

acquisition from the Persons Subject To This Order of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Persons Subject To This Order in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Persons Subject To This Order, or service any item, of whatever origin, that is owned, possessed or controlled by the Persons Subject To This Order if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. In addition to the Related Person named above, after notice and opportunity for comment as provided in section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Xu by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order if necessary to prevent evasion of the Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until May 4, 2016.

VI. In accordance with part 756 of the Regulations, Xu may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

VII. In accordance with part 756 of the Regulations, the related persons may also file an appeal of this Order with the Under Secretary of Commerce for Industry and Security.

VIII. A copy of this Order shall be delivered to Xu and the Related Persons. This Order shall be published in the **Federal Register**.

Dated: November 27, 2007.

**Eileen M. Albanese**,

*Director, Office of Exporter Services.*

[FR Doc. 07-5987 Filed 12-07-07; 8:45 am]

**BILLING CODE 3510-DT-M**

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### **Proposed Information Collection; Comment Request; Application for the President's "E" and "E STAR" Awards for Export Expansion**

**AGENCY:** International Trade Administration (ITA).

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before February 8, 2008.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Jennifer Kirsch, [Jennifer.Kirsch@mail.doc.gov](mailto:Jennifer.Kirsch@mail.doc.gov), phone (202) 482-5449, fax (202) 482-5362.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Abstract**

The President's "E" Award for Excellence in Exporting is our nation's highest award to honor American exporters. "E" Awards recognize firms and organizations for their competitive achievements in world markets, as well as the benefits of their success to the U.S. economy. The President's "E STAR" Award recognizes the sustained superior international marketing performance of "E" Award winners.

##### **II. Method of Collection**

The application form is available on the Internet. Applicants are required to submit one electronic version and one hard copy.

##### **III. Data**

*OMB Control Number:* 0625-0065.  
*Form Number(s):* ITA-725P.

*Type of Review:* Regular submission.  
*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 10.

*Estimated Time Per Response:* 20 hours.

*Estimated Total Annual Burden Hours:* 200.

*Estimated Total Annual Cost to Public:* \$0.

#### **IV. Request for Comments**

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 4, 2007.

**Gwellnar Banks**,

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E7-23848 Filed 12-7-07; 8:45 am]

**BILLING CODE 3510-FP-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-831]

#### **Fresh Garlic from the People's Republic of China: Notice of Preliminary Results and Preliminary Partial Rescission of the Twelfth Administrative Review**

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

**SUMMARY:** The Department of Commerce ("Department") is conducting an administrative review of the antidumping duty order on fresh garlic from the People's Republic of China ("PRC") covering the period of review ("POR") of November 1, 2005, through October 31, 2006. As discussed below, we preliminarily determine that certain respondents in this review made sales in the United States at prices below

normal value ("NV"). 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 importer-specific assessment rates are above *de minimis*.

**EFFECTIVE DATE:** December 10, 2007.

**FOR FURTHER INFORMATION CONTACT:** Julia Hancock, Michael Holton, or Matthew Renkey, 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) 482-1394, (202) 482-1324, and (202) 482-2312, respectively.

#### 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) ("Order"). On November 1, 2006, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on fresh garlic from the PRC for the period November 1, 2005, through October 31, 2006. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review*, 71 FR 64240 (November 1, 2006).

On November 30, 2006, we received requests from both Petitioners<sup>1</sup> and certain PRC companies to conduct administrative reviews for a total of 52 companies. On December 27, 2006, the Department initiated an administrative review of 52<sup>2</sup> producers/exporters of

<sup>1</sup> Petitioners are the members of the Fresh Garlic Producers Association: Christopher Ranch L.L.C.; The Garlic Company; Valley Garlic; and Vessey and Company, Inc. (hereinafter referred to as "Petitioners").

<sup>2</sup> Anqiu Friend Food Co., Ltd. ("Anqiu"); APS Qingdao; Fujian Meitan Import & Export Xiamen Corporation ("Fujian Meitan"); Golden Bridge International, Inc. ("Golden Bridge"); Henan Weite Industrial Co., Ltd. ("Henan Weite"); Heze Ever-Best International Trade Co., Ltd. ("Heze Ever-Best"); Hongchang Fruits & Vegetable Products ("Hongchang"); Huaiyang Hongda Dehydrated Vegetable Company ("Huaiyang Hongda"); Jinan Farmlady Trading Co., Ltd. ("Jinan Farmlady"); Jinan Yipin Corporation, Ltd. ("Jinan Yipin"); Jining Haijiang Trading Co., Ltd. ("Jining Haijiang"); Jining Solar Summit Trade Co., Ltd. ("Jining Solar"); Jining Trans-High Trading Co., Ltd. ("Jining Trans-High"); Jinxian County Huaguang Food Import & Export Co., Ltd. ("Jinxian County Huaguang"); Jinxiang Dong Yun Freezing Storage Co., Ltd. (aka Jinxiang Eastward Shipping Import

subject merchandise from the PRC. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 77720 (December 27, 2006) ("Initiation Notice").

On March 8, 2007, in accordance with section 351.213(d)(1) of the Department's regulations, we rescinded the administrative review with respect to nine companies. See *Fresh Garlic from the People's Republic of China: Notice of Partial Rescission of the Twelfth Administrative Review*, 72 FR 10491 (March 8, 2007) ("Rescission Notice"). Therefore, this review covers 43<sup>3</sup> producers/exporters of the subject merchandise and the PRC-wide entity.

and Export Limited Company) ("Jinxiang Dong Yun"); Jinxiang Shanyang Freezing Storage Co., Ltd. ("Jinxiang Shanyang"); Laiwu Hongyang Trading Company Ltd. ("Laiwu Hongyang"); Linshu Dading Private Agricultural Products Co., Ltd. ("Linshu Dading"); Omni Décor China Ltd. ("Omni"); Pizhou Guangda Import and Export Co., Ltd. ("Pizhou Guangda"); Qingdao Bedow Foodstuffs Co., Ltd. ("Qingdao Bedow"); Qingdao Camel Trading Co., Ltd.; ("Qingdao Camel"); Qingdao H&T Food Co., Ltd. ("Qingdao H&T"); Qingdao Potenza Imp & Exp Co., Ltd. ("Qingdao Potenza"); Qingdao Saturn International Trade Co., Ltd. ("Qingdao Saturn"); Qingdao Shiboliang Food Co., Ltd. ("Qingdao Shiboliang"); Qingdao Tiantaixing Foods Co., Ltd. ("Qingdao Tiantaixing"); Qingdao Titan Shipping LLC ("Qingdao Titan"); Qingdao Xintianfeng Foods ("Qingdao Xintianfeng"); Qufu Dongbao Import & Export Trade Co., Ltd. ("Qufu Dongbao"); Rizhao Xingda Foodstuffs Co., Ltd. ("Rizhao Xingda"); Shandong Chengshun Farm Produce Trading Co., Ltd. ("Shandong Chengshun"); Shandong Dongsheng Eastsun Foods Co., Ltd. ("Shandong Dongsheng"); Shandong Garlic Company ("Shandong Garlic"); Shandong Longtai Fruits and Vegetables Co., Ltd. ("Shandong Longtai"); Shandong Wonderland Organic Food Co., Ltd. ("Shandong Wonderland"); Shanghai Ba-Shi Yuexin Logistics Development ("Shanghai Ba-Shi"); Shanghai Ever Rich Trade Company ("Shanghai Ever Rich"); Shanghai LJ International Trading Co., Ltd. ("Shanghai LJ"); Shanghai McCormick Foods Co., Ltd. ("Shanghai McCormick"); Shenzhen Fanhui Import & Export Co., Ltd. ("Shenzhen Fanhui"); Shenzhen Xinboda Industrial Co., Ltd. ("Shenzhen Xinboda"); Sunny Import & Export Co., Ltd. ("Sunny"); T&S International, LLC ("T&S"); Taian Fook Huat Tong Kee Pte Ltd. ("Taian Fook Huat"); Taian Ziyang Food Co., Ltd. ("Taian Ziyang"); Weifang Hongqiao International Logistic Co., Ltd. ("Weifang Hongqiao"); Weifang Shennong Foodstuff Co., Ltd. ("Weifang Shennong"); Xiang Cheng Sunny Foodstuff Factory ("Xiang Cheng"); XuZhou Simple Garlic Industry Co., Ltd. ("XuZhou Simple"); Zhangqiu Qingyuan Vegetable Co., Ltd. ("Zhangqiu Qingyuan"); and Zhengzhou Harmoni Spice Co., Ltd. ("Zhengzhou Harmoni").

<sup>3</sup> Anqiu; APS Qingdao; Fujian Meitan; Golden Bridge; Henan Weite; Heze Ever-Best; Hongchang; Huaiyang Hongda; Jinan Farmlady; Jining Haijiang; Jining Solar; Jining Trans-High; Jinxian County Huaguang; Jinxiang Dong Yun; Jinxiang Shanyang; Laiwu Hongyang; Pizhou Guangda; Qingdao Bedow; Qingdao Camel; Qingdao H&T; Qingdao Potenza; Qingdao Saturn; Qingdao Shiboliang; Qingdao Tiantaixing; Qingdao Xintianfeng; Qufu Dongbao; Rizhao Xingda; Shandong Chengshun; Shandong Dongsheng; Shandong Garlic; Shandong Longtai; Shanghai Ba-Shi; Shanghai Ever Rich; Shanghai LJ; Shanghai McCormick; Shenzhen Fanhui; Sunny; T&S; Taian Ziyang; Weifang Shennong; Xiang Cheng; Zhangqiu Qingyuan; and Zhengzhou Harmoni.

On August 2, 2007, the Department extended the preliminary results of this administrative review until November 30, 2007. See *Fresh Garlic from the People's Republic of China: Extension of Time Limit for the Preliminary Results of the Twelfth Administrative Review*, 72 FR 42390 (August 2, 2007).

##### Respondent Selection

On January 23, 2007, the Department issued a quantity and value ("Q&V") questionnaire to the 43 named firms that still had an active request for review. See Letter with Attachments from Alex Villanueva, Program Manager, to All Interested Parties, RE: Quantity and Value Questionnaire for Fresh Garlic from the People's Republic of China, (January 23, 2007) ("Q&V questionnaire"). Additionally, on January 23, 2007, Petitioners withdrew their request for review for nine named firms.<sup>4</sup> See *Rescission Notice*. Between February 2, 2007, and March 2, 2007, the Department received responses to the Q&V questionnaire from 23 firms.<sup>5</sup>

On February 13, 2007, Qingdao Camel withdrew its request for an administrative review.<sup>6</sup> On February 14, 2007, the Department received a letter from Qingdao Camel stating that it would not be responding to the Q&V questionnaire.

On February 15, 2007, the Department issued a second Q&V questionnaire to the 20 firms<sup>7</sup> that did not respond to the Department's original Q&V questionnaire. See Letter with Attachments from Alex Villanueva, Program Manager, to All Interested

<sup>4</sup> Jinan Yipin; Lindshu Dading; Omni; Qingdao Titan; Shandong Wonderland; Shenzhen Xinboda; Taian Fook; Weifang Hongqiao; and XuZhou Simple.

<sup>5</sup> Jinxiang Dong Yun; Huaiyang Hongda; Shanghai LJ; Qufu Dong Bao; Weifang Shennong; Zhengzhou Harmoni; Sunny; Jinxiang Shanyang; Qingdao Xintianfeng; Shandong Longtai; Jining Trans-High; Shenzhen Fanhui; Taian Ziyang; Anqiu; Heze Ever-Best; Qingdao Saturn; Henan Weite; Qingdao Tiantaixing; Xiang Cheng (producer for Shanghai LJ); Shanghai Ever Rich; XuZhou Simple; Shanghai McCormick; and Jinan Farmlady. In their responses, both XuZhou Simple and Shanghai McCormick responses stated that they had no shipments of subject merchandise to the United States during the POR. Moreover, between March 13-14, 2007, the Department received revised Q&V questionnaire responses from the following 10 firms: Anqiu; Henan Weite; Jinan Farmlady; Jinxiang Dong Yun; Qingdao Tiantaixing; Qingdao Xintianfeng; Qufu Dongbao; Shanghai LJ; Taian Ziyang; and Weifang Shennong.

<sup>6</sup> However, Petitioners did not withdraw their request for a review of Qingdao Camel.

<sup>7</sup> APS Qingdao; Fujian Meitan; Hongchang Fruits; Jining Haijiang; Jining Solar; Jinxian County Huaguang; Laiwu Hongyang; Pizhou Guangda; Qingdao Bedow; Qingdao H&T; Qingdao Potenza; Qingdao Shiboliang; Rizhao Xingda; Shandong Chengshun; Shandong Dongsheng; Shandong Garlic; Shanghai Ba-Shi; T&S; Golden Bridge; and Zhangqiu Qingyuan.

Parties, RE: Second Quantity and Value Questionnaire for Fresh Garlic from the People's Republic of China, (February 15, 2007) ("Second Q&V Questionnaire").

Between February 16, 2007, and February 27, 2007, the Department received separate rate certifications from 18 firms<sup>8</sup> and between March 23 and 26, 2007, the Department received separate rate applications from 2 firms.<sup>9</sup> Additionally, between February 27, 2007, and March 2, 2007, the Department received responses from Zhangqiu Qingyuan and Golden Bridge that each company did not have shipments of subject merchandise to the United States during the POR.

As discussed below in "Preliminary Partial Rescission of the Administrative Review," on March 16, 2007, the Department received letters from Petitioners and Zhengzhou Harmoni withdrawing their requests for review of Zhengzhou Harmoni and thus, the Department did not consider Zhengzhou Harmoni in the selection of respondents.

On April 11, 2007, after receiving comments from interested parties, the Department selected Jinxiang Dong Yun, Huaiyang Hongda, and Shanghai LJ as the three mandatory respondents since they were the three largest exporters, by volume, of the remaining companies. See Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, from James C. Doyle, Office Director, Office 9, re: Antidumping Duty Administrative Review of Fresh Garlic from the People's Republic of China: Selection of Respondents, (April 11, 2007) ("Respondent Selection Memo"). There are 15 companies, based on withdrawals and appropriately submitted Q&V questionnaire responses, that were not selected as mandatory respondents, but which qualified for separate rates: Sunny; Qufu Dong Bao; Weifang Shennong; Jinxiang Shanyang; Qingdao Xintianfeng; Shandong Longtai; Jining Trans-High; Shenzhen Fanhui; Taian Ziyang; Anqiu; Shanghai Ever Rich; Heze Ever-Best; Qingdao Saturn; Henan Weite; and Jinan Farmlady (collectively known as the "separate rate companies").

<sup>8</sup> Jinxiang Dong Yun; Huaiyang Hongda; Shanghai LJ; Qufu Dong Bao; Weifang Shennong; Zhengzhou Harmoni; Sunny; Jinxiang Shanyang; Qingdao Xintianfeng; Shandong Longtai; Jining Trans-High; Shenzhen Fanhui; Taian Ziyang; Anqiu; Shanghai Ever Rich; Heze Ever-Best; Qingdao Saturn; and Henan Weite.

<sup>9</sup> Qingdao Tiantaixing and Jinan Farmlady.

### Questionnaires

There are 37<sup>10</sup> companies that remain in the administrative review, after the rescission of the reviews for Qingdao Tiantaixing, Zhengzhou Harmoni, Golden Bridge, Shanghai McCormick, and Zhangqiu Qingyuan, for these preliminary results, as discussed below in "Preliminary Partial Rescission of the Administrative Reviews."

On April 16, 2007, the Department issued antidumping duty questionnaires to Jinxiang Dong Yun, Huaiyang Hongda, and Shanghai LJ. Between May 14, 2007, and June 4, 2007, Huaiyang Hongda responded to the Department's non-market economy ("NME") questionnaire but did not respond to the Department's subsequent supplemental questionnaires. Between May 21, 2007, and November 15, 2007, Shanghai LJ responded to the Department's NME questionnaire and subsequent supplemental questionnaires. Between May 21, 2007, and November 13, 2007, Jinxiang Dong Yun responded to the Department's NME questionnaire and subsequent supplemental questionnaires. Between May 7, 2007, and May 23, 2007, Qingdao Saturn submitted voluntary responses to the Department's NME questionnaire.

### Preliminary Partial Rescission of the Administrative Review

On March 22, 2007, Petitioners requested that the Department extend the deadline for the withdrawal of review requests. On March 27, 2007, the Department extended the deadline to withdraw a request for review to July 11, 2007.

#### *Qingdao Tiantaixing*

On July 9, 2007, Qingdao Tiantaixing withdrew its request for an administrative review. No other party requested a review of Qingdao Tiantaixing. Therefore, because Qingdao Tiantaixing's request was timely, in accordance with 19 CFR 351.213(d)(1), we have rescinded this review with respect to Qingdao Tiantaixing.

#### *Qingdao Xintianfeng*

On February 6, 2007, Qingdao Xintianfeng withdrew its request for an

<sup>10</sup> Anqiu; APS Qingdao; Fujian Meitan; Henan Weite; Hongchang; Huaiyang Hongda; Jinan Farmlady; Jining Haijiang; Jining Solar; Jining Trans-High; Jinxian County Huaguang; Jinxiang Dong Yun; Jinxiang Shanyang; Laiwu Hongyang; Pizhou Guangda; Qingdao Bedow; Qingdao Camel; Qingdao H&T; Qingdao Potenza; Qingdao Saturn; Qingdao Shiboliang; Qingdao Xintianfeng; Qufu Dongbao; Rizhao Xingda; Shandong Chengshun; Shandong Dongsheng; Shandong Garlic; Shandong Longtai; Shanghai Ba-Shi; Shanghai Ever Rich; Shanghai LJ; Shenzhen Fanhui; Sunny; T&S; Taian Ziyang; Weifang Shennong; and Xiang Cheng.

administrative review. Nonetheless, as previously noted, on February 22, 2007, Qingdao Xintianfeng submitted both a Q&V questionnaire response and a separate rate certification. On July 25, 2007, which was 14 days after the withdrawal deadline, Petitioners submitted a letter withdrawing their request for an administrative review of Qingdao Xintianfeng. On July 31, 2007, Qingdao Xintianfeng submitted a letter stating that due to its cooperative efforts it wished to remain an active respondent in this administrative review. On August 22, 2007, the Department issued a letter stating that it extended the time limit for withdrawing a request for review by 20 days to July 31, 2007. However, the Department also requested that Qingdao Xintianfeng submit a letter clarifying whether its July 31, 2007, letter, was in fact a retraction of its February 6, 2007, withdrawal of its review request. On August 24, 2007, Qingdao Xintianfeng submitted a letter stating that it was retracting its February 6, 2007, withdrawal request and wished to remain an active respondent in this administrative review. Therefore, because Qingdao Xintianfeng still has an active request for a review, we have not rescinded this review with respect to Qingdao Xintianfeng.

#### *Zhengzhou Harmoni*

On March 16, 2007, the Department received letters from Petitioners and Zhengzhou Harmoni withdrawing their requests for review of Zhengzhou Harmoni. Therefore, because Petitioners' and Zhengzhou Harmoni's requests were timely, in accordance with 19 CFR 351.213(d)(1), we have rescinded this review with respect to Zhengzhou Harmoni.

#### *No-Shipment Companies*

Three companies, Golden Bridge, Shanghai McCormick, and Zhangqiu Qingyuan, reported in their Q&V questionnaire responses that they made no shipments of subject merchandise to the United States during the POR. Additionally, the Department's examination of shipment data from CBP for these 3 companies confirmed that there were no entries of subject merchandise from them during the POR. Consequently, because there is no evidence on the record to indicate that these three companies had sales of subject merchandise under this Order during the POR, pursuant to 19 CFR 351.213(d)(3), the Department is preliminarily rescinding the review with respect to these three respondents: Golden Bridge, Shanghai McCormick, and Zhangqiu Qingyuan.

### Surrogate Country and Surrogate Values

On June 7, 2007, the Department sent interested parties a letter requesting comments on the surrogate country and information pertaining to valuing factors of production. On August 2, 2007, September 20, 2007, and October 31, 2007, Petitioners submitted surrogate value comments from various Indian sources. No other interested party submitted comments on the surrogate country and information pertaining to valuing factors of production.

### Scope of the Order

The products covered by this *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 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.

### Adverse Facts Available (“AFA”)

Section 776(a)(2) of the Tariff Act of 1930, as amended (the “Act”), provides that, if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1)

and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that if an interested party “promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information,” the Department may modify the requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed “deficient” under section 782(d) if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department; and (5) the information can be used without undue difficulties.

Furthermore, section 776(b) of the Act states 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 from the administering authority or the Commission, the administering authority or the Commission ..., in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.” *See also* Statement

of Administrative Action (“SAA”) accompanying the Uruguay Round Agreements Act (“URAA”), H.R. Rep. No. 103–316 at 870 (1994). 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 id.* An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. *See* section 776(b) of the Act.

### Huaiyang Hongda

As discussed in the “General Background” section above, Huaiyang Hongda did not respond to the supplemental questionnaires issued by the Department on August 10, 2007, and August 22, 2007. The deadline for Huaiyang Hongda to file a response to the supplemental Section A questionnaire and the supplemental Sections C and D questionnaire were August 24, 2007, and September 4, 2007, respectively. Huaiyang Hongda failed to respond to either of these supplemental questionnaires. Additionally, the Department issued letters to Huaiyang Hongda on August 24, 2007, and September 13, 2007, and confirmed delivery for both letters. In both letters, the Department noted that responses to its supplemental questionnaires were past due and requested that Huaiyang Hongda notify the Department whether it intended to participate further in this administrative review. Huaiyang Hongda did not respond to either of these letters. Therefore, the Department finds that Huaiyang Hongda’s non-responsiveness necessitates the use of facts available, pursuant to sections 776(a)(2)(A), (B) and (C) of the Act.

Based upon Huaiyang Hongda’s failure to submit responses to the Department’s supplemental questionnaires and follow-up letters, the Department finds that Huaiyang Hongda withheld requested information, failed to provide the information in a timely manner and in the form requested, and significantly impeded this proceeding, pursuant to sections 776(a)(2)(A), (B) and (C) of the Act. Because Huaiyang Hongda failed to provide a response to the Department’s supplemental questionnaires, critical data relevant to its separate rate determination remains outstanding. Therefore, the Department was prevented from conducting a complete separate rate analysis. Additionally, Huaiyang Hongda’s failure to provide a response to the Department’s supplemental questionnaires means that

critical information necessary to calculate an antidumping margin for Huaiyang Hongda is absent from the record. Therefore, Huaiyang Hongda withheld requested information, failed to provide the information in a timely manner and in the form requested, and has significantly impeded this proceeding. Thus, the Department has no choice but to rely on the facts otherwise available in order to determine a margin for Huaiyang Hongda, pursuant to section 776(a)(2)(A), (B) and (C) of the Act. *See Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 69546 (December 1, 2006) and accompanying Issues and Decision Memorandum at Comment 1.

For these preliminary results, the Department finds that Huaiyang Hongda has failed to cooperate to the best of its ability. Specifically, the Department finds that Huaiyang Hongda did not respond to the Department's request for clarification on certain issues, including its separate rate information and reported sales and cost information, as requested in the Department's supplemental questionnaires. *See Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1384 (Fed. Cir. 2003) ("*Nippon Steel*"). Because Huaiyang Hongda refused to answer the Department's supplemental questionnaires and letters, the Department finds that Huaiyang Hongda has failed to cooperate to the best of its ability, pursuant to section 776(b) of the Act.

Because of Huaiyang Hongda's refusal to cooperate in the instant proceeding, the Department was unable to calculate a company-specific margin or even to determine Huaiyang Hongda's separate rate status. Thus, the Department could not determine whether Huaiyang Hongda is eligible for a separate rate. Accordingly, we are not granting Huaiyang Hongda a separate rate and consider Hongda to be part of the PRC-wide entity, subject to the PRC-wide rate.

#### 19 Companies

As mentioned in the "General Background" section above, the Department initiated this administrative review with respect to 52 companies, including among them APS Qingdao, Fujian Meitan, Hongchang, Jining Haijiang, Jining Solar, Jinxian County Huaguang, Laiwu Hongyang, Pizhou Guangda, Qingdao Bedow, Qingdao Camel, Qingdao H&T, Qingdao Potenza, Qingdao Shiboliang, Rizhao Xingda, Shandong Chengshun, Shandong

Dongsheng, Shandong Garlic, Shanghai Ba-Shi, and T&S (collectively referred to as the "19 Companies"). *See Initiation Notice*. On January 23, 2007, the Department rescinded, in part, the review on nine of the 52 companies, but noted that 43 companies, including the 19 Companies, were still subject to review. *See Rescission Notice*. Additionally, on January 23, 2007, and on February 15, 2007, the Department issued a Q&V questionnaire and a Second Q&V questionnaire to the 19 companies. None of the 19 Companies responded to the Department's Q&V questionnaire, nor did these 19 Companies respond to the Department's Second Q&V questionnaire.

Because these 19 Companies were non-responsive to the Department's two requests for Q&V information, the Department finds that they are not entitled to a separate rate. Additionally, by not responding to the Department's first or second Q&V questionnaire, each company failed to provide critical information to be used for the Department's respondent selection process. Therefore, pursuant to sections 776(a)(2)(A), (B) and (C) of the Act, the Department finds that the application of facts available is appropriate. In addition, pursuant to section 776(b) of the Act, the Department may apply adverse facts available if it finds a respondent has failed to cooperate by not acting to the best of its ability to comply with a request for information from the Department. By failing to respond to the Department's first and second Q&V questionnaire, these 19 Companies have failed to act to the best of their ability in this segment of the proceeding. Moreover, because these 19 Companies did not participate in the respondent selection exercise, the Department did not send them a questionnaire and was unable to determine whether or not they qualified for a separate rate. Therefore, these 19 Companies are not eligible to receive a separate rate and will be part of the PRC-wide entity, subject to the PRC-wide rate.

#### PRC-wide Entity

Because Huaiyang Hongda and the 19 Companies, which are part of the PRC-wide entity, failed to cooperate to the best of their ability in providing the requested information, as discussed above, we find it appropriate, in accordance with sections 776(a)(2)(A), (B) and (C), as well as section 776(b), of the Act, to assign total AFA to the PRC-wide entity. *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of the First Administrative*

*Review and New Shipper Review*, 72 FR 10689, 10692 (March 9, 2007) (decision to apply total AFA to the NME-wide entity was unchanged for the final results). By doing so, we ensure that the companies that are part of the PRC-wide entity will not obtain a more favorable result by failing to cooperate than had they cooperated fully in this review.

As discussed above, section 776(b) of the Act authorizes the Department to use, as AFA, information derived from the petition, the final determination in the LTFV investigation, any previous administrative review, or any other information placed on the record. Section 776(b)(4) of the Act permits the Department to use as AFA information derived in the LTFV investigation or any prior review. In selecting an AFA rate, the Department's practice has been to assign non-cooperative Respondents the highest margin determined for any party in the less-than-fair-value ("LTFV") investigation or in any administrative review. *See Stainless Steel Plate in Coils from Taiwan: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 67 FR 5789 (February 7, 2002). As AFA, we are assigning the PRC-wide entity, which includes Huaiyang Hongda and the 19 Companies, the highest rate from any segment of this proceeding, which in this case is 376.67 percent assigned to the PRC-wide entity in the LTFV investigation. *See Notice of Final Determination of Sales at Less Than Fair Value: Fresh Garlic from the People's Republic of China*, 59 FR 49058, 49060 (September 26, 1994) ("*Garlic LTFV Final Determination*").

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. Secondary information is defined as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See SAA* accompanying the URAA, H.R. Doc. No. 103-316 at 870 (1994); *see also* 19 CFR 351.308(d).

The SAA further provides that the term "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *See SAA* at 870. Thus, to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. The AFA rate we are applying for the current review of fresh garlic was corroborated

in the LTFV investigation. See *Garlic LTFV Final Determination*, 59 FR at 49060. No information has been presented in the current review that calls into question the reliability of the information used for this AFA rate. Thus, the Department finds that the information is reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Flowers from Mexico*, the Department did not use the highest margin in the proceeding as best information available (the predecessor to facts available) because that margin was based on another company's aberrational business expenses and was unusually high. See *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) ("*Flowers from Mexico*"). In other cases, the Department has not used the highest rate in any segment of the proceeding as the AFA rate because the highest rate was subsequently discredited, or the facts did not support its use. See *D&L Supply Co. v. United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated). None of these unusual circumstances are present with respect to the rate being used here. Moreover, the rate selected, (*i.e.*, 376.67 percent), is the rate currently applicable to the PRC-wide entity. The Department assumes that if an uncooperative respondent could have obtained a lower rate, it would have cooperated. See *Rhone Poulenc, Inc. v. United States*, 899 F. 2d 1185, 1190-91 (Fed. Cir. 1990); *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 24 CIT 841, 848 (2000) (respondents should not benefit from failure to cooperate). As there is no information on the record of this review that demonstrates that this rate is not appropriate to use as AFA in the current review, we determine that this rate has relevance.

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

#### Voluntary Respondents

Section 782(a) of the Act provides that the Department, in any investigation

under subtitle A or B or a review under section 751(a) in which the administering authority has, under section 777A(c)(2), limited the number of exporters or producers examined, or determined a single country-wide rate, the administering authority shall establish an individual weighted-average dumping margin for any exporter or producer not initially selected for individual examination under such sections who submits to the administering authority the information requested from exporters or producers selected for examination, if (1) such information is so submitted by the date specified for exporters and producers that were initially selected for examination; and (2) the number of exporters or producers who have submitted such information is not so large that individual examination of such exporters or producers would be unduly burdensome and inhibit the timely completion of the investigation.

#### Qingdao Saturn

As discussed in the "General Background" section above, between May 7 and 23, 2007, Qingdao Saturn submitted voluntary responses to the Department's NME questionnaire. In Qingdao Saturn's questionnaire responses, Qingdao Saturn requested that the Department calculate an individual weighted-average dumping margin for Qingdao Saturn, pursuant to section 782(a) of the Act. Additionally, between October 2 and 15, 2007, Qingdao Saturn requested that the Department calculate an individual weighted-average dumping margin for Qingdao Saturn, pursuant to section 782(a) of the Act, arguing that the Department has the resources and time to review Qingdao Saturn as a voluntary respondent due to Huaiyang Hongda's lack of participation in this proceeding. Moreover, on October 9, 2007, Petitioners submitted comments requesting that the Department not review Qingdao Saturn as a voluntary respondent, pursuant to section 782(a) of the Act, because Department does not have the additional resources to consider Qingdao Saturn's data so late in the proceeding. Furthermore, in their comments, Petitioners stated that the Department has not yet determined how it will treat Huaiyang Hongda in the preliminary results.

For these preliminary results, the Department has not examined any of the submissions by Qingdao Saturn because of the Department's resource constraints and the Department's decision to only review three exporters. Although Qingdao Saturn is correct that Huaiyang Hongda has not responded to the

Department's supplemental questionnaires, as discussed above in the "Huaiyang Hongda" section, the Department has not received communication from Huaiyang Hongda that it is not going to participate as an active respondent in this proceeding. In certain circumstances, the Department has determined to review a voluntary respondent because (1) another respondent notified the Department that it was not going to participate; and (2) reviewing this voluntary respondent would not be unduly burdensome, given time and resource constraints. See *Certain Frozen Warmwater Shrimp from the People's Republic of China: Notice of Final Results and Rescission, in Part, 2004/2006 Antidumping Duty Administrative Review and New Shipper Reviews*, 72 FR 52049 (September 12, 2007) and accompany Issues and Decision Memorandum at Comment 15; see also *Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Results and Partial Rescission of the 2004/2006 Administrative Review and Preliminary Intent to Rescind 2004/2006 New Shipper Review*, 72 FR 10645, 10647, and 10655 (March 9, 2007). However, in this proceeding, although Huaiyang Hongda has chosen to not respond to the Department's supplemental questionnaires, Huaiyang Hongda is still under review. Thus, the Department has devoted time and resources to the consideration of Huaiyang Hongda for these preliminary results.

Additionally, the Department finds that, while Qingdao Saturn is correct that the Department can choose to review a voluntary respondent, section 782(a)(2) of the Act provides that the Department may do so if reviewing such an exporter or producer is not "unduly burdensome and inhibit the timely completion of the investigation." However, the Department finds that, given the limited amount of time remaining after Huaiyang Hongda stopped responding to the Department's questionnaires, the Department did not have an adequate amount of time to examine Qingdao Saturn's responses for these preliminary results.

The Department notes that the analysis of initial questionnaire responses makes up only a limited portion of the work performed with respect to any given respondent. The Department frequently issues supplemental questionnaires, collects surrogate value data for the factors of production ("FOPs") used by each individual respondent, identifies and resolves any issues with respect to such data, and calculates a separate margin for each company. See *Notice of Final*

*Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers from the People's Republic of China*, 69 FR 20594 (April 16, 2004) and accompanying Issues and Decision Memorandum at Comment 2. Each of these activities requires the expenditure of significant resources. Given the limited amount of time available, the Department lacks the resources to analyze Qingdao Saturn as a voluntary respondent for these preliminary results, pursuant to section 782(a) of the Act. Moreover, in addition to the caseload identified in the Respondent Selection Memo as a factor to limit the number of respondents, the office responsible for this proceeding, AD/CVD Operations Office 9, is responsible for conducting five new antidumping investigations initiated subsequent to the selection of respondents in this review. Thus, it does not have significant additional resources to apply to Qingdao Saturn.

#### NME Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. See *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Rescission of 2004/2005 New Shipper Review*, 71 FR 66304 (November 14, 2006). None of the parties to this proceeding has contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

#### Separate Rate Determinations

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 *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079 (September 8, 2006); *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's*

*Republic of China*, 71 FR 29303 (May 22, 2006).

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 *Notice of Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as amplified by *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*").

#### 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; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. See *Sparklers*, 56 FR at 20589.

Throughout the course of this administrative review, only two of the mandatory respondents, Jinxiang Dong Yun and Shanghai LJ, have placed sufficient evidence on the record that demonstrate absence of *de jure* control. Additionally, all of the separate rate 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 has found that they establish an absence of *de jure* control. See *Preliminary Results of New Shipper Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 30695, 30696 (June 7, 2001). We have no information in this proceeding that would cause us to reconsider this determination. 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; (2) the legal authority on the

record decentralizing control over the respondent, as demonstrated by the PRC laws placed on the record of this review; and (3) other formal measures by the government decentralizing control of companies.<sup>11</sup>

#### 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. See *Silicon Carbide*, 59 FR at 22587; *Sparklers*, 56 FR at 20589.

The Department conducted a separate rates analysis for (1) two of the mandatory respondents chosen for an administrative review: Jinxiang Dong Yun and Shanghai LJ; and (2) the separate rate companies upon which an administrative review was requested but which were not chosen as mandatory respondents.

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 create binding sales contracts; (3) they do not

<sup>11</sup> This preliminary finding applies to (1) two of the selected respondents of this administrative review: Jinxiang Dong Yun and Shanghai LJ; and (2) the separate rate companies of this administrative review: Sunny; Qufu Dong Bao; Weifang Shennong; Jinxiang Shanyang; Qingdao Xintianfeng; Shandong Longtai; Jining Trans-High; Shenzhen Fanhui; Taian Ziyang; Anqiu; Shanghai Ever Rich; Heze Ever-Best; Qingdao Saturn; Henan Weite; and Jinan Farmlady.

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 two of the mandatory respondents, Jinxiang Dong Yun and Shanghai LJ, and the separate rate companies 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 of export activities. Consequently, we preliminarily determine that Jinxiang Dong Yun, Shanghai LJ, and the separate rate companies have met the criteria for the application of a separate rate.

However, as discussed previously, the Department is not granting one of the mandatory respondents, Huaiyang Hongda, a separate rate because Huaiyang Hongda failed to respond to the supplemental questionnaire issued by the Department that contained several questions regarding Huaiyang Hongda's eligibility for a separate rate. As a result, we cannot confirm or verify the separate rate information that Huaiyang Hongda submitted in its questionnaire responses.

#### Surrogate Country

When the Department investigates 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 the Memorandum to the File through James C. Doyle, Director, Office 9 and Alex Villanueva, Program Manager, Office 9 from Julia Hancock, Senior Case Analyst, Office 9: Surrogate Factor Valuations for the Preliminary Results of the 12th Administrative Review (November 30, 2007) ("Surrogate Values Memo").

As discussed in the "NME Country Status" section, the Department considers the PRC to be an NME 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 (June 1, 2007) ("Surrogate Country List"). 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 (March 1, 2004) ("Policy Bulletin"). In this case, the Department has found that India and Egypt are both significant producers of comparable merchandise. The Department finds 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 publically available and reliable data. Furthermore, the Department notes that India has been the primary surrogate country in past segments, and the only surrogate value data based submitted on the record are from Indian sources. Given the above facts, the Department has selected India as the primary surrogate country for this review. *See* Memorandum to the File, through James C. Doyle, Director, Office 9, Import Administration, and Alex Villanueva, Program Manager, Office 9, from Julia Hancock, Senior Case Analyst, Subject: 12th Administrative Review of Fresh Garlic from the People's Republic of China: Selection of a Surrogate Country (November 30, 2007) ("Surrogate Country Memo").

#### 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 Jinxiang Dong Yun and Shanghai LJ because the first sale to an unaffiliated party was made before the date of importation and the use of constructed EP ("CEP") 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, brokerage and handling, and marine insurance. For Jinxiang Dong Yun and Shanghai LJ, 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* Surrogate Values Memo for details regarding the surrogate values for movement expenses. Additionally, Jinxiang Dong Yun reported that its international freight was provided by a market economy carrier and paid in U.S. dollars, so we used the actual cost per kilogram of the freight. Moreover, Jinxiang Dong Yun reported certain U.S. Customs and other expenses that must be deducted from the starting price to unaffiliated purchasers. Accordingly, we will deduct these expenses from the starting price to unaffiliated purchasers, as reported by Jinxiang Dong Yun. *See* Memorandum to the File, through Alex Villanueva, Program Manager, Office 9, from Michael Holton, Senior Analyst, Office 9; Company Analysis Memorandum in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China ("PRC"): Jinxiang Dong Yun (November 30, 2007).

#### Normal Value

##### 1. Methodology

Section 773(c)(1)(B) of the Act provides that the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department calculates NV using each of the FOPs that a respondent consumes in the production of a unit of the subject merchandise because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies. However, there are circumstances 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 Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China*, 68 FR 47538 (August 11, 2003), and

accompanying Issues and Decision Memorandum at Comment 1 (“PVA”) (citing to *Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms from the People’s Republic of China*, 66 FR 31204 (June 11, 2001)).

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.<sup>12</sup> In the 10th 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.<sup>13</sup> In analyzing the questionnaire responses and “harvest verification” reports in the 10th 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.<sup>14</sup> In the two previous administrative reviews, the Department also stated that “should a respondent be able to 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.” *10th Review Final Results*, 71 FR at 26331; *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, 71520 (December 11, 2006).

<sup>12</sup> 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*”).

<sup>13</sup> See Memorandum to the File from Matthew Renkey, Senior Case Analyst; 12th Administrative Review 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*, (November 30, 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.”

<sup>14</sup> 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.

In the course of this review, the Department has requested and obtained a vast amount of detailed information from the respondents with respect to each company’s garlic production practices. However, 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 Matthew Renkey, Senior Case Analyst, and Michael Holton, Senior Case Analyst, Office 9: 12th Administrative Review of the Antidumping Duty Order on Fresh Garlic From the People’s Republic of China: Intermediate Input Methodology (November 30, 2007) (“Intermediate Product Memo”), we continue to believe that the respondents were unable to accurately record and substantiate the complete costs of growing garlic during the POR.

Thus, in the preliminary results for this administrative review, 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, the Department applied an “intermediate-product valuation methodology” to the 2 mandatory companies, Jinxiang Dong Yun and Shanghai LJ, for which we are calculating an antidumping duty margin in these preliminary results. Using this methodology, the Department 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 the Intermediate Product Memo.

## 2. Factor Valuations

In accordance with section 773(c) of the Act, the Department calculated NV based on the intermediate product value and processing FOPs reported by the respondents for the POR. To calculate NV, the Department 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, the Department considered the quality, specificity, and contemporaneity of the data. As appropriate, the Department adjusted input prices by including freight costs to make them delivered prices. The

Department 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) (“*Sigma*”). The Department 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, the Department has valued the fresh garlic bulb using prices for the size ranges of “A” and “super-A” grade garlic bulb in India, as published by Azadpur Agriculture Produce Marketing Committee (“APMC”) in its “Market Information Bulletin” (the “Bulletin”). 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. The Bulletin is published by the Azadpur APMC on each trading day and contains, among other things, a list of all fruits and vegetables sold on the previous trading day, the amount (by weight) of each fruit or vegetable sold on that day, and a low, high and modal price for each commodity sold. The Department notes that the “A” grade garlic typically ranges from 40 - 55 millimeters (“mm”) in diameter, and the “super-A” grade garlic ranges 40 mm and above in diameter. See Petitioners’ Second Surrogate Value Submission, (September 20, 2007) at Attachment 1; Petitioners’ First Surrogate Value Submission, (August 2, 2007) at Exhibits 4–5.

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*, 70 FR 34082 at Comment 2; *10th Review Final Results*, 71 FR 26329 at Comment 2. Accordingly, the Department finds that it is important to use surrogate Indian garlic values reflecting sales of garlic bulbs of similar diameter to that of Jinxiang Dong Yun’s and Shanghai LJ’s merchandise during the POR. Therefore, for these preliminary results, the Department finds that the “A” grade and “super-A” grade garlic data from Azadpur APMC

are the best available and most appropriate information on the record to value the garlic bulb input, pursuant to section 773(c) of the Act, for the reasons stated below. The Department has found that the data from Azadpur APMC satisfy the Department's surrogate value selection criteria. See *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the Eleventh Administrative Review and New Shipper Reviews*, 72 FR 34438, 34440 (June 22, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

Because the Department is able to determine the size of "A" and "super-A" grade garlic and Jinxiang Dong Yun and Shanghai LJ provided the size of the garlic bulb, the Department is calculating the surrogate value for the garlic bulb using a simple average of the Azadpur data for "A" and "super-A" grade garlic for Jinxiang Dong Yun and Shanghai LJ. For further discussion of the Department's calculation for the surrogate value for the garlic bulb, as well as other surrogate values used, see the Surrogate Values Memo.

**Preliminary Results of the Reviews**

The Department has determined that the following preliminary dumping margins exist for the period November 1, 2005, through October 31, 2006:

**FRESH GARLIC FROM THE PRC**

Manufacturer/Exporter	Weighted-Average Margin (Percent)
Shanghai LJ International Trading Co., Ltd. ....	35.05
Jinxiang Dong Yun Freezing Storage Co., Ltd. ....	23.21
Qufu Dongbao Import & Export Trade Co., Ltd. ....	27.49
Weifang Shennong Foodstuff Co., Ltd. ....	27.49
Jinxiang Shanyang Freezing Storage Co., Ltd. ....	27.49
Qingdao Xintianfeng Foods ....	27.49
Shandong Longtai Fruits and Vegetables Co., Ltd. ....	27.49
Jining Trans-High Trading Co., Ltd. ....	27.49
Shenzhen Fanhui Import & Export Co., Ltd. ....	27.49
Taian Ziyang Food Co., Ltd. ....	27.49
Anqiu Friend Food Co., Ltd. ....	27.49
Shanghai Ever Rich Trade Company .....	27.49

**FRESH GARLIC FROM THE PRC—  
Continued**

Manufacturer/Exporter	Weighted-Average Margin (Percent)
Heze Ever-Best International Trade Co., Ltd. ....	27.49
Qingdao Saturn International Trade Co., Ltd. ....	27.49
Sunny Import & Export Co., Ltd. ....	27.49
Henan Weite Industrial Co., Ltd. ....	27.49
Jinan Farmlady Trading Co., Ltd. ....	27.49
PRC-wide Rate <sup>15</sup> .....	376.67

<sup>15</sup>The PRC-Wide entity includes Huaiyang Hongda, APS Qingdao, Fujian Meitan, Hongchang, Jining Haijiang, Jining Solar, Jinxian County Huaguang, Laiwu Hongyang, Pizhou Guangda, Qingdao Bedow, Qingdao Camel, Qingdao H&T, Qingdao Potenza, Qingdao Shiboliang, Rizhao Xingda, Shandong Chengshun, Shandong Dongsheng, Shandong Garlic, Shanghai Ba-Shi, and T&S.

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 of this administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results. Interested parties must provide the Department with supporting documentation for the publicly available information to value each FOP. Additionally, in accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally cannot accept the submission of additional, previously absent—from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). See *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. See 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication of these preliminary results of review. See 19 CFR 351.309(d). The Department urges interested parties to provide an executive summary of each argument contained within the case briefs and rebuttal briefs.

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

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

**Assessment Rates**

Upon completion of this administrative review, 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*.

For Qingdao Tiantaixing, Zhengzhou Harmoni, Golden Bridge, Shanghai

McCormick, and Zhangqiu Qingyuan, companies for which this review is preliminarily rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(2).

#### 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 of the final results, as provided by section 751(a)(2)(C) of the Act: (1) for the exporters listed above, the cash-deposit rate will be that established in these final results of review (except, if the rate is zero or *de minimis*, no cash deposit will be required); (2) for previously reviewed or investigated companies not listed above that have separate rates, the cash-deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all other PRC exporters of subject merchandise, which have not been found to be entitled to a separate rate, the cash-deposit rate will be the PRC-wide rate of 376.67 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, 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 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.

This administrative review, and this notice are in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213 and 351.221(b)(4).

Dated: November 30, 2007.

#### David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7-23891 Filed 12-7-07; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-475-818]

#### Certain Pasta From Italy: Notice of Partial Rescission of Antidumping Duty Administrative Review

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

**DATES:** *Effective Date:* December 10, 2007.

**SUMMARY:** In response to requests for administrative review received on July 31, 2007, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on certain pasta from Italy covering the period July 1, 2006, through June 30, 2007.<sup>1</sup> As a result of timely withdrawals of request for review, we are rescinding this review, in part, with respect to Valdigrano Di Flavio Pagani SrL (Valdigrano), Industria Alimentare Colavita, S.p.A. (Indalco) Atar S.r.L. (Atar), Rummo S.P.A. Molina E Pastificio (Rummo), Pastificio Pagani S.p.A. (Pagani), Pastificio Carmine Russo and Pastificio Russo di Cicciano (collectively, Russo), and Domenico Paone fu Erasmo S.p.A. (Domenico).

**FOR FURTHER INFORMATION CONTACT:** Christopher Hargett, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4161.

#### SUPPLEMENTARY INFORMATION:

##### Background

On July 31, 2007, the Department received a request for review from Valdigrano, F. Divella SpA (Divella), Pasta Zara SpA (Zara), Pastificio Di Martino Gaetano & F.lli SrL (Di Martino), Pastificio Felicetti SrL (Felicetti), and from Industria Indalco.<sup>2</sup> The Department also received a request for an administrative review from petitioners<sup>3</sup> of Atar, Rummo, Pagani, Russo, and Domenico.<sup>4</sup>

<sup>1</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation*, 72 FR 48613, 48614 (August 24, 2007) (*Initiation Notice*).

<sup>2</sup> See *Pasta from Italy, Request for Administrative Review of Antidumping Order*, July 31, 2007.

<sup>3</sup> Petitioners are the New World Pasta Company, American Italian Pasta Company, and Dakota Growers Pasta Company.

<sup>4</sup> See Request for '06-'07 Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy, July 31, 2007.

On August 24, 2007, the Department initiated the review.<sup>5</sup> On September 4, 2007, Valdigrano withdrew its request for review. On September 12, 2007, Indalco withdrew its request for review. On October 1 and October 5, 2007, petitioners withdrew their request for review on Rummo, Pagani, Russo, and Domenico. On November 21, 2007, petitioners withdrew their request for review on Atar.

On October 15, 2007, the Department selected Divella, Zara and Atar as respondents in the instant review.<sup>6</sup> On October 15, 2007, the Department issued antidumping duty questionnaires to Divella, Zara and Atar.<sup>7</sup>

#### Scope of Order

Imports covered by the antidumping duty order on pasta from Italy include shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this order is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded from the order on pasta from Italy are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Istituto Mediterraneo Di Certificazione, by Bioagricoop Scrl, by QC&I International Services, by Ecocert Italia or by Consorzio per il Controllo dei Prodotti Biologici, by Associazione Italiana per l'Agricoltura Biologica, or by Istituto per la Certificazione Etica e Ambientale (ICEA) are also excluded from this order.

The merchandise subject to the antidumping duty order on pasta from Italy is currently classifiable under item 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and Customs purposes, the written description of the merchandise subject to the order is dispositive.

<sup>5</sup> See *Initiation Notice*.

<sup>6</sup> See Selection of Respondents for Individual Review Memo from the Team to Melissa Skinner, dated October 15, 2007.

<sup>7</sup> See request for information from the Department to Divella, Zara and Atar, dated October 15, 2007.