

**DEPARTMENT OF COMMERCE****International Trade Administration**

[A-570-831]

**Fresh Garlic from the People's Republic of China: Preliminary Results of New Shipper Review**

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

**SUMMARY:** The Department of Commerce (Department) is conducting a new shipper review (NSR) of Qingdao Sea-line International Trade Co. Ltd. (Qingdao Sea-line) under the antidumping duty order on fresh garlic from the People's Republic of China (PRC) covering the period of review (POR) of November 1, 2008 through April 30, 2009. As discussed below, we preliminarily determine that Qingdao Sea-line has made sales in the United States at prices below normal value (NV). Qingdao Sea-line has participated fully in the review and has demonstrated its eligibility for a separate rate in this NSR. The dumping margin is set forth in the "Preliminary Results of the Review" 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.

**EFFECTIVE DATE:** May 5, 2010.

**FOR FURTHER INFORMATION CONTACT:**

Scott Lindsay, 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) 482-0780.

**SUPPLEMENTARY INFORMATION:****Background**

On May 21, 2009, 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 a NSR request from Qingdao Sea-line. On June 24, 2009, the Department determined that the request submitted by Qingdao Sea-line met the threshold requirements for initiation of a NSR and initiated Qingdao Sea-line's NSR. See *Fresh Garlic From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review*, 74 FR 31241 (June 30, 2009).

On October 29, 2009, the Department placed a copy of the CBP data run on

the record of this review, which contains all entries of subject merchandise exported from the PRC to the United States during the POR. See Memorandum to the File, from The Team, AD/CVD Operations, Office 6, Re: New Shipper Review of Fresh Garlic from the People's Republic of China: Customs Entries from November 1, 2008 through April 30, 2009 (October 29, 2009). On April 20, 2010, the Department placed copies of CBP documents on the record of this review pertaining to Qingdao Sea-line's shipment of garlic from the PRC exported to the United States during the POR. See Memorandum to the File, from Scott Lindsay, Senior Case Analyst, Re: New Shipper Review of Fresh Garlic from the People's Republic of China: Customs Entry Package (April 20, 2010).

Since the initiation of this review, the Department has issued original and supplemental questionnaires to Qingdao Sea-line, which Qingdao Sea-line has responded to in a timely manner. On October 13, 2009, 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 Review of Fresh Garlic from the People's Republic of China ("PRC") (October 13, 2009). On November 19, 2009, the Department extended the preliminary results of this NSR to no later than April 20, 2010. See *Fresh Garlic from the People's Republic of China: Extension of Time Limit for the Preliminary Results of the New Shipper Review*, 74 FR 59962 (November 19, 2009). As explained in the memorandum from the Deputy Assistant Secretary (DAS) for Import Administration, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5 through February 12, 2010. Thus, all deadlines in this segment of the proceeding were extended by seven days. See Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, Re: Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm (February 12, 2010). Therefore, the deadline for the preliminary results of this review was extended to April 27, 2010.

On January 15, 2010, Qingdao Sea-line submitted comments on the surrogate country selection and information pertaining to valuing factors of production. See Letter to the Department, from Qingdao Sea-line, Re: Fresh Garlic from the People's Republic of China Surrogate Value Information

for 15th New Shipper Review (January 15, 2010) (Qingdao Sea-line's Surrogate Value Submission). The 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) also submitted comments regarding surrogate values for this NSR. See Letter to the Department, from Petitioners, Re: 15th New Shipper Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China (January 14, 2010) (Petitioners' Surrogate Value Data). No other party has submitted surrogate values or surrogate country comments on the record of this proceeding.

On March 26, 2010, Petitioners submitted on the record documents and data that, it maintains, call into question the U.S. price reported by Qingdao Sea-line for its garlic. On April 13, 2010, Qingdao Sea-line submitted a response to Petitioners' March 26, 2010, submission. In its response, Qingdao Sea-line argued that the U.S. sales information it placed on the record was complete, accurate, and supported by third party documentation. Therefore, Qingdao Sea-line argued, it is appropriate for the Department to utilize its reported U.S. sales information for these preliminary results. On April 16, 2010, the Department issued a supplemental questionnaire regarding the information contained in Petitioners' submission. A response to this questionnaire was received on April 22, 2010. The Department notes that this questionnaire response was received too late to be considered for this preliminary determination. The Department will therefore consider these submissions in its analysis for the final results.

**Period of Review**

Pursuant to 19 CFR 351.214(g), the POR covered by this NSR is November 1, 2008 through April 30, 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.

#### 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, e.g., 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 have contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

#### Separate Rates

As noted above, designation of a country as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(C)(i) 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 its 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.<sup>1</sup>

#### 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, Qingdao Sea-line has placed documentation 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. In addition, Qingdao Sea-line has placed on the record copies of certain laws and regulations, including the "Company Law of the People's Republic of China," the "Foreign trade Law of the PRC," and "Regulations of the PRC on the Administration of Company Registration." The Department has analyzed these 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, 2007), 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 determine that the evidence on the record supports a preliminary finding of an absence of *de jure* government control of Qingdao Sea-line based on: (1) an absence of restrictive stipulations associated with the exporter's business license; and (2) the legal authority on the record decentralizing control over the respondent.

#### B. Absence of De Facto Control

As stated in previous cases, there is evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See, e.g., 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, e.g., 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).

In Qingdao Sea-line's questionnaire responses, it submitted evidence indicating an absence of *de facto* governmental control over its export activities. Specifically, this evidence indicates that: (1) Qingdao Sea-line sets its own export prices independent of the government and without the approval of a government authority; (2) Qingdao Sea-line retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) Qingdao Sea-line has an executive director and general manager with the authority to negotiate and bind the company in an agreement; (4) the general manager is selected by the owners of the company, and the

<sup>1</sup> *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).

general manager appoints the manager of each department; and (5) there is no restriction on Qingdao Sea-line's use of export revenues. The questionnaire responses of Qingdao Sea-line do not suggest that pricing is coordinated among exporters. The Department conducted a separate rate analysis for Qingdao Sea-line. During our analysis of the information on the record, we found no information indicating the existence of *de facto* government control. Therefore, the Department preliminarily finds that Qingdao Sea-line has established, *prima facie*, that it qualifies for separate rate status under the criteria established by *Silicon Carbide* and *Sparklers*.

### Bona Fides Analysis

Consistent with Department practice, we examined the *bona fides* of the new shipper sale at issue. In evaluating whether or not a sale in a NSR 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 (Court of International Trade (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) (*New Donghua*) (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.). In *TTPC*, the court also affirmed the Department's decision 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.

We preliminarily find that the sale made by Qingdao Sea-line during the POR was a *bona fide* commercial transaction based on the totality of circumstances, namely: (1) the price reported by Qingdao Sea-line; (2) neither Qingdao Sea-line 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 the Department will continue to examine all aspects of Qingdao Sea-line'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 to Barbara E. Tillman, Director Office 6, Re: Bona Fides Analysis of the Sale in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China ("PRC"): Qingdao Sea-line International Trading Co., Ltd. New Shipper Review (April 27, 2010) (*Qingdao Sea-line's Preliminary Bona Fides Memorandum*). As discussed above, we will continue to examine the *bona fides* of Qingdao Sea-line's sale.

Based on our preliminary findings that: 1) Qingdao Sea-line's sale is *bona fide*; 2) Qingdao Sea-line is eligible for a separate rate (see the "Separate Rates" section above); 3) Qingdao Sea-line is not affiliated with any exporter or producer that had previously shipped subject merchandise to the United States; and 4) Jinxiang County Juxinyuan Trading Co. Ltd. (Jinxiang Juxinyuan), the producer of the subject merchandise, did not export the subject merchandise to the United States during the POI, we preliminarily determine that Qingdao Sea-line has met the requirements to qualify as a new shipper during the POR. Therefore, for purposes of these preliminary results, we are treating the single sale of subject merchandise exported to the United States by Qingdao Sea-line and produced by Jinxiang Juxinyuan during the POR, to be an appropriate transaction for this review.

### Surrogate Country

When the Department investigates imports from an NME country, section 773(c)(1) of the Act directs it to base Normal Value (NV) 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, Peru, and Thailand are countries comparable to the PRC in terms of economic development. See Memorandum to Thomas Gilgunn, Program Manager, from Kelly Parkhill, Acting Director Office of Policy, Subject: Request for a List of Surrogate Countries for a New Shipper Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China (September 15, 2009). 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. The sources of the surrogate factor values are discussed under the "Normal Value" section below and in the Memorandum from Scott Lindsay, Re: Preliminary Results of the 2008-2009 New Shipper Review of Fresh Garlic from the People's Republic of China: Surrogate Values (April 27, 2010) (*Surrogate Values Memorandum*).

## U.S. Price

In accordance with section 772(a) of the Act, we calculated the export price of Qingdao Sea-lines sale to the United States because it made its sale to an unaffiliated party before the date of importation and the use of constructed export price was not otherwise warranted. We calculated Qingdao Sea-line's export price based on its price to an unaffiliated purchaser in the United States. In accordance with section 772(c) of the Act, where appropriate, we deducted from the starting price to the unaffiliated purchaser the expenses for foreign inland 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,<sup>2</sup> 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. 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 this review, Jinxiang Juxinyuan, Qingdao Sea-line's garlic producer, did not report FOPs related to growing whole garlic bulbs. As such, for the reasons outlined in Memorandum from Scott Lindsay, Re: 2008–2009 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 Qingdao Sea-line. 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 Jinxiang County Juxinyuan Trading Co. Ltd.'s costs, which were calculated using its reported usage rates for processing fresh garlic. See *Intermediate Input Methodology Memorandum*.

### 2. Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on the FOP data reported by Jinxiang Juxinyuan for the POR. We relied on the factor-specific data submitted by Jinxiang Juxinyuan for the production inputs in its questionnaire responses, where applicable, for purposes of selecting SVs. To calculate NV, we

<sup>2</sup> See e.g., *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); *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); *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); and *Fresh Garlic From the People's Republic of China: Final Results and Partial Rescission of the 13th Antidumping Duty Administrative and New Shipper Reviews*, 74 FR 29174 (June 19, 2009).

multiplied the reported per-unit factor consumption rates by publicly-available Indian SVs.

In selecting the SVs, consistent with our past practice, we considered the quality, specificity, and contemporaneity of the data. See, e.g., *Folding Metal Tables and Chairs from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 71 FR 71509 (December 11, 2006), and accompanying Issues and Decision Memorandum at Comment 9. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory, where appropriate. This adjustment is in accordance with the decision of the U.S. Court of Appeals for the Federal Circuit (Federal Circuit). See *Sigma Corp. v. United States*, 117 F. 3d 1401, 1408 (Fed. Cir. 1997). Where necessary, we adjusted the SVs for inflation/deflation using the Wholesale Price Index (WPI) as published in the International Monetary Fund's International Financial Statistics, available at <http://ifs.apdi.net/imf>.

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,<sup>3</sup> 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, e.g., *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.

As discussed above, the Department is applying an intermediate input methodology for Qingdao Sea-line. Therefore, we sought to identify the best available surrogate value for the garlic bulb input for production, as opposed to finding surrogate values for the steps involved in planting, growing, and

<sup>3</sup> Section 773(c)(1)(B) of the Act states that . . . the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority.

harvesting raw garlic (such as seeds, water, fertilizer, etc.). See Petitioners' Surrogate Value Data; see also Surrogate Values Memorandum. For the preliminary results of this review, we find that data from the Azadpur APMC's "Market Information Bulletin" are the most appropriate information available to value Qingdao Sea-line's garlic bulb input.

In its FOP database, Qingdao Sea-line reported garlic bulb input size for the garlic produced and sold to the U.S. during the POR. Consistent with our findings in *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) (*Final Results Twelfth 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. Because there were no Grade Super-A prices reported by the APMC during the POR, we inflated the 2007-2008 APMC prices for "Super A" grade garlic to make them contemporaneous to our POR. See Surrogate Values Memorandum.

#### Financial Ratios

Petitioners and Qingdao Sea-line submitted comments and factual information regarding surrogate financial ratios. See Petitioners' Surrogate Value Data and Qingdao Sea-line's Surrogate Value Submission. After analyzing these comments and factual information, the Department has determined that it is appropriate to use Tata Tea Ltd.'s (Tata Tea) and Limtex Tea Limited's (Limtex) financial data. We find that calculating an average of these two Indian tea processors provides financial ratios that best reflect the broader experience of the garlic industry and is consistent with our practices during the last three reviews. For these preliminary results, we are using Tata Tea's and Limtex's financial data, since tea is comparable to subject merchandise (*i.e.*, whole and peeled garlic) and each company's non-integrated production process is similar to that of Jinxiang Juxinyuan. We find that the resulting financial ratios from the average of Tata Tea's and Limtex's financial data provide the best surrogate for the garlic industry in the PRC as a whole, based on the information on the record of this review. See Surrogate Values Memorandum.

#### Other Factors of Production

We valued the packing material inputs using weighted-average unit import values derived from the Monthly Statistics of the Foreign Trade of India (MSFTI), as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India, and compiled by the World Trade Atlas (WTA), available at <http://www.gtis.com/wta.htm>. The Indian WTA import data are reported in dollars and are contemporaneous with the POR.<sup>4</sup> Indian SVs denominated in Indian rupees were converted to U.S. dollars using the applicable daily exchange rate for India for the POR. See <http://www.ia.ita.doc.gov/exchange/index.html>. Where appropriate, we converted the units of measure to kilograms. See Surrogate Values Memorandum.

Furthermore, with regard to the WTA Indian import-based SVs, we disregarded prices from NME countries<sup>5</sup> and those we have reason to believe or suspect may be subsidized, because we have found in other proceedings that these exporting countries maintain broadly available, non-industry-specific export subsidies and, therefore, there is reason to believe or suspect that all exports to all markets from such countries may be subsidized.<sup>6</sup> We are also guided by the statute's legislative history that explains that it is not necessary to conduct a formal investigation to ensure that such prices are not subsidized. See H.R. Rep. No. 576 100th Cong., 2. Sess. 590-91 (1988). Rather, the Department was instructed by Congress to base its decision on information that is available to it at the time it is making its determination. Therefore, we excluded export prices from Indonesia, South Korea, Thailand, and India when calculating the Indian import-based SVs. See Surrogate Value

<sup>4</sup> See *Surrogate Value Memorandum* at Attachment 1.

<sup>5</sup> The NME countries are Armenia, Azerbaijan, Belarus, Georgia, Kyrgyz Republic, Moldova, PRC, Tajikistan, Turkmenistan, Uzbekistan, and Vietnam.

<sup>6</sup> See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Final Results of the 1998-1999 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part*, 66 FR 1953 (January 10, 2001), and accompanying Issues and Decision Memorandum at Comment 1; *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Final Results of 1999-2000 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part*, 66 FR 57420 (November 15, 2001), and accompanying Issues and Decision Memorandum at Comment 1; and *China National Machinery Imp. & Exp. Corp. v. United States*, 293 F. Supp. 2d 1334, 1339 (CIT 2003), as affirmed by the Federal Circuit, 104 Fed. Appx. 183 (Fed. Cir. 2004).

Memorandum. Finally, we excluded imports that were labeled as originating from an "unspecified" country from the average Indian import values, because we could not be certain that they were not from either an NME or a country with general export subsidies.

As discussed above, the Department valued surrogate truck freight cost by using a per-unit average rate calculated from August 2008 data on the following Web site: <http://www.infobanc.com/logistics/logtruck.htm>. See *Polyethylene Retail Carrier Bags from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 52282, 52286 (September 9, 2008) (and unchanged in *Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 6857 (February 11, 2009)); and Surrogate Value Memorandum at Attachment 9.

To value electricity, the Department used March 2008 electricity price rates from Electricity Tariff & Duty and Average Rates of Electricity Supply in India, published by the Central Electricity Authority of the Government of India. Because these data were contemporaneous with the POR, we did not adjust the average value. See Surrogate Value Memorandum at Attachment 4.

For direct labor, indirect labor and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rates reflective of the observed relationship between wages and national income in ME countries as reported on Import Administration's Web site. See "Expected Wages of Selected NME Countries" (revised December 2009) (available at <http://www.trade.gov/ia/>). For further details on the labor calculation, see Surrogate Value Memorandum at Attachment 5. Because the regression-based wage rates do not separate the labor rates into different skill levels or types of labor, we applied the same wage rate to all skill levels and types of labor reported by Jinxiang Jininyuan.

#### 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 date of the U.S. sale, as certified by the Federal Reserve Bank. See <http://www.ia.ita.doc.gov/exchange/index.html>.

#### Preliminary Results of the Review

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

margin exists for Qingdao Sea-line during the period November 1, 2008 through April 30, 2009:

#### FRESH GARLIC FROM THE PRC

Exporter/Manufacturer	Weighted-Average Margin (Percent)
Exported by Qingdao Sea-line International Trading Co., Ltd. and Produced by Jinxiang County Juxinyuan Trading Co. Ltd. ....	171.20

#### Assessment Rates

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. Consistent with the *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 (June 19, 2009) (*Final Results Garlic Thirteenth Review*), 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 Final Results Garlic Thirteenth Review*. 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 this review.

#### Cash Deposit Requirements

Consistent with the final results of the *Final Results Garlic Thirteenth Review*, 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 this review. Specifically, the following cash deposit requirements will be effective upon publication of the final results of this review 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 by Jinxiang Juxinyuan and exported by Qingdao Sea-line, the cash

deposit rate will be the per-unit rate determined in the final result of this new shipper review and; (2) for subject merchandise exported by Qingdao Sea-line but not produced by Jinxiang Juxinyuan, the cash deposit rate will be the per-unit 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 this proceeding 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 these 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 and rebuttal briefs in electronic format (*e.g.*, preferably in Microsoft Word). 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 this review, including the results of its analysis of issues raised in any such written briefs 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, 2010.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[Order No. 1675]

### Reorganization/Expansion of Foreign-Trade Zone 21

#### Charleston, South Carolina, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

WHEREAS, the South Carolina State Ports Authority, grantee of Foreign-Trade Zone 21, submitted an application to the Board for authority to reorganize and expand its zone to delete Sites 3 and 10 in their entirety, remove acreage from Sites 5 and 7, and add eight new sites (proposed Sites 16-23) in the Charleston, South Carolina, area within and adjacent to the Charleston Customs and Border Protection port of entry (FTZ Docket 15-2009, filed 4/8/09);

WHEREAS, notice inviting public comment was given in the **Federal Register** (74 FR 17452-17453, 4/15/09) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

WHEREAS, the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal, with respect to Sites 3, 5, 7 and 10 and Sites 16, 17, 18, 21, 22 and 23, is in the public interest;

NOW, THEREFORE, the Board hereby orders:

The application to reorganize and expand FTZ 21 is approved in part (with respect to Sites 3, 5, 7 and 10 and Sites 16, 17, 18, 21, 22 and 23), subject to the FTZ Act and the Board's