

interested parties, the Department is conducting an expedited (120-day) sunset review in accordance with 19 CFR 351.218(e)(1)(ii)(c)(2).

### Scope of Review

The products covered by the Suspension Agreement include hot-rolled iron and non-alloy steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in the Suspension Agreement are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling") for example, products which have been beveled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Although the HTS subheadings are provided for convenience and customs purposes, the written description of the scope of the Agreement is dispositive. Specifically excluded from subject merchandise within the scope of this Agreement is grade X-70 steel plate.

### Analysis of Comments Received

All issues raised by parties to this sunset review are addressed in the "Issues and Decision Memorandum for the Final Results of the Expedited Sunset Review of the Agreement Suspending the Antidumping Duty Investigation of Certain Cut-to-Length Carbon Steel Plate from the Russian Federation," from Ronald K. Lorentzen, Deputy Assistant Secretary for Policy and Negotiations, Import

Administration, to David M. Spooner, Assistant Secretary, Import Administration (December 1, 2008) ("Decision Memorandum"), which is adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail were the suspended antidumping duty investigation to be terminated. Parties may find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B-1117, of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at <http://ia.ita.doc.gov/frn>. The paper copy and electronic version of the Decision Memorandum are identical in content.

### Final Results of Review

We determine that termination of the Suspension Agreement and the underlying antidumping duty investigation on CTL plate from Russia would likely lead to a continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/producer/exporter	Weighted-average margin percentage
Severstal .....	53.81
Russia-wide .....	185.00

We are issuing and publishing this notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Tariff Act.

Dated: December 1, 2008.

**David M. Spooner,**

*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 the Antidumping Duty Administrative and New Shipper Reviews and Intent to Rescind, In Part, the Antidumping Duty Administrative and New Shipper Reviews**

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

**SUMMARY:** The Department of Commerce (Department) is conducting administrative and new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China (PRC) covering the period of review (POR) of November 1, 2006 through October 31, 2007. As discussed below, we preliminarily determine that sales have been made in the United States at prices below normal value (NV) with respect to certain exporters who participated fully and are entitled to a separate rate in the administrative or new shipper reviews (NSR). In addition, we are preliminarily rescinding the NSR for Anqiu Haoshun Trade Co., Ltd. (Haoshun). Finally, the Department intends to rescind the antidumping duty administrative reviews of three companies that had no shipments of subject merchandise to the United States during the POR. If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on entries of subject merchandise during the POR for which importer-specific assessment rates are above *de minimis*.

**EFFECTIVE DATE:** December 8, 2008.

#### **FOR FURTHER INFORMATION CONTACT:**

Scott Lindsay, Nicholas Czajkowski, or Summer Avery, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482-0780, (202) 482-1395, and (202) 482-4052, 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 1, 2007, 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, 2006 through October 31, 2007. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 72 FR 61859 (November 1, 2007).

#### **New Shipper Reviews**

On November 20, 2007 and November 30, 2007, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the Act), and 19 CFR

351.214(c), the Department received three NSR requests from Haoshun, Ningjin Ruifeng Foodstuff Co., Ltd. (Ningjin), and Zhengzhou Yuanli Trading Co., Ltd. (Yuanli). On December 21, 2007, the Department initiated NSRs for all three companies. *See Fresh Garlic From the People's Republic of China: Initiation of Antidumping Duty New Shipper Reviews*, 73 FR 161 (January 2, 2008).

On March 31, 2008, the Department placed on the record of the new shipper review copies of CBP documents pertaining to each shipment of garlic from the PRC and exported to the United States by these three companies during the POR.<sup>1</sup>

On July 21, 2008, the three respondents in the NSR agreed to waive the new shipper review time limits align the instant NSR with the instant administrative review. Therefore, on July 23, 2008, in accordance with 19 CFR 351.214(j), we aligned the deadlines for the NSRs for Yuanli, Ningjin, and Haoshun with the deadlines for the 13th administrative review. *See* the Memorandum to All Interested Parties from the Department Re: The Alignment of the New Shipper Reviews with the 13th Antidumping Duty Administrative Review of Fresh Garlic from the People's Republic of China (July 23, 2008).

Since the initiation of these reviews, the Department issued original and supplemental questionnaires to Haoshun, Ningjin, and Yuanli. All three companies have responded to the Department's questionnaires in a timely manner. The Fresh Garlic Producers Association (FGPA) and its individual members (Christopher Ranch L.L.C., the Garlic Company, Valley Garlic, and Vessey and Company, Inc.) (collectively, petitioners) have also submitted comments regarding the NSRs. *See* Letter to the Department from Petitioners Re: 13th Administrative Review and 13th New Shipper Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China (October 16, 2008) (Petitioners' October 16, 2007 Comments) and Letter to the Department from Petitioners Re: 13th New Shipper Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China (November 7, 2008).

#### Administrative Review

On November 30, 2007, we received requests from the petitioners and certain

PRC companies to conduct administrative reviews for certain companies. *See* Letter from Petitioners to the Department Re: 13th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China Request for Review (November 30, 2007). On December 27, 2007, the Department initiated administrative reviews for 63 producers/exporters of subject merchandise from the PRC. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 72 FR 73315 (December 27, 2007) (*Initiation Notice*). On March 28, 2008, the Department selected the following two companies as mandatory respondents: Anqiu Friend Food Co., Ltd. (Anqiu Friend) and Weifang Shennong Foodstuff Co., Ltd. (Weifang Shennong) (collectively, mandatory administrative review respondents). *See* Memorandum from Irene Gorelik, Senior International Trade Analyst, Office 9, Re: Antidumping Administrative Review of Fresh Garlic from the People's Republic of China: Respondent Selection Memorandum (March 28, 2008) (Respondent Selection Memorandum).

On June 24, 2008, petitioners timely withdrew their request for review for certain companies in this administrative review. On June 26, 2008, petitioners timely submitted an amended partial withdrawal of request for review. On November 21, 2008, in accordance with 19 CFR 351.213(d)(1), we rescinded the administrative review with respect to 30 companies. *See Fresh Garlic from the People's Republic of China: Partial Rescission of the 13th Antidumping Duty Administrative Review*, 73 FR 70621 (November 21, 2008) (*Rescission Notice*). Furthermore, the Department intends to rescind the review of three additional companies (*see* the "Preliminary Partial Rescission of Administrative Review" section below).

Therefore, this review covers the 31 producers/exporters of the subject merchandise listed in Attachment 1 to this notice.<sup>2</sup>

<sup>2</sup> In their November 30, 2007 request for review, petitioners requested that the Department initiate an administrative review of Haoshun. *See* Letter from Petitioners to the Department re: 13th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China-Request for Review. However, the Department initiated a new shipper review of the company instead. Although we did not initiate an administrative review of Haoshun, petitioners' partial withdrawal request for the administrative review of certain companies included Haoshun and we in turn included Haoshun in the list of companies for whom the administrative review was rescinded in the *Rescission Notice*. Therefore, the Department formally initiated review of only 29 of

On August 4, 2008, the Department extended the deadline for the preliminary results of this administrative review until December 1, 2008. *See Fresh Garlic from the People's Republic of China: Extension of Time Limit for the Preliminary Results of Administrative Review*, 73 FR 45211 (August 4, 2008).

Following the initiation, the Department issued original and supplemental questionnaires to Anqiu Friend and Weifang Shennong. Both companies responded to the Department's questionnaires in a timely manner. During the course of this review, petitioners submitted comments regarding the administrative review. *See* Letter to the Department from Petitioners Re: 13th Administrative Review of Fresh Garlic from the People's Republic of China Comments on Supplemental Section A Questionnaire Responses of Anqiu Friend and Weifang Shennong (October 6, 2008); Letter to the Department from Petitioners Re: 13th Administrative Review and 13th New Shipper Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China (October 16, 2008); and Letter to the Department from Petitioners Re: 13th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China (November 7, 2008).

#### 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

the 30 companies named in the *Rescission Notice*. Thus, after rescinding the review of the additional three companies for no sales, there are 31 companies remaining in this review.

<sup>1</sup> *See* the Memorandum from Blaine H. Wiltse, Case Analyst Office 9, Re: New Shipper Review of Fresh Garlic from the People's Republic of China: Customs Data (March 31, 2008).

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.

### Separate Rates

In proceedings involving non-market economy (NME) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control, and thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of subject merchandise subject to review in an NME country a single rate unless an exporter can demonstrate that it is sufficiently independent of government control to be entitled to a separate rate. *See, e.g., Honey from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 74764, 74766 (December 16, 2005) (unchanged in the final results).

In the administrative review, for companies who were previously assigned a separate rate in a previous segment of this proceeding, the Department normally requires entities to submit a separate-rate certification stating that they continue to meet the criteria for obtaining a separate rate. For entities that were not assigned a separate rate in the previous segment of a proceeding, to demonstrate eligibility for such, the Department requires a separate-rate application. In this administrative review, Jinxiang Dongyun Freezing Storage Co., Ltd. (Jinxiang Dongyun), Qingdao Saturn International Trade Co., Ltd. (Qingdao Saturn), Qufu Dongbao Import & Export Trade Co., Ltd. (Qufu Dongbao), and Shanghai LJ International Trading Co., Ltd. (Shanghai LJ) (collectively, separate-rate respondents), each submitted a separate-rate certification. Anqiu Friend and Weifang Shennong and the four separate-rate respondents each provided company-specific information and each stated that it met the criteria for the assignment of a separate rate. Ningjin, and Yuanli each also provided company-specific information and each stated that it met

the criteria for the assignment of a separate rate. We considered whether Anqiu Friend, Weifang Shennong, Ningjin, and Yuanli were eligible for a separate rate.<sup>3</sup>

The Department's separate-rate status test to determine whether the exporter is independent from government control does not consider, in general, macroeconomic/border-type controls (e.g., export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level.<sup>4</sup>

To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of select criteria, discussed below. *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588, 20589 (May 6, 1991) (*Sparklers*); and *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586-87 (May 2, 1994) (*Silicon Carbide*). Under this test, exporters in NME countries are entitled to separate, company-specific margins when they can demonstrate an absence of government control over exports, both in law (*de jure*) and in fact (*de facto*).

#### 1. 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; or (3) any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589. Anqiu Friend, Weifang Shennong, Ningjin, and Yuanli placed on the administrative records documents to demonstrate an absence of *de jure* control (i.e., the Company Law of the People's Republic of China (revised in 2005), Regulations

<sup>3</sup> The Department has determined that Haoshun's sale was not bona fide and is preliminarily rescinding Haoshun's NSR. Therefore, we are not determining whether Haoshun qualifies for a separate rate, and it will remain part of the PRC-entity.

<sup>4</sup> *See Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less Than Fair Value*, 62 FR 61754, 61758 (November 19, 1997), and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

of PRC on Administration of Registration of Companies (revised in 2005), the Foreign Trade Law of the People's Republic of China (revised in 2004), the Regulations of the People's Republic of China on the Import and Export of Goods, and the Regulations of the People's Republic of China for Controlling the Registration of Enterprises as Legal Persons). As in prior cases, we analyzed the laws presented to us and found them to establish sufficiently an absence of *de jure* control. *See, e.g., Honey from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 102, 105 (January 3, 2007) (unchanged in final results); *Hand Trucks and Certain Parts Thereof from the People's Republic of China: Preliminary Results and Partial Rescission of Administrative Review and Preliminary Results of New Shipper Review*, 72 FR 937, 944 (January 9, 2007) (unchanged in final results). 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 Anqiu Friend, Weifang Shennong, Ningjin, and Yuanli.

The four separate-rate respondents, Jinxiang Dongyun, Qingdao Saturn, Qufu Dongbao, and Shanghai LJ each certified that, as with the previous period where each company was granted a separate rate, there is an absence of *de jure* government control of its exports. Each of the four separate-rate respondents' separate-rate certifications, stated, where applicable, that it 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 jure* control determination with regard to Jinxiang Dongyun, Qingdao Saturn, Qufu Dongbao, and Shanghai LJ.

#### 2. Absence of *De Facto* Control

3. 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 Department typically considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the export prices are set by, or subject to the approval of, a government authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses. See *Silicon Carbide*, 59 FR at 22586–87; see also *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22544–45 (May 8, 1995).

The Department conducted a separate-rate analysis for companies subject to the administrative review that submitted separate rate applications. In their separate-rate applications, the companies requesting separate rates submitted evidence indicating an absence of *de facto* governmental control over their export activities. Specifically, for Anqiu Friend, Weifang Shennong, Ningjin, and Yuanli, the evidence we reviewed indicates that: (1) each company sets its own export prices independent of the government and without the approval of a government authority; (2) each company retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) each company has a general manager, branch manager or division manager with the authority to negotiate and bind the company in an agreement; (4) the general manager is selected by the board of directors or company employees, and the general manager appoints the deputy managers and the manager of each department; and (5) there is no restriction on each company's use of export revenues. The separate-rate applications of each company do not suggest that pricing is coordinated among exporters. During our analysis of the information on the record, we found no information indicating the existence of government control.

The four separate-rate respondents, Jinxiang Dongyun, Qingdao Saturn, Qufu Dongbao, and Shanghai LJ each certified 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. Each of the four separate-rate respondent's

separate-rate certifications, stated, where applicable, that it 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 determination with regard to Jinxiang Dongyun, Qingdao Saturn, Qufu Dongbao, and Shanghai LJ.

Therefore, the Department preliminarily finds that Anqiu Friend, Weifang Shennong, Ningjin, and Yuanli have established, *prima facie*, that they qualify for separate rates under the criteria established by *Silicon Carbide* and *Sparklers*.

The remaining companies subject to this antidumping administrative review (see Attachment 2) did not apply for a separate rate and thus will be assigned the PRC-wide rate for their imports of subject merchandise during the POR.

#### **Preliminary Partial Rescission of Administrative Review**

On January 14, 2008, Hebei Golden Bird Trading Co., Ltd. (Hebei Golden Bird), Jining Yongjia Trade Co. (Jining Yongjia), Ltd., Jinan Farmlady Trading Co., Ltd. (Jinan Farmlady), Qingdao Tiantaixing Foods Co., Ltd. (Qingdao Tiantaixing), and Qingdao Xintianfeng Foods Co., Ltd. (Qingdao Xintianfeng) each certified that they made no shipments of subject merchandise to the United States during the POR. As noted above, the requests for review were withdrawn with respect to Hebei Golden Bird and Jining Yongjia. Therefore, in accordance with 19 CFR 351.213(d)(1), we rescinded the antidumping duty administrative review with respect to these two companies on November 21, 2008. See *Rescission Notice*. The Department's examination of shipment data from CBP for Jinan Farmlady, Qingdao Tiantaixing, and Qingdao Xintianfeng confirmed that there were no entries of subject merchandise from these three companies during the POR. Consequently, because there is no evidence on the record to indicate that these three companies had sales of subject merchandise under this order during the POR, pursuant to 19 CFR 351.213(d)(3), the Department is preliminarily rescinding the review with respect to Jinan Farmlady, Qingdao Tiantaixing, and Qingdao Xintianfeng.

#### **Bona Fide Analysis**

Consistent with the Department's practice, we investigated the bona fide nature of the sale made by each new shipper, *i.e.*, Haoshun, Ningjun, and

Yuanli, for these reviews. In evaluating whether or not a single sale in a new shipper review is commercially reasonable, and therefore *bona fide*, the Department considers, *inter alia*, such factors as: (1) the timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was made on an arm's-length basis. See *Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1250 (CIT 2005). Accordingly, the Department considers a number of factors in its *bona fides* analysis, "all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise." See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1342 (CIT 2005) (citing *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002) and accompanying Issues and Decision Memorandum: New Shipper Review of Clipper Manufacturing Ltd.).

Haoshun: We have preliminarily concluded that the single sale made by Haoshun during the POR is not a *bona fide* commercial transaction based on the totality of circumstances, namely: (a) the high price and low quantity of Haoshun's single POR sale; and (b) other evidence of a non-*bona fide* transaction. Since much of our analysis regarding the evidence of the *bona fides* of the transaction involves business proprietary information, a full discussion of the bases for our preliminary result is set forth in the Memorandum from Scott Lindsay, Senior Case Analyst, Office 6, Re: Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China: *Bona Fide Nature of the Sale Under Review for Haoshun Trade Co. Ltd.* (December 1, 2008) (Haoshun *Bona Fides* Memorandum). In sum, the totality of the circumstances of this sale leads the Department to find that Haoshun's POR sale is not a *bona fide* commercial transaction. Therefore, this sale does not provide a reasonable or reliable basis for calculating a dumping margin. For further information, see *Haoshun Bona Fides* Memorandum. As Haoshun had no other sales of subject merchandise during the instant POR, the Department is preliminarily rescinding the NSR with respect to Haoshun.

Yuanli: We preliminarily find that the sale made by Yuanli was a *bona fide* commercial transaction. Specifically, we found that: (1) the price and quantity of the sale was within the range of the

prices and quantities of other entries of subject merchandise from the PRC into the United States during the POR; (2) Yuanli and its customer did not incur any extraordinary expenses arising from the transaction; (3) the sale was made between unaffiliated parties at arm's length; and (4) the timing of the sale does not indicate that this sale was not *bona fide*. However, we note that there is other evidence on the record that call into question whether Yuanli's sale was *bona fide*. Since much of our analysis regarding the evidence of the *bona fides* of the transaction involves business proprietary information, a full discussion of the bases for our preliminary result is set forth in the Memorandum from Summer Avery, Case Analyst, Office 6, Re: *Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China ("PRC")*: Zhengzhou Yuanli Trading Co., Ltd. (December 1, 2008). Accordingly, we will continue to examine Yuanli's sale after the preliminary results.

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

Ningjin: We preliminarily find that the new shipper sale made by Ningjin was a *bona fide* commercial transaction. Specifically, we found that: (1) the price of the sale was within the range of the prices of other entries of subject merchandise from the PRC into the United States during the POR; (2) neither Ningjin nor its customer incurred any extraordinary expenses arising from the transaction; (3) the sale was made between unaffiliated parties at arm's length; and (4) the timing of the sale does not indicate that this sale was not *bona fide*. However, we note that there is other evidence on the record that call into question whether Ningjin sale was *bona fide*. Since much of our analysis regarding the evidence of the *bona fides* of the transaction involves business proprietary information, a full discussion of the bases for our preliminary result is set forth in the Memorandum from Nicholas

Czajkowski, Case Analyst, Office 6, Re: *Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China ("PRC")*: Ningjin Ruifeng Foodstuff Co., Ltd. (December 1, 2008). Accordingly, we will continue to examine Ningjin's sale after the preliminary results.

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

#### Non-Market Economy Country

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. In the investigation of certain lined paper products from the PRC, the Department examined the PRC's market status and determined that NME status should continue for the PRC. See the Department's memorandum Re: Antidumping Duty Investigation of Certain Lined Paper Products from the People's Republic of China ("China") China's status as a non-market economy (NME), (August 30, 2006). This document is available online at: <http://ia.ita.doc.gov/download/prc-nme-status/prc-lined-paper-memo-08302006.pdf>. 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., Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 71 FR 7013 (February 10, 2006). The presumption of the NME status of the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of these administrative and new shipper reviews. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

#### Surrogate Country

When the Department investigates imports from an NME country, section 773(c)(1) of the Act directs it to base NV,

in most circumstances, on the NME producer's factors of production (FOPs), valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. Moreover, it is the Department's practice to select an appropriate surrogate country based on the availability and reliability of data from the countries. See *Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process* (March 1, 2004) (*Policy Bulletin*).

As discussed in the "Non-Market Economy Country" section above, the Department considers the PRC to be an NME country. Pursuant to section 773(c)(4) of the Act, the Department determined that India, Colombia, Indonesia, the Philippines, and Thailand are countries comparable to the PRC in terms of economic development. See the Memorandum to All Interested Parties Re: The Administrative Review of Fresh Garlic from the People's Republic of China (April 24, 2008) at Attachment 1 and the Memorandum to All Interested Parties Re: New Shipper Review of Fresh Garlic from the People's Republic of China (July 23, 2008) at Attachment 1. Also in accordance with section 773(c)(4) of the Act, the Department has found that India is a significant producer of comparable merchandise. Moreover, the Department finds India to be a reliable source for surrogate values because India is at a similar level of economic development pursuant to 773(c)(4) of the Act, is a significant producer of comparable merchandise, and has publicly available and reliable data. Furthermore, the Department notes that India has been the primary surrogate country in past segments of this proceeding, and the only surrogate value data based submitted on the record are from Indian sources. Given the above facts, the Department has selected India as the primary surrogate country for this review. See the Memorandum from Scott Lindsay, Case Analyst, Office 6, Re: Selection of a Surrogate Country for the Preliminary Results of the 13th Administrative Review (December 1, 2008). The sources of the surrogate factor values are discussed under the "Normal Value" section below and in the Memorandum

from Nicholas Czajkowski, Case Analyst, Office 6, Re: Preliminary Results of the 13th Administrative Review and New Shipper Review of Fresh Garlic from the People's Republic of China: Surrogate Values (December 1, 2008) (Surrogate Values Memorandum).

#### U.S. Price

In accordance with section 772(a) of the Act, we calculated the export price (EP) for sales to the United States for the two administrative review respondents and the three NSR respondents because each company made its sale to an unaffiliated party before the date of importation and the use of constructed EP was not otherwise warranted. We calculated each company's EP based on its price to unaffiliated purchasers in the United States. In accordance with section 772(c) of the Act, as appropriate, we deducted from the starting price to unaffiliated purchasers the expenses for foreign inland freight, international freight, brokerage and handling, marine insurance, warehousing, and U.S. customs duties. For the expenses that were either provided by an NME vendor or paid for using an NME currency, we used surrogate values as appropriate. Where expenses were incurred using a market economy supplier or in a market economy currency, we deducted these expenses directly. See the "Factor Valuations" section below for details regarding the surrogate values for movement expenses.

#### Normal Value

##### 1. Methodology

Section 773(c)(1)(B) of the Act provides that the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department calculates NV using each of the FOPs that a respondent consumes in the production of a unit of the subject merchandise because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies. However, there are circumstances in which the Department will modify its standard FOP methodology, choosing to apply a surrogate value to an intermediate input instead of the individual FOPs used to produce that intermediate input. 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 a surrogate value. See *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 the 11th and 12th administrative reviews, and for the final results of the 11th and 12th NSRs, the Department found that garlic industry producers in the PRC do not generally track actual labor hours incurred for growing, tending, and harvesting activities and, thus, do not maintain appropriate records which would allow most, if not all, respondents to quantify, report, and substantiate this information. See the Memorandum from Scott Lindsay, International Trade Compliance Analyst, Office 6, Re: 13th New Shipper Review of Fresh Garlic from the People's Republic of China Intermediate Methodology Source Documents (December 1, 2008). In the 11th administrative review and NSR, 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) (unchanged in the final results). In the course of these reviews, one company, Haoshun, reported its growing FOPs.<sup>5</sup> Based on our analysis of the information on the record and for the reasons outlined in the Memorandum from Scott Lindsay, Senior Case Analyst, Office 6, Re: 13th New Shipper Review of Fresh

Garlic From the People's Republic of China: Intermediate Input Methodology (December 1, 2008) (Intermediate Input Memorandum), the Department has found that Haoshun was not able to accurately record and substantiate the complete costs of growing garlic during the POR.<sup>6</sup>

Thus, in the preliminary results for these reviews, in order to eliminate the distortions in our calculation of NV, for all of the reasons identified above and described in the Intermediate Input Memorandum, the Department applied an "intermediate-product valuation methodology" to the mandatory administrative review respondents and the NSR respondents for which we are calculating an antidumping duty margin in these preliminary results. Using this methodology, the Department calculated NV by starting with a surrogate value for the garlic bulb (*i.e.*, the "intermediate product"), adjusted for yield losses during the processing stages, and adding the respondents' processing costs, which were calculated using their reported usage rates for processing fresh garlic. For a complete explanation of the Department's analysis with respect to Haoshun, see Intermediate Input Memorandum.

##### 2. Factor Valuations

In accordance with section 773(c) of the Act, the Department calculated NV based on the intermediate product value and processing FOPs reported by the respondents for the POR. To calculate NV, the Department multiplied the reported per-unit factor quantities by publicly available surrogate values in India with the exception of the surrogate value for ocean freight, which we obtained from an international freight company. In selecting the surrogate values, the Department considered the quality, specificity, and contemporaneity of the data. As appropriate, the Department adjusted input prices by including freight costs to make them delivered prices. The Department calculated these freight costs based on the shorter of the reported distance from the domestic supplier to the factory or the distance from the port in accordance with the decision in *Sigma Corporation v. United States*, 117 F.3d 1401 (Fed. Cir. 1997) (*Sigma*). For more information regarding

<sup>5</sup> Ningjin, Yuanli, Anqiu Friend, and Weifang Shennong did not report FOPs related to growing whole garlic bulbs.

<sup>6</sup> Therefore, the Department would apply an intermediate-product valuation methodology to Haoshun if the Department were to calculate a company-specific margin for Haoshun in this proceeding. However, we are not calculating a company-specific margin for Haoshun for these preliminary results since we have found its sale to be not *bona fide*. See "Bona Fide Analysis" section, above.

the Department's valuation for the various FOPs, *see* Surrogate Values Memorandum.

**Garlic Bulb Valuation**

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

The Department has applied an intermediate input methodology for respondents. Therefore, we sought to identify the best available surrogate value for the garlic bulb input to production, as opposed to identifying a surrogate value for garlic seed. *See* Petitioners' October 16, 2007 Comments at 3. For the preliminary results of these reviews we find that data from the Azadpur APMC's "Market Information Bulletin" is the most appropriate information available to value the respondents' garlic bulb input.

In their FOP databases, respondents reported garlic bulb input size ranges for each type of garlic produced and sold to the U.S. during the POR. Respondents reported garlic bulb input sizes ranging between 40 mm and 60 mm. Petitioners submitted data to the Department stating that garlic bulb sizes that range from 55 mm and above are Grade Super-A and garlic bulb sizes that range between 40 mm and 55 mm are Grade A and Grade Super-A. *See* Petitioners' October 16, 2007 Comments at 3. Therefore, for this preliminary determination, we have used Grade Super-A values for bulb input sizes that range from 55 mm and above, and an average of Grade A and Super-A values for bulb input sizes that are in ranges from 40 mm to 55 mm.

To calculate the surrogate value for garlic bulbs, we first averaged all data points from November 2006 to October 2007 for: (1) Grade Super-A; and (2) Grade A. We then subtracted a 7% fee (6% commission fee plus 1% market fee) charged on transactions at the Azadpur APMC from the Grade A and Grade Super-A averages. *See* Surrogate Values Memorandum at Exhibit 3. We then averaged the Grade A and Grade Super-A values for garlic inputs in ranges from 40 mm to 55 mm.

**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 respondents, 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 1117 of the main Commerce building.

**Preliminary Results of Reviews**

As a result of our reviews, we preliminarily determine that the following margins exist for the period November 1, 2006 through October 31, 2007:

**FRESH GARLIC FROM THE PRC 2006-2007 ADMINISTRATIVE REVIEW**

Manufacturer/Exporter	Weighted-Average Margin (Percent)
Anqiu Friend Food Co., Ltd. ....	3.97
Weifang Shennong Foodstuff Co., Ltd. ....	10.17
Jinxiang Dongyun Freezing Storage Co., Ltd. ....	7.07
Qingdao Saturn International Trade Co., Ltd. ....	7.07
Qufu Dongbao Import & Export Trade Co., Ltd. ....	7.07
Shanghai LJ International Trading Co., Ltd. ....	7.07
PRC-wide Rate (see Attachment 2) .....	376.67

**FRESH GARLIC FROM THE PRC 2006-2007 NEW SHIPPER REVIEW**

Exported and Produced by Zhengzhou Yuanli Trading Co., Ltd. ....	26.05
Exported and Produced by Ningjin Ruifeng Foodstuff Co., Ltd. ....	20.39

**FRESH GARLIC FROM THE PRC 2006-2007 NEW SHIPPER REVIEW—Continued**

PRC-wide Rate .....	376.67
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**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).

**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. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs, limited to issues raised in the case briefs, will be due five days later, pursuant to 19 CFR 351.309(d). Parties who submit case or rebuttal briefs in these proceedings are requested to submit with each argument: (1) a statement of the issue, and (2) a brief summary of the argument. Parties are requested to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Additionally, parties are requested to provide its case brief and rebuttal briefs in electronic format (*e.g.*, WordPerfect, Microsoft Word, Adobe Acrobat, etc.). Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration within 30 days of the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in case and rebuttal briefs. The Department will issue the final results of these reviews, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

**Assessment Rates**

Consistent with the final results of the 12th NSR review of Fresh Garlic from the PRC, we will direct CBP to assess importer-specific assessment rates based on the resulting per-unit (*i.e.*, per kilogram) amount on each entry of the subject merchandise during the POR. *See Fresh Garlic from the People's Republic of China: Final Results and Rescission, In Part, of Twelfth New Shipper Reviews*, 73 FR 56550, 56552 (September 29, 2008) (12th NSR of

*Fresh Garlic from the PRC*). Therefore, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this review. For assessment purposes, we will calculate importer-specific assessment rates for fresh garlic from the PRC. 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 the *12th NSR of Fresh Garlic from the PRC*, we will establish and collect a per-kilogram cash-deposit amount which will be equivalent to the company-specific dumping margin published in the final results of these reviews. Specifically, the following cash deposit requirements will be effective upon publication of the final results of these reviews for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(1) of the Act: (1) for subject merchandise exported by Anqiu Friend and exported by Weifang Shennong the cash deposit rates will be the rates determined in the final results of the administrative review (except that if a rate is *de minimis*, *i.e.*, less than 0.50 percent, a zero cash deposit will be required); (2) for subject merchandise produced and exported by Yuanli or produced and exported by Ningjin, the cash deposit rates will be the rates determined in the final results of the new shipper review (except that if a rate is *de minimis*, *i.e.*, less than 0.50 percent, a zero cash deposit will be required); (3) for subject merchandise exported by but not produced by Yuanli or exported by but not produced by Ningjin, the cash deposit rate will be the PRC-wide rate of 376.67 percent; (4) for subject merchandise exported by Jinxiang Dongyun, Qingdao Saturn, Qufu Dongbao, and Shanghai LJ, the cash deposit rates will be the rates determined in the final results of the administrative review (except that if a rate is *de minimis*, *i.e.*, less than 0.50 percent, a zero cash deposit will be

required); (5) for previously-investigated or previously-reviewed PRC and non-PRC exporters who received a separate rate in a prior segment of the proceeding (which were not reviewed in this segment of the proceeding), the cash deposit rate will continue to be the rate assigned in that segment of the proceeding; (6) for subject merchandise exported by Haoshun and all other PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 376.67 percent; and (7) 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.

#### 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.

These administrative and new shipper reviews and notice are in accordance with sections 751(a)(1), 751(a)(2)(B), and 777(i) of the Act and 19 CFR 351.213 and 351.214.

Dated: December 1, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

#### ATTACHMENT 1

Companies currently subject to the administrative review (Preliminarily rescinded companies are not included in this list)

1. Anqiu Friend Food Co., Ltd.
2. Weifang Shennong Foodstuff Co., Ltd.
3. APS Qingdao
4. American Pioneer Shipping
5. Beijing Jim International Food Co., Ltd.
6. Burgeon International Inc.
7. Fujian Meitan Import & Export Xiamen Corporation
8. Jining Meiya Foods Co., Ltd.
9. Jining Trans-High Trading Co., Ltd.
10. Jinxiang County Huaguang Food Import & Export Co., Ltd.
11. Jinxiang Dongyun Freezing Storage Co., Ltd.

(a/k/a Jinxiang Eastward Shipping

Import and Export Limited Company)

12. Junan Auto Imp and Exp Co., Ltd.
13. Linyi Futai Foodstuff Co., Ltd.
14. Marnex (HongKong) Company
15. New Future International Trading Co.
16. Omni Decor China Ltd.
17. Qingdao Rock-It Sports Inc.
18. Qingdao Saturn International Trade Co., Ltd.
19. Qufu Dongbao Import & Export Trade Co., Ltd.
20. Sea Trade International Incorporated
21. Shandong Chengshun Farm Produce Trading Co., Ltd.
22. Shandong Chenhe Int'l Trading Co., Ltd.
23. Shandong Dongsheng Eastsun Foods Co., Ltd.
24. Shandong Garlic Company
25. Shanghai LJ International Trading Co., Ltd.
26. Shanghai New Long March International Trade Co., Ltd.
27. Shenzhen Greening Trading Co., Ltd.
28. Shenzhen Imp & Exp. Ltd.
29. T&S International, LLC
30. Taiwan Wachine Co., Ltd.
31. Taizhou Overseas Int'l Ltd.

#### ATTACHMENT 2

(Companies subject to the PRC-wide rate)

1. APS Qingdao
2. American Pioneer Shipping
3. Beijing Jim International Food Co., Ltd.
4. Burgeon International Inc.
5. Fujian Meitan Import & Export Xiamen Corporation
6. Jining Meiya Foods Co., Ltd.
7. Jining Trans-High Trading Co., Ltd.
8. Jinxiang County Huaguang Food Import & Export Co., Ltd.
9. Junan Auto Imp and Exp Co., Ltd.
10. Linyi Futai Foodstuff Co., Ltd.
11. Marnex (HongKong) Company
12. New Future International Trading Co.
13. Omni Decor China Ltd.
14. Qingdao Rock-It Sports Inc.
15. Sea Trade International Incorporated
16. Shandong Chengshun Farm Produce Trading Co., Ltd.
17. Shandong Chenhe Int'l Trading Co., Ltd.
18. Shandong Dongsheng Eastsun Foods Co., Ltd.
19. Shandong Garlic Company
20. Shanghai New Long March International Trade Co., Ltd.
21. Shenzhen Greening Trading Co., Ltd.
22. Shenzhen Imp & Exp. Ltd.
23. T&S International, LLC
24. Taiwan Wachine Co., Ltd.
25. Taizhou Overseas Int'l Ltd.

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