Decisions of the Wrangell District Ranger: Wrangell Sentinel, published weekly in Wrangell, Alaska.

Supplemental notices may be published in any newspaper, but the time frames for making comments or filing appeals will be calculated based upon the date that notices are published in the newspapers of record listed in this notice.

Dated: April 21, 2009.

Denny Bschor,

Regional Forester.

[FR Doc. E9–10045 Filed 5–1–09; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Preliminary Results of New Shipper Reviews

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

SUMMARY: The Department of Commerce (Department) is conducting six new shipper reviews (NSRs) of the antidumping duty order on fresh garlic from the People's Republic of China (PRC) covering the periods of review (PORs) of November 1, 2007 through April 30, 2008 and November 1, 2007 through June 9, 2008. As discussed below, we preliminarily determine that sales have been made in the United States at prices below normal value (NV) with respect to certain exporters who participated fully and have demonstrated their eligibility for a separate rate in the NSRs. The NSRs for Jinxiang Tianheng Trade Co., Ltd. and Shandong Jinxiang Zhengyang Import & Export Co., Ltd. continue to be preliminarily rescinded. The dumping margins are set forth in the ''Preliminary Results of the Reviews'' section below. 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.* We invite interested parties to comment on these preliminary results. *See* ''Comments'' section below.

DATES: *Effective Date:* May 4, 2009.

FOR FURTHER INFORMATION CONTACT: Toni Page, Elfi Blum, or Jun Jack Zhao, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1398, (202) 482–0197, or (202) 482–1396, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 21, 22, 27, and 30, 2008, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(c), the Department received NSR requests from Jinxiang Hejia Co., Ltd (Hejia), Weifang Chenglong Import & Export Co., Ltd. (Chenglong), Jinxiang Tianheng Trade Co., Ltd (Tianheng), Juye Homestead Fruits and Vegetables Co. Ltd. (Juye Homestead), Chengwu County Yuanxing Industry & Commerce Co., Ltd. (Chengwu), and Shandong Jinxiang Zhengyang Import & Export Co., Ltd. (Zhengyang). On June 30, 2008, the Department initiated NSRs for all six companies. *See Fresh Garlic From the People's Republic of China: Initiation of Antidumping Duty New Shipper Reviews,* 73 FR 38979 (published July 8, 2008).

On June 30, 2008 and January 2, 2009, the Department placed copies of CBP documents on the record of the NSRs pertaining to each shipment of garlic from the PRC exported to the United States by these six companies during the POR.[1] On July 29, 2008, we issued a memorandum extending the end of the POR from April 30, 2008 to June 9, 2008, so as to capture entries that entered the U.S. market after April 30, 2008. *See* Memorandum to the File from Martha Douthit Re: Expansion of the Period of Review in the New Shipper Review of Fresh Garlic from the People's Republic of China (July 29, 2008), on file in the Central Records Unit (CRU), room 1117 of the main Commerce building.

Since the initiation of these reviews, the Department issued original and supplemental questionnaires to Hejia, Chenglong, Tianheng, Juye Homestead, Chengwu, and Zhengyang. All six companies responded to the Department's questionnaires in a timely manner. On August 20, 2008, the Department sent interested parties a letter requesting comments on the surrogate country selection and information pertaining to valuing factors of production. *See* Letter to Interested Parties from the Department Re: New Shipper Reviews of Fresh Garlic from the People's Republic of China (''PRC'') (August 20, 2008). On November 12, 2008, Zhengyang submitted comments on the surrogate country selection and information pertaining to valuing factors of production. *See* Letter to the Department from Zhengyang Re: Surrogate Value Submission: Fresh Garlic from the People's Republic of China: New Shipper Review for 11/01/07–04/30/08 (November 12, 2008) (Zhengyang's Surrogate Value Data). The Fresh Garlic Producers Association (FGPA) and its individual members (Christopher Ranch LLC, the Garlic Company, Valley Garlic, and Vessey and Company, Inc.) (collectively, petitioners) also submitted comments regarding surrogate values for these NSRs. *See* Letter to the Department from Petitioners Re: 14th New Shipper Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China (November 26, 2008) (Petitioners' Surrogate Value Data). In addition, Zhengyang submitted comments rebutting Petitioners' Surrogate Value Data submission. *See* Letter to the Department from Zhengyang Re: Rebuttal Documents on Surrogate Value Submission: Fresh Garlic from the People's Republic of China: New Shipper Review for 11/01/07–04/30/08 (December 8, 2008) (Zhengyang's Rebuttal Surrogate Value Data). All submitted comments are on file in the CRU. No other party has submitted surrogate values or surrogate country comments on the record of this proceeding.

On December 3, 2008, the Department extended the preliminary results of these NSRs to no later than April 27, 2009. *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 73638 (December 3, 2008). On March 18, 2009, the Department notified all interested parties of its intent to preliminarily rescind the NSRs for Tianheng and Zhengyang. *See* Memorandum from Barbara E. Tillman Re: Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China (''PRC''): Jinxiang Tianheng Trade Co. and Intent to Preliminarily Rescind Jinxiang Tianheng Trade Co.'s New Shipper Review (March 18, 2009) and Memorandum from Barbara E. Tillman Re: Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China (''PRC''): Shandong Jinxiang Zhengyang Import & Export Co., Ltd., and Intent to Preliminarily Rescind Shandong

[1] *See* the Memorandum from Jun Jack Zhao Re: New Shipper Review of Fresh Garlic from the People's Republic of China: Customs Data (June 30, 2008) and the Memorandum from Toni Page Re: New Shipper Review of Fresh Garlic from the People's Republic of China: Entry Documents (January 2, 2009).

Jinxiang Zhengyang Import & Export Co., Ltd.'s New Shipper Review (March 18, 2009). On April 1, 2009, we received comments from Tianheng and Zhengyang. *See* Letter to the Department from Tianheng Re: Response to Bona Fides Memorandum of March 18, 2009; Jinxiang Tianheng Trade Co., Ltd.; Fresh Garlic from the People's Republic of China: New Shipper Review for 11/01/07–04/30/08; and Letter to the Department from Zhengyang Re: Response to Bona Fides Memorandum of March 18, 2009; Shandong Jinxiang Zhengyang Import and Export Co., Ltd.; Fresh Garlic from the People's Republic of China: New Shipper Review for 11/01/07–04/30/08. The Department is reviewing the comments and timely information submitted by all interested parties on this issue. The Department intends to address these comments and factual information in a subsequent memorandum that will be issued prior to the final results of these NSRs.

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.

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

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*).

The Department's separate-rate status test to determine whether the exporter is independent from government control does not consider, in general, macroeconomic/border-type controls (*e.g.,* export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level.[2]

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, Hejia, Juye Homestead, Chenglong, and Chengwu have each 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.[3] In addition, Hejia, Juye Homestead, Chenglong, and Chengwu have each placed on the record the ''Foreign Trade Law of the People's Republic of China'', the ''Company 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 of Hejia, Juye Homestead, Chenglong, and Chengwu based on: (1) an absence of restrictive stipulations associated with the exporter's business license; and (2) the legal authority on the record

[2] *See Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value,* 62 FR 61754, 61758 (November 19, 1997), and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 62 FR 61276, 61279 (November 17, 1997).

[3] On March 18, 2009, the Department preliminarily rescinded the NSRs of Tianheng and Zhengyang. As such, we have not conducted a separate rate analysis of either company.

decentralizing control over the respondent.

B. Absence of De Facto Control

As stated in previous cases, there is evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide,* 59 FR at 22586–87. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.

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 Hejia's, Juye Homestead's, Chenglong's, and Chengwu's 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 the new shippers 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 Hejia, Juye Homestead, Chenglong, and Chengwu have each established, *prima facie,* that they qualify for separate rates status under the criteria established by *Silicon Carbide* and *Sparklers.*

Bona Fide Analysis

Consistent with Department practice, we examined the *bona fide* nature of the new shipper sales at issue. In evaluating whether or not a 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) (*TTPC*). 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: New Shipper Review of Clipper Manufacturing Ltd.). Also, in *TTPC,* the court affirmed the Department's practice of considering that ''any factor which indicates that the sale under consideration is not likely to be typical of those which the producer will make in the future is relevant,'' (*TTPC,* 366 F. Supp. 2d at 1250), and found that ''the weight given to each factor investigated will depend on the circumstances surrounding the sale.'' *TTPC,* 366 F. Supp. 2d at 1263. Finally, in *New Donghua,* the CIT affirmed the Department's practice of evaluating the circumstances surrounding a NSR sale so that a respondent does not unfairly benefit from an atypical sale, and obtain a lower dumping margin than the producer's usual commercial practice would dictate.

Tianheng: On March 18, 2009, we preliminarily concluded that the sale made by Tianheng during the POR was not a *bona fide* commercial transaction and thus notified parties of our intent to rescind the NSR for this company. The Department came to this conclusion based on the totality of circumstances, namely: (a) the atypical nature of Tianheng's POR sale; and (b) other evidence of a non-*bona fide* transaction. Since much of our analysis regarding the evidence of the *bona fides* of the transaction involves business proprietary information, a full discussion of the bases for our decision to rescind was set forth in the Memorandum from Barbara E. Tillman Re: *Bona Fide* Nature of the Sale in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China (''PRC''): Jinxiang Tianheng Trade Co. and Intent to Preliminarily Rescind Jinxiang Tianheng Trade Co.'s New Shipper Review (March 18, 2009) (Tianheng *Bona Fides* Memorandum).

On April 1, 2009, Tianheng submitted comments and factual information addressing the Department's *bona fides* analysis. The Department intends to address these comments and factual information in a subsequent memorandum that will be issued prior to the final results.

Zhengyang: On March 18, 2009, we preliminarily concluded that the sale made by Zhengyang during the POR was not a *bona fide* commercial transaction and thus preliminarily rescinded the NSR for this company. The Department came to this conclusion based on the totality of circumstances, namely: (a) the atypical nature of Zhengyang's POR sale; and (b) other evidence of a non-*bona fide* transaction. Since much of our analysis regarding the evidence of the *bona fides* of the transaction involves business proprietary information, a full discussion of the bases for our decision to rescind is set forth in the Memorandum from Barbara E. Tillman Re: *Bona Fide* Nature of the Sale in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China (''PRC''): Shandong Jinxiang Zhengyang Import & Export Co., Ltd., and Intent to Preliminarily Rescind Shandong Jinxiang Zhengyang Import & Export Co., Ltd.'s New Shipper Review (March 18, 2009) (Zhengyang *Bona Fides* Memorandum). On April 1, 2009, Zhengyang submitted comments and factual information addressing the Department's *bona fides* analysis. The Department intends to address these comments and factual information in a subsequent memorandum issued prior to the final results.

Hejia: We preliminarily find that the sale made by Hejia during the POR was a *bona fide* commercial transaction based on the totality of circumstances, namely: (1) Neither Hejia nor its customer incurred any extraordinary expenses arising from the transaction; (2) the sale was made between

unaffiliated parties at arm's length; and (3) the timing of the sale does not indicate that this sale was not *bona fide.* However, we note that the Department will continue to examine all aspects of Hejia's POR sale including whether it is atypical, and, as such, not indicative of what its future sales may be. Since much of our analysis regarding the evidence of the *bona fides* of the transaction involves business proprietary information, a full discussion of the bases for our preliminary decision is set forth in the Memorandum from Barbara E. Tillman Re: *Bona Fide* Nature of the Sale in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China (''PRC''): Shandong Jinxiang Hejia Co., Ltd. New Shipper Review (April 27, 2009) (Hejia *Bona Fides* Memorandum). Accordingly, we will continue to examine the *bona fides* of Hejia's sale after the preliminary results.

Based on our investigation into the *bona fide* nature of Hejia's reviewed sale, its questionnaire responses, as well as its eligibility for a separate rate (*see* the ''Separate Rates'' section above) and the Department's preliminary determination that Hejia was not affiliated with any exporter or producer that had previously shipped subject merchandise to the United States, we preliminarily determine that Hejia has met the requirements to qualify as a new shipper during the POR. Therefore, for purposes of these preliminary results, we are treating Hejia's new shipper sale of subject merchandise to the United States as an appropriate transaction for its review.

Juye Homestead: We preliminarily find that the sale made by Juye Homestead was a *bona fide* commercial transaction. Specifically, we find that: (1) The price of the sale was within the range of the prices of other entries of subject merchandise from the PRC into the United States during the POR; (2) neither Juye Homestead nor its customer incurred any extraordinary expenses arising from the transaction; (3) the sale was made between unaffiliated parties at arm's length; and (4) the timing of the sale does not indicate that this sale was not *bona fide.* However, we note that there is certain evidence on the record that suggests that the *bona fides* of Juye Homestead's sale is not definitive. Since much of our analysis regarding the evidence of the *bona fides* of the transaction involves business proprietary information, a full discussion of the bases for our preliminary decision is set forth in the Memorandum from Jun Jack Zhao Re: *Bona Fide* Nature of the Sale in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China (''PRC''): Juye Homestead Fruits and Vegetables Co., Ltd. (April 27, 2009). Accordingly, we will continue to examine the *bona fides* of Juye Homestead's sale after the preliminary results.

Based on our investigation into the *bona fide* nature of Juye Homestead's reviewed sale, its questionnaire responses, as well as its eligibility for a separate rate (*see* the ''Separate Rates'' section above) and the Department's determination that Juye Homestead was not affiliated with any exporter or producer that had previously shipped subject merchandise to the United States, we preliminarily determine that Juye Homestead has met the requirements to qualify as a new shipper during the POR. Therefore, for purposes of these preliminary results, we are treating Juye Homestead's new shipper sale of subject merchandise to the United States as an appropriate transaction for its review.

Chenglong: We preliminarily find that the new shipper sale made by Chenglong was a *bona fide* commercial transaction. Specifically, we found that: (1) The price of the sale was within the range of the prices of other entries of subject merchandise from the PRC into the United States during the POR; (2) neither Chenglong nor its customer incurred any extraordinary expenses arising from the transaction; (3) the sale was made between unaffiliated parties at arm's length; and (4) the timing of the sale does not indicate that this sale was not *bona fide.* However, we note that certain evidence on the record suggests that the *bona fides* of Chenglong's sale is not definitive. Since much of our analysis regarding the evidence of the *bona fides* of the transaction involves business proprietary information, a full discussion of the bases for our preliminary decision is set forth in the Memorandum from Jun Jack Zhao Re: *Bona Fide* Nature of the Sale in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China (''PRC''): Weifang Chenglong Import & Export Co., Ltd. (April 27, 2009). Accordingly, we will continue to examine the *bona fides* of Chenglong's sale after the preliminary results.

Based on our investigation into the *bona fide* nature of Chenglong's reviewed sale, its questionnaire responses, as well as its eligibility for a separate rate (*see* the ''Separate Rates'' section above) and the Department's determination that Chenglong was not affiliated with any exporter or producer that had previously shipped subject merchandise to the United States, we preliminarily determine that Chenglong has met the requirements to qualify as a new shipper during the POR. Therefore, for purposes of these preliminary results, we are treating Chenglong's new shipper sale of subject merchandise to the United States as an appropriate transaction for its review.

Chengwu: We preliminarily find that the new shipper sale made by Chengwu was a *bona fide* commercial transaction. Specifically, we found that: (1) The price of the sale was within the range of the prices of other entries of subject merchandise from the PRC into the United States during the POR; (2) neither Chengwu nor its customer incurred any extraordinary expenses arising from the transaction; (3) the sale was made between unaffiliated parties at arm's length; and (4) the timing of the sale does not indicate that this sale was not *bona fide.* However, we note that there is certain evidence on the record that suggests the *bona fides* of Chenwu's sale is not definitive. Since much of our analysis regarding the evidence of the *bona fides* of the transaction involves business proprietary information, a full discussion of the bases for our preliminary decision is set forth in the Memorandum from Toni Page Re: *Bona Fide* Nature of the Sale in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China (''PRC''): Chengwu County Yuanxiang Industry & Commerce Co., Ltd. (April 27, 2009). Accordingly, we will continue to examine the *bona fides* of Chengwu's sale after the preliminary results.

Based on our investigation into the *bona fide* nature of Chengwu's reviewed sale, its questionnaire responses, as well as its eligibility for a separate rate (*see* the ''Separate Rates'' section above) and the Department's determination that Chengwu was not affiliated with any exporter or producer that had previously shipped subject merchandise to the United States, we preliminarily determine that Chengwu has met the requirements to qualify as a new shipper during the POR. Therefore, for purposes of these preliminary results, we are treating Chengwu's new shipper sale of subject merchandise to the United States as an appropriate transaction for its review.

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 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. 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*).

As discussed in the ''Non-Market Economy Country Status'' section above, the Department considers the PRC to be an NME country. Pursuant to section 773(c)(4) of the Act, the Department determined that India, Colombia, Indonesia, the Philippines, and Thailand are countries comparable to the PRC in terms of economic development. *See* the Memorandum to All Interested Parties Re: New Shipper Reviews of Fresh Garlic from the People's Republic of China (''PRC'') (August 20, 2008) at Attachment 1. Also in accordance with section 773(c)(4) of the Act, the Department has found that India is a significant producer of comparable merchandise. Moreover, the Department finds India to be a reliable source for surrogate values because India is at a similar level of economic development pursuant to section 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 of this proceeding, and the only surrogate value data 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* Letter to All Interested Parties Re: New Shipper Reviews of Fresh Garlic from the People's Republic of China (''PRC'') at Attachment 1 (August 20, 2008). The sources of the surrogate factor values are discussed under the ''Normal Value'' section below and in the Memorandum from Toni Page Re: Preliminary Results of the 2007–2008 New Shipper Reviews of Fresh Garlic from the People's Republic of China: Surrogate Values (April 27, 2009) (*Surrogate Values Memorandum*).

U.S. Price

In accordance with section 772(a) of the Act, we calculated the export price for sales to the United States for Hejia, Juye Homestead, Chenglong, and Chengwu because each company made its sale to an unaffiliated party before the date of importation and the use of constructed export prices was not otherwise warranted. We calculated each company's export price based on its price to unaffiliated purchasers in the United States. In accordance with section 772(c) of the Act, where appropriate, we deducted from the starting price to unaffiliated purchasers the expenses for foreign inland freight, international freight, brokerage and handling, marine insurance, warehousing, and U.S. customs duties. For the expenses that were either provided by an NME vendor or paid for using an NME currency, we used surrogate values as appropriate. *See* the ''Factor Valuations'' section below for details regarding the surrogate values for movement expenses.

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 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. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China,* 68 FR 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)).

For the final results of certain prior administrative reviews (ARs) and NSRs (*i.e., Fresh Garlic from the People's Republic of China: Partial Rescission and Preliminary Results of the Eleventh Administrative Review and New Shipper Reviews,* 71 FR 71510 (December 11, 2006) (unchanged in the final results) (*11th AR and NSRs*); *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 12th Administrative Review,* 73 FR 34251 (June 17, 2008) (*12th AR*), and *Fresh Garlic from the People's Republic of China: Final Results and Rescission, In Part, of Twelfth New Shipper Reviews,* 73 FR 56550 (September 29, 2008) (*12th NSR*), the Department found that garlic industry producers in the PRC do not generally track actual labor hours incurred for growing, tending, and harvesting activities and, thus, do not maintain appropriate records which would allow most, if not all, respondents to quantify, report, and substantiate this information. *See* the Memorandum from Toni Page Re: New Shipper Reviews of Fresh Garlic from the People's Republic of China—Intermediate Methodology Source Documents (April 27, 2009) (*Intermediate Input Methodology Source Documents*). In the *11th AR and NSRs,* 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 11th AR and NSRs* at 71520. In the course of these reviews, one company, Tianheng, reported its growing FOPs.[4] (Hejia, Juye Homestead, Chenglong, Zhengyang, and Chengwu did not report FOPs related to growing whole garlic bulbs.) As such, for the reasons outlined in Memorandum from Toni Page Re: 2007–2008 New Shipper Review of Fresh Garlic from the People's Republic of China: Intermediate Input Methodology (April 27, 2009) (*Intermediate Input Methodology Memorandum*), the Department is applying an ''intermediate-product valuation methodology'' to the NSR respondents 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''), adjusting for yield losses during the processing stages, and adding the respondents' processing costs,

[4] On March 18, 2009, the Department preliminarily rescinded the NSR of Tianheng. As such, we have not conducted an analysis of the growing FOPs that Tianheng reported.

which were calculated using their reported usage rates for processing fresh garlic. *See Intermediate Input Methodology Memorandum.*

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. 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*). For more information regarding the Department's valuation for the various FOPs, *see Surrogate Values Memorandum.*

Garlic Bulb Valuation

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

The Department has applied an intermediate input methodology for respondents. Therefore, we sought to identify the best available surrogate value for the garlic bulb input to production, as opposed to finding surrogate values for the steps involved in planting, growing, and harvesting raw garlic (such as seeds, water, fertilizer, etc.). *See* Petitioners' Surrogate Value Data at 2; *see also Surrogate Values Memorandum.* For the preliminary results of these reviews, we find that data from the Azadpur APMC's ''Market Information Bulletin'' is the most appropriate information available to value the respondents' garlic bulb input.

In their FOP databases, respondents reported garlic bulb input size ranges for each type of garlic produced and sold to the U.S. during the POR. Respondents, with the exception of Hejia, reported garlic bulb input sizes ranging between 45 mm and 65 mm. Consistent with the final results of the 12th administrative review, the Department continues to find that garlic bulb sizes that range from 55 mm and above are Grade Super-A and garlic bulb sizes that range between 40 mm and 55 mm are Grade A and Grade Super-A. *See Surrogate Values Memorandum.* Therefore, for these preliminary results, for respondents other than Hejia, we have used Grade Super-A values when respondents have reported bulb input sizes that range from 55 mm and above, and an average of Grade A and Super-A values when they have reported bulb input sizes that are in ranges from 40 mm to 55 mm. To calculate the surrogate value for garlic bulbs, we first averaged all data points from November 1, 2007 to April 30, 2008 for: (1) Grade Super-A; and (2) Grade A. We then subtracted a 7 percent fee (6 percent commission fee plus 1 percent market fee) charged on transactions at the Azadpur APMC from the Grade A and Grade Super-A averages. *See Surrogate Values Memorandum.*

Garlic Bulb Valuation for Hejia

Hejia has submitted information on the record indicating that the garlic it sold, and the garlic bulb input thereof, possessed physical characteristics which significantly distinguish it from the Grade A and Super Grade A garlic on which we rely to value garlic bulb inputs. As such, neither Grade A nor Super Grade A garlic appears to be an appropriate basis from which to derive a surrogate value for the bulb input used by Hejia. Moreover, there is no other appropriate bulb surrogate value information on the record of this review. Thus, for these preliminary results, we have determined to use an FOB sales offer from Sundaram Overseas Operations (SOO), an Indian trading company, as the basis for deriving NV. SOO's sales offer appears to be an Indian export price for a whole garlic product that is physically similar to the product sold by Hejia. However, we have incomplete information regarding the FOB sales offer made by SOO. As such, for the purposes of these preliminary results, we are making the following assumptions: (1) SOO acted only as a trading company and did not further process the garlic at issue; and (2) the processing FOPs for the garlic at issue are similar to the processing FOPs of other whole garlic subject to these NSRs. Therefore, we adjusted SOO's price by removing the profit, SG&A, and overhead expenses associated with the activities of an Indian trading company. As such, the resulting NV will only reflect the costs and profit associated with processing whole garlic. *See Surrogate Values Memorandum.*

The Department is requesting comments and factual information regarding the appropriate surrogate value to use in calculating NV for Hejia for purposes of the final results of review. Due to the unusual nature of this valuation and calculation, regardless of whether there is new factual information on the record after issuance of these preliminary results, the Department will continue to consider the appropriateness of this calculation for purposes of the final results of review. Since much of our analysis regarding Hejia's garlic and the garlic bulb input thereof has been treated as business proprietary information, a full discussion of the bases for calculating an appropriate surrogate value for Hejia's garlic bulb input is set forth in the *Surrogate Values Memorandum.*

Financial Ratios

Petitioners and Zhengyang submitted comments and factual information regarding surrogate financial ratios. *See* Petitioners' Surrogate Value Data, Zhengyang's Surrogate Value Data, and Zhengyang's Rebuttal Surrogate Value Data submissions. After analyzing these comments and factual information, the Department has determined that it is appropriate to include the financial statements of additional Indian companies in the calculation of the financial ratios used to value overhead expenses, selling expenses, general expenses, and profits for the respondents. Specifically, the Department will calculate financial ratios using a simple average of financial data from three Indian processors of tea and/or other agricultural products. Using an average of these three companies' data will allow us to calculate financial ratios that better reflect the broader experience of the surrogate industry. *See Surrogate Values Memorandum.*

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank. *See <http://www.ia.ita.doc.gov/exchange/index.html>.*

Verification

Following the publication of these preliminary results, we intend to verify,

as provided in section 782(i)(3) of the Act, the questionnaire responses of these new shippers. 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 CRU.

Preliminary Results of the Reviews

As a result of our reviews, we preliminarily find that the following margins exist for the period November 1, 2007 through June 9, 2008:

FRESH GARLIC FROM THE PRC

Exporter/manufacturer	Weighted-average margin (percent)
Exported by Weifang Chenglong Import & Export Co., Ltd. and Produced by Jinxiang County Jichao Farm Business Co., Ltd	39.85
Exported and Produced by Juye Homestead Fruits and Vegetables Co., Ltd	99.78
Exported and Produced Chengwu County Yuanxiang Industry & Commerce, Ltd	134.90
Exported and Produced by Jinxiang Hejia Co., Ltd	70.38

Assessment Rates

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. Consistent with the final results of the *12th NSR,* we will direct CBP to assess importer-specific assessment rates based on the resulting per-unit (*i.e.,* per kilogram) amount on each entry of the subject merchandise during the POR. *See 12th NSR* at 56552. Specifically, we will divide the total dumping margins for each importer by the total quantity of subject merchandise sold to that importer during the POR to calculate a per-unit assessment amount. We will direct CBP to assess importer-specific assessment rates based on the resulting per-unit (*i.e.,* per kilogram) amount on each entry of the subject merchandise during the POR if any importer-specific assessment rate calculated in the final results of this review is above *de minimis.* The Department will issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of these reviews.

Cash Deposit Requirements

Consistent with the final results of the *12th NSR,* we will establish and collect a per-kilogram cash-deposit amount which will be equivalent to the company-specific dumping margin published in the final results of these reviews. Specifically, the following cash deposit requirements will be effective upon publication of the final results of these reviews for all 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)(1) of the Act: (1) For subject merchandise produced and exported by Juye Homestead, Hejia or Chengwu, the cash deposit rates will be the rates determined in the final results of the new shipper reviews; (2) for subject merchandise exported by but not produced by Juye Homestead, exported but not produced by Hejia, or exported by but not produced by Chengwu, the cash deposit rate will be the PRC-wide rate; (3) for subject merchandise produced by Jinxiang County Jichao Farm Business Co., Ltd. (Jichao) and exported by Chenglong, the cash deposit rates will be the rates determined in the final results of the new shipper reviews; (4) for subject merchandise exported by Chenglong but not produced by Jichao, the cash deposit rates will be the PRC-wide rate; and (5) for subject merchandise produced or exported by Tianheng or Zhengyang, the cash deposit rate will be the PRC-wide rate. These requirements, when imposed, shall remain in effect until further notice.

Disclosure

We will disclose the calculations used in our analysis to parties to these proceedings not later than ten days after the date of public announcement, or if there is no public announcement within five days of the date of publication of this notice. *See* 19 CFR 351.224(b).

Comments

Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments within 30 days of the date of publication of this notice, unless otherwise notified by the Department. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs, limited to issues raised in the case briefs, will be due five days later, pursuant to 19 CFR 351.309(d). Parties who submit case or rebuttal briefs in these proceedings are requested to submit with each argument: (1) a statement of the issue, and (2) a brief summary of the argument. Parties are requested to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Additionally, parties are requested to provide their case brief and rebuttal briefs in electronic format (*e.g.,* WordPerfect, Microsoft Word, Adobe Acrobat, etc.). Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration within 30 days of the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in case and rebuttal briefs. The Department will issue the final results of these reviews, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 90 days after these preliminary results are issued, unless the final results are extended. See 19 CFR 351.214(i).

Notification to Importers

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 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.

We are issuing and publishing these preliminary results in accordance with sections 751(a)(2)(B) and 777(i) of the Act, and 19 CFR 351.214(h).

Dated: April 27, 2009.

Ronald M. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–10184 Filed 5–1–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States. Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before May 26, 2009. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. at the U.S. Department of Commerce in Room 3720.

Docket Number: 09–013. Applicant: Princeton University, Olden Street, Princeton, NJ 08544. Instrument: Electron Beam Evaporator. Manufacturer: Plassys, France. Intended Use: The instrument will be used in the study of superconducting quantum circuits, ultimately directed towards superconducting quantum computation. The evaporator will be used to make low–defect aluminum Josephson junctions, a necessary component of all quantum bits. A unique feature of this instrument is that it offers full stage rotation, in–situ angle control for bilayer Josephson junction fabrication and controlled oxidation. Stage rotation is necessary to fabricated Josephson junctions in a single deposition process, the only way of fabricating devises with long coherence. Justification for Duty–Free Entry: No instruments of the same general category as the foreign instrument begin manufactured in the United States. Application accepted by Commissioner of Customs: April 6, 2009.

Dated: April 27, 2009.

Christopher Cassel,

Acting Director, IA Subsidies Enforcement Office.

[FR Doc. E9–10175 Filed 5–1–09; 8:45 am]

BILLING CODE 3510–DS–S

U.S. DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 18–2009]

Proposed Foreign-Trade Zone, Kern County, California, Application and Public Hearing

An application has been submitted to the Foreign–Trade Zones (FTZ) Board (the Board) by the County of Kern Department of Airports to establish a general–purpose foreign–trade zone at sites in Kern County, California. Meadows Field Airport in Kern County has been designated by U.S. Customs and Border Protection as a user fee airport. The application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on April 28, 2009. The applicant is authorized to make the proposal under the California Government Code, Sections 6300–6305.

The proposed zone would consist of two sites located in Kern County, California. They are as follows: *Site 1* (231 acres, 3 parcels) - Parcel 1A (200 acres), within the 1,332–acre Meadow Field Airport complex (includes an aviation fuel depot), 1401 Skyway Drive, Bakersfield; Parcel 1B (1 acre) – at the P.R.I.M.E. (Pacific Rim & India Multinational Enterprises Corporation) warehouse facility, 2341 Cepheus Court, Bakersfield; and, Parcel 1C (30 acres) – located at the 110–acre Wingsport Industrial Park, Merle Haggard & Wings Way, Bakersfield. Parcels 1B and 1C are adjacent to the Meadows Field Airport. Parcel 1A is owned by Kern County. Parcels 1B and 1C are owned by private owners; and, *Site 2* (167 acres) – located at the 1,450–acre Tejon Industrial Complex, intersection of I–5 and Highway 99, Lebec. Site 2 will incorporate parcels that have previously been part of Site 2 of FTZ 202 and of Subzone 202D within the Tejon Industrial Complex.

The application indicates a need for zone services in Kern County, California. Several firms have indicated an interest in using zone procedures for warehousing/distribution activities for a variety of products. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case–by-case basis.

In accordance with the Board's regulations, Kathleen Boyce of the FTZ staff is designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on May 27, 2009, 9 a.m., at the International Terminal Building at Meadows Field Airport, 1401 Skyway Drive, Bakersfield, California.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address listed below. The closing period for their receipt is July 6, 2009. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15–day period (to July 20, 2009).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Executive Secretary, Foreign–Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's website, which is accessible via www.trade.gov/ftz.

For further information, contact Kathleen Boyce at Kathleen_Boyce@ita.doc.gov or (202) 482–1346.

Dated: April 28, 2009.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–10182 Filed 5–1–09; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 090424759–9760–01]

RIN 0648–ZB55

Ocean Education Grants for AZA Aquariums

AGENCY: Office of Education (OED), Office of the Under Secretary (USEC), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of funding availability.

SUMMARY: The NOAA Office of Education (OEd) is issuing a request for applications to support education projects designed to engage the public in activities that increase ocean and/or climate literacy and the adoption of a stewardship ethic. Funded projects will be between one and five years in duration and will support ocean education projects led by eligible applicants. Eligible applicants are only 501(c)(3) non-profit organizations that are either aquariums accredited by the Association of Zoos and Aquariums (AZA) or have a legally sanctioned