

Inc., Japan. *Intended Use*: See notice at 73 FR 18258, April 3, 2008.

*Comments*: None received. *Decision*: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons*: The foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Dated: April 24, 2008.

**Faye Robinson,**

Director, Statutory Import Programs Staff,  
Import Administration.

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## DEPARTMENT OF COMMERCE

### International Trade Administration

A-570-831

#### Fresh Garlic from the People's Republic of China: Preliminary Results of the 12th New Shipper Reviews

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

**SUMMARY**: The Department of Commerce ("Department") is conducting new shipper reviews ("NSRs") of the antidumping duty order on fresh garlic from the People's Republic of China ("PRC") that cover the period of review ("POR") of November 1, 2006 through April 30, 2007. See *Antidumping Duty Order: Fresh Garlic From the People's Republic of China*, 59 FR 59209 (November 16, 1994) ("Order"). On June 29, 2007, the Department initiated semi-annual new shipper reviews for Shandong Chenhe International Trading Co., Ltd. ("Chenhe"), Qingdao Tiantaixing Foods Co., Ltd. ("QTF"), Hebei Golden Bird Trading Co., Ltd. ("Golden Bird"), Jining Yongjia Trade Co., Ltd. ("Yongjia") and Shenzhen Greening Trading Co., Ltd. ("Greening"). See *Fresh Garlic from the People's Republic of China: Initiation of Antidumping Duty New Shipper Reviews*, 72 FR 38057 (July 12, 2007) ("Initiation of NSRs").

We preliminarily determine that Golden Bird, Greening, QTF and Yongjia have made sales in the United States at less than normal value ("NV"). We also preliminarily determine that

Chenhe has not made sales in the United States at less than 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 the importer-specific assessment rates are above *de minimis*.

**EFFECTIVE DATE**: May 1, 2008.

**FOR FURTHER INFORMATION CONTACT**: Julia Hancock and Paul Walker, 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 and (202) 482-0413, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Case History

##### General Background

On May 17, May 21 and May 28, 2007, the Department received requests for new shipper reviews from Chenhe, QTF, Golden Bird, Yongjia, and Greening, respectively. On June 12, 2007, the Department requested additional information from QTF, Golden Bird, and QTF, respectively regarding their new shipper review submissions. On June 13, 2007, Petitioners<sup>1</sup> submitted comments regarding Chenhe's, QTF's, Golden Bird's, and Yongjia's new shipper submissions.

On June 14, 2007, QTF, Golden Bird, and Yongjia submitted additional information regarding their new shipper review submissions. Additionally, on June 19 and June 21, 2007, QTF, Golden Bird, Yongjia, and Chenhe submitted letters regarding Petitioners' June 13, 2007 comments. On June 29, 2007, the Department initiated semi-annual new shipper reviews of QTF, Golden Bird, Yongjia, Chenhe, and Greening. See *Initiation of NSRs*, 72 FR 38057.

On July 2, 2007, after initiating the reviews, the Department issued antidumping duty questionnaires to the five companies participating in the new shipper reviews. The Department subsequently issued supplemental questionnaires and received responses from all companies under review between September 2007 and March 2008.

##### Extension of Preliminary Results

On November 16, 2007, the Department extended the preliminary

results of these new shipper reviews to March 25, 2008. See *Fresh Garlic from the People's Republic of China: Extension of Time Limits for the Preliminary Results of the New Shipper Reviews*, 72 FR 64579 (November 16, 2007). Additionally, on March 6, 2008, the Department extended the preliminary results a second time to April 24, 2008. See *Fresh Garlic from the People's Republic of China: Extension of Time Limits for the Preliminary Results of the New Shipper Reviews*, 73 FR 12079 (March 6, 2008).

##### Expansion of the POR

On April 23, 2008, we issued a memorandum extending the end of the POR from April 30, 2007 to May 17, 2007, to capture entries of two of the new shippers' merchandise into the United States market. See Memorandum to the File from Julia Hancock, Senior Analyst, through Catherine Bertrand, 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, (April 23, 2008).

##### Surrogate Country and Surrogate Values

On August 23, 2007, the Department sent interested parties a letter requesting comments on the surrogate country and information pertaining to valuing factors of production.

On October 31, 2007, QTF, Yongjia, and Golden Bird submitted comments on the surrogate country and information pertaining to valuing factors of production. Additionally, on November 26, 2007, the Department extended the deadline to submit information pertaining to valuing factors of production to December 17, 2007.

On December 17, 2007, Petitioners submitted information pertaining to valuing factors of production. On December 17 and December 27, 2007, Chenhe submitted information and rebuttal comments pertaining to valuing factors of production. No other party has submitted surrogate values or surrogate country comments on the record of this proceeding.

##### 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

<sup>1</sup>The Fresh Garlic Producers Association and its individual members: Christopher Ranch LLC, the Garlic Company, Valley Garlic and Vessey and Company, (collectively known as "Petitioners").

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.

#### Verification

Following the publication of these preliminary results, we intend to verify, as provided in section 782(i)(3) of the Tariff Act of 1930, as amended, ("the Act"), sales and cost information submitted by respondents, as appropriate. At verification, we will use standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and the selection of original source documentation containing relevant information. We will prepare verification reports outlining our verification results and place these reports on file in the Central Records Unit, room 1117 of the main Commerce building.

#### Bona Fide Analysis

Consistent with the Department's practice, we investigated the *bona fide* nature of the sale made by each new shipper, Chenhe, Greening, Golden Bird, QTF, and Yongjia, respectively for these reviews. In evaluating whether or not a single sale in a new shipper review is commercially reasonable, and therefore *bona fide*, the Department considers, *inter alia*, such factors as: (1) the timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was made on an arm's-

length basis. See *Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1250 (CIT 2005). Accordingly, the Department considers a number of factors in its *bona fides* analysis, "all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise." See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1342 (CIT 2005) (citing *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002) and accompanying Issues and Decision Memorandum).

We preliminarily find that the new shipper sales made by Chenhe, Greening, Golden Bird, QTF, and Yongjia, respectively, were made on a *bona fide* basis. Specifically, we found that: (1) the price and quantity of each new shipper sale was within the range of the prices and quantities of other entries of subject merchandise from the PRC into the United States during the POR; (2) the new shipper and its customer did not incur any extraordinary expenses arising from the transaction; (3) each new shipper sale was made between unaffiliated parties at arm's length; (4) there is no record evidence that indicates that each new shipper sale was not made based on commercial principles; (5) the sale was resold at a profit; and (6) the timing of each new shipper sale is not an indicator of a sale made on a non-*bona fide* basis.<sup>2</sup> Based on our investigation into the *bona fide* nature of each new shipper sale, the questionnaire responses submitted by each new

<sup>2</sup> See Memorandum from Julia Hancock, Senior Case Analyst, Office 9, to James C. Doyle, Director, Office 9, "Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China: *Bona Fide* Nature of the Sale Under Review for Shandong Chenhe International Trading Co., Ltd.," dated April 22, 2008; Memorandum from Paul Walker, Senior Case Analyst, Office 9, to James C. Doyle, Director, Office 9, "Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China: *Bona Fide* Nature of the Sale Under Review for Qingdao Tiantaixing Foods Co., Ltd.," dated April 22, 2008; Memorandum from Paul Walker, Senior Case Analyst, Office 9, to James C. Doyle, Director, Office 9, "Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China: *Bona Fide* Nature of the Sale Under Review for Hebei Golden Bird Trading Co., Ltd.," dated April 22, 2008; Memorandum from Paul Walker, Senior Case Analyst, Office 9, to James C. Doyle, Director, Office 9, "Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China: *Bona Fide* Nature of the Sale Under Review for Jining Yongjia Trade Co., Ltd.," dated April 22, 2008; and Memorandum from Paul Walker, Senior Case Analyst, Office 9, to James C. Doyle, Director, Office 9, "Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China: *Bona Fide* Nature of the Sale Under Review for Shenzhen Greening Trading Co., Ltd.," dated April 22, 2008.

shipper, as well as each new shipper's eligibility for a separate rate (see Separate Rates Determination section below) and the Department's determination that each new shipper was not affiliated with any exporter or producer that had previously shipped subject merchandise to the United States, we preliminarily determine that each new shipper has met the requirements to qualify as a new shipper during the POR. Therefore, for purposes of these preliminary results, we are treating each new shipper's sale of subject merchandise to the United States as an appropriate transaction for these reviews.

#### 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 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 Notice of 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 Rates Determination

A designation of a country as an NME remains in effect until it is revoked by the Department. See section 771(18)(C) of the Act. Accordingly, there is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate.

It is the Department's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in the Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China ("Sparklers"), 56 FR 20588 (May 6, 1991), as amplified by the *Notice of Final Determination of Sales at Less*

*Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (“*Silicon Carbide*”).

#### 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 shippers have placed a number of documents on the record to demonstrate absence of *de jure* control including business licenses, financial statements, and narrative information regarding government laws and regulations on corporate ownership, and the companies' operations and selection of management. Specifically, the new shippers have placed on the record 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., Honey from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 102, 105 (January 3, 2006), unchanged in *Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 72 FR 37715, 37716 (July 11, 2007). 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

The absence of *de facto* governmental control over exports is based on whether a company: (1) sets its own export prices independent of the government and other exporters; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other agreements; and (4) has autonomy from the government regarding the selection

of management. *See Silicon Carbide*, 59 FR at 22587 and *Sparklers*, 56 FR at 20589; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

The Department conducted a separate-rates analysis for each new shipper. In their questionnaire responses, each new shipper submitted evidence indicating an absence of *de facto* governmental control over its export activities. Specifically, this evidence indicates that: (1) each new shipper sets its own export prices independent of the government and without the approval of a government authority; (2) each new shipper retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) each new shipper has a general manager, branch manager or division manager with the authority to negotiate and bind the company in an agreement; (4) the general manager is selected by the board of directors or company employees, and the general manager appoints the deputy managers and the manager of each department; and (5) there is no restriction on each new shipper's use of export revenues. The questionnaire responses of each new shipper 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. Therefore, the Department preliminarily finds that each new shipper has established, *prima facie*, that they qualify for separate rates under the criteria established by *Silicon Carbide* and *Sparklers*.

#### 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 factors of production (“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 from Paul Walker, Senior Analyst,

Office 9, “New Shipper Review of Fresh Garlic from the People's Republic of China: Surrogate Values for the Preliminary Results,” dated April 22, 2008 (“Factor Valuation Memo”).

As discussed in the “Separate Rates” section, above, 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 1, 2007. 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).

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 publicly 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 submitted on the record are from Indian sources. Given the above facts, the Department is preliminarily selecting India as the surrogate country for the PRC on the basis that: (1) it is at a similar level of economic development pursuant to section 773(c)(4) of the Act; (2) it is a significant producer of comparable merchandise; and (3) we have reliable data from India that we can use to value the FOPs.

## Fair Value Comparisons

To determine whether sales of the subject merchandise made by Chenhe, Greening, Golden Bird, QTF, and Yongjia to the United States were at prices below NV, we compared each company's export price ("EP") to NV, as described below.

### U.S. Price

In accordance with section 772(a) of the Act, we calculated the EP for sales to the United States for Chenhe, Greening, Golden Bird, QTF, and Yongjia 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, and brokerage and handling. For Chenhe, Greening, Golden Bird, QTF, and Yongjia, 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. Additionally, Chenhe reported certain U.S. Customs duties, U.S. brokerage and handling, 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 Chenhe. See Memorandum to the File from Julia Hancock, 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"): Shandong Chenhe," dated April 22, 2008.

## Normal Value

### A. Methodology

Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME country 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 account 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 (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 9<sup>th</sup> administrative review, 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. See *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 34082 (June 13, 2005). In the 10<sup>th</sup> 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>3</sup> In analyzing the questionnaire responses and "harvest verification" reports in the 10<sup>th</sup> 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. 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) ("10<sup>th</sup> Review Final Results"), and accompanying Issues and Decision Memorandum at Comment 1. 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." See *10<sup>th</sup> 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).

In the course of these reviews, the Department has requested and obtained detailed information from the respondents with respect to each company's garlic production practices. Questionnaire responses revealed that only Yongjia had farming operations to grow fresh garlic.<sup>4</sup> However, based on our analysis of the information on the record and for the reasons outlined in the Memorandum to James C. Doyle, Director, Office 9, from Paul Walker, Senior Case Analyst, Office 9, "New Shipper Reviews of the Antidumping Duty Order on Fresh Garlic From the People's Republic of China: Intermediate Input Methodology," dated April 22, 2008 ("Intermediate Product Memo"), we continue to believe that the sole respondent that farmed garlic, Yongjia, was unable to accurately record and substantiate the complete costs of growing garlic during the POR.

Thus, in the preliminary results for these new shipper reviews, 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 all companies. Using this methodology, the Department calculated NV by starting with a surrogate value for the garlic bulb

<sup>3</sup> See Memorandum to the File from Julia Hancock, Senior Case Analyst; Intermediate Input Methodology Memoranda from the 10<sup>th</sup> Administrative Review Final Results and 11<sup>th</sup> Administrative Review Preliminary Results (April 22, 2008), 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>4</sup> Specifically, Chenhe, Greening, QTF, and Golden Bird are all processors and exporters of fresh garlic that purchased whole garlic bulbs and processed it for export. Consequently, the FOPs provided by each all begin with whole garlic bulbs and not the factors that are used to grow whole garlic bulbs.

(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.

#### B. 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). 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.

Additionally, during the POR, Greening purchased all of certain inputs from a market economy supplier and paid for the inputs in a market economy currency. The Department has instituted a rebuttable presumption that market economy input prices are the best available information for valuing an input when the total volume of the input purchased from all market economy sources during the period of investigation or review exceeds 33 percent of the total volume of the input purchased from all sources during the period. In these cases, unless case-specific facts provide adequate grounds to rebut the Department’s presumption, the Department will use the weighted-average market economy purchase price to value the input. Alternatively, when the volume of an NME firm’s purchases of an input from market economy suppliers during the period is below 33 percent of its total volume of purchases

of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the prices, the Department will weight-average the weighted-average market economy purchase price with an appropriate surrogate value (“SV”) according to their respective shares of the total volume of purchases, unless case-specific facts provide adequate grounds to rebut the presumption. When a firm has made market economy input purchases that may have been dumped or subsidized, are not *bona fide*, or are otherwise not acceptable for use in a dumping calculation, the Department will exclude them from the numerator of the ratio to ensure a fair determination of whether valid market economy purchases meet the 33-percent threshold. See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717–18 (October 19, 2006).

Accordingly, we valued Greening’s inputs using the market economy prices paid for the inputs where the total volume of the input purchased from all market economy sources during the POR exceeded 33 percent of the total volume of the input purchased from all sources during that period. Where appropriate, we increased the market economy prices of inputs by freight expenses. See Factor Valuation Memorandum. For a detailed description of all actual values used for market-economy inputs, see Memorandum to the File from Julia Hancock, 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”): Shenzhen Greening,” dated April 22, 2008.

Moreover, 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 range “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 from 40 mm and above in diameter. However, the Department also finds that garlic that ranges from 55 mm in diameter and above is the “super-A” grade garlic. See Memorandum to the File from Julia Hancock, “Placing Market Research Report on the Record,” dated April 22, 2008.

As the Department determined in past reviews, the price at which garlic is sold is heavily dependent upon physical characteristics such as bulb size. See, e.g., *10<sup>th</sup> Review Final Results*, 71 FR 26329 at Comment 2; 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) (“*11<sup>th</sup> Review Final Results*”), and accompanying Issues and Decision Memorandum 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 Chenhe, Greening, Golden Bird, QTF, and Yongjia merchandise during the POR. Therefore, for these preliminary results, the Department finds that the “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 *11<sup>th</sup> Review Final Results* at Comment 2.

Because the Department is able to identify the grades of Indian garlic that correspond to various diameter ranges and because Chenhe, Greening, Golden Bird, QTF, and Yongjia reported the size of the garlic bulb they sold during the POR, the Department is calculating the surrogate value for the garlic bulb input using a simple average of the Azadpur APMC data for “super-A” grade garlic for Chenhe, Greening, Golden Bird, QTF, and Yongjia. 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 Factor Valuation Memo.

#### Preliminary Results of the Reviews

As a result of our review, we preliminarily find that the following

margins exist for the period November 1, 2006 through May 17, 2007<sup>5</sup>:

#### FRESH GARLIC FROM THE PRC

| Exporter/Manufacturer  | Weighted-Average Margin (Percent) |
|--|-----------------------------------|
| Exported and Produced by Shandong Chenhe International Trading Co., Ltd. ....  | 0.00                              |
| Exported and Produced by Qingdao Tiantaixing Foods Co., Ltd. ....  | 32.85                             |
| Exported by Hebei Golden Bird Trading Co., Ltd. and Produced by Cangshan County Hongyang Vegetables & Foods Co., Ltd. .... | 13.89                             |
| Exported by Jining Yongjia Trade Co., Ltd. and Produced by Jinxiang County Shanfu Frozen Co., Ltd. ....                    | 18.94                             |
| Exported and Produced by Shenzhen Greening Trading Co., Ltd. ....  | 2.15                              |

The Department will disclose to parties of this proceeding the calculations performed in reaching the preliminary results 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 duty new shipper 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 new shipper 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. 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. Therefore, parties should take note that new surrogate value data that are introduced following the 20-day

<sup>5</sup> The POR has been extended until May 17, 2007, so as to capture entries from Chenhe and Greening which, though shipped prior to April 30, 2007 did not enter the U.S. market until after, respectively. See Memorandum to the File from Julia Hancock, Senior Case Analyst, 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, 2008.

deadline generally will not fall within the meaning and applicability of 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 this new shipper review. See 19 CFR 351.309(c)(1)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 5 days after the deadline for submitting the case briefs. See 19 CFR 351.309(d)(1). The Department requests that interested parties 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 intends to issue the final results of these new shipper reviews, which will include the results of its analysis 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 completion of the final results, pursuant to 19 CFR 351.212(b), 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 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 Chenhe, Greening, QTF, Golden Bird, and Yongjia 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 Chenhe, produced and exported by Greening, produced and exported by QTF, produced by Cangshan County Hongyang Vegetables & Foods Co., Ltd. and exported by Golden Bird, or produced by Jinxiang County Shanfu Frozen Co., Ltd. and exported by Yongjia, the cash-deposit rate will be that established in the final results of these reviews; (2) for subject merchandise exported by Golden Bird but not manufactured by Cangshan County Hongyang Vegetables & Foods Co., Ltd. and for subject merchandise exported by Yongjia but not manufactured by Jinxiang County Shanfu Frozen Co., Ltd., the cash deposit rate will continue to be the PRC-wide rate (*i.e.*, 376.67 percent); and (3) for subject merchandise exported by Chenhe, Greening, and QTF, 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 Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with

sections 751(a)(1), 751(a)(2)(B), and 777(i) of the Act, and 19 CFR 351.214(h) and 351.221(b)(4).

Dated: April 22, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E8-9597 Filed 4-30-08; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN: 0648-XH57**

#### Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Mid-Atlantic Fishery Management Council's (Council) Squid, Mackerel, and Butterfish Monitoring Committee and Scientific and Statistical Committee (SSC) will hold a public meeting.

**DATES:** The meeting will be held on Wednesday, May 21, 2008, from 10 a.m. to 5 p.m.

**ADDRESSES:** The meeting will be held at the Hilton Garden Inn Providence Airport, One Thurber Street, Warwick, RI 02886; telephone: (401) 734-9600).

*Council address:* Mid-Atlantic Fishery Management Council; 300 S. New Street, Room 2115, Dover, DE 19904; telephone: (302) 674-2331.

**FOR FURTHER INFORMATION CONTACT:** Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; 300 S. New Street, Room 2115, Dover, DE 19904; telephone: (302) 674-2331, extension 19.

**SUPPLEMENTARY INFORMATION:** The purposes of this meeting are: to examine the biology, fisheries, and current stock status for Atlantic mackerel, *Loligo* and *Illex* squid and butterfish; to review staff analyses regarding proposed specifications and related management measures for the 2009 fishing year; and, to make recommendations to the Council's Squid, Mackerel, and Butterfish Committee relative to the 2009 quota specifications and other management measures. The Council's SSC will meet simultaneously with the Squid, Mackerel, and Butterfish Monitoring Committee to provide its input and advice concerning the 2009 quota specifications and other

management measures developed by the Monitoring Committee.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

#### Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Bryan at the Mid-Atlantic Council Office, (302) 674-2331 extension 18, at least 5 days prior to the meeting date.

Dated: April 28, 2008.

**Tracey L. Thompson,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E8-9600 Filed 4-30-08; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN: 0648-XH55**

#### New England Fishery Management Council; Public Meeting

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

**ACTION:** Notice of a public meeting.

**SUMMARY:** The New England Fishery Management Council's (Council) Herring Oversight Committee will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

**DATES:** The meeting will be held on Thursday, May 22, 2008, at 9 a.m.

**ADDRESSES:** The meeting will be held at the Clarion Hotel, 1230 Congress Street, Portland, ME 04102; telephone: (207) 774-5611.

*Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

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

**SUPPLEMENTARY INFORMATION:** The items of discussion in the committee's agenda are as follows:

1. There will be one hour scheduled at the beginning of this meeting (9 a.m.) for the public to provide scoping comments on Amendment 4 to the Herring Fishery Management Plan (FMP).

2. Review and discuss comments and recommendations from the April 30, 2008 Herring Advisory Panel Meeting.

3. Review and discuss updated Atlantic herring stock/fishery information.

4. Receive a report regarding the current sea sampling (observer) program, and review/discuss updated sea sampling data for the herring fishery.

5. Review and discuss existing shore-side bycatch monitoring initiatives for the herring fishery.

6. Continue work on the development of management alternatives for consideration in Amendment 4 to the Herring FMP.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

#### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: April 28, 2008.

**Tracey L. Thompson,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E8-9598 Filed 4-30-08; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN: 0648-XH56**

#### New England Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and