

from Japan. See *Initiation of Five-Year ("Sunset") Review*, 75 FR 67082 (November 1, 2010) (*Initiation Notice*). Because no domestic interested party responded to the notice of initiation of the sunset review by the applicable deadline, the Department is revoking the antidumping duty order on SDC from Japan.

DATES: *Effective Date:* December 22, 2010.

FOR FURTHER INFORMATION CONTACT: Jerrold Freeman at (202) 482-0180 or Mino Hatten at (202) 482-1690, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On December 22, 2005, the Department published in the **Federal Register** the antidumping duty order on SDC from Japan. See *Antidumping Duty Order: Superalloy Degassed Chromium from Japan*, 70 FR 76030 (December 22, 2005).

On November 1, 2010, the Department initiated a sunset review of the antidumping duty order on SDC from Japan pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). See *Initiation Notice*. We received no response to the notice of initiation from domestic interested parties by the applicable deadline date. See 19 CFR 351.218(d)(1)(i). As a result, the Department has concluded that no domestic party intends to participate in the sunset review. See 19 CFR 351.218(d)(1)(iii)(A). On November 22, 2010, we notified the International Trade Commission, in writing, that we intend to revoke the antidumping duty order on SDC from Japan. See 19 CFR 351.218(d)(1)(iii)(B)(2).

Scope of the Order

The product covered by the order is all forms, sizes, and grades of SDC from Japan. SDC is a high-purity form of chrome metal that generally contains at least 99.5 percent, but less than 99.95 percent, chromium. SDC contains very low levels of certain gaseous elements and other impurities (typically no more than 0.005 percent nitrogen, 0.005 percent sulphur, 0.05 percent oxygen, 0.01 percent aluminum, 0.05 percent silicon, and 0.35 percent iron). SDC is generally sold in briquetted form, as "pellets" or "compacts," which typically are 1.5 inches x 1 inch x 1 inch or smaller in size and have a smooth surface. SDC is currently classifiable under subheading 8112.21.00 of the

Harmonized Tariff Schedule of the United States (HTSUS). The order covers all chromium meeting the above specifications from SDC regardless of tariff classification.

Certain higher-purity and lower-purity chromium products are excluded from the scope of the order. Specifically, the order does not cover electronics-grade chromium, which contains a higher percentage of chromium (typically not less than 99.95 percent), a much lower level of iron (less than 0.05 percent), and lower levels of other impurities than SDC. The order also does not cover "vacuum melt grade" chromium, which normally contains at least 99.4 percent chromium and contains a higher level of one or more impurities (nitrogen, sulphur, oxygen, aluminum and/or silicon) than specified above for SDC.

Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Revocation

Pursuant to section 751(c)(3)(A) of the Act and 19 CFR 351.218(d)(1)(iii)(B)(3), if no domestic interested party files a notice of intent to participate, the Department shall issue a final determination revoking the order within 90 days of the initiation of the review. Because no domestic interested party filed a timely notice of intent to participate in this sunset review, the Department finds that no domestic interested party is participating in this sunset review. Therefore, we are revoking the antidumping duty order on SDC from Japan. The effective date of revocation is December 22, 2010, the fifth anniversary of the antidumping duty order.

Effective Date of Revocation

Pursuant to section 751(c)(3)(A) of the Act and 19 CFR 351.222(i)(2)(i), the Department intends to issue instructions to U.S. Customs and Border Protection, 15 days after publication of this notice, to terminate the suspension of liquidation of the merchandise subject to the order which was entered, or withdrawn from warehouse, for consumption on or after December 22, 2010. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to the suspension of liquidation and antidumping duty deposit requirements. The Department is not conducting any administrative reviews of this order currently but it will conduct an administrative review of the order with respect to subject merchandise entered prior to the effective date of revocation

in response to appropriately filed requests for review.

This five-year (sunset) review and notice are published in accordance with sections 751(c) and 777(i)(1) of the Act.

Dated: December 16, 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: Preliminary Results of, Partial Rescission of, and Intent to Rescind, in Part, the 15th Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (Department) is conducting an administrative review of the antidumping duty order on fresh garlic from the People's Republic of China (PRC) covering the period of review (POR), November 1, 2008 through October 31, 2009. The Department initiated this review for 84 producers/exporters (companies). Based on timely withdrawal of requests for review, the Department is now rescinding the review with respect to 54 companies which are listed in Attachment I. As such, this review covers the 30 companies listed in Attachment II.

One producer/exporter selected as a mandatory respondent has participated fully and has demonstrated its eligibility for a separate rate. We preliminarily determine that the respondent sold subject merchandise to the United States at prices below normal value (NV). The Department has also preliminarily determined that total adverse facts available (AFA) is warranted for two mandatory respondents who each failed to cooperate to the best of its ability in this proceeding. The Department preliminarily grants a separate rate to four companies which demonstrated the eligibility for separate rate status. The rates assigned to each of these companies, can be found in the "Preliminary Results of Review" section of this notice. The Department also intends to rescind preliminarily the review with respect to seven companies which each timely submitted a "no shipment" certification. The remaining

fourteen companies for which a review was requested but which failed to timely submit a no-shipment certification, or separate rate certification or application, are part of the PRC-wide entity. A more detailed explanation of the disposition of each of the above companies can be found below.

Interested parties are invited to comment on these preliminary results. 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 assessment rates are above *de minimis*.

DATES: *Effective Date:* December 22, 2010.

FOR FURTHER INFORMATION CONTACT:

Scott Lindsay, David Lindgren, or Lingjun Wang, 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, (202) 482-3870, and (202) 482-2316, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 16, 1994, the Department published in the **Federal Register** the antidumping duty order on fresh garlic from the PRC. *See Antidumping Duty Order: Fresh Garlic From the People's Republic of China*, 59 FR 59209 (November 16, 1994) (*Order*). On November 2, 2009, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on fresh garlic from the PRC for the period November 1, 2008 through October 31, 2009. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 74 FR 56573 (November 2, 2009). On November 25, 2009 and November 30, 2009, various interested parties timely requested administrative reviews of 84 garlic producers/exporters.

On December 23, 2009, the Department initiated an administrative review for 84 companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 68229, 68230-68231 (December 23, 2009) (*Initiation Notice*).

On November 25, 2009, Hebei Golden Bird Trading Co., Ltd. (Golden Bird), Jining Yongjia Trade Co., Ltd. (Yongjia), Jinxiang Tianheng Trade Co., Ltd. (Tianheng), Qingdao Tiantaixing Foods

Co., Ltd. (QTF), Weifang Chenglong Import & Export Co., Ltd. (Chenglong), each timely certified that it had no shipments during the POR. Also, Qingdao Sea-line International Trading Co. Ltd. (Sea-line) timely certified that it had no shipments during the period of May 1, 2009 through October 31, 2009.¹ On January 22, 2010, Jinan Yipin Corporation Ltd. (Yipin), Shandong Chenhe International Trading Co., Ltd. (Chenhe), Shanghai LJ International Trading Co. (Shanghai LJ), Zhengzhou Yuanli Trading Co. (Yuanli) each timely certified that it had no shipments during the POR.² On March 10, 2010, the Fresh Garlic Producers Association (FGPA) and its individual members³ (collectively, Petitioners) commented on Yongjia and QTF's no shipment representations based on publicly available information through the Port Import Export Reporting Services (PIERS). On March 19, 2010, Yongjia and QTF responded to Petitioners' comments.

On January 12, 2010, the Department released CBP data to interested parties. Comments on the CBP data were due on January 25, 2010. On January 22, 2010, Golden Bird and Tianheng reiterated to the Department that they did not have any shipments during the POR. *See Intent to Rescind, In Part, the Administrative Review* section below.

On January 22, 2010, Henan Weite Industrial Co., Ltd. (Henan Weite), Jinan Farmlady Trading Co., Ltd. (Farmlady), Qingdao Xintianfeng Foods Co., Ltd. (QXF), Shandong Longtai Fruits and Vegetables Co., Ltd. (Longtai), Weifang Hongqiao International Logistic Co., Ltd. (Hongqiao), and Zhenzhou Harmoni Spice Co., Ltd. (Harmoni) each timely submitted a separate rate certification.⁴ On January 13, 2010, Shenzhen Greening Trading Co., Ltd. (Shenzhen Greening) timely submitted a separate rate certification. On February 28, 2010, Shenzhen Greening also timely submitted a separate rate application.

On February 12, 2010, the Department issued a memorandum that tolled the deadlines for all Import Administration cases by seven calendar days due to the Federal Government closure. *See Memorandum for the Record from Ronald Lorentzen, DAS for Import*

Administration, Tolling of Administrative Deadlines as a Result of the Government Closure During the Recent Snowstorm, dated February 12, 2010. On March 1, 2010, in accordance with section 777A(c)(2) of the Tariff Act of 1930, as amended (the Act), the Department selected the following four companies as mandatory respondents for individual examination in this review: Jinxiang Tianma Freezing Storage Co., Ltd. (Tianma Freezing), Shenzhen Xinboda Industrial Co., Ltd. (Shenzhen Xinboda), Shenzhen Greening and Harmoni. *See Memorandum from Scott Lindsay, International Trade Analyst, Office 6, Re: Antidumping Administrative Review of Fresh Garlic from the People's Republic of China: Respondent Selection Memorandum* (March 1, 2010) (*Respondent Selection Memorandum*), available on file in the Central Records Unit, Room 7046 of the Department's main building.

On March 8, 2010, the Department issued antidumping questionnaires (initial questionnaire) to the four mandatory respondents. On March 11, 2010 and March 30, 2010, Petitioners timely withdrew their requests to review 54 companies. *See Attachment I. Jinxiang Hejia Co. Ltd. (Hejia)* withdrew its own review request on January 13, 2010. However, since Petitioners also requested a review of Hejia, that review continues. On March 30, 2010, Zhengzhou Harmoni Spice Co. Ltd. (Harmoni) withdrew its own review request in addition to Petitioners' withdrawal request. Shenzhen Greening and Tianma Freezing did not respond to the initial questionnaire, nor did they request any extension or state that they were having difficulty in responding to the questionnaire. On April 19, 2010, April 26, 2010, and May 4, 2010, Shenzhen Xinboda submitted responses to the initial questionnaire.⁵ On July 21, 2010, Petitioners commented on these responses. On September 17, 2010, and November 17, 2010, Shenzhen Xinboda submitted responses to the first and second supplemental questionnaires.

On April 9, 2010, Petitioners requested that the Department conduct verification of the factual information placed on the record of this proceeding by the mandatory respondents. On June 8, 2010, the Department extended the deadline for the preliminary results of this administrative review until December 7, 2010. *See Fresh Garlic From The People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty*

¹ Sea-line has an active new shipper review that covers the first six months of the POR covered by this administrative review, November 1, 2008 through April 30, 2009.

² On March 11, 2010, Petitioners subsequently withdrew their requests to review Tianheng, Chenglong, and Yuanli.

³ The individual members of the FGPA are Christopher Ranch L.L.C., The Garlic Company, Valley Garlic, and Vessey and Company, Inc.

⁴ Petitioners subsequently withdrew their requests to review Henan Weite and Harmoni.

⁵ The Department granted several extensions for various sections of the initial questionnaire.

Administrative Review, 75 FR 32361 (June 8, 2010).

On July 20, 2010, the Department provided all interested parties the opportunity to submit any information they wanted the Department to consider when selecting the surrogate country and surrogate values. On October 19, 2010, Petitioners and Shenzhen Xinboda submitted their respective surrogate data. On October 29, 2010, both parties commented on the other parties' surrogate data.

Period of Review

The POR is November 1, 2008 through October 31, 2009.

Scope of the Order

The products covered by the 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.

Partial Rescission of the Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party that requested the review withdraws the request within 90 days of the date of

publication of the initiation notice of the requested review. Further, pursuant to 19 CFR 351.213(d)(1), the Department is permitted to extend this time if it is reasonable to do so.

For all but one of the 54 companies listed in Attachment II, Petitioners were the only party that requested the review. With respect to one other company, Harmoni, both Harmoni and Petitioners requested a review of Harmoni. On March 30, 2010, both Petitioners and Harmoni timely withdrew their respective review requests.⁶ Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review with respect to all 54 companies named in the Attachment II.

Intent To Rescind, in Part, the Administrative Review

Under 19 CFR 351.213(d)(3), the Department may rescind a review where there are no exports, sales, or entries of subject merchandise during the respective period of review listed below. In the *Initiation Notice*, the Department stated that any company named in the notice of initiation that had no exports, sales, or entries during the period of review should notify the Department within 30 days of publication of the *Initiation Notice* in the **Federal Register**. The Department stated that it would consider rescinding the review only if the company submitted a properly filed and timely statement certifying that it had no exports, sales, or entries of subject merchandise during the period of review. *See Initiation Notice*. The deadline to submit "no shipment" certifications was January 22, 2010.

As noted above, Golden Bird, Yipin, Yongjia, QTF, Chenhe, and Shanghai LJ each timely certified that it had no shipments during the POR. Also, Sea-line timely certified that it had no shipments during the period May 1, 2009 through October 31, 2009. The Department issued "no-shipment" inquiries to CBP and received one response regarding Golden Bird.

On January 22, 2010, Golden Bird and Tianheng reiterated that their certifications are accurate.⁷ The

⁶ On August 16, 2010, Farmlady urged the Department to determine whether Harmoni had any business dealings with Petitioners before any final rescission. The regulations are clear that so long as the parties that requested the review withdrew the request, the Secretary will rescind the review. Since both withdrawal requests were timely, the Department has no basis to evaluate the reasoning behind party's decision to withdraw its request. Furthermore, Farmlady provided no evidence to support its claim that there have been business dealings between Petitioners and Harmoni.

⁷ Petitioners subsequently withdrew their request to review Tianheng, so it became unnecessary to further examine Tianheng's no-shipment certification.

Department examined Golden Bird's detailed transaction information provided by CBP, and also invited parties to comment. *See* Memorandum from Scott Lindsay, Re: Antidumping Administrative Review of Fresh Garlic from the People's Republic of China: Placing Additional Customs and Border Protection (CBP) Data on the Record (November 10, 2010). On November 29, 2010, Golden Bird submitted comments continuing to argue that its no-shipment certification was accurate. Based on the evidence on the record, the Department preliminarily determines that Golden Bird did not have any garlic shipments enter the United States during the POR.

On March 10, 2010, Petitioners questioned the accuracy of Yongjia and QTF's no-shipment statement based on PIERS data. On March 19, 2010, Yongjia and QTF responded to Petitioners' comments by challenging the accuracy of PIERS data. The Department examined the detailed transaction information provided by CBP. *See* Memorandum from Scott Lindsay, Re: Antidumping Administrative Review of Fresh Garlic from the People's Republic of China: Placing Additional Customs and Border Protection (CBP) Data on the Record (November 24, 2010). Based on the evidence on the record, the Department preliminarily determines that Yongjia and QTF did not have any garlic shipments enter the United States during the POR.

When examining a no-shipment certification, the Department's practice is to: (1) Review the respondent's no shipment claim; (2) examine CBP entry data to determine whether these data are consistent with the claim; and (3) send a "No Shipment Inquiry" to CBP requesting that CBP notify the Department if it has evidence of shipments from the company making the claim. After taking these three steps, the Department has found no evidence on the record to indicate that these companies had exports, entries, or sales of subject merchandise under this order during the POR, pursuant to 19 CFR 351.213(d)(3). Therefore, the Department is preliminarily rescinding the review with respect to Golden Bird, Yipin, Yongjia, QTF, Chenhe, Sea-line, and Shanghai LJ.

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 eligible for 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*, 56 FR 20588 (May 6, 1991) (Sparklers), 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*).

In the *Initiation Notice*, the Department stated that all firms that wish to qualify for separate-rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate-rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate-rate eligibility, the Department requires entities for which a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. In this administrative review, Farmlady, QXF, Longtai, and Hongqiao each submitted a separate-rate certification. Although Shenzhen Xinboda did not submit a separate rate certification, as a cooperating mandatory respondent, it did answer all the separate rate questions in our questionnaires. As such, Shenzhen Xinboda, Farmlady,

QXF, Longtai, and Hongqiao each provided company-specific information and each stated that it met the criteria for the assignment of a separate rate. We considered whether Shenzhen Xinboda, Farmlady, QXF, Longtai, and Hongqiao were eligible for a separate rate.

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. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Ukraine*, 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 Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

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; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.

Shenzhen Xinboda, Farmlady, QXF, Longtai, and Hongqiao each certified that, consistent with the most recent segment of this proceeding in which it participated and was granted a separate rate, there is an absence of *de jure* government control of its exports.⁸ Each of these companies certified to its separate-rate status, and stated, where applicable, that the company had no relationship with any level of the PRC government with respect to ownership, internal management, and business operations. In this segment, we have no new information on the record that

⁸The most recently completed segment of this proceeding in which Xintianfeng and Hongqiao participated and were granted separate rate status was *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 14th Antidumping Duty Administrative Review*, 75 FR 34976 (June 21, 2010). The most recently completed segment of this proceeding in which Longtai and Farmlady participated and was granted separate rate status was *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).

would cause us to reconsider the previous *de jure* control determinations with regard to these companies. Thus, we find that evidence on the record supports a preliminary finding of an absence of *de jure* government control with regard to the export activities of Shenzhen Xinboda, Farmlady, QXF, Longtai, and Hongqiao.

B. Absence of De Facto Control

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

The absence of *de facto* government 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).

Shenzhen Xinboda, Farmlady, QXF, Longtai, and Hongqiao each timely submitted a certification of its separate-rate eligibility which stated that, as with the previous period where each company was granted a separate rate; there is an absence of *de facto* government control of each company's exports. Their separate rate certifications, stated, where applicable, that they had no relationship with any level of the PRC government with respect to ownership, internal management, and business operations. In this segment, we have no new information on the record that would cause us to reconsider the previous period's *de facto* control determinations with regard to these companies. Therefore, the Department preliminarily finds that Shenzhen Xinboda, Farmlady, QXF, Longtai, and Hongqiao have established, *prima facie*, that they qualify for separate rates under the

criteria established by *Silicon Carbide* and *Sparklers*.

Surrogate Country

When the Department investigates imports from an NME country, section 773(c)(1) of the Act directs it to base 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, Philippines, Indonesia, Thailand, Ukraine, and Peru are countries comparable to the PRC in terms of economic development. See Memorandum to All Interested Parties Re: 15th Administrative Review of Fresh Garlic from the People's Republic of China (July 20, 2010) at Attachment 1.

Also, in accordance with section 773(c)(4) of the Act, the Department has found that India is a significant producer of comparable merchandise. Moreover, the Department finds India to be a reliable source for surrogate values (SVs) because India is at a similar level of economic development, 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 SV 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 SVs are discussed under the "Normal Value" section below and in the Memorandum from Scott Lindsay, Re: Preliminary Results of the 2008–2009 Administrative Review of Fresh Garlic from the People's Republic of China: Surrogate Values Memorandum (December 7, 2010) (SV Memorandum).

No parties submitted comments concerning selection of the surrogate country.

U.S. Price

In accordance with section 772(a) of the Act, we calculated export prices (EP) for Shenzhen Xinboda's sales to the United States because they were made to unaffiliated parties before the date of importation. We calculated Shenzhen Xinboda's EP based on its price to unaffiliated purchasers in the United States. In accordance with section 772(c) of the Act, where appropriate, we deducted movement expenses (e.g. foreign inland freight, international freight, brokerage and handling, marine insurance, warehousing, and U.S. customs duties) from the starting price to unaffiliated purchasers. For the expenses that were either provided by an NME vendor or paid for with an NME currency, we used SVs as appropriate. See the "Factor Valuations" section below for details regarding the SV for movement expenses.

Normal Value

A. 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 SVs to an intermediate input instead of the individual FOPs used to produce that intermediate input. In some cases, a respondent may report factors used to produce an intermediate input that accounts for an insignificant share of total output. When the potential increase in accuracy to the overall calculation that results from valuing each of the FOPs is outweighed by the resources, time, and burden such an analysis would place on all parties to the proceeding, the Department has valued the intermediate input directly using SVs. 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 several prior administrative reviews (ARs) and new shipper reviews (NSRs) under the garlic order,⁹ 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 preliminary results of the eleventh 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 *Fresh Garlic from the People's Republic of China: Partial Rescission and Preliminary Results of the Eleventh Administrative Review and New Shipper Reviews*, 71 FR 71510, 71520 (December 11, 2006).

In the course of this review, Zhengzhou Dadi Garlic Industry Co., Ltd. (Zhengzhou Dadi), Shenzhen Xinboda's producer, did not report FOPs related to growing whole garlic bulbs. As such, for the reasons outlined in the Memorandum from Scott Lindsay, Re: 15th Administrative Review of Fresh Garlic from the People's Republic of China: Intermediate Input Methodology (December 7, 2010) (Intermediate Input Methodology Memorandum), the Department is applying an "intermediate-input product valuation methodology" to calculate Shenzhen Xinboda's NV. Using this methodology,

⁹ See e.g., *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the Eleventh Administrative Review and New Shipper Reviews*, 72 FR 34438 (June 22, 2007); *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 12th Administrative Review*, 73 FR 34251 (June 17, 2008) (12th AR); *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 Review and New Shipper Reviews*, 74 FR 29174 (June 19, 2009) (13th Administrative Review).

the Department calculated NV by starting with an SV for the garlic bulb (*i.e.*, the “intermediate product”), adjusting for yield losses during the processing stages, and adding Shenzhen Xinboda’s costs, which were calculated using its reported usage rates for processing fresh garlic. *See* Intermediate Input Methodology Memorandum.

B. Factor Valuations

In accordance with section 773(c) of the Act, the Department calculated NV based on the FOP data reported by Shenzhen Xinboda for the POR. We relied on the factor-specific data submitted by Shenzhen Xinboda for the production inputs in their questionnaire responses, where applicable, for purposes of selecting SVs. To calculate NV, the Department multiplied the reported per-unit factor consumption rates by publicly available India SVs.

In selecting the SVs, consistent with our past practice, the Department 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, the Department adjusted input prices by including freight costs to make them delivered prices. Specifically, the Department added to the SVs, as appropriate, a surrogate freight cost using the shorter of the reported distance from the domestic suppliers to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the decision of the U.S. Court of Appeals for the Federal Circuit (CAFC). *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* SV 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,¹⁰ is to select, to the extent

practicable, SVs 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 Canvases 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 Shenzhen Xinboda. Therefore, we sought to identify the best available SV for the garlic bulb input into production. *See* Petitioners’ Submission Concerning Surrogate Values for Factors of Production and Shenzhen Xinboda’s Surrogate Value Submission; *see also*, SV 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 Shenzhen Xinboda’s garlic bulb input.

In its responses to the first and second supplemental questionnaires, Shenzhen Xinboda stated that its “document system, including inventory system and accounting system, does not record the different sizes of garlic bulbs;” and “normally uses garlic bulbs of 5 cm to 5.5 cm for the production of peeled garlic.” Consistent with our findings in the twelfth AR, 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. We have used Grade A and Grade Super A for garlic bulb valuation. *See* SV Memorandum. Because the Grade Super-A prices reported by the APMC which are on the record of this review are from 2007–2008, we inflated them to make them contemporaneous to our POR. *See* SV Memorandum.

Other Factors of Production

In past cases, it has been the Department’s practice to value various FOPs using import statistics of the primary selected surrogate country from World Trade Atlas (WTA), as published by Global Trade Information Services (GTIS). *See Certain Preserved Mushrooms From the People’s Republic of China: Preliminary Results of Antidumping Duty New Shipper Review*, 74 FR 50946, 50950 (October 2, 2009) (unchanged in *Certain Preserved Mushrooms From the People’s Republic of China: Final Results of Antidumping*

Duty New Shipper Review, 74 FR 65520 (December 10, 2009)). However, in October 2009, the Department learned that Indian import data obtained from the WTA, as published by GTIS, began identifying the original reporting currency for India as the U.S. Dollar. The Department then contacted GTIS about the change in the original reporting currency for India from the Indian Rupee to the U.S. Dollar. Officials at GTIS explained that while GTIS obtains data on imports into India directly from the Ministry of Commerce, Government of India, as denominated and published in Indian Rupees, the WTA software is limited with regard to the number of significant digits it can manage. Therefore, GTIS made a decision to change the original reporting currency for Indian data from the Indian Rupee to the U.S. Dollar in order to reduce the loss of significant digits when obtaining data through the WTA software. GTIS explained that it converts the Indian Rupee to the U.S. Dollar using the monthly Federal Reserve exchange rate applicable to the relevant month of the data being downloaded and converted. *See Certain Oil Country Tubular Goods from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010), and accompanying Issues and Decision Memorandum at Comment 4.

However, the data reported in the Global Trade Atlas (GTA) software published by GTIS reports import statistics, such as those from India, in the original reporting currency and, thus, these data correspond to the original currency value reported by each country. Additionally, the data reported in the GTA software are reported to the nearest digit and, thus, there is not a loss of data by rounding, as there is with the data reported by the WTA software. Consequently, the Department has obtained import statistics from GTA for valuing various FOPs because the GTA import statistics are in the original reporting currency of the country from which the data are obtained, and have the same level of accuracy as the original data released.

Furthermore, with regard to the GTA Indian import-based SVs, in accordance with the Omnibus Trade and Competitiveness Act of 1988 legislative history, the Department continues to apply its long-standing practice of disregarding SVs if it has a reason to believe or suspect the source data may

¹⁰ 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.”

be subsidized.¹¹ In this regard, the Department has previously found that it is appropriate to disregard such prices from Indonesia, South Korea and Thailand, because we have determined that these countries maintain broadly available, non-industry specific export subsidies. *See, e.g., Certain Cut-to-Length Carbon-Quality Steel Plate From Indonesia: Final Results of Expedited Sunset Review*, 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum at 4; *Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19–20; and *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand*, 66 FR 50410 (October 3, 2001), and accompanying Issues and Decision Memorandum at 23. Based on the existence of these subsidy programs that were generally available to all exporters and producers in Indonesia, South Korea, and Thailand at the time of the POR, the Department finds that it is reasonable to infer that all exporters from these countries may have benefitted from these subsidies. We also disregarded prices from NME countries¹² and those 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.

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 GTA.

The Department valued surrogate truck freight cost by using a per-unit average rate calculated from April 2009 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) (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 SV 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 are not contemporaneous with the POR, we inflated March 2008 prices to make them contemporaneous to our POR. *See* SV Memorandum.

We valued brokerage and handling expenses using a price list of export procedures necessary to export a standardized cargo of goods in India. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in India that is published in *Doing Business 2010: India*, published by the World Bank. *See* SV Memorandum.

The Department is continuing to evaluate options for determining labor values in light of the recent Court of Appeals for the Federal Circuit (CAFC) decision. *See Dorbest Ltd. v. United States*, 604 F.3d 1363, 1372 (Fed. Cir. 2010). For these preliminary results, we have calculated an hourly wage rate to use in valuing respondent reported labor input by averaging industry-specific earnings and/or wages in countries that are economically comparable to the PRC and that are significant producers of comparable merchandise.

For the preliminary results of this AR, the Department is valuing labor using a simple average industry-specific wage rate using earnings or wage data reported under Chapter 5B by the International Labor Organization (ILO). To achieve an industry-specific labor value, we relied on industry-specific labor data from the countries we determined to be both economically comparable to the PRC, and significant producers of comparable merchandise. Specifically, for this review, the Department has calculated the wage rate using a simple average of the data provided to the ILO under Sub-Classification 15 of the ISIC–Revision 3 standard by countries determined to be both economically comparable to the PRC and significant producers of comparable merchandise. The Department finds the two-digit description under ISIC–Revision 3 (“Manufacture of Food Products and Beverages”) to be the best available wage rate SV on the record because it is specific and derived from industries

that produce merchandise comparable to the subject merchandise. A full description of the industry-specific wage rate calculation methodology is provided in the SV Memorandum. Consequently, we averaged the ILO industry-specific wage rate data or earnings data available from the following countries found to be economically comparable to the PRC and to be significant producers of comparable merchandise: Ecuador, Egypt, Indonesia, Jordan, Peru, Philippines, Thailand, and Ukraine. Further information on the calculation of the wage rate can be found in the SV Memorandum. The resulting wage rate is \$1.36.

Financial Ratios

Petitioners and Shenzhen Xinboda submitted factual information regarding surrogate financial ratios. *See* Petitioners’ Submission Concerning Surrogate Values for Factors of Production and Shenzhen Xinboda’s Surrogate Value Submission. After analyzing these comments and factual information, the Department has preliminarily determined that it is appropriate to calculate a single set of surrogate financial ratios applicable to the production and sales of all subject merchandise (both whole and peeled garlic) for these preliminary results using both Tata Tea Ltd.’s (Tata Tea) and Limtex Ltd.’s (Limtex) financial data. Since the 2002–2003 administrative review, the Department has considered tea processing to be sufficiently similar to garlic processing in that neither product is highly processed or preserved prior to sale. *See Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 34082 (June 13, 2005), and accompanying Issues and Decision Memorandum at 34–35. Moreover, we note that it is the Department’s preference to use financial data from more than one surrogate producer to reflect the broader experience of the surrogate industry. *See, e.g., Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Sixth Antidumping Duty Administrative Review and Final Results of the Ninth New Shipper Review*, 69 FR 42039 (July 13, 2004), and accompanying Issues and Decision Memorandum at Comment 2; *see also 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), and accompanying Issues and Decision Memorandum at Comment 3,

¹¹ Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) at 590.

¹² The NME countries are Armenia, Azerbaijan, Belarus, Georgia, Kyrgyz Republic, Moldova, North Korea, the People's Republic of China, Tajikistan, Turkmenistan, Uzbekistan, and Vietnam.

and *Certain Oil Country Tubular Goods From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010), and accompanying Issues and Decision Memorandum at Comment 13. We find that calculating an average of these two Indian tea processors' data provides financial ratios that best reflect the broader experience of the garlic industry and that are consistent with our practice during previous reviews. See *Fresh Garlic From the People's Republic of China: Final Results of New Shipper Review*, 75 FR 61130 (October 4, 2010), and accompanying Issues and Decision Memorandum at Comment 4. The Department finds that both Tata Tea's and Limtex's non-integrated production process is similar to that of the garlic industry. 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 SV Memorandum.

Margin for the Separate Rate Companies

As discussed above, the Department has preliminarily determined that Farmlady, QXF, Longtai, and Hongqiao have demonstrated their eligibility for separate rate status. The statute and the Department's regulations do not address the establishment of a rate to be applied to individual companies not selected for examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, we have looked to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents we did not examine in an administrative review. For the exporters subject to a review that were determined to be eligible for separate rate status, but were not selected as mandatory respondents, the Department generally weight-averages the rates calculated for the mandatory respondents, excluding any rates that are zero, *de minimis*, or based entirely on facts available (FA). See, e.g., *Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Results of New Shipper Review and Partial Rescission of Administrative Review*, 73 FR 8273, 8279 (February 13, 2008) (unchanged in *Wooden Bedroom Furniture From the People's Republic of*

China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, 73 FR 49162 (August 20, 2008)). For this administrative review, the Department has calculated a positive margin for the single mandatory respondent, Shenzhen Xinboda. Accordingly, for the preliminary results, consistent with our practice, the Department has preliminarily determined that the margin to be assigned to Farmlady, QXF, Longtai, and Hongqiao should be the rate calculated for the single mandatory respondent, Shenzhen Xinboda.

PRC-Wide Entity

The *Initiation Notice* states "{F} or exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate-rate status unless they respond to all parts of the questionnaire as mandatory respondents." Shenzhen Greening, who after timely submitting separate rate documents did not respond to the initial questionnaire, will remain part of the PRC-wide entity. Tianma Freezing, who also did not respond to the initial questionnaire, will remain part of the PRC-wide entity. In addition, the *Initiation Notice* specifically initiated reviews by name for 16 companies which were not selected as mandatory respondents and which did not submit separate rate documentation. The Department finds these companies failed to demonstrate their eligibility for separate rate status. Accordingly, the Department considers these companies part of the PRC-wide entity. See Attachment III.

Facts Otherwise Available and Adverse Facts Available

Sections 776(a)(1) and (2) of the Act provide that, if necessary information is not available on the record, or if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information in a timely matter or in the form or manner requested subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the administering authority shall, subject to section 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Where the Department determines that a response to a request for

information does not comply with the request, section 782(d) of the Act provides that the Department shall promptly inform the party submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that party with an opportunity to remedy or explain the deficiency. Section 782(d) of the Act additionally states that if the party submits further information that is unsatisfactory or untimely, the administering authority may, subject to subsection (e), disregard all or part of the original and subsequent responses. Section 782(e) of the Act provides that the Department shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority if: (1) The information is submitted by the deadline established for its submission; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the administering authority with respect to the information; and (5) the information can be used without undue difficulties.

Section 776(b) of the Act further provides that, if the Department finds that an interested party has failed to comply by not acting to the best of its ability to comply with a request of information, the Department may use an adverse inference in selecting from among the facts otherwise available. Section 776(b) of the Act also authorizes the Department to use as AFA information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

For the reasons discussed below, the Department preliminarily determines that, in accordance with sections 776(a)(1), 776(a)(2) and 776(b) of the Act, the use of AFA is appropriate for the preliminary results with respect to the PRC-wide entity, which includes Shenzhen Greening and Tianma Freezing.

Shenzhen Greening and Tianma Freezing were selected as mandatory respondents, but neither responded to the initial questionnaire. Thus, the information necessary for the Department to conduct its analysis is not available in the record. Moreover, the decision by these companies to not respond to the initial questionnaire constitutes a refusal to provide the

Department with information necessary to conduct its antidumping analysis. See Sections 776(a)(2)(A) and (B) of the Act. As these companies have withheld necessary information that has been requested by the Department, the Department shall, pursuant to sections 776(a)(1), (a)(2)(A), and (a)(2)(B) of the Act, use facts otherwise available to reach the applicable determination.

In addition, because Shenzhen Greening and Tianma Freezing did not respond to the initial questionnaire and did not request any extension, the Department finds that each of these companies has failed to cooperate by not acting to the best of its ability to comply with the Department's request for information. By withholding the requested information, these companies prevented the Department from conducting any company-specific analysis or calculating dumping margins for the POR. Therefore, pursuant to section 776(b) of the Act, the Department preliminarily determines that an inference that is adverse to the interests of Shenzhen Greening and Tianma Freezing is warranted.

Because we have determined Shenzhen Greening and Tianma Freezing to be part of the PRC-wide entity, the PRC-wide entity is now under review. The Department preliminarily finds that the PRC-wide entity did not respond to the Department's request for information and that necessary information is not available on the record. Moreover, the Department preliminarily finds that the PRC-wide entity significantly impeded the proceeding by withholding information and failing to respond to the Department's request for information within the specified deadlines. Therefore, pursuant to sections 776(a)(1) and (a)(2) of the Act, the Department preliminarily determines that the application of facts otherwise available is warranted for the PRC-wide entity.

In addition, because Shenzhen Greening and Tianma Freezing failed to cooperate by not acting to the best of its ability, the PRC-wide entity did not provide the requested information, which was in the sole possession of the respondents and could not be obtained otherwise. Pursuant to section 776(b) of the Act, we preliminarily determine that in selecting from among the facts otherwise available, an adverse inference is warranted for the PRC-wide entity. By using an inference that is adverse to the interests of the PRC-wide entity, we ensure the companies that are part of the PRC-wide entity will not obtain a more favorable result by failing

to cooperate than had they cooperated fully in this review.

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c) authorize the Department to rely on information derived from: (1) The petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any information placed on the record. In reviews, the Department normally selects, as AFA, the highest rate on the record of any segment of the proceeding. See, e.g., *Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review*, 68 FR 19504, 19506 (April 21, 2003). The U.S. Court of International Trade (CIT) and the CAFC have consistently upheld the Department's practice in this regard. See *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990) (*Rhone Poulenc*); *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in a less-than-fair-value investigation); see also *Kompass Food Trading Int'l v. United States*, 24 CIT 678, 683-84 (2000) (upholding a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd. v. United States*, 360 F. Supp. 2d 1339, 1348 (CIT 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is "sufficiently adverse so as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." See *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See *Statement of Administrative Action Accompanying the Uruguay Round Agreements Act*, H.R. Rep. No. 103-316, Vol. 1, at 870 (1994) (SAA); see also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Brazil*, 69 FR 76910, 76912 (December

23, 2004). In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior margin "reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less." See *Rhone Poulenc*, 899 F.2d at 1190.

Consistent with the statute, court precedent, and its normal practice, the Department has preliminarily assigned the rate of \$4.71 per kilogram, the highest rate determined in any segment of this proceeding, to the PRC-wide entity, which includes the companies named in Attachment III. See *13th Administrative Review*. As discussed further in the "Corroboration of Secondary Information Used as Adverse Facts Available" section below, this rate has been corroborated.

Corroboration of Secondary Information Used as Adverse Facts Available

Section 776(c) of the Act provides that, where the Department selects from among the facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. Secondary information is described in the SAA as "{i}nformation derived from the petition that gave rise to the investigation or review, the final determination covering the subject merchandise, or any previous review under section 751 concerning the subject merchandise." See SAA at 870. The SAA states that "corroborate" means to determine that the information used has probative value. *Id.* The Department has determined that to have probative value, information must be reliable and relevant. See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) (unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final*

Results of Antidumping Duty Administrative Reviews and Termination in Part, 62 FR 11825 (March 13, 1997)). The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation or review. See SAA at 870; see also *Notice of Preliminary Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators from Japan*, 68 FR 35627, 35629 (June 16, 2003) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators from Japan*, 68 FR 62560 (November 5, 2003); and *Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada*, 70 FR 12181, 12183 (March 11, 2005).

To be considered corroborated, information must be found to be both reliable and relevant. Unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only sources for calculated margins are administrative determinations. The per-unit AFA rate we are applying for the current review was calculated using the *ad valorem* rate contained in the petition in the original investigation of garlic from the PRC and was applied as the per-unit AFA rate in the most recently completed administrative reviews of this order. See, e.g., *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 14th Antidumping Duty Administrative*

Review, 75 FR 34976 (June 21, 2010) (*Garlic 14*). Furthermore, no information has been presented in the current review that calls into question the reliability of this information. Thus, the Department finds that the information is reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. See, e.g., *Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996). Similarly, the Department does not apply a margin that has been discredited. See *D&L Supply Co. v. United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated). None of these unusual circumstances are present with respect to the rate being used here. Moreover, the rate selected, *i.e.*, \$4.71 per kilogram, is the rate currently applicable to the PRC-wide entity. The Department assumes that if an uncooperative respondent could have obtained a lower rate, it would have cooperated. See *Rhone Poulenc*, 899 F.2d at 1190–91 and *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 24 CIT 841, 848 (2000) (respondents should not benefit from failure to cooperate). As there is no information on the record of this review that demonstrates that this rate is not appropriate to use as AFA for the PRC-wide entity in the current review, we determine that this rate has relevance.

As this AFA rate is both reliable and relevant, we determine that it has probative value, and is thus in accordance with the requirement, under section 776(c) of the Act, that secondary information be corroborated to the extent practicable (*i.e.*, that it has probative value).

Currency Conversion

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

Verification

Following the publication of these preliminary results, we intend to verify, as provided in section 782(i)(3) of the Act, sales and FOP information submitted by the Shenzhen Xinboda, as appropriate. At verification, we will use standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and the selection of original source documentation containing relevant information. We will prepare verification reports outlining our verification results and place these reports on file in the Central Records Unit, room 7046 of the main Commerce building.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margins exist for the period November 1, 2008 through October 31, 2009:

FRESH GARLIC FROM THE PRC 2008–2009 ADMINISTRATIVE REVIEW

Manufacturer/exporter	Weighted-average margin (dollars per kilogram)
Shenzhen Xinboda Industrial Co., Ltd.	\$0.72
Jinan Farmlady Trading Co., Ltd.	0.72
Qingdao Xintianfeng Foods Co., Ltd.	0.72
Shandong Longtai Fruits and Vegetables Co., Ltd.	0.72
Weifang Hongqiao International Logistic Co., Ltd.	0.72
PRC-wide Entity (see Attachment III)	4.71

Assessment Rates

The Department will instruct U.S. Customs and Border Protection (“CBP”) to assess antidumping duties on all appropriate entries. For the companies listed above which had a separate rate granted in a previously completed segment of this proceeding that was in effect during the instant review period,

antidumping duties shall be assessed on entries subject to the separate rate at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment

instructions for such companies directly to CBP 15 days after the publication of this notice in the **Federal Register**. For any of the companies listed above that do not currently have a separate rate (and thus remain a part of the PRC-wide entity), the Department will issue assessment instructions upon the

completion of this administrative review.

Consistent with the final results of *Garlic 14*, 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. 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*.

Cash Deposit Requirements

Consistent with the final results of *Garlic 14*, 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 exported by Shenzhen Xinboda, the cash deposit rate will be the per-unit rate determined in the final results of this administrative review and; (2) for subject merchandise exported by Farmlady, QXF, Longtai, or Hongqiao, the cash deposit rates will be the per-unit rate determined in the final results of this administrative review; (3) for subject merchandise exported by PRC exporters subject to this administrative review that have not been found to be entitled to a separate rate (*see* Attachment III), the cash deposit rate will be the per-unit PRC-wide rate determined in the final results of administrative review; (4) for subject merchandise exported by all other PRC exporters that have not been found to be entitled to a separate rate, the cash deposit rate will be the per-unit PRC-wide rate determined in the final results of administrative review; (5) for previously-investigated or previously-reviewed PRC and non-PRC exporters who received a separate rate in a prior segment of the proceeding and which were not under review in this segment of the proceeding, the cash deposit rate will continue to the rate assigned in that

prior segment of the proceeding; (6) the cash deposit rate for non-PRC exporters of subject merchandise which have not received their own rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. 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 the preliminary results and may submit case briefs and/or written comments within 30 days of the date of publication of this notice, unless otherwise notified by the Department. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs, limited to issues raised in the case briefs, will be due five days later, pursuant to 19 CFR 351.309(d). Parties who submit case or rebuttal briefs in this proceeding 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 Microsoft Word or Adobe Acrobat).

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 351.241(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) and 351.221(b)(4).

Dated: December 17, 2010.

Paul Piquado,

Acting Deputy Assistant Secretary for Import Administration.

Attachment I

Companies Being Rescinded

The following companies were named in our *Initiation Notice*. Subsequently, interested parties withdrew all relevant requests for review for these companies. Therefore, pursuant to 19 CFR 351.213(d)(1), we are rescinding this administrative review with respect to these companies.

1. American Pioneer Shipping
2. Anhui Dongqian Foods Ltd.
3. Anqiu Haoshun Trade Co., Ltd.
4. APS Qingdao
5. Chiping Shengkang Foodstuff Co., Ltd.
6. Hangzhou Guanyu Foods Co., Ltd.
7. Henan Weite Industrial Co., Ltd.
8. Hongqiao International Logistics Co.
9. IT Logistics Qingdao Branch
10. Jinan Solar Summit International Co., Ltd.
11. Jining Highton Trading Co., Ltd.
12. Jining Jiulong International Trading Co., Ltd.
13. Jining Tiankuang Trade Co., Ltd.
14. Jinxiang County Huaguang Food Import & Export Co., Ltd.¹³
15. Jinxiang Dacheng Food Co., Ltd.
16. Jinxiang Fengsheng Import & Export Co., Ltd.
17. Jinxiang Jinma Fruits Vegetables Products Co., Ltd.
18. Jinxiang Tianheng Trade Co., Ltd.
19. Juye Homestead Fruits and Vegetables Co., Ltd.
20. Kingwin Industrial Co., Ltd.
21. Laiwu Fukai Foodstuff Co., Ltd.
22. Laizhou Xubin Fruits and Vegetables
23. Linyi City Heding District Jiuli Foodstuff Co.
24. Ningjin Ruifeng Foodstuff Co., Ltd.
25. Qingdao Apex Shipping Co., Ltd.
26. Qingdao Lianghe International Trade Co., Ltd.
27. Qingdao Sino-World International Trading Co., Ltd.
28. Qingdao Winner Foods Co., Ltd.
29. Qingdao Yuankang International
30. Rizhao Huasai Foodstuff Co., Ltd.
31. Samyoung America (Shanghai) Inc.
32. Shandong Chengshun Farm Produce Trading Co., Ltd.

¹³ f/k/a Jinxiang County Huaguang Food Import & Export Co., Ltd. in the *Initiation Notice*.

33. Shandong China Bridge Imports
34. Shandong Dongsheng Eastsun Foods Co., Ltd.
35. Shandong Garlic Company
36. Shandong Jinxiang Zhengyang Import & Export Co., Ltd.
37. Shandong Sanxing Food Co., Ltd.
38. Shandong Xingda Foodstuffs Group Co., Ltd.
39. Shandong Yipin Agro (Group) Co., Ltd.
40. Shanghai Goldenbridge International Co., Ltd.
41. Shanghai Great Harvest International Co., Ltd.
42. T&S International, LLC
43. Taian Eastsun Foods Co., Ltd.
44. Taian Solar Summit Food Co., Ltd.
45. V.T. Impex (Shandong) Limited
46. Weifang Chenglong Import & Export Co., Ltd.
47. Weifang Naike Foodstuffs Co., Ltd.
48. WSSF Corporation (Weifang)
49. Xiamen Huamin Import Export Company
50. Xiamen Keep Top Imp. and Exp. Co., Ltd.
51. You Shi Li International Trading Co., Ltd.
52. Zhangzhou Xiangcheng Rainbow Greenland Food Co., Ltd.
53. Zhengzhou Harmoni Spice Co., Ltd.
54. Zhengzhou Yuanli Trading Co., Ltd.

Attachment II

Companies Subject to the Administrative Review

1. Anqiu Friend Food Co., Ltd.
2. Chengwu County Yuanxiang Industry & Commerce Co., Ltd.
3. Hebei Golden Bird Trading Co., Ltd.
4. Heze Ever-Best International Trade Co., Ltd. (f/k/a Shandong Heze International Trade and Developing Company)
5. Jinan Farlady Trading Co., Ltd.
6. Jinan Yipin Corporation Ltd.
7. Jining Yongjia Trade Co., Ltd.
8. Jinxiang Dongyun Freezing Storage Co., Ltd. (a/k/a Jinxiang Eastward Shipping Import and Export Limited Company)
9. Jinxiang Hejia Co., Ltd.
10. Jinxiang Shanyang Freezing Storage Co., Ltd.
11. Jinxiang Tianma Freezing Storage Co., Ltd.
12. Linshu Dading Private Agricultural Products Co., Ltd.
13. Qingdao Saturn International Trade Co., Ltd.
14. Qingdao Sea-Line International Trading Co., Ltd.
15. Qingdao Tiantaixing Foods Co., Ltd.
16. Qingdao Xintianfeng Foods Co., Ltd.
17. Qufu Dongbao Import & Export Trade Co., Ltd.
18. Shandong Chenhe Int'l Trading Co., Ltd.
19. Shandong Longtai Fruits and Vegetables Co., Ltd.
20. Shandong Wonderland Organic Food Co., Ltd.
21. Shanghai Ever Rich Trade Company
22. Shanghai LJ International Trading Co., Ltd.
23. Shenzhen Fanhui Import & Export Co., Ltd.
24. Shenzhen Greening Trading Co., Ltd.
25. Shenzhen Xinboda Industrial Co., Ltd.
26. Taian Fook Huat Tong Kee Pte. Ltd.
27. Taiyan Ziyang Food Co., Ltd.

28. Weifang Hongqiao International Logistic Co., Ltd.
29. Weifang Shennong Foodstuff Co., Ltd.
30. XuZhou Simple Garlic Industry Co., Ltd.

Attachment III

Companies Under Review Subject to the PRC-Wide Rate

1. Anqiu Friend Food Co., Ltd.
2. Chengwu County Yuanxiang Industry & Commerce Co., Ltd.
3. Heze Ever-Best International Trade Co., Ltd. (f/k/a Shandong Heze International Trade and Developing Company)
4. Jinxiang Dongyun Freezing Storage Co., Ltd. (a/k/a Jinxiang Eastward Shipping Import and Export Limited Company)
5. Jinxiang Hejia Co., Ltd.
6. Jinxiang Shanyang Freezing Storage Co., Ltd.
7. Linshu Dading Private Agricultural Products Co., Ltd.
8. Qingdao Saturn International Trade Co., Ltd.
9. Qufu Dongbao Import & Export Trade Co., Ltd.
10. Shandong Wonderland Organic Food Co., Ltd.
11. Shanghai Ever Rich Trade Company
12. Shenzhen Fanhui Import & Export Co., Ltd.
13. Taian Fook Huat Tong Kee Pte. Ltd.
14. Taiyan Ziyang Food Co., Ltd.
15. Weifang Shennong Foodstuff Co., Ltd.
16. XuZhou Simple Garlic Industry Co., Ltd.
17. Jinxiang Tianma Freezing Storage Co., Ltd.
18. Shenzhen Greening Trading Co., Ltd.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XA102

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Council to convene public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a meeting of the Vessel Monitoring System (VMS) Advisory Panel.

DATES: The meeting will convene at 8:30 a.m. on Thursday, January 13, 2011 and conclude by 4 p.m. on Thursday, January 13, 2011.

ADDRESSES: The meeting will be held at the Crowne Plaza Hotel 5303 West Kennedy Boulevard, Tampa, FL 33609; *telephone:* (813) 289-1950.

Council address: Gulf of Mexico Fishery Management Council, 2203 N.

Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. John Froeschke, Fishery Biologist-Statistician; Gulf of Mexico Fishery Management Council; *telephone:* (813) 348-1630 x235.

SUPPLEMENTARY INFORMATION: The Vessel Monitoring System (VMS) Advisory Panel will meet to discuss operation, design, usage of vessel monitoring systems, and resulting data from these systems. The Advisory Panel will discuss the potential role of VMS in enhanced seafood traceability in Gulf of Mexico fisheries. This will include status and review of existing seafood traceability programs and potential mechanisms to enhance seafood safety in the future. The Advisory Panel will also consider technical issues with VMS and consider potential solutions to use VMS more effectively, increase user-friendliness of VMS units including enhanced communication for reporting fishing activities. Finally, the Advisory Panel will also consider future roles and potential applications of VMS software in Gulf of Mexico fisheries. The meeting will conclude with draft recommendations presented to the Gulf of Mexico Fishery Management Council at its February 7-10, 2011 meeting in Gulfport, MS.

Copies of the agenda and other related materials can be obtained by calling (813) 348-1630.

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

Special Accommodations

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