

Dated: September 28, 2009.

John M. Andersen,

*Acting Deputy Assistant Secretary for
Antidumping and Countervailing Duty
Operations.*

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-831]

Fresh Garlic from the People's Republic of China: Final Results and Final Rescission, In Part, of New Shipper Reviews

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

SUMMARY: The Department of Commerce (Department) is conducting the 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, 2008.¹ As discussed below, we determine that sales have been made in the United States at prices below normal value (NV) with respect to two exporters who participated fully and have demonstrated their eligibility for separate rates in the NSR: Chengwu County Yuanxiang Industry & Commerce, Ltd. (Yuanxiang) and Jinxiang Hejia Co., Ltd. (Hejia). In the preliminary results of this review, we found Yuanxiang's and Hejia's POR sales were made on a bona fide basis. See *Fresh Garlic From the People's Republic of China: Preliminary Results of New Shipper Reviews*, 74 FR 20452 (May 4, 2009) (*Preliminary Results*). We are continuing to find Yuanxiang's and Hejia's sales to be *bona fide* for the final results of this review. In addition, we are rescinding the NSRs for four companies: Weifang Chenglong Import & Export Co., Ltd. (Chenglong), Jinxiang Tianheng Trade Co., Ltd. (Tianheng), Jinxiang Zhengyang Import & Export Co., Ltd. (Zhengyang), and Juye Homestead Fruits and Vegetables Co., Ltd. (Juye). We intend to instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on entries of subject merchandise during the POR for which importer-specific assessment rates are above *de minimis*.

EFFECTIVE DATE: October 2, 2009.

¹ We extended the end of the period of review (POR) from April 30, 2007 to June 9, 2008, to capture entries for three respondents. See the "Expansion of the POR" section in the *Preliminary Results*.

FOR FURTHER INFORMATION CONTACT: Toni Page, Scott Lindsay, or Summer Avery, 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) 482-0780, or (202) 482-4052, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 4, 2009, the Department published in the **Federal Register** the preliminary results of the NSRs of the antidumping duty order on fresh garlic from the PRC. See *Preliminary Results*. Since the *Preliminary Results*, the following events have occurred.

Hejia filed surrogate value (SV) information for its single-clove garlic on May 19, 2009. On May 22, 2009, we extended the deadline for all interested parties to submit publicly available information to value factors of production until June 9, 2009. Chenglong and Tianheng filed SV information on June 9, 2009. On June 19, 2009, Fresh Garlic Producers Association (FGPA) and its individual members (Christopher Ranch L.L.C., the Garlic Company, Valley Garlic, and Vessey and Company, Inc.) (collectively, Petitioners), filed factual information intended to rebut SV information filed by Chenglong and Tianheng.

On May 27, 2009, the Department issued a supplemental questionnaire to Shandong Zhengyang with a due date of June 10, 2009. On June 4, 2009, counsel for Zhengyang notified the Department that it was withdrawing its representation of the company and advised the Department to contact Zhengyang directly. On June 12, 2009, the Department sent a letter to Zhengyang stating that we had not received its supplemental questionnaire response and that we had canceled verification. Zhengyang did not respond to the Department's letter.

On May 27, 2009, the Department sent a supplemental questionnaire to Hejia. The Department received Hejia's timely response on June 2, 2009. On June 2, 2009, the Department was notified by Juye that it was withdrawing from the NSR.

On June 4, 2009, we extended the time limit for the completion of the final results of these reviews. See *Fresh Garlic From the People's Republic of China: Extension of Time Limit for the Final Results of New Shipper Reviews*, 74 FR 26839 (June 4, 2009).

The Department conducted verification of the NSR respondents Chenglong, Hejia, and Yuanxiang from June 22, 2009 through June 30, 2009. On

July 30 and 31, 2009, the Department issued its verification reports.

On July 30, 2009, the Department preliminarily found Tianheng's sale to be not *bona fide*. See Memorandum From Barbara E. Tillman, Office Director, Office 6, 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"): Amended Intent to Preliminarily Rescind Jinxiang Tianheng Trade Co.'s New Shipper Review, July 30, 2009 (*Amended Memorandum*). We continue to find Tianheng's sale to be not *bona fide* for these final results.

In response to requests filed by Petitioners and the NSR respondents, the Department extended the due date for case briefs until August 17, 2009. The Department received timely filed case briefs from Petitioners, Hejia, Yuanxiang, Chenglong, and Tianheng. On August 21, 2009, the Department advised Hejia and Tianheng that each company's brief contained new factual information and instructed both Hejia and Tianheng to re-file their case briefs. Hejia and Tianheng complied with the Department's request and re-filed their case briefs on August 28, 2009 and September 9, 2009, respectively. In response to requests filed by Petitioners and the NSR respondents, the Department extended the deadline for rebuttal briefs to August 24, 2009, for arguments regarding everything except Hejia-related issues, and to August 28, 2009, for Hejia-specific matters. The Department received timely filed rebuttal briefs from all interested parties on August 24 and 28, 2009.

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.

Analysis of Comments Received

Issues raised in the case and rebuttal briefs by parties to this proceeding and to which we have responded are listed in Appendix 1 to this notice and addressed in the Memorandum from John Anderson, Acting Deputy Assistant Secretary for Import Administration Re: Fresh Garlic from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the New Shipper Reviews and Rescission, In Part, of the New Shipper Reviews (*Issues and Decision Memorandum*), September 24, 2009, which is hereby adopted by this notice.² Parties can find a complete discussion of the issues raised in these NSRs and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit (CRU), Room 1117 of the main Department building. In addition, a copy of the Issues and Decision Memorandum can be accessed directly on our website at <http://ia.ita.doc.gov/>. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Final Rescission of Zhengyang's and Juye's New Shipper Reviews

Subsequent to our *Preliminary Results*, Zhengyang and Juye each ceased participation in its respective new shipper review. Specifically, Zhengyang did not respond to the Department's May 27, 2009

supplemental questionnaire and Juye withdrew from its new shipper review on June 4, 2009. By not fully participating in its new shipper review, each company has failed to establish that it qualified for a separate rate.

To establish whether a company operating in a non-market economy (NME) is sufficiently independent from the Government to be eligible for a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994). Under the separate rates criteria, the Department assigns separate rates in NME cases only if the respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities. We note that by failing to fully participate in their new shipper reviews, Zhengyang and Juye did not demonstrate that they are free of government control and, therefore, are not eligible to receive a separate rate, and as part of the NME-entity are not eligible for a new shipper review. As such, the Department rescinds the new shipper reviews of Zhengyang and Juye.

Bona Fides Analyses For Chenglong, Tianheng, Yuanxiang and Hejia; and Final Rescission of New Shipper Reviews with Respect to Chenglong and Tianheng

While conducting a review, particularly a review where a company's margin would be based on a single sale, the Department examines price, quantity, and other circumstances associated with the sale under review, and must determine if the sale was based on normal commercial considerations and presents an accurate representation of the company's normal business practices. If the Department determines that the price was not based on normal commercial considerations or is atypical of the respondent's normal business practices, including other sales of comparable merchandise, the sale may be considered non-*bona fide*.

In the *Preliminary Results*, the Department preliminarily found that Chenglong's, Hejia's, and Yuanxiang's single POR sales were made on a *bona fide* basis. However, as a result of our analyses of information found during the verification of these companies, as well as comments made by interested parties, the Department has determined that Chenglong's POR transaction was

not a *bona fide* sale. Finally, the Department continues to find Yuanxiang's and Hejia's sales to be *bona fide* for these final results.

Chenglong: In the *Preliminary Results*, the Department noted that certain information on the record called into question the *bona fides* of Chenglong's sale and that we would continue to examine all aspects of Chenglong's POR sale. See *Preliminary Results* at 20455. After conducting verification of Chenglong and reviewing interested parties' briefs, the Department has determined that Chenglong's sale was not a *bona fide* transaction. See the *Chenglong Final Bona Fides Memorandum* for a more detailed discussion of the Department's determination as well as the *Issues and Decision Memorandum* at Comment 2. Accordingly, the Department is rescinding this NSR with respect to Chenglong.

Tianheng: On July 30, 2009, the Department preliminarily found Tianheng's sale to be not *bona fide*. See *Amended Memorandum*. As noted in the "Background" section, both Petitioners and Tianheng submitted briefs and rebuttal briefs regarding the *bona fides* of Tianheng's single sale. Based on our analysis of arguments made by the parties, the Department continues to find Tianheng's sale to be not *bona fide*. See *Issues and Decision Memorandum* at Comment 3. Therefore, we are rescinding the NSR with respect to Tianheng for these final results.

Yuanxiang: In the *Preliminary Results*, the Department preliminarily concluded that the single sale made by Yuanxiang was a *bona fide* commercial transaction. Petitioners and Yuanxiang have submitted arguments as to whether the Department should rescind Yuanxiang's NSR in these final results. See the *Yuanxiang Final Bona Fides Memorandum* for a more detailed discussion of the Department's determination as well as the *Issues and Decision Memorandum* at Comment 4. Based on the totality of the circumstances as discussed in the Issues and Decision Memorandum addressing Yuanxiang's *bona fides* issues, for these final results, the Department continues to find that Yuanxiang's sale was *bona fide*. See *id.*

Hejia: In the *Preliminary Results*, the Department noted that certain information on the record called into question the *bona fides* of Hejia's POR sale and that we would continue to examine all aspects of Hejia's sale. See *Preliminary Results* at 20455. After conducting verification of Hejia and reviewing interested parties' briefs, the Department has determined that Hejia's

² In addition, due to the proprietary nature of much of the information involved in company-specific discussions, the Department has found it necessary to address certain issues in separate memoranda. See *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 Hejia Co., Ltd (Hejia) (Hejia Final Bona Fides Memorandum)* and *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 and Export Co. Ltd. (Chenglong) (Chenglong Final Bona Fides Memorandum)*.

sale was a *bona fide* transaction. See the *Hejia Final Bona Fides Memorandum* for a more detailed discussion of the Department's determination as well as the *Issues and Decision Memorandum* at Comment 1. Based on the totality of the circumstances as discussed in the *Issues and Decision Memorandum* addressing Hejia's *bona fides* issues, for these final results, the Department continues to find that Hejia's sale was *bona fide*. See *id.*

Changes Since the Preliminary Results

Based on our analysis of information on the record of these reviews, and comments received from the interested parties, we have made changes to the financial ratios used to value overhead expenses, selling expenses, general expenses, and profits for the respondents. In these final results, for Yuanxiang, we are calculating surrogate financial ratios using a simple average of financial data from four Indian processors of tea, coffee, and rice. Using an average of these four companies' data allows us to calculate financial ratios that better reflect the broader experience of the surrogate industry. See *Issues and Decision Memorandum* at Comment 7 and *Final Surrogate Values Memorandum*. Also, based on our findings at verification, the Department is adjusting Yuanxiang's factors regarding packing for these final results. See *Yuanxiang Verification Report* at 3. The Department has also made changes to the valuation of Hejia's single-clove garlic input. The specific changes, which includes business proprietary information, are addressed in the Memorandum from Nicholas Czajkowski, Case Analyst, Re: New Shipper Review of Fresh Garlic from the People's Republic of China: Analysis for the Final Results of Jinxiang Hejia Co., Ltd. (Hejia).

FINAL RESULTS OF NEW SHIPPER REVIEWS

As a result of our reviews, we determine that the following margins exist for the periods November 1, 2007 through April 30, 2008 and November 1, 2007 through June 9, 2008:

FRESH GARLIC FROM THE PRC 2007–2008 NEW SHIPPER REVIEWS

Exported and Produced by Chengwu County Yuanxiang Industry & Commerce, Ltd.	115.29
Exported and Produced by Jinxiang Hejia Co., Ltd.	15.37

Disclosure

We will disclose the calculations used in our analysis to parties to these

proceedings within five days of the date of publication of this notice. See 19 CFR 351.224(b).

Assessment Rates

Consistent with the final results of the 13th administrative review (AR) and NSRs of Fresh Garlic from the PRC, 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 *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 13th Antidumping Duty Administrative Review and New Shipper Reviews*, 74 FR 29174, 29177 (June 19, 2009) (*13th AR & NSRs of Fresh Garlic from the PRC*). Therefore, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1). The Department will issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this review. For assessment purposes, we calculated importer-specific assessment rates for fresh garlic from the PRC. Specifically, we divided 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*.

Cash Deposit Requirements

Consistent with the final results of the *13th AR & NSRs of Fresh Garlic from the PRC*, we will collect a per kilogram cash-deposit amount which will be the per-unit equivalent of the company-specific dumping margin published in the final results of these reviews. 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 Yuanxiang the cash deposit rate will be the per-unit rate determined in the final results of the new shipper review; (2) for subject merchandise exported by Yuanxiang but not produced by Yuanxiang, the cash

deposit rate continues to be the per-unit PRC-wide rate; (3) for subject merchandise produced and exported by Hejia the cash deposit rate will be the per-unit rate determined in the final results of the new shipper review; (4) for subject merchandise exported by Hejia but not produced by Hejia, the cash deposit rate continues to be the per-unit PRC-wide rate; and (5) for subject merchandise produced or exported by Tianheng, Zhengyang, Chenglong, and Juye, the cash deposit rates continues to be the per-unit PRC-wide rate. These requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final 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.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

These new shipper reviews and notice are issued and published in accordance with sections 751(a)(2)(B) and 777(i) of the Act and 19 CFR and 351.214.

Dated: September 24, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix I

- Comment 1: Whether Hejia's Sale is Bona Fide*
- Comment 2: Whether Chenglong's Sale is Bona Fide*
- Comment 3: Whether Tianheng's Sale is Bona Fide*
- Comment 4: Whether Yuanxiang's Sale is Bona Fide*
- Comment 5: Surrogate Value of Single-Clove Garlic*

Comment 6: Calculation of Yield Loss Factor

Comment 7: Financial Ratios

Comment 8: Whether to Calculate Separate Financial Ratios for Whole Garlic and Peeled Garlic

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-855]

Non-Frozen Apple Juice Concentrate from the People's Republic of China: Final Results for the Administrative Review

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

SUMMARY: The Department is conducting an administrative review of this *Order*, covering the period of review ("POR") of June 1, 2007, - May 31, 2008. The Department preliminarily found that Itochu Corporation and its wholly-owned subsidiaries, Yitian Juice (Shaanxi) Co., Ltd. and Laiyang Yitian Juice Co., Ltd., (collectively known as "Itochu") did not sell the subject merchandise at less than normal value ("NV") and thus assigned a zero margin for the POR. See *Non-Frozen Apple Juice Concentrate from the People's Republic of China: Preliminary Results for the Administrative Review*, 74 FR 31238 (June 30, 2009) ("*Preliminary Results*"). Based upon our analysis of comments received, the Department made no changes to the margin calculations in the final results. Therefore, we will instruct the 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: October 2, 2009.

FOR FURTHER INFORMATION CONTACT: Alexis Polovina, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington DC 20230; telephone (202) 482-3927.

SUPPLEMENTARY INFORMATION:

CASE HISTORY

On June 5, 2000, the Department of Commerce ("Department") published in the **Federal Register** the antidumping duty order on certain non-frozen apple juice concentrate from the People's Republic of China ("PRC"). See *Notice*

of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China, 65 FR 35606 (June 5, 2000) ("*Order*"). On June 30, 2009, the Department published in the **Federal Register** the *Preliminary Results* of this administrative review. On July 17, 2009, Itochu filed comments regarding the Department's *Preliminary Results*. On July 22, 2009, The Department subsequently rejected these comments as they contained an untimely submission of new factual information. See Memorandum to the File, from Alexis Polovina, Case Analyst, Office 9, through Alex Villanueva, Program Manager, Office 9, regarding "Administrative Review of Apple Juice Concentrate from the People's Republic of China: Rejection of New Information" dated July 22, 2009 ("Rejection of New Information"). As the deadline to submit case briefs was July 30, 2009, the Department allowed Itochu to resubmit their case brief. Itochu submitted a revised case brief on July 30, 2009. No other party filed comments and no party requested a public hearing.

SCOPE OF THE ORDER

The product covered by this order is certain non-frozen apple juice concentrate. Apple juice concentrate is defined as all non-frozen concentrated apple juice with a brix scale of 40 or greater, whether or not containing added sugar or other sweetening matter, and whether or not fortified with vitamins or minerals. Excluded from the scope of this order are: frozen concentrated apple juice; non-frozen concentrated apple juice that has been fermented; and non-frozen apple juice to which spirits have been added.

The merchandise subject to this order is classified in the *Harmonized Tariff Schedule of the United States* ("HTSUS") at subheadings 2106.90.52.00, and 2009.70.00.20 before January 1, 2002, and 2009.79.00.20 after January 1, 2002. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

ANALYSIS OF COMMENTS RECEIVED

All issues raised in the comments by Itochu are addressed in the concurrent Issues and Decision Memorandum ("Issues and Decision Memo"), which is hereby adopted by this notice. A list of the issues which Itochu raised and to which we respond in the Issues and Decision Memo is attached to this notice as an Appendix. The Issues and

Decision Memo is a public document and is on file in the Central Records Unit ("CRU"), Main Commerce Building, Room 1117, and is accessible on the Web at <http://www.trade.gov/ia>. The paper copy and the electronic version of the memorandum are identical in content.

FINAL RESULTS OF THE REVIEW

The Department has determined that the final dumping margin for the POR is:

NON-FROZEN APPLE JUICE CONCENTRATE FROM THE PRC

Exporter	Weighted-Average Margin (Percent)
Itochu Corporation	0.00

ASSESSMENT RATES

Upon issuance of the final results, the Department will determine, and the CBP shall assess, antidumping duties on all appropriate entries on an ad valorem basis. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific (or customer) duty assessment rates based on the ratio of the total amount of dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis*, i.e., less than 0.50 percent.

CASH-DEPOSIT REQUIREMENTS

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of subject merchandise from Itochu entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Tariff Act of 1930, as amended ("Act"): (1) For subject merchandise exported by Itochu, no deposit will be required; (2) for companies previously found to be entitled to a separate rate in prior segments of the proceeding, and for which no review has been requested, the cash deposit rate will continue to be the rate established in the most recent review of that company; (3) for all other PRC exporters, the cash deposit rate will be 51.74 percent, the PRC country-wide *ad-valorem* rate; and (4) for non-PRC exporters of subject merchandise from