the final results of the administrative review for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for subject merchandise exported by the respondents, the cash-deposit rate will be that established in the final results of review; (2) 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; (3) for all non-PRC exporters of subject merchandise, the cash-deposit rate will be the rate applicable to the PRC exporter that supplied 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 POR. 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 review in accordance with sections 751(a)(3) and 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: November 29, 2004.

**James J. Jochum,**  
Assistant Secretary for Import Administration.

[FR Doc. E4-3477 Filed 12-6-04; 8:45 am]

**BILLING CODE 3510-DS-S**

## **DEPARTMENT OF COMMERCE**

### **International Trade Administration**

[A-485-806]

#### **Certain Hot-Rolled Carbon Steel Flat Products from Romania: Preliminary Results of Antidumping Duty Administrative Review**

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

**SUMMARY:** In response to a request by United States Steel Corporation, a domestic interested party, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products (hot-rolled steel) from Romania. The period of review (POR) is November 1, 2002, through October 31, 2003.

We preliminarily find that sales have been made below normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on the subject merchandise that was exported by Ispat Sidex S.A. (Ispat Sidex) and its subsidiary, Sidex Trading S.R.L. (Sidex Trading), and entered during the POR.

**EFFECTIVE DATE:** December 7, 2004.

**FOR FURTHER INFORMATION CONTACT:** Charles Riggle at (202) 482-0650 or David Layton at (202) 482-0371, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On November 29, 2001, the Department published an antidumping duty order on hot-rolled steel from Romania. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products From Romania*, 66 FR 59566 (November 29, 2001) (*Amended Determination and Order*). On November 3, 2003, the Department published a notice of opportunity to request an administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 68 FR 62279 (November 3, 2003). On November 28, 2003, in accordance with 19 CFR 351.213(b)(1), the petitioner requested a review of Ispat Sidex, a