

entries during the period of review. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties. See 19 CFR 351.402(f)(3).

#### Notification Regarding APO

This notice also serves as a reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO as explained in the APO itself. See also 19 CFR 351.305(a)(3). Timely written notification of the 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 sanctionable violation.

We are publishing these final results of administrative review and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: September 27, 2010.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-831]

#### Fresh Garlic From the People's Republic of China: Final 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 Trading 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 determine that a sale has been made in the United States at a price below normal value (NV) with respect to Qingdao Sea-line, an exporter who participated fully and demonstrated its eligibility for separate rate. See *Fresh Garlic From the People's Republic of China: Preliminary Results of New Shipper Review*, 75 FR 24578 (May 5, 2010) (*Preliminary Results*). We

are continuing to find Qingdao Sea-line's sale to be *bona fide* for the final results of this review. 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*.

**DATES:** *Effective Date:* October 4, 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 5, 2010, the Department published in the **Federal Register** the preliminary results of the NSR of the antidumping duty order on fresh garlic from the PRC. See *Preliminary Results*. Since the *Preliminary Results*, the following events have occurred.

On May 21, 2010, the Department extended the deadline for filing case briefs. See Letter from the Department to All Interested Parties (May 21, 2010). On July 19, 2010, Qingdao Sea-line submitted a document on the record of this review that contained new factual information within the meaning of 19 CFR 351.301(b)(4) and 19 CFR 351.301(c)(1). As a result, on July 23, 2010, the Department issued a letter to Qingdao Sea-line rejecting its July 19, 2010 submission. Also on July 23, 2010, the Department notified the parties of the briefing schedule for the final results. See Memorandum to the File, Antidumping Duty New Shipper Review of Fresh Garlic From the People's Republic of China: Briefing Schedule (July 23, 2010). On August 6, 2010, Qingdao Sea-line timely submitted its case brief and requested a hearing. On August 16, 2010, Petitioners<sup>1</sup> timely submitted their rebuttal brief.

On August 27, 2010, the Department placed on the record a memorandum indicating that, pursuant to a telephone discussion, Qingdao Sea-line was withdrawing its request for a hearing. See Memorandum to the File, Antidumping Duty New Shipper Review of Fresh Garlic From the People's Republic of China: Canceled Hearing Request (August 27, 2010).

<sup>1</sup> The Fresh Garlic Producers Association: Christopher Ranch L.L.C., the Garlic Company, Valley Garlic, and Vessey and Company, Inc. (collectively, Petitioners).

On September 3, 2010, as a result of the recent decision issued by the Court of Appeals for the Federal Circuit's (CAFC) ruling in *Dorbest Limited et al. v. United States*, 604 F.3d 1363 (Fed. Cir. 2010) (*Dorbest*), the Department placed a memorandum on the record regarding its reconsideration of its valuation of the labor wage rate for this review. The Department gave interested parties until September 15, 2010 to comment specifically to the proposed labor wage rate methodology. See Memorandum to the File, Fresh Garlic from the People's Republic of China: Wage Rate Data (September 3, 2010). The Department received no comments.

#### 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 the Appendix to this notice and addressed in the Memorandum from Susan Kuhbach, Acting Deputy

Assistant Secretary for Import Administration, To Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, Fresh Garlic from the People's Republic of China: Issues and Decision Memorandum of Qingdao Sea-line Trading Co. Ltd. (September 24, 2010) (*Issues and Decision Memorandum*), which is hereby adopted by this notice. Parties can find a complete discussion of the issues raised in this NSR and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, Room 1117 of the main Department building. In addition, a copy of the *Issues and Decision Memorandum* can be accessed directly on our Web site at <http://www.trade.go/ia/>. The paper copy and electronic version of the *Issues and Decision Memorandum* are identical in content.

**Bona Fides Analysis**

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, to 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 Qingdao Sea-line's single POR sale was

made on a *bona fide* basis. Based on our analysis of additional information placed on the record by Petitioners that we did not examine for the *Preliminary Results*, as well as comments made by interested parties, the Department continues to find that Qingdao Sea-line's sale was a *bona fide* sale. For a more detailed discussion of this analysis, please see the Department's accompanying *Issues and Decision Memorandum*.

**Surrogate Country**

Since the *Preliminary Results*, no interested party has commented on the selection of India as the surrogate country. Therefore, we continue to determine that India is the appropriate surrogate country for the final results of this NSR.

**Separate Rates**

The Department found in the *Preliminary Results* that Qingdao Sea-line demonstrated a lack of *de jure* and *de facto* government control with respect to its export activities, and preliminarily determined that it was eligible for a separate rate. No information has been placed on the record of this proceeding since the *Preliminary Results* to contradict our preliminary separate-rate determination. Therefore, for the final results, we continue to determine that Qingdao Sea-line is eligible for a separate rate.

**Changes Since the Preliminary Results**

Based on our analysis of information on the record of this review, and comments received from the interested parties, we have made changes to the surrogate values for garlic bulbs. In the *Preliminary Results*, the Department stated that it would subtract seven

percent from the value of the average of Super-A grade garlic, in accordance with the fees noted by the Azapdur APMC price data used by the Department. See *Preliminary Results* of the 2008–2009 New Shipper Review of Fresh Garlic from the People's Republic of China: Surrogate Values (April 27, 2010) at 3. However, the Department instead used the average value inclusive of the seven percent. Therefore, for these final results, the Department is using the value for Super-A grade garlic, minus the seven percent in fees, as the surrogate value for garlic bulbs. See *Issues and Decision Memorandum* at Issue 2.

In addition, the Department has changed its wage rate calculation methodology for these final results. As a consequence of the CAFC ruling in *Dorbest*, the Department is no longer relying on the regression-based wage rate described in 19 CFR 351.408(c)(3). The Department is continuing to evaluate options for determining labor values in light of the recent CAFC decision. For these final results, we have calculated an hourly wage rate to use in valuing Qingdao Sea-line's reported labor input by averaging earnings and/or wages in countries that are economically comparable to the PRC and that are significant producers of comparable merchandise. The *Issues and Decision Memorandum* contains a more detailed explanation of this new methodology. See *Issues and Decision Memorandum* at Issue 5.

**Final Results of New Shipper Review**

As a result of our review, we determine that the following margin exists for the period November 1, 2008 through April 30, 2009:

FRESH GARLIC FROM THE PRC 11/1/2008–4/30/2009

New shipper review	
Exporter/manufacturer	Weighted-Average Margin(dollars per kilogram)
Exported by Qingdao Sea-line Trade Co. Ltd. and Produced by Jinxiang County Juxingyuan Trading Co., Ltd .....	\$1.28/kg.

**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 14th administrative review (AR), we will direct CBP to assess an importer-

specific assessment rate 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 14th Antidumping Duty Administrative*, 75 FR 34976, (June 21, 2010) (*14th AR*). 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 intends to 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 14th AR, we will collect a per kilogram cash-deposit amount. 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 County Juxingyuan Trading Co., Ltd. (Juxingyuan) and exported by Qingdao Sea-line, the cash deposit rate will be the per-unit rate determined in the final results of this new shipper review; (2) for subject merchandise exported by Qingdao Sea-line but not produced by Juxingyuan, the cash deposit rate 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.

This new shipper review 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, 2010.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

### Appendix I

Issue 1: The Bona Fides of Qingdao Sea-line's Sale

Issue 2: Surrogate Valuation of Garlic Bulbs

Issue 3: Use of India Wholesale Price Index as Inflation for Surrogate Values

Issue 4: Financial Ratios

Issue 5: Wage Rates

Issue 6: Cold Storage

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-909]

### Certain Steel Nails from the People's Republic of China: Initiation of Antidumping Duty New Shipper Review

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

**EFFECTIVE DATE:** October 4, 2010.

**SUMMARY:** The Department of Commerce ("Department") has determined that a request for a new shipper review ("NSR") of the antidumping duty order on certain steel nails ("steel nails") from the People's Republic of China ("PRC"), received on August 27, 2010, meets the statutory and regulatory requirements for initiation. The period of review ("POR") for this NSR is August 1, 2009, through July 31, 2010.

**FOR FURTHER INFORMATION CONTACT:** Emeka Chukwudebe, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: 202-482-0219.

**SUPPLEMENTARY INFORMATION:**

### Background

The notice announcing the antidumping duty order on certain steel nails from the PRC was published in the **Federal Register** on August 1, 2008. See *Notice of Antidumping Duty Order: Certain Steel Nails From the People's Republic of China*, 73 FR 44961 (August 1, 2008) ("*Antidumping Duty Order*"). On August 27, 2010, pursuant to section

751(a)(2)(B)(i) of the Tariff Act of 1930, as amended ("Act"), and 19 CFR 351.214(c), the Department received a NSR request from Shanghai Colour Nail Co., Ltd. ("Shanghai Colour"). Shanghai Colour's request was properly made during August 2010, which is the annual anniversary of the *Antidumping Duty Order*. Shanghai Colour certified that it is the exporter and Wuxi Colour Nail Co., Ltd. ("Wuxi Colour") is the manufacturer of the subject merchandise upon which the request was based. Shanghai Colour also submitted a public version, which adequately summarized proprietary information and provided explanations as to why certain proprietary information is not capable of summarization.

Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(ii), Shanghai Colour certified that it did not export steel nails to the United States during the period of investigation ("POI"); and Shanghai Colour provided a certification from Wuxi Colour that it did not export subject merchandise to the United States during the POI. In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Shanghai Colour certified that, since the initiation of the investigation, it has never been affiliated with any Chinese exporter or producer who exported steel nails to the United States during the POI, including those not individually examined during the investigation. As required by 19 CFR 351.214(b)(2)(iii)(B), Shanghai Colour also certified that its export activities were not controlled by the central government of the PRC.

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv), Shanghai Colour submitted documentation establishing the following: (1) the date on which Shanghai Colour first shipped steel nails for export to the United States and the date on which the steel nails were first entered, or withdrawn from warehouse, for consumption; (2) the volume of its first shipment; and (3) the date of its first sale to an unaffiliated customer in the United States.

The Department conducted U.S. Customs and Border Protection ("CBP") database queries in an attempt to confirm that Shanghai Colour's shipments of subject merchandise had entered the United States for consumption and that liquidation of such entries had been properly suspended for antidumping duties. The Department also examined whether the CBP data confirmed that such entries were made during the NSR POR. The information we examined was