

In accordance with the Board's regulations, a member of the FTZ staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is June 29, 2007. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 16, 2007.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce Export Assistance Center, 1100 St. Francis Drive, Santa Fe, NM 87504.
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2814B, 1401 Constitution Ave. NW, Washington, DC 20230.

For further information, contact Elizabeth Whiteman at Elizabeth_Whiteman@ita.doc.gov or (202) 482-0473.

Dated: April 20, 2007.

Andrew McGilvray,
Executive Secretary.

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

(Docket 16-2007)

Foreign-Trade Zone 214 -- Lenoir County, North Carolina, Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the North Carolina Global TransPark Authority, grantee of FTZ 214, requesting authority to expand its zone to include an additional site in Rocky Mount adjacent to the Durham Customs and Border Protection port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on April 19, 2007.

FTZ 214 was approved on May 7, 1996 (Board Order 815, 61 FR 27048, 5/30/96) and expanded on August 14, 2003 (Board Order 1281, 68 FR 51965, 8/29/03). The general-purpose zone currently consists of two sites (1,205 acres) in the area: *Site 1* (1,170 acres) --

Kinston Regional Jetport complex in Lenoir County; and, *Site 2* (35 acres) -- warehouse facility of Kanban Logistics, Inc., 1114 Kingsboro Road, Rocky Mount.

The applicant is now requesting authority to expand the general-purpose zone to an additional site in Rocky Mount: *Proposed Site 3* (84 acres total) -- two warehouse facilities of Crown LSP Group, Inc., located at 400 English Road (Proposed Site 3A - 56 acres) and located at 1201 Thorpe Road (Proposed Site 3B - 28 acres). The site is owned by AGREDE, LLC. The site will provide warehousing and distribution services to area businesses. No specific manufacturing authority is being requested at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is June 29, 2007. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 16, 2007.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations: Office of Carolinas Gateway Partnership, 427 Falls Road, Rocky Mount, NC 27804; and, Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2814B, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230.

For further information, contact Camille Evans at Camille_Evans@ita.doc.gov or (202) 482-2350.

Dated: April 19, 2007.

Andrew McGilvray,
Executive Secretary.

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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 New Shipper Reviews

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

SUMMARY: The Department of Commerce ("the Department") is conducting new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China ("PRC") covering the period of review ("POR") of November 1, 2005, through April 30, 2006.

On June 27, 2006, the Department initiated semi-annual new shipper reviews for Jinxiang Tianma Freezing Storage Co., Ltd. ("Tianma"), Shenzhen Xinboda Industrial Co., Ltd. ("Xinboda"), Shandong Wonderland Organic Food Co., Ltd. ("Wonderland"), Weifang Hongqiao International Logistics Co., Ltd. ("Hongqiao").¹ Therefore, this review covers four companies.

We preliminarily determine that certain new shipper review companies have made sales in the United States at prices below normal value. If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on entries of subject merchandise during the POR for which the importer-specific assessment rates are above *de minimis*.

EFFECTIVE DATE: April 30, 2007

FOR FURTHER INFORMATION CONTACT: Javier Barrientos, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482-2243.

SUPPLEMENTARY INFORMATION:

General Background

On November 16, 1994, the Department published in the **Federal Register** the antidumping duty order on fresh garlic from the PRC. See *Antidumping Duty Order: Fresh Garlic From the People's Republic of China*, 59 FR 59209 (November 16, 1994).

On May 18, May 24, May 26, and May 30, 2006, we received timely requests for new shipper reviews of

¹ See *Fresh Garlic from the People's Republic of China; Initiation of New Shipper Reviews*, 71 FR 38607 (July 7, 2006).

Xinboda, Wonderland, Hongqiao, and Tianma, respectively. On June 30, 2006, after initiating the reviews, the Department issued antidumping duty questionnaires to the four companies participating in the new shipper reviews. The Department subsequently issued supplemental questionnaires to all companies under review between September 2006 and February 2007.

Expansion of the POR

On April 23, 2007, we issued a memorandum extending the end of the POR from April 30, 2006, to May 4, 2006, to capture entries of two of the new shippers' merchandise into the United States market. *See Memorandum to the File from Javier Barrientos, Senior Analyst, through Alex Villanueva, Program Manager, Office 9: Expansion of the Period of Review in the New Shipper Reviews of Fresh Garlic from the People's Republic of China*, dated April 23, 2007.

Extension of Preliminary Results Deadline

On December 20, 2006, the Department published a notice extending the preliminary results time limits of these new shipper reviews to April 23, 2007. *See Fresh Garlic from the People's Republic of China: Extension of Time Limits for the Preliminary Results of the New Shipper Reviews*, 71 FR 76272 (December 20, 2006). The final results continue to be due 90 days after the publication of these preliminary results.

Surrogate Country and Surrogate Values

On November 20, 2006, and April 3, 2007, Petitioners submitted surrogate value comments.² To date, no other parties have submitted surrogate value or surrogate country comments on the record of this proceeding.

Scope of the Order

The products covered by this 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, our written description of the scope of this order is dispositive. In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to CBP to that effect.

Verification

Pursuant to 19 CFR 351.307(b)(iv), we conducted verifications of the sales and factors of production ("FOP") for Xinboda³, Wonderland⁴, Hongqiao⁵, and Tianma⁶.

³ The verification of Xinboda's sales took place on March 12, 2007. *See Memorandum to the File through Alex Villanueva, Program Manager, Office 9, from Javier Barrientos, Senior Case Analyst: Verification of Shenzhen Xinboda Industrial Co., Ltd. in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China*, dated April 23, 2007. The verification of the FOPs for Zhengzhou Dadi Garlic Industry Co., Ltd. ("Dadi"), Xinboda's producer of subject merchandise, took place from March 13, through March 14, 2007. Id.

⁴ The verification of Wonderland's sales and FOPs took place from March 15, 2007 through March 16, 2007. *See Memorandum to the File through Alex Villanueva, Program Manager, Office 9, from Irene Gorelik, Analyst, Office 9: Verification of the Sales and Factors Response of Shandong Wonderland Organic Food Co., Ltd. in the Antidumping New Shipper Review of Fresh Garlic from the People's Republic of China*, dated April 23, 2007.

⁵ The verification of Hongqiao's sales took place on March 19, 2007. *See Memorandum to the File through Alex Villanueva, Program Manager, Office 9, from Javier Barrientos, Senior Case Analyst: Verification of Weifang Hongqiao International Logistics Co., Ltd. in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China*, dated April 23, 2007. The verification of the FOPs for Jinxiang Dingtai Garlic Product Co., Ltd. ("Dingtai"), Hongqiao's producer of subject merchandise, took place on March 20, 2007. Id.

⁶ The verification of Tianma's sales and FOPs took place from March 21, through March 23, 2007. *See Memorandum to the File through Alex Villanueva, Program Manager, Office 9, from Irene Gorelik, Analyst, Office 9: Verification of the Sales and Factors Response of Jinxiang Tianma Freezing*

New Shipper Reviews Bona Fide Analysis

Consistent with the Department's practice, we investigated the *bona fide* nature of the sales made by Xinboda, Hongqiao, Wonderland, and Tianma for the new shipper reviews. We found that new shipper sales made by Xinboda, Hongqiao, Wonderland, and Tianma were made on a *bona fide* basis. Based on our investigation into the *bona fide* nature of the sales, the questionnaire responses submitted by the companies, and our verifications thereof, as well as the companies' eligibility for a separate rate (*see Separate Rates Determination* section below) and the Department's preliminary determination that Xinboda, Hongqiao, Wonderland, and Tianma were not affiliated with any exporter or producer that had previously shipped subject merchandise to the United States, we preliminarily determine that each of the above-named respondents has met the requirements to qualify as a new shipper during the POR. Therefore, for purposes of these preliminary results of review, we are treating Xinboda's, Hongqiao's, Wonderland's, and Tianma's respective sales of subject merchandise to the United States as appropriate transactions for these new shipper reviews.⁷

Non-Market Economy Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a Non-Market Economy ("NME") country. In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended (the "Act"), any determination that a foreign

Storage Co., Ltd. in the Antidumping New Shipper Review of Fresh Garlic from the People's Republic of China, dated April 23, 2007.

⁷ *See Memorandum from Irene Gorelik, Analyst, Office 9, through Alex Villanueva, Program Manager, Office 9, to James C. Doyle, Director, Office 9: Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Fresh Garlic: Shandong Wonderland Organic Food Co., Ltd.*, dated April 23, 2007; *Memorandum from Javier Barrientos, Senior Analyst, Office 9, through Alex Villanueva, Program Manager, Office 9, to James C. Doyle, Office Director, Office 9: Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Fresh Garlic: Weifang Hongqiao International Logistics Co., Ltd.*, dated April 23, 2007; *Memorandum from Irene Gorelik, Analyst, Office 9, through Alex Villanueva, Program Manager, Office 9, to James C. Doyle, Office Director, Office 9: Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China ("PRC"): Jinxiang Tianma Freezing Storage Co., Ltd.*, dated April 23, 2007; and *Memorandum from Javier Barrientos, Senior Analyst, Office 9, through Alex Villanueva, Program Manager, Office 9, to James C. Doyle, Office Director, Office 9: Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Fresh Garlic: Shenzhen Xinboda Industrial Co., Ltd.*, dated April 23, 2007.

² Petitioners in this proceeding are the Fresh Garlic Producers Association and its individual members.

country is an NME country shall remain in effect until revoked by the administering authority. See *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007). None of the parties to this proceeding has contested such treatment. Accordingly, we calculated normal value ("NV") in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rates Determination

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. See e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China*, 72 FR 9508 (March 2, 2007).

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).

A. Absence of De Jure Control

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

Throughout the course of this proceeding, the new shipper companies (Xinboda, Hongqiao, Wonderland, and Tianma) have placed sufficient evidence on the record that demonstrate the absence of *de jure* control. The new shipper companies have placed on the record a number of documents to

demonstrate absence of *de jure* control including the "Foreign Trade Law of the People's Republic of China" and the "Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations." The Department has analyzed such PRC laws and found that they establish an absence of *de jure* control. See, e.g., *Preliminary Results of New Shipper Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 30695 (June 7, 2001). We have no information in this proceeding that would cause us to reconsider this determination. Thus, we believe that the evidence on the record supports a preliminary finding of an absence of *de jure* government control based on: (1) an absence of restrictive stipulations associated with the exporter's business license; and (2) the legal authority on the record decentralizing control over the respondent.

B. Absence of De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. See *Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255 (December 31, 1998). Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates. The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the exporter sets its own export prices independent of the government and without the approval of a government authority; (2) whether the respondent has the authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

The Department conducted a separate-rates analysis for the new shipper companies under review: Hongqiao, Tianma, Wonderland, and Xinboda. Hongqiao, Tianma, and Xinboda reported that they are limited-liability companies owned by private investors. However, one new shipper review company, Wonderland, reported

that it is wholly owned by a foreign entity. Therefore, an additional separate-rates analysis is not necessary to determine whether Wonderland's export activities are independent from government control. See *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China*, 64 FR 71104, 71105 (December 20, 1999) (where the respondent was wholly foreign-owned, and thus, qualified for a separate rate).

These companies have all 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; and (5) each is responsible for financing its own losses. The questionnaire responses of the new shipper companies (Hongqiao, Tianma, Wonderland, and Xinboda) 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 Hongqiao, Tianma, Wonderland, and Xinboda have met the criteria for the application of a separate rate.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's FOPs, valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are: (1) at a level of economic development comparable to that of the NME country and (2) significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the "Normal Value" section below and in *Memorandum to the File through James C. Doyle, Director, Office 9 and Alex Villanueva, Program Manager, Office 9 from Javier Barrientos, Senior Analyst, Office 9: Surrogate Factor Valuations for the Preliminary Results of the New Shipper Reviews*, dated April 23, 2007 ("*Factor Valuation Memo*").

As discussed in the "Separate Rates" section, the Department considers the PRC to be an NME country. The

Department has treated the PRC as an NME country in all previous antidumping proceedings. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding contested such treatment. Accordingly, we treated the PRC as an NME country for purposes of these reviews and calculated NV, pursuant to section 773(c) of the Act, by valuing the FOPs in a surrogate country.

The Department determined that India, Sri Lanka, Indonesia, Philippines, and Egypt are countries comparable to the PRC in terms of economic development. See *Memorandum from Ron Lorentzen, Director, Office of Policy, to Alex Villanueva, Program Manager, China/NME Group, Office 9: Antidumping Administrative Review of Fresh Garlic from the People's Republic of China: Request for a List of Surrogate Countries*, dated August 7, 2006. Moreover, it is the Department's practice to select an appropriate surrogate country based on the availability and reliability of data from the countries. See *Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process*, dated March 1, 2004. In this case, we have found that India and Egypt are both significant producers of comparable merchandise. As previously stated, only Petitioners submitted data with respect to surrogate factor values with Indian data. No parties submitted Egyptian data on the record for this proceeding. Moreover, since India has been the primary surrogate country in past segments, for these new shipper reviews, we will rely on Indian data with respect to surrogate factor valuations and surrogate financial ratios. Therefore, we find India to be a reliable source for surrogate values because India is at a similar level of economic development pursuant to 773(c)(4) of the Act, is a significant producer of comparable merchandise, and has publicly available and reliable data. See *Memorandum to the File, through James C. Doyle, Office Director, Office 9, Import Administration, and Alex Villanueva, Program Manager, Office 9, from Javier Barrientos, Senior Analyst: Antidumping Duty New Shipper Reviews of Fresh Garlic from the People's Republic of China: Selection of a Surrogate Country*, dated April 23, 2007. Furthermore, we note that India has been the primary surrogate country in past segments and Petitioners submitted surrogate values

based on Indian import data that are contemporaneous with the POR, which gives further credence to the use of India as a surrogate country.

U.S. Price

In accordance with section 772(a) of the Act, we calculated the export price ("EP") for sales to the United States for Hongqiao, Tianma, Wonderland, and Xinboda because the first sale to an unaffiliated party was made before the date of importation and the use of constructed EP was not otherwise warranted. We calculated EP based on the price to unaffiliated purchasers in the United States. In accordance with section 772(c) of the Act, as appropriate, we deducted from the starting price to unaffiliated purchasers foreign inland freight and brokerage and handling. For Hongqiao, Tianma, Wonderland, and Xinboda, each of these services was either provided by an NME vendor or paid for using an NME currency. Thus, we based the deduction of these movement charges on surrogate values. See *Factor Valuation Memo* for details regarding the surrogate values for movement expenses.

Normal Value

1. Methodology

The Department's general policy, consistent with section 773(c)(1)(B) of the Act, is to calculate NV using each of the FOPs that a respondent consumes in the production of a unit of the subject merchandise. There are circumstances, however, in which the Department will modify its standard FOP methodology, choosing to apply a surrogate value to an intermediate input instead of the individual FOPs used to produce that intermediate input. In some cases, a respondent may report factors used to produce an intermediate input that accounts for an insignificant share of total output. When the potential increase in accuracy to the overall calculation that results from valuing each of the FOPs is outweighed by the resources, time, and burden such an analysis would place on all parties to the proceeding, the Department has valued the intermediate input directly using a surrogate value. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China*, 68 FR 4753 (August 11, 2003), and accompanying Issues and Decision Memorandum at Comment 1 (which cites to *Certain Preserved Mushrooms from the People's Republic of China: Final Results of First New Shipper Review and First Antidumping Duty Administrative Review*, 66 FR 31204

(June 11, 2001), and accompanying Issues and Decision Memorandum at Comment 2).

In the 9th *Review Final Results*, the Department recognized that there were serious discrepancies between the reported FOPs of the different respondents and that the standard FOP methodology might not be adequate to apply in future reviews.⁸ In the tenth administrative review, the Department conducted a "harvest verification" of several garlic producers in the PRC, interviewing farmers, studying farming techniques, and reviewing standard PRC garlic production record-keeping.⁹ In analyzing the questionnaire responses and "harvest verification" reports in the tenth administrative review, the Department determined that, to capture the complete costs of producing fresh garlic, the methodology of valuing the intermediate product, the fresh garlic bulb, would more accurately capture the complete costs of producing subject merchandise.¹⁰ In the 10th *Review Final Results*, we also stated that "should a respondent be able provide sufficient factual evidence that it maintains the necessary information in its internal books and records that would allow us to establish the completeness and accuracy of the reported FOPs, we will revisit this issue and consider whether to use its reported FOPs in the calculation of NV." See *10th Review Final Results* at 26331; see also *Fresh Garlic from the People's Republic of China: Partial Rescission and Preliminary Results of the Eleventh Administrative Review and New Shipper Reviews* 71 FR 71510 (December 11, 2006).

In the course of these reviews, the Department has requested and obtained a vast amount of detailed information from the respondents with respect to each company's garlic production practices. Questionnaire responses

⁸ See *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 34082 (June 13, 2005) ("9th Review Final Results").

⁹ See *Memorandum to the File from Irene Gorelik, Analyst; New Shipper Reviews of Fresh Garlic from the People's Republic of China: Intermediate Input Methodology Memoranda from the 10th Administrative Review Final Results and 11th Administrative Review Preliminary Results*, dated April 23, 2007, in which the Department placed the Intermediate Input Methodology memos from the tenth and eleventh Administrative Reviews on the record of this proceeding, inclusive of the verification reports resulting from the "harvest verification."

¹⁰ See *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews* 71 FR 26329 (May 4, 2006) ("10th Review Final Results"), and accompanying Issues and Decision Memorandum at Comment 1.

revealed, and subsequent verifications confirmed, that only Tianma had farming operations to grow fresh garlic.¹¹ Based on our analysis of the information on the record and for the reasons outlined in the *Memorandum to the File through James C. Doyle, Director, Office 9 and Alex Villanueva, Program Manager, Office 9 from Irene Gorelik, Analyst, Office 9: New Shipper Review of the Antidumping Duty Order on Fresh Garlic From the People's Republic of China: Intermediate Input Methodology*, April 23, 2007 (“*Intermediate Product Memo*”), we continue to believe that the sole company that grew fresh garlic, Tianma, was unable to accurately record and substantiate the complete costs of growing garlic during the POR.

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

2. Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on the intermediate product value and processing FOPs reported by the respondents for the POR. To calculate NV, we multiplied the reported per-unit factor quantities by publicly available surrogate values in India with the exception of the surrogate value for ocean freight, which we obtained from an international freight company. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them

¹¹ Specifically, Wonderland is a processor and exporter of fresh garlic that purchased whole garlic bulb and processed it for export. Both Hongqiao and Xinboda are exporters that purchased already processed garlic for export from their unaffiliated suppliers. Hongqiao and Xinboda’s unaffiliated suppliers do not grow but purchase whole garlic and process it. Consequently, the FOPs provided by Wonderland, Xinboda’s unaffiliated supplier and Hongqiao’s unaffiliated supplier all begin with whole garlic bulb and not the factors that are used to grow whole garlic bulb.

delivered prices. We calculated these freight costs based on the shorter of the reported distance from the domestic supplier to the factory or the distance from the port in accordance with the decision in *Sigma Corporation v. United States*, 117 F.3d 1401 (Fed. Cir. 1997). We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sale(s) as certified by the U.S. Federal Reserve Bank.

Garlic Bulb Value

In applying the intermediate input methodology, the Department sought foremost to identify the best available surrogate value for the fresh garlic bulb input to production, as opposed to identifying a surrogate value for garlic seed. Therefore, we have valued the fresh garlic bulb using prices for the “super-A” grade garlic bulb in India, as published by Azadpur Agriculture Produce Marketing Committee (“APMC”) in its “Market Information Bulletin” (the “Bulletin”).¹² Azadpur APMC is the largest fruit and vegetable market in Asia and has become a “National Distribution Centre” for important Indian agricultural products such as garlic. We note that the “super-A” grade denotes a garlic bulb which is over 40 millimeters (“mm”) in diameter and that the respondents’ subject merchandise is, on average, greater than 40 mm in diameter, as identified within the respondents’ questionnaire responses. As the Department determined in past reviews, the price at which garlic is sold is heavily dependent upon physical characteristics, such as bulb size and number of cloves. See *9th Review Final Results* at Comment 2; see also *10th Review Final Results* at Comment 2. For these preliminary results, we find that the “super-A” data from Azadpur APMC is the best available and most appropriate information on the record to value the garlic bulb input, pursuant to section 773(c) of the Act.

To value the fresh garlic bulb in the last administrative review, the Department used information from the Agricultural Marketing Information Network (“Agmarknet”) database. The database on the Agmarknet website contains daily prices from APMCs throughout India and has information on prices and varieties of garlic sold in India, but does not contain information on the grade/size of the bulb. In the last administrative review, the Department

¹² For information concerning this surrogate value, see Petitioners’ November 20, 2006, and April, 3, 2007 submissions.

concluded that the “China” variety bulb, found in the Agmarknet database, is reflective of the larger bulb used by the respondents in the production of subject merchandise. See *10th Review Final Results* at Comment 2. The Department believes the Azadpur APMC to be a superior source of information for purposes of these reviews for the reasons stated below.

The Department’s practice when selecting the “best available information” for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, surrogate values which are: publicly available, product-specific, representative of a broad market average, tax-exclusive and contemporaneous with the POR. See *Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China*, 71 FR 16116 (March 30, 2006), and accompanying Issues and Decision Memorandum at Comment 2.

(1) The Bulletin is Publicly Available

We note that the Bulletin is published for public distribution on each trading day (six days per week) and contains daily information on agricultural products sold at the APMC. In addition, the Bulletin is available electronically upon request from Azadpur APMC. Thus, we find that the Bulletin is publicly available information.

(2) The Bulletin is Sufficiently Specific

With respect to garlic prices, the Bulletin contains count size-specific data such as the grade of the bulb and prices (minimum, maximum and modal) in rupees of the various grades of garlic. As we have explained in past cases, this is extremely important data for purposes of our analysis, as respondents’ garlic bulb products/inputs are, on average, over 40mm in diameter, and most Indian garlic is not that large. “super-A” garlic, however, is defined to be that size. Thus, the Department finds the “super-A” garlic pricing information in the Bulletin to be more specific to the input in question than the Agmarknet data because it provides a surrogate value based on a quantifiable bulb size (grade) with which to value the intermediate product.

(3) The Bulletin reports a broad market average

As noted above, Azadpur APMC is a “National Distribution Centre” for agricultural products. A careful examination of the Bulletin shows that agricultural products from all over India are sold at Azadpur APMC, which claims to be the largest fruit and

vegetable market (by quantity) in the world. See Azadpur APMC's website www.apmcazadpurdelhi.com. Thus, we find the Bulletin's "super-A" garlic prices to be representative of a broad market average.

Furthermore, there is no record evidence which suggests that the prices included in the Bulletin are inclusive of taxes or duties.

Adjustments for Contemporaneity and Other Matters

In selecting the best available and most appropriate surrogate value for the fresh garlic bulb, the Department considered all surrogate value comments submitted by Petitioners and have determined that certain adjustments are necessary.¹³

With respect to contemporaneity, we note that the Azadpur APMC data is not contemporaneous with the POR. We note that the record shows that data points for "super-A" garlic in the Azadpur Bulletin were not publicly recorded until May 2006 (a month after the POR). However, we are able to adjust the post-POR surrogate value of "super-A" garlic by deflating the data points, *i.e.*, we divided the average Wholesale Price Index ("WPI") for the six months of the POR by the average WPI of the number of months for which we gathered data points for May - July 2006, and applied the resultant ratio to the average price of "super-A" garlic. The Department's methodology for deflation is described in detail in the *Factor Valuation Memo*. Thus, we believe such deflation addresses our concerns about the contemporaneity of the data.

With respect to the markets within India used by the Department, it is the Department's practice to use country-wide data instead of regional data when the former is available. See *Wuhan Bee Healthy Co., Ltd. v. United States*, Slip Op. 05-142 (CIT 2005), at 5. Thus, we have included all data points for sales of "super-A" garlic from seven Indian states in calculating a surrogate value for fresh garlic bulbs. See *Factor Valuation Memo* at 4.

In addition, the Department used a simple average rather than a weighted average of all "super-A" garlic prices to calculate the fresh bulb surrogate value because daily arrivals are not recorded on a size basis and we were unable to determine the weight of the "super-A" garlic versus the weight of the other grades of garlic.

¹³ Other than Petitioners, none of the four new shipper companies submitted surrogate value comments or data.

Finally, the Department deducted a six percent market fee imposed by Azadpur AMPC on sales made at the APMC, as indicated on the APMC website.¹⁴

Because the Department is applying an "intermediate-product valuation methodology," resulting in the valuation of factor inputs that begin with whole garlic bulb, the direct material, and other factors such as electricity, water, mesh bags, cartons, tape and plastic banding, where applicable, that are associated with processing whole garlic will be valued with surrogate data from India. Furthermore, Indian surrogate financial ratios will also be applied to all four new shipper companies. The sources and calculations for the surrogate factor valuations and surrogate financial ratios are described in full detail in the *Factor Valuation Memo*.

Preliminary Results of the Reviews

The Department has determined that the following preliminary dumping margins exist for the period November 1, 2005, through May 4, 2006:

Manufacturer/Exporter	Weighted-Average Margin (Percent)
Produced by Jinxiang Dingtai Garlic Product Co., Ltd. and Exported by Weifang Hongqiao International Logistics Co., Ltd.	25.34 %
Produced and Exported by Jinxiang Tianma Freezing Storage Co., Ltd.	8.42 %
Produced and Exported by Shandong Wonderland Organic Food Co., Ltd.	5.24 %
Produced by Zhengzhou Dadi Garlic Industry Co., Ltd. and Exported by Shenzhen Xinboda Industrial Co., Ltd.	0.00 % (<i>de minimis</i>)

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

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

¹⁴ We note that the Azadpur APMC Market Information Bulletin database also discusses unloading weighing fees. However, we do not believe that an adjustment is necessary in our calculations to reflect these fees. First, it is not clear that this charge is applied to all, or even most, farmers. Furthermore, this charge does not appear to be a tax or duty.

publication of these preliminary results. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. See 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication of these preliminary results of review. See 19 CFR 351.309(d).

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

The Department will issue the final results of these new shipper reviews, which will include the results of its analysis of issues raised in any such comments, within 90 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. If these preliminary results are adopted in our final results of review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific (or customer) *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis*.

Cash Deposit Requirements

The following cash deposit requirements, when imposed, will be effective upon publication of the final results of these new shipper reviews for

all shipments of subject merchandise from Hongqiao, Wonderland, Tianma, and Xinboda entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) for subject merchandise produced and exported by Tianma, produced and exported by Wonderland, produced by Dadi and exported by Xinboda, or produced by Dingtai and exported by Hongqiao, the cash-deposit rate will be that established in the final results of these reviews; (2) for subject merchandise exported by Hongqiao but not manufactured by Dingtai and for subject merchandise exported by Xinboda but not manufactured by Dadi, the cash deposit rate will continue to be the PRC-wide rate (*i.e.*, 376.67 percent); and (3) for subject merchandise exported by Wonderland or Tianma, but manufactured by any other party, the cash deposit rate will be the PRC-wide rate (*i.e.*, 376.67 percent).

If the cash deposit rate calculated in the final results is zero or *de minimis*, no cash deposit will be required for those specific producer-exporter combinations. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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

These the new shipper reviews and this notice are in accordance with sections 751(a)(2)(B) and 777(i) of the Act, and 19 CFR 351.214(h) and 351.221(b)(4) of the Department's regulations.

Dated: April 23, 2007.

David A. Spooner,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042307A]

New England Fishery Management Council; Skate Fishery Management Plan; Scoping Process

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

ACTION: Notice of intent to prepare an environmental impact statement (EIS) and notice of initiation of scoping process; request for comments.

SUMMARY: The New England Fishery Management Council (Council) announces its intent to prepare an amendment to the Skate Fishery Management Plan (FMP) and to prepare an EIS to analyze the impacts of any proposed management measures. The Council is also formally initiating a public process to determine the scope of alternatives to be addressed in the amendment and EIS. The purpose of this notification is to alert the interested public of the re-commencement of the scoping process and to provide for public participation in compliance with environmental documentation requirements.

DATES: The Council will discuss and take scoping comments at public meetings in May, 2007. For specific dates and times of the scoping meetings, see **SUPPLEMENTARY INFORMATION**. Written scoping comments must be received on or before 5 p.m., local time, May 30, 2007.

ADDRESSES: The Council will take scoping comments at public meetings in Gloucester, MA, Narragansett, RI and Buzzards Bay, MA. For specific locations, see **SUPPLEMENTARY INFORMATION**. Written comments should be submitted by any of the following methods:

- Mail: Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930-2298. Please write on the envelope: "Scoping Comments on Amendment 3 to the Skate FMP";
- E-mail: SkateScoping@noaa.gov;
- Federal e-Rulemaking Portal: <http://www.regulations.gov>; or
- Fax: (978) 281-9135.

Requests for copies of the scoping document and other information should be directed to Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street,

Mill 2, Newburyport, MA 01950, telephone (978) 465-0492. The scoping document is also accessible electronically via the Internet at <http://www.nefmc.org/skates/index.html>.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, (978) 465-0492.

SUPPLEMENTARY INFORMATION:

Background

The Skate FMP was implemented in September 2003. The primary objectives of the Skate FMP are to: (1) Protect the overfished species of skates and increase their biomass to target levels specified in the FMP while preventing overfishing of the other skate species; and (2) collect information critical for improving knowledge of skate fisheries by species and for monitoring the status of skate fisheries, resources, and related markets, as well as the effectiveness of skates management approaches. The FMP includes reporting requirements to improve fishery information, prohibitions on overfished species, a trip limit for the skate wing fishery, and mechanisms for FMP monitoring and plan adjustments. Through the establishment of a "baseline" of management measures in other fisheries, the FMP recognizes the interactions of skates with groundfish, scallops, and monkfish fisheries. In 2006, winter skate was determined to be overfished. Therefore, under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act, the Council must develop and implement a rebuilding plan for this resource.

Measures Under Consideration

The Council may consider a host of management measures to reduce skate mortality, improve reporting, cap or reduce landings, and/or reduce bycatch and discard mortality to prevent overfishing and rebuild overfished stocks. Measures that may be considered include, but are not limited to, a hard TAC for the directed skate fishery, annual catch limits and accountability measures, greater regulation of the fishery through days-at-sea limits, changes to skate possession limits, changes to exempted fisheries and closed areas, new gear regulations, and elimination of the baseline review process and proxy input controls.

It is possible that during the scoping process, other issues will be raised related to the purpose of this amendment, and if appropriate, those issues will be considered by the Council as well.