

attached to this notice as an appendix. The Issues and Decision Memorandum is a public document and is on file in the Central Records Unit ("CRU") in room B-099 in the main Department building, and is also accessible on the Web at <http://ia.ita.doc.gov/frn>. The paper copy and electronic version of the memorandum are identical in content.

#### Changes Since the Preliminary Results

Based on our analysis of comments received, we have made changes in the margin calculations for Feili and New-Tec. See Issues and Decision Memorandum, at Comments 1-15.

- We revised the calculation of the surrogate value for water to use the correct inflation factor.
- We revised the calculation of the surrogate value for air freight in the zero-priced transactions to account for the total weight of each shipment.
- We excluded the zero-priced transactions for all of Feili's and New-Tec's customers that otherwise made no purchases of the same merchandise for consideration during the POR.
- We applied Feili's by-product offset to the cost of direct materials rather than to normal value.

#### Final Results of Review

We determine that the following dumping margins exist for the period June 1, 2004, through May 31, 2005:

Exporter/Manufacturer	Weighted-Average Margin Percentage
Feili* .....	0.24
New-Tec * .....	0.08
The PRC-Wide Entity**	70.71

\* These rates are *de minimis*.

\*\* This includes Anji Jiu, Xiamen Zehui, and Yixiang.

#### Assessment Rates

The Department intends to issue assessment instructions to U.S. Customs and Border Protection ("CBP") 15 days after the date of publication of these final results of review. In accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific assessment rates for merchandise subject to this review. For Feili and New-Tec, we divided the total amount of antidumping duties calculated for each importer by the total entered value of the sales to each importer to calculate *ad valorem* assessment rates. Where the assessment rate is above *de minimis*, we will direct CBP to assess the resulting assessment rates against the entered customs values for the subject merchandise on each importer's entries during the POR.

Where an importer-specific *ad valorem* rate is zero or *de minimis*, we

will order CBP to liquidate appropriate entries without regard to antidumping duties.

#### Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of FMTCs from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by Section 751(a)(1) of the Act: (1) As the final weight-averaged margins for New-Tec and Feili are less than 0.5 percent and, therefore, *de minimis*, no cash deposit of estimated antidumping duties will be required; (2) for previously reviewed or investigated companies not listed above that have a separate rate, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) the cash deposit rate for all other PRC exporters will be 70.71 percent, the current PRC-wide rate; and (4) the cash deposit rate for all non-PRC exporters will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

#### Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties. This notice also serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

We are issuing and publishing this determination and notice in accordance

with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 01, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

#### Appendix

List of Comments and Issues in the Decision Memorandum

*Comment 1*: Market-Economy Purchases

*Comment 2*: Verification

*Comment 3*: Common-Leg Tables

*Comment 4*: Inclusion of Zero-Priced Transactions in the Margin Analysis

*Comment 5a*: Treatment of Zero-Priced Transactions as Indirect Selling Expenses

*Comment 5b*: Calculation of Freight Expenses for Zero-Priced Transactions on a Shipment-Specific Basis

*Comment 5c*: Zero-Priced Merchandise That Was Not Subsequently Sold for Consideration

*Comment 5d*: Calculation of the Importer-Specific Assessment Rates

*Comment 5e*: Negative Values Derived from the Calculation of the Zero-Priced Transactions

*Comment 6*: Material Inputs Provided Free of Charge

*Comment 7*: Additional Charges for Origin Receiving Charge ("ORC") and Automated Manifest System ("AMS")

*Comment 8*: Scrap Offset

*Comment 9*: The Surrogate Value for Polyester Fabric with Down

*Comment 10*: The Inflation Factor for Water

*Comment 11*: Regression-Based Surrogate Value for Labor

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## DEPARTMENT OF COMMERCE

### International Trade Administration

A-570-831

#### Fresh Garlic from the People's Republic of China: Partial Rescission and Preliminary Results of the Eleventh Administrative Review and New Shipper Reviews

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

**SUMMARY:** The Department of Commerce ("the Department") is conducting an administrative review and new shipper review of the antidumping duty order on fresh garlic from the People's Republic of China ("PRC") both covering the period of review ("POR") of November 1, 2004, through October 31, 2005.

The Department initiated an administrative review of 34<sup>1</sup> producers/exporters of subject merchandise from the PRC. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 76024 (December 22, 2005) (“*Administrative Review Initiation*”). On December 28, 2005, the Department also initiated new shipper reviews with respect to Shandong Longtai Fruits & Vegetables Co., Ltd. (“Longtai”), Qingdao Camel Trading Co., Ltd. (“Qingdao Camel”), Qingdao Saturn, Qingdao Xintianfeng Foods Co., Ltd. (“QXF”), and XuZhou Simple.<sup>2</sup> Therefore, this reviews covers 39 companies (34 administrative review companies and 5 new shipper companies).<sup>3</sup>

On June 20, 2006, in accordance with section 351.213(d)(1) of the Department’s regulations, we rescinded the administrative review with respect to nineteen companies: Chengshun, Shanghai LJ, Tianshan, Xi’an, Anqiu Friend, Clipper, H&T, Huaiyang, Yun

Feng, Hongyu, Sanshan, Qingdao Saturn, Qufu Dongbao, Dongyue, Shandong Jining, Fanhui, Dexing, Yisheng and Harmoni. In addition, the Department published a notice of intent to rescind the review in part with respect to two additional companies: Weifang Shennong and Jinan Yipin. The Department is preliminarily rescinding the review with respect to Weifang Shennong and Jinan Yipin (see “Preliminary Partial Rescissions of Administrative Reviews” section below). *See Fresh Garlic from the People’s Republic of China: Notice of Intent to Rescind and Partial Rescission of the 11<sup>th</sup> Administrative Review*, 71 FR 37537 (June 30, 2006) (“*Rescission Notice*”).

Therefore, this review covers fifteen<sup>4</sup> producers/exporters of the subject merchandise and the PRC-wide entity. Also included in these fifteen companies is Xuzhou Simple, who has a concurrent administrative and new shipper review. For these preliminary results, we have calculated an antidumping margin in the new shipper review, which will be the margin also applicable to Xuzhou Simple in this administrative review (see “Xuzhou Simple” section below).

As a result, we preliminarily determine that fifteen (five new shipper review companies and ten administrative review companies)<sup>5</sup> of these companies have made sales in the United States at prices below normal value. 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 the importer-specific assessment rates are above *de minimis*.

**EFFECTIVE DATE:** December 11, 2006.

**FOR FURTHER INFORMATION CONTACT:** Irene Gorelik, AD/CVD Operations, Office 9, Import Administration,

International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482-6905.

#### SUPPLEMENTARY INFORMATION:

##### General 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). On November 1, 2005, 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, 2004, through October 31, 2005. *See Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 70 FR 65883 (November 1, 2005).

##### New Shipper Review Requests

On October 3, 2005, we received a request for a new shipper review of Qingdao Camel. On November 2, 2005, we received a request for a new shipper review of QXF. On November 17, 2005, we received a request for a new shipper review of XuZhou Simple. On November 29, 2005, we received a request for a new shipper review of Qingdao Saturn. On November 30, 2005, we received a request for a new shipper review of Longtai.

##### Administrative Review Requests

On November 15, 2005, we received a request from Heze Ever-Best International Trade Co., Ltd. (“Ever-Best”) for an administrative review. On November 30, 2006, we received a request from Petitioners for an administrative review of 34 companies.<sup>6</sup> On November 30, 2006, we also received requests from Trans-High,

<sup>1</sup> Anqiu Friend Food Co., Ltd. (“Anqiu Friend”), Clipper Manufacturing Ltd. (“Clipper”), Fook Huat Tong Kee Foodstuffs Co., Ltd. (“FHTK”), Heze Ever-Best International Trade Co., Ltd. (“Ever-Best”), who also requested a review on their own behalf, H&T Trading Company (“H&T”), Huaiyang Huamei Foodstuff Co., Ltd. (“Huaiyang”), Huaiyang Hongda Dehydrated Vegetable Company (“Hongda”), Jinxiang Dongyun Freezing Storage Co., Ltd. (“Dongyun”), who also requested a review on their own behalf, Jinxiang Shanyang Freezing Storage Co., Ltd. (“Shanyang Freezing”), who also requested a review on their own behalf, Jinxiang Hongyu Freezing and Storing Co., Ltd. (“Hongyu”), Jinxiang Tianshan Foodstuff Co., Ltd. (“Tianshan”), Jinan Yipin Corporation, Ltd. (“Jinan Yipin”), Jining Trans-High Trading Co., Ltd. and its supplier Jining Yunfeng Agricultural Products Co., Ltd. (collectively, “Trans-High”), Jining Yun Feng Agriculture Products Co., Ltd. (“Yun Feng”), Linshu Dading Private Agricultural Products Co., Ltd. (“Linshu Dading”), Linyi Sanshan Import & Export Trading Co., Ltd. (“Sanshan”), Pizhou Guangda Import and Export Co., Ltd. (“Pizhou Guangda”), Qingdao Saturn International Trade Co., Ltd. (“Qingdao Saturn”), Qufu Dongbao Import & Export Trade Co., Ltd. (“Qufu Dongbao”), Shandong Chengshun Farm Produce Trading Co., Ltd. (“Chengshun”), Shandong Dongyue Produce Co., Ltd. (“Dongyue”), Shandong Jining Jinshan Textile Co., Ltd. (“Shandong Jining”), Shanghai Ever Rich Trade Company (“Ever-Rich”), Shanghai LJ International Trading Co., Ltd. (“Shanghai LJ”), Shenzhen Fanhui Import & Export Co., Ltd. (“Fanhui”), Sunny Import & Export Limited (“Sunny”), Taiyan Ziyang Food Co., Ltd. (“Ziyang”), Tancheng County Dexing Foods Co., Ltd. (“Dexing”), Weifang Shennong Foodstuff Co., Ltd. (“Weifang Shennong”), Xi’an XiongLi Foodstuff Co., Ltd. (“Xi’an”), Xiangcheng Yisheng Foodstuffs Co. (“Yisheng”), XuZhou Simple Garlic Industry Co., Ltd. (“XuZhou Simple”), Zhangqui Qingyuan Vegetable Co., Ltd. (“Qingyuan”), and Zhengzhou Harmoni Spice Co., Ltd. (“Harmoni”).

<sup>2</sup> *See Fresh Garlic from the People’s Republic of China: Initiation of New Shipper Reviews*, 70 FR 76765 (December 28, 2005) (“*New Shipper Initiation*”).

<sup>3</sup> Included in this list of 34 companies is the concurrent new shipper reviews for Qingdao Saturn and Xuzhou Simple.

<sup>4</sup> During the course of this review, the Department obtained information from Pizhou Guangda and its exporter, Ever-Rich, that Pizhou was not an exporter of subject merchandise during this POR. Therefore, the Department is preliminarily rescinding this review with respect to Pizhou Guangda (see “Preliminary Partial Rescissions of Administrative Reviews” section below). Additionally, Ever-Rich claimed that it did not make shipments of subject merchandise to the United States during the POR, which was confirmed by the Department at verification. Therefore, the Department is preliminarily rescinding the review with respect to Ever-Rich (see “Preliminary Partial Rescissions of Administrative Reviews” section below).

<sup>5</sup> Further, we preliminarily determine to use total adverse facts available to determine the rate for QXF and the PRC-wide entity, which included Qingyuan (see the “QXF” and “Qingyuan” sections below).

<sup>6</sup> Petitioners are the members of the Fresh Garlic Producers Association: Christopher Ranch L.L.C.; The Garlic Company; Valley Garlic; and Vessey and Company, Inc. (hereinafter referred to as “Petitioners”). Petitioners requested an administrative review of the following companies: Anqiu Friend, Clipper, FHTK, Ever-Best, who also requested a review on their own behalf, H&T, Huaiyang, Hongda, Dongyun, who also requested a review on their own behalf, Shanyang Freezing, who also requested a review on their own behalf, Hongyu, Tianshan, Jinan Yipin, Trans-High, Yun Feng, Linshu Dading, Sanshan, Pizhou Guangda, Qingdao Saturn, Qufu Dongbao, Chengshun, Dongyue, Shandong Jining, Ever-Rich, Shanghai LJ, Fanhui, Sunny, Ziyang, Dexing, Weifang Shennong, Xi’an, Yisheng, XuZhou Simple, Qingyuan, and Harmoni.

Dongyun and FHTK for an administrative review.

On December 22, 2005, the Department published a notice of initiation of a review for fresh garlic from the PRC, covering the period November 1, 2004, through October 31, 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 76024 (December 22, 2005).<sup>7</sup> On December 28, 2005, the Department published a notice of initiation of new shipper reviews of fresh garlic from the PRC covering the period November 1, 2004, through October 31, 2005. *See Fresh Garlic from the People's Republic of China: Initiation of New Shipper Reviews*, 70 FR 76765 (December 28, 2005).

On February 13, 2006, the Department issued antidumping duty questionnaires to the five companies participating in the new shipper review. On February 24, 2006, the Department issued a memorandum on respondent selection for the administrative review. *See Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration from James C. Doyle, Director, Office 9: Antidumping Duty Administrative Review of Fresh Garlic from the People's Republic of China: Selection of Respondents* (February 24, 2006) ("Respondent Selection Memo").<sup>8</sup> The Department selected the four largest companies as selected respondents based on export volume of fresh garlic from the PRC under review.<sup>9</sup> On February 28, 2006, the Department issued Section A questionnaires to the companies not chosen as selected respondents.

The Department subsequently issued supplemental questionnaires to all companies under review between March 2006 and August 2006.

#### Alignment of Reviews

On April 28, 2006, the Department aligned the statutory time lines of this administrative review and all but one of the new shipper reviews.<sup>10</sup> On August

14, 2006, QXF agreed to waive the new shipper time limits.<sup>11</sup> On August 14, 2006, the Department aligned the statutory time lines of QXF's new shipper review with this administrative review.

#### Extension of Preliminary Results Deadline

On June 14, 2006, the Department published a notice extending the preliminary results time limits of this administrative review and new shipper reviews to October 2, 2006. *See Fresh Garlic from the People's Republic of China: Extension of Time Limits for the Preliminary Results of the 11th Administrative Review and New Shipper Reviews*, 71 FR 34304 (June 14, 2006). On September 19, 2006, the Department published a second notice extending the preliminary results time limits of this administrative review and new shipper reviews to November 16, 2006. *See Fresh Garlic from the People's Republic of China: Extension of Time Limits for the Preliminary Results of the 11th Administrative Review and New Shipper Reviews*, 71 FR 54796 (September 19, 2006). On November 15, 2006, the Department published a third notice extending the preliminary results time limits of this administrative review and new shipper reviews to November 30, 2006. *See Fresh Garlic from the People's Republic of China: Extension of Time Limits for the Preliminary Results of the 11th Administrative Review and New Shipper Reviews*, 71 FR 65502 (November 15, 2006). The final results continue to be due 120 days after the publication of these preliminary results.

#### Surrogate Country and Surrogate Values

On August 31, 2006, September 12, 2006, October 19, 2006, and November 2, 2006, Petitioners submitted surrogate value comments related, in part, to the valuation of the intermediate factor of production, fresh garlic bulbs. On August 31, 2006, October 31, 2006, and November 7, 2006, Linshu, Shanyang Freezing, Sunny and Trans-High (collectively, "LSST") provided their own comments on this factor and also provided comments on Petitioners' submissions. Likewise, on September 8, 2006, and October 30, 2006, Dongyun provided comments on Petitioners' submissions with respect to the valuation of fresh garlic bulbs.

#### Preliminary Partial Rescissions of Administrative Reviews

##### Withdrawal of Review Requests

On March 20, 2006, Petitioners withdrew their request for an administrative review on four companies: Chengshun, Shanghai LJ, Tianshan, and Xi'an. On May 30, 2006, Petitioners withdrew their request for an administrative review on sixteen additional companies: Anqiu Friend, Clipper, H&T, Huaiyang, Yun Feng, Hongyu, Sanshan, Pizhou, Qingdao Saturn, Qufu Dongbao, Dongyue, Shandong Jining, Fanhui, Dexing, Yisheng and Harmoni. On May 30, 2006, Harmoni withdrew its own request for an administrative review. Therefore, because Petitioners' and Harmoni's requests were timely, in accordance with section 351.213(d)(1) of the Department's regulations, we rescinded this review with respect to Chengshun, Shanghai LJ, Tianshan, Xi'an, Anqiu Friend, Clipper, H&T, Huaiyang, Yun Feng, Hongyu, Sanshan, Qingdao Saturn, Qufu Dongbao, Dongyue, Shandong Jining, Fanhui, Dexing, Yisheng and Harmoni. *See Rescission Notice*.

##### Weifang Shennong and Jinan Yipin

On January 17, 2006, Weifang Shennong notified the Department that it had no shipments of subject merchandise to the United States during the POR. On January 27, 2006, Jinan Yipin notified the Department that it had no shipments of subject merchandise to the United States during the POR. The Department reviewed CBP's garlic entry data from the POR, and found no evidence to contradict these statements of no entries or sales of subject merchandise by Weifang Shennong or Jinan Yipin into the United States during the POR. *See Memorandum to the File from Paul Walker, Analyst; 11th Administrative Review of Fresh Garlic from the People's Republic of China: Customs Entry Packages*, dated June 20, 2006. Therefore, absent the submission of any evidence that Weifang Shennong or Jinan Yipin had U.S. entries or sales of subject merchandise during the POR, the Department is preliminarily rescinding the administrative review with respect to these companies.

##### Pizhou Guangda

As noted above, Petitioners requested an administrative review of Pizhou Guangda. *See Administrative Review Initiation*. However, through the course of the review and subsequent verification, the Department was notified by Ever-Rich, an exporter also

<sup>7</sup> The Department initiated an administrative review of 34 companies.

<sup>8</sup> Of the 34 named firms for which the Department initiated an administrative review, 18 firms had both an active request for review and an appropriately submitted Q&V questionnaire response. The following 18 companies were considered in the selection of respondents for this administrative review: Anqiu Friend; Dong Yun; FHTK; Heze; Hongda; Shanyang Freezing; Jinan Yipin; Linshu Dading; Qingdao Saturn; Qufu Dongbao; Ever-Rich; Fanhui; Sunny; Ziyang; Weifang Shennong; Trans-High; XuZhou Simple; and Harmoni.

<sup>9</sup> The selected Respondents are Sunny, Shanyang Freezing, Trans-High, and Dongyun.

<sup>10</sup> See the Department's letter to All Interested Parties, dated April 28, 2006.

<sup>11</sup> See the Department's letter to All Interested Parties, dated August 14, 2006, where the Department notes that QXF agreed to waive the new shipper time limits.

subject to this administrative review and Pizhou Guangda's exporter, that Pizhou Guangda was only a producer of subject merchandise, not an exporter.<sup>12</sup> Furthermore, during the verification conducted by the Department, both Ever-Rich and Pizhou Guangda stated that Pizhou Guangda had not supplied Ever-Rich with any subject merchandise for export to the United States during the POR. See the "Verification" section below. Additionally, on May 30, 2006, Petitioners withdrew their request for an administrative review with respect to Pizhou Guangda. Therefore, for these preliminary results, the Department is preliminarily rescinding the administrative review with respect to Pizhou Guangda in accordance with 19 CFR 351.213(d)(3).

#### Ever-Rich

Ever-Rich claimed that it did not make shipments of subject merchandise to the United States during the POR. We conducted a data query of CBP entry information on subject merchandise which may have been exported by Ever-Rich. In addition, the Department conducted a verification of Ever-Rich's export sales as well as the sales from Ever-Rich's producer of subject merchandise, Pizhou Guangda, as stated above.<sup>13</sup> The Department's verification of Ever-Rich's sales and those of its supplier were consistent with Ever-Rich's statement that it made no sales to the United States. See the "Verification" section below. Therefore, based on the results of our verification, we are preliminarily rescinding the administrative review with respect to Ever-Rich because we found no evidence that it made shipments of the subject merchandise during the POR in accordance with 19 CFR 351.213(d)(3).

#### Trans-High

We reviewed certain entries of subject merchandise exported by Trans-High during the POR. Trans-High informed the Department that it believed that Chinese exporters and/or U.S. importers were improperly identifying Trans-High as the supplier/invoicing company on certain exports of subject merchandise

for importation into the United States. See Trans-High Section C questionnaire response dated April 20, 2006 at C-31. Additionally, Trans-High also submitted invoice documentation, which it had previously provided to CBP, highlighting its suspicion of the improper use of Trans-High's antidumping rate. See *Id.* at Exhibit C-2.

During the course of this review, the Department requested all of Trans-High's POR entry documentation from CBP. The Department reviewed the information contained within the CBP entry documents and the information provided by Trans-High in its questionnaire response. Based on the information submitted by Trans-High and the CBP entry documentation, we agree with Trans-High that certain entries were improperly classified as Trans-High shipments during the POR. For the Department's detailed analysis of the entry documentation in question and Trans-High's own information, see *Memorandum to the File, through Alex Villanueva, Program Manager, Office 9, from Nicole Bankhead, Senior Analyst, Office 9; Company Analysis Memorandum in the Antidumping Duty Administrative Review of Fresh Garlic from the People's Republic of China ("PRC"): Jining Trans-High Trading Co., Ltd. ("Trans-High") and its supplier Jining Yunfeng Agricultural Products Co., Ltd. ("Yun Feng")*, dated November 30, 2006.

#### Xuzhou Simple

XuZhou Simple requested a new shipper review on November 15, 2005. On December 28, 2005, the Department initiated a new shipper review with respect to XuZhou Simple. See *New Shipper Initiation*. In conducting the new shipper review for XuZhou Simple, the Department analyzed the *bona fide* nature of XuZhou Simple's sale to the United States, verified the company's sales and factors of production, and calculated an antidumping duty margin.

Additionally, Petitioners also requested an administrative review with respect to XuZhou Simple, which the Department initiated. See *Administrative Review Initiation*. Although the Department did not select XuZhou Simple as a mandatory respondent in the administrative review, it also did not opt to initiate only the new shipper review for XuZhou Simple. Accordingly, because the Department initiated both a new shipper and administrative review for XuZhou Simple, the Department will apply the rate calculated in the new shipper review for XuZhou Simple's

sales subject to the administrative review.

#### Scope of the Order

The products covered by this antidumping duty 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 antidumping duty 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.

#### Verification

Pursuant to 19 CFR 351.307(b)(iv), we conducted verifications of the sales and factors of production ("FOP") for

<sup>12</sup> See *Memorandum to the File through Alex Villanueva, Program Manager, Office 9 from Paul Walker, Senior Case Analyst: Administrative Review of Fresh Garlic from the People's Republic of China: Verification of Pizhou Guangda Import & Export Co., Ltd. ("Pizhou Guangda Verification Report")*.

<sup>13</sup> See *Memorandum to the File through Alex Villanueva, Program Manager, Office 9 from Paul Walker, Senior Case Analyst: Administrative Review of Fresh Garlic from the People's Republic of China: Verification of Shanghai Ever Rich ("Ever-Rich Verification Report")*.

Longtai<sup>14</sup>, Qingdao Camel<sup>15</sup>, QXF<sup>16</sup>, Qingdao Saturn<sup>17</sup>, and XuZhou Simple<sup>18</sup>. The Department also conducted a sales verification of Ever-Rich and its supplier, Pizhou Guangda.<sup>19</sup>

### New Shipper Reviews Bona Fide Analysis

Consistent with the Department's practice, we investigated the *bona fide* nature of the sales made by Longtai, Qingdao Saturn, Qingdao Camel, and XuZhou Simple for the new shipper reviews. We found that new shipper sales made by Longtai, Qingdao Saturn, Qingdao Camel, and XuZhou Simple

<sup>14</sup> The verification of Longtai's sales and FOPs took place from August 7, 2006 through August 9, 2006. See Memorandum to the file through Alex Villanueva, Program Manager, Office 9, from Nicole Bankhead, Analyst, Office 9: Verification of the Sales and Factors Response of Shandong Longtai Fruits and Vegetables Co., Ltd. in the Antidumping New Shipper Review of Fresh Garlic from the People's Republic of China.

<sup>15</sup> The verification of the FOPs for Lufeng, Qingdao Camel's producer of subject merchandise, took place from August 10, 2006 through August 11, 2006. See Memorandum to the File through Alex Villanueva, Program Manager, Office 9, from Cindy Robinson, Senior Case Analyst, Office 9: Verification of the Factors Response of Jinxiang County Lufeng Agriculture Product Material Co., Ltd. in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China ("Lufeng Verification Report"). The verification of Qingdao Camel's sales took place on August 14, 2006. See Memorandum to the File through Alex Villanueva, Program Manager, Office 9, from Cindy Robinson, Senior Case Analyst: Verification of the Sales Response of Qingdao Camel Trading Co., Ltd. in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China.

<sup>16</sup> The verification of QXF's sales and FOPs took place from August 15, 2006 through August 18, 2006. See Memorandum to the File through Alex Villanueva, Program Manager, Office 9, from Nicole Bankhead, Analyst, Office 9: Verification of the Sales and Factors Response of Qingdao Xintianfeng Foods Co., Ltd. in the Antidumping New Shipper Review of Fresh Garlic from the People's Republic of China ("QXF Verification Report").

<sup>17</sup> The verification of Qingdao Saturn's sales and FOPs took place from August 21, 2006 through August 24, 2006. See Memorandum to the File through Alex Villanueva, Program Manager, Office 9 from Paul Walker, Senior Case Analyst: New Shipper Review of Fresh Garlic from the People's Republic of China: Verification of Qingdao Saturn International Trade Co., Ltd. and Cangshan County Taifeng Agricultural By-Products Processing Co., Ltd. ("Taifeng").

<sup>18</sup> The verification of XuZhou Simple's sales and FOPs took place from August 28, 2006 through August 30, 2006. See Memorandum to the File through Alex Villanueva, Program Manager, Office 9, from Irene Gorelik, Analyst, Office 9: Fresh Garlic from the People's Republic of China ("PRC"): Verification of Sales and Factors of Production for XuZhou Simple Garlic Industry Co., Ltd. ("XuZhou Simple").

<sup>19</sup> The verification of the sales for Ever-Rich's producer of subject merchandise, Pizhou Guangda, took place on August 25, 2006 and the verification of Ever-Rich's sales took place on September 1, 2006. See Ever-Rich Verification Report and Pizhou Guangda Verification Report.

were made on a *bona fide* basis.<sup>20</sup> Based on our investigation into the *bona fide* nature of the sales, the questionnaire responses submitted by the companies, and our verifications thereof, as well the companies' eligibility for a separate rate (see Separate Rates section below) and the Department's preliminary determination that Longtai, Qingdao Saturn, Qingdao Camel, and XuZhou Simple were not affiliated with any exporter or producer that had previously shipped subject merchandise to the United States, we preliminarily determine that the above-named respondents have met the requirements to qualify as a new shipper during the POR. Therefore, for purposes of these preliminary results of the review, we are treating Longtai's, Qingdao Saturn's, Qingdao Camel's, and XuZhou Simple's respective sales of subject merchandise to the United States as an appropriate transactions for this new shipper review.<sup>21</sup>

### 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 *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 has contested such

<sup>20</sup> The Department did not conduct a *bona fide* analysis of QXF's sales because QXF is receiving total adverse facts available. See "QXF" section below. However, QXF did receive a separate rate as part of the Department's analysis of the absence of *de jure* and *de facto* control. See "Separate Rates Determination" below.

<sup>21</sup> See Memorandum from Nicole Bankhead, Senior Analyst, Office 9, through Alex Villanueva, Program Manager, Office 9, to James C. Doyle, Director, Office 9: Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Fresh Garlic: Longtai, dated November 16, 2006 ("Longtai Prelim Bona Fide Memo"); Memorandum from Paul Walker, Senior Analyst, Office 9, through Alex Villanueva, Program Manager, Office 9, to James C. Doyle, Office Director, Office 9: Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Fresh Garlic: Qingdao Saturn Trading Co., Ltd., dated November 16, 2006 ("Qingdao Saturn Prelim Bona Fide Memo"); Memorandum from Irene Gorelik, Analyst, Office 9, through Alex Villanueva, Program Manager, Office 9, to James C. Doyle, Office Director, Office 9: Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China ("PRC"): XuZhou Simple Garlic Industry Co., Ltd., dated November 16, 2006 ("XuZhou Simple Prelim Bona Fide Memo").

treatment. Accordingly, we calculated normal value ("NV") in accordance with section 773(c) of the Act, which applies to NME countries.

### Separate Rates Determination

A designation as an NME remains in effect until it is revoked by the Department. See section 771(18)(C) 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. See e.g., *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079 (September 8, 2006) and *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006).

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 exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in the *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("Silicon Carbide").

### A. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; and (2) any legislative enactments decentralizing control of companies.

Throughout the course of this administrative review and new shipper reviews, the new shipper companies (Longtai, Qingdao Saturn, QXF, Qingdao Camel, XuZhou Simple) and the administrative review companies (Sunny, Trans-High, Shanyang Freezing, and Dongyun) have placed sufficient evidence on the record that

demonstrate absence of *de jure* control. Additionally, FHTK, Ever-Best, Hongda, Linshu Dading, and Ziyang, the non-selected respondents seeking a separate rate, have placed on the record a number of documents to demonstrate absence of *de jure* control including the "Foreign Trade Law of the People's Republic of China" and the "Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations." The Department has analyzed such PRC laws and found that they establish an absence of *de jure* control. See, e.g., *Preliminary Results of New Shipper Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 30695 (June 7, 2001). We have no information in this proceeding that would cause us to reconsider this determination. Thus, we believe that the evidence on the record supports a preliminary finding of an absence of *de jure* government control based on: (1) an absence of restrictive stipulations associated with the exporter's business license; and (2) the legal authority on the record decentralizing control over the respondent.<sup>22</sup>

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

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. See *Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255 (December 31, 1998). Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether 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 exporter sets its own export prices independent of the government and without the approval of a government authority; (2) whether the respondent has the 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 its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

The Department conducted a separate rates analysis for (1) the new shipper companies under review: Longtai, Qingdao Saturn, QXF, Qingdao Camel, and XuZhou Simple; (2) the selected respondents chosen for an administrative review: Sunny, Trans-High, Shanyang Freezing, and Dongyun; and (3) the companies upon which an administrative review was requested but not chosen as a selected respondent: FHTK, Ever-Best, Hongda, Linshu Dading, and Ziyang.

The following new shipper review companies and administrative review selected respondents (Longtai, Qingdao Saturn, QXF, Qingdao Camel, XuZhou Simple, Sunny, Trans-High, Shanyang Freezing, and Dongyun) reported that they are limited-liability companies owned by private investors. Four of the non-selected respondents of this administrative review, Ziyang, Hongda, Linshu Dading, and Ever-Best, also reported that they are limited-liability companies owned by private investors. However, one non-selected respondent in this administrative review, FHTK, reported that it is wholly owned by foreign entities. Therefore, an additional separate-rates analysis is not necessary to determine whether FHTK's export activities are independent from government control. See *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China*, 64 FR 71104, 71105 (December 20, 1999) (where the respondent was wholly foreign-owned, thus, qualified for a separate rate).

These companies have all asserted the following: (1) there is no government participation in setting export prices; (2) sales managers and authorized employees have the authority to bind sales contracts; (3) they do not have to notify any government authorities of management selections; (4) there are no restrictions on the use of export revenue; (5) each is responsible for financing its own losses. The questionnaire responses of the new shipper companies (Longtai, Qingdao Saturn, QXF, Qingdao Camel, XuZhou Simple), the selected respondents of the administrative review (Sunny, Trans-High, Shanyang Freezing, and Dongyun) and the non-selected respondents of the administrative review (Ever-Best, Hongda, Linshu Dading, and Ziyang) 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. Consequently, we preliminarily determine that Longtai, Qingdao Saturn, QXF, Qingdao Camel, XuZhou Simple, Sunny, Trans-High, Shanyang Freezing, Dongyun, FHTK, Ever-Best, Hongda, Linshu Dading, and Ziyang have met the criteria for the application of a separate rate.

#### Surrogate Country

When the Department is investigating 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 factors of production, 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. The sources of the surrogate factor values are discussed under the "Normal Value" section below and in *Memorandum to the File through James C. Doyle, Director, Office 9 and Alex Villanueva, Program Manager, Office 9 from Paul Walker, Senior Analyst, Office 9: Surrogate Factor Valuations for the Preliminary Results of the 11<sup>th</sup> Administrative Review and New Shipper Reviews*, November 30, 2006 ("Factor Valuation Memo").

As discussed in the "Separate Rates" section, the Department considers the PRC to be an NME country. The Department has treated the PRC as an NME country in all previous antidumping proceedings. 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. None of the parties to this proceeding contested such treatment. Accordingly, we treated the PRC as an NME country for purposes of this review and calculated NV, pursuant to section 773(c) of the Act, by valuing the FOPs in a surrogate country.

The Department determined that India, Sri Lanka, Indonesia, Philippines, and Egypt are countries comparable to the PRC in terms of economic development. See *Memorandum from Ron Lorentzen, Director, Office of Policy, to Alex Villanueva, Program*

<sup>22</sup> This preliminary finding applies to (1) the selected respondents of this administrative review: Sunny, Trans-High, Shanyang Freezing, and Dongyun; (2) the new shipper companies under review: Longtai, Qingdao Saturn, QXF, Qingdao Camel, and XuZhou Simple; and (3) the non-selected respondents of this administrative review seeking a separate rate: FHTK, Ever-Best, Hongda, Linshu Dading, and Ziyang.



*Manager, China/NME Group, Office 9: Antidumping Administrative Review of Fresh Garlic from the People's Republic of China: Request for a List of Surrogate Countries*, (January 18, 2006) ("Surrogate Country List"). 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"). In this case, we have found that India and Egypt are both significant producers of comparable merchandise. Therefore, we find 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 publically available and reliable data. See *Memorandum to the File, through James C. Doyle, Office Director, Office 9, Import Administration, and Alex Villanueva, Program Manager, Office 9, from Cindy Lai Robinson, Senior Analyst, Subject: Antidumping Duty New Shipper Reviews and 11<sup>th</sup> Administrative Review of Fresh Garlic from the People's Republic of China: Selection of a Surrogate Country*, (November 30, 2006) ("Surrogate Country Memo"). Furthermore, we note that India has been the primary surrogate country in past segments and both Petitioners and Respondents submitted surrogate values based on Indian import data that are contemporaneous to the POR, which gives further credence to the use of India as a surrogate country.

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in an antidumping administrative review and a new shipper review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results.

#### Adverse Facts Available

Section 776(a)(2) of the Tariff Act of 1930, as amended (the "Act"), provides that, if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 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, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that if an interested party "promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative form in which such party is able to submit the information," the Department may modify the requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed "deficient" under section 782(d) if: (1) the information is submitted by the established deadline; (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; and (5) the information can be used without undue difficulties.

Furthermore, section 776(b) of the Act states that if the Department "finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission ..., in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available." See also Statement of Administrative Action (SAA) accompanying the URAA, H.R. Rep. No. 103-316 at 870 (1994).

#### Qingdao Camel

For these preliminary results, in accordance with sections 776(a)(2)(A) and 776(a)(2)(B) of the Act, we have determined that the use of facts available is appropriate for Qingdao

Camel's reported labor and electricity usage. In addition, we have determined that facts available is appropriate for Qingdao Camel's reported distances between the individual factor supplier and Qingdao Camel's producer, Jinxiang County Lufeng Agriculture Product Material Co., Ltd. ("Lufeng") in accordance with section 776(a)(2)(D) of the Act. Finally, we have also determined that in accordance with section 776(a)(2)(A) of the Act, the use of facts available is appropriate for Qingdao Camel's unreported consumption of mesh bags.

#### Labor

In these preliminary results, because Lufeng was unable to provide the requested supporting documentation concerning the actual number of labor hours used to process and pack the subject merchandise, we applied facts available to Lufeng's usage of processing and packing labor pursuant to section 776(a)(2)(A) of the Act.

In Qingdao Camel's original section D questionnaire response dated April 4, 2006, Lufeng stated that it records the labor time and the processed and packed product quantity of garlic it produced in the pay bills. The Department issued two supplemental questionnaires requesting Lufeng to provide the actual labor hours usage for processing and packing. In its first section D supplemental response, Lufeng provided certain labor worksheets but none of the worksheets recorded the actual labor hours used for processing and packing the subject merchandise. See Qingdao Camel's May 1, 2006 submission at 11 and Exhibits 9 and 10. In its second section D supplemental response, Lufeng stated again that its labor hours for processing and packing is calculated based on pay bills, and the corresponding exhibit indicated that the processing labor was reported based on processing quantity. See Qingdao Camel's July 19, 2006 submission at 10 and Exhibit 9. At verification, Lufeng stated that its processing and packing is a continuous operation and its workers were paid by the weight of garlic processed, but no records were kept to track the actual hours worked. See *Lufeng Verification Report* at 11. See also *Memorandum to the File through Alex Villanueva, Program Manager, Office 9 from Cindy Lai Robinson, Senior Analyst, Office 9; Company Analysis Memorandum in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China ("PRC")*: Qingdao Camel Trading Co., Ltd. at 5 ("Qingdao Camel Analysis Memo"). Because Lufeng did not provide the actual labor

hours used for processing and packing the subject merchandise after the Department's repeated requests, we applied facts available to Lufeng's labor pursuant to section 776(a)(2)(A) of the Act.

Because Lufeng could not provide the requested information in the form or manner requested concerning processing and packing labor, in accordance with section 776(a)(2)(B) of the Act, we found it appropriate to apply facts available to Lufeng's consumption of processing and packing labor.

As stated above, Lufeng could not provide the consumption of processing and packing labor in the form or manner that the Department requested. The Department provided Lufeng with additional opportunities to submit the requested information. However, Lufeng still did not do so. The Department cannot rely on Lufeng's submitted information for processing and packing labor to derive an accurate dumping margin. It is the Department's practice to calculate the dumping margin based on the actual processing and packing labor hours worked. *See Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews*, 71 FR 26329, 26330 (May 4, 2006) ("10<sup>th</sup> Review Final Results"). Because Lufeng could not provide the necessary information in the form or manner requested, we applied facts available to Lufeng's processing and packing labor pursuant to sections 776(a)(2)(A) and (B) of the Act.

#### Electricity

In these preliminary results, because Lufeng could not provide the requested supporting documentation concerning its usage of electricity during the packing stage ("packing electricity"), we applied facts available to Lufeng's consumption of packing electricity pursuant to sections 776(a)(2)(A) and (B) of the Act.

Lufeng did not provide any explanation or supporting documents concerning its usage of packing electricity in its original Section D questionnaire response dated April 4, 2006. In its May 1, 2006, supplemental response, Lufeng noted that its packing electricity is an estimated figure but it did not provide any supporting documents. *See Qingdao Camel's May 1, 2006 submission at 12.* At verification, the Department requested supporting documentation for Lufeng's reported packing electricity. Lufeng again indicated that its reported electricity consumption for packing is an estimate

which is calculated based on the packing machine's capacity and the quantity packed. Lufeng also stated that it does not have any records tracking the actual electricity consumption for packing. *See Lufeng Verification Report at 10. See also Qingdao Camel Analysis Memo at 5.* Because Lufeng did not provide the requested supporting documents for its consumption of packing electricity, we applied facts available to Lufeng's packing electricity pursuant to section 776(a)(2)(A) of the Act.

Because Lufeng could not provide the requested information in the form or manner requested concerning packing electricity, we found it appropriate to apply facts available to Lufeng's consumption of packing electricity in accordance with section 776(a)(2)(B) of the Act.

As stated above, Lufeng could not provide the packing electricity consumption in the form or manner that the Department requested. The Department provided Lufeng with additional opportunities to submit the requested information. However, Lufeng still did not do so. The Department cannot rely on Lufeng's submitted information for packing electricity to derive an accurate dumping margin. It is the Department's practice to calculate the dumping margin based on the actual packing electricity. *See 10<sup>th</sup> Review Final Results.* Therefore, we applied facts available to Lufeng's electricity consumption pursuant to sections 776(a)(2)(A) and (B) of the Act.

#### Supplier Distance

In these preliminary results, because Lufeng could not provide the requested supporting documentation concerning its supplier distance at verification, we applied facts available to Lufeng's supplier distance pursuant to section 776(a)(2)(D) of the Act.

Lufeng provided its suppliers' information in Exhibit 7 of Qingdao Camel's May 1, 2006 submission. At verification, we requested that Lufeng provide information to support its reported supplier distances, but Lufeng did not provide such information and therefore, it cannot be verified. *See Lufeng Verification Report at 12. See also Qingdao Camel Analysis Memo at 5.* Because the Department could not verify the supplier distances submitted by Lufeng, the Department cannot rely on Lufeng's submitted information for supplier distances to derive an accurate dumping margin. Therefore, we applied facts available to Lufeng's supplier distances pursuant to section 776(a)(2)(D) of the Act.

#### Mesh Bags

In these preliminary results, because Lufeng withheld information concerning mesh bags used to pack the subject merchandise, we applied facts available to Lufeng's usage of mesh bags pursuant to section 776(a)(2)(A) of the Act.

Lufeng did not report mesh bags consumption in Qingdao Camel's three submissions of FOP data dated April 4, 2006, May 1, 2006, and July 19, 2006, respectively. At verification, we discovered that Lufeng did use mesh bags to pack the subject merchandise. *See Lufeng Verification Report at 11. See also Qingdao Camel Analysis Memo at 6.* Because Lufeng withheld this data and failed to report its actual mesh bags consumption to the Department, despite the Department's giving Lufeng three additional opportunities to correct its FOP data, we applied facts available for Lufeng's mesh bags consumption pursuant to section 776(a)(2)(A) of the Act.

#### Use of partial adverse facts available ("AFA")

Section 776(b) of the Act states that if the Department "finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission ..., in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available." *See also Statement of Administrative Action (SAA) accompanying the URAA, H.R. Rep. No. 103-316 at 870 (1994).* An adverse inference may include reliance on information derived from the Petition, the final determination in the investigation, any previous review, or any other information placed on the record. *See section 776(b) of the Act.*

In this instance, Lufeng failed to act to the best of its ability to comply with the Department's repeated requests for information for all four factors discussed above: labor for processing and packing, packing electricity, supplier distances, and mesh bags. Lufeng reported consumption figures in the factors of production database for three of these four factors. However, it was only at verification that it became clear that the numbers Lufeng provided in its response for these factors had no basis in documentary evidence of actual consumption and moreover, that a previously unreported factor of production existed. Lufeng was given



several opportunities to provide the requested information but it failed to do so. Throughout the proceeding, Lufeng did not indicate that it was unable to submit the information requested in the requested form and manner, neither did Lufeng provide a full explanation or suggest an alternative form in which to submit the information, in accordance with section 782(c)(1) of the Act. Therefore, we find it appropriate to apply a partial AFA for these four factors used by Lufeng in these preliminary results, pursuant to section 776(b) of the Act.

As partial AFA for labor, electricity, and mesh bags, we averaged the top three usage ratios of each of the three inputs, reported by other respondents subject to this administrative review and new shipper reviews, and applied that average usage ratio to Lufeng's reported consumption of labor, electricity, and mesh bags. *See Malleable Iron Pipe Fittings From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 37051 (June 29, 2006) (where the Department assigned partial AFA to a respondent's FOP data due to its failure to cooperate to the best of its ability in reporting accurate FOP consumption data).

With respect to Lufeng's suppliers distance, we are applying Lufeng's reported sigma distance (distance from plant to port) for all of Lufeng's applicable factors. *See Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review*, 70 FR 54361 (September 14, 2005). *See also Qingdao Camel Analysis Memo* at 6.

Notably, all of the information used as partial AFA with respect to Lufeng's calculations are derived from other reviewed respondents' information on the record and, therefore, the requirements involving secondary information of section 776(c) of the Act do not apply in this case.

#### QXF

For these preliminary results, in accordance with sections 776(a)(2)(A),(B),(C)&(D) of the Act, we have determined that the use of facts available is appropriate for QXF.<sup>23</sup> Specifically, we find that facts available is warranted under section 776(a)(2)(A) of the Act because QXF withheld information pertaining to affiliations, its relationship with its United States customer, and its reported usage rate of certain factors of production, including

the garlic bulb. Second, we find that facts available is warranted under section 776(a)(2)(B) of the Act because QXF did not provide the above information in a timely manner. Additionally, facts available is warranted under section 776(a)(2)(C) of the Act because QXF impeded the instant proceeding regarding the overpayment it received for its POR sale, its unreported affiliations, its relationship with its U.S. customer, and its reporting of certain factors of production. Finally, we find that facts available is warranted under section 776(a)(2)(D) of the Act because we were unable to verify the overpayment QXF received during the POR and its affiliations. *See Memorandum to James Doyle, Director, Office 9 through Alex Villanueva, Program Manager, Office 9, from Nicole Bankhead, Senior Case Analyst, Office 9; New Shipper Review of Fresh Garlic from People's Republic of China: Application of Adverse Facts Available to Qingdao Xintianfeng Foods Co., Ltd.*, dated November 30, 2006 ("QXF AFA Memo").

#### AFA

In selecting from among facts available, pursuant to section 776(b) of the Act, an adverse inference is warranted when the Department has determined that a respondent has "failed to cooperate by not acting to the best of its ability to comply with a request for information." Section 776(b) of the Act goes on to note that an adverse inference may include reliance on information derived from (1) the petition; (2) a final determination in the investigation under this title; (3) any previous review under section 751 or determination under section 753, or (4) any other information on the record.

Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See SAA accompanying the URAA*, H.R. Doc. No. 103-316, Vol. 1 at 870 (1994); *Mannesmannrohren-Werke AG v. United States*, 77 F. Supp. 2d 1302 (CIT 1999). The Court of Appeals for the Federal Circuit (CAFC), in *Nippon Steel Corporation v. United States*, 337 F. 3d 1373, 1382 (Fed. Cir. 2003), provided an explanation of the "failure to act to the best of its ability" standard, stating that the ordinary meaning of "best" means "one's maximum effort," and that the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum it is able to do. *Id.* The CAFC acknowledged, however, that "deliberate concealment or inaccurate reporting" would certainly

be sufficient to find that a respondent did not act to the best of its ability, although it indicated that inadequate responses to agency inquiries "would suffice" as well. *Id.* Compliance with the "best of the ability" standard is determined by assessing whether a respondent has put forth its maximum effort to provide the Department with full and complete answers to all inquiries in an investigation. *Id.* The CAFC further noted that while the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping. *Id.*

As discussed below, we determine that, within the meaning of section 776(b) of the Act, QXF failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information, and that the application of adverse facts available ("AFA") is warranted. The Department finds that QXF failed to cooperate to the best of its ability because it did not respond accurately to the Department's questions on such basic information as payment received for its POR sale, affiliations, and production data. QXF could have complied with the Department's request to respond accurately to the Department's initial questionnaire, requests for supplemental information, and questions asked at verification. In numerous cases, it did not. Instead it provided conflicting answers, inaccurate responses, or simply withheld information altogether.

For example, the Department's original questionnaire on page D1 requested that QXF contact the official in charge should it have questions concerning the reporting of factors of production. *See* the Department's original questionnaire dated February 13, 2006. We note that at no time in the course of this proceeding did QXF contact the Department with respect to reporting requirements for factors of production. However, at verification the Department discovered that QXF withheld information from the Department pertaining to purchases of garlic (other than that from its own farms) because it did not think it was "relevant." *See* QXF Verification Report at 11.

Similarly, QXF withheld information concerning its affiliations. During verification, QXF stated that it had no affiliations other than the ones reported in its questionnaire responses. However, during the course of verification the Department discovered a business license for another company. When the team questioned QXF about this other

<sup>23</sup> As stated above, QXF is receiving a separate rate.

company, QXF provided information regarding this affiliate to the Department. Thus, QXF withheld information concerning its affiliate until the Department discovered information to the contrary at verification.

In light of the sheer volume of missing, contradictory, or withheld information from the record by QXF, the Department has determined that there is a “pattern of behavior” by QXF that warrants an application of adverse inferences in this case. *See Borden, Inc. v. United States*, 22 C.I.T. 1153, 1154 (1998) (affirming the Department’s application of adverse facts available based on the respondent’s “pattern of behavior”). QXF did not act to the best of its ability in responding to numerous, important questionnaires during the administrative review and as a result, the Department has little confidence in the record before it. Furthermore, the extent of the discrepancies and questionable data is so great, that the Department has determined that it must apply total AFA to the record for QXF, pursuant to section 776(b) of the Act. *See Steel Authority of India, Ltd. v. United States*, 25 C.I.T. 482, 149 F.Supp. 2d 921, 928 (CIT 2001) (“Moreover, if the Department were forced to use the partial information submitted by respondents, interested parties would be able to manipulate the process by submitting only beneficial information. Respondents, not the Department, would have the ultimate control to determine what information would be used for the margin calculation. This is in direct contradiction to the policy behind the use of facts available. *See Rhone Poulenc, Inc. v. United States*, 13 CIT 218, 225, 710 F.Supp. 341, 347 (1989), *aff’d*, *Rhone Poulenc*, 899 F.2d 1185 (holding that the BIA rule, the forerunner to facts available, is designed to “prevent a respondent from controlling the results of an administrative review by providing partial information”). As a result, the Department’s interpretation of the statute is consistent with the purpose of the anti-dumping provisions, demonstrating the reasonableness of its interpretation.”); *see also Steel Authority of India, Ltd. v. U.S.*, 25 C.I.T. 1390 (2001) (affirming the Department’s remand).

QXF consistently failed to provide the Department with truthful and/or complete responses during the new shipper review and the application of total AFA in this case is therefore appropriate because it should not be rewarded by “obtaining a more favorable result by failing to cooperate

than had it cooperated fully.” *SAA* at 870.

Section 776(c) of the Act requires that the Department corroborate, to the extent practicable, secondary information used as facts available. Secondary information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.” *See SAA* at 870 and 19 CFR 351.308(d).

The information used in calculating this margin was based on “best information available” from the LTFV investigation. This rate is the current PRC-wide rate. Moreover, as there is no information on the record of this review that demonstrates that this rate is not appropriate to use as AFA in the current review. Accordingly, we determine that this rate has relevance. As this rate is both reliable and relevant, we determine that it has probative value. Accordingly, we have determined that the selected rate of 376.67 percent, the highest rates from any segment of this proceeding (*i.e.*, the calculated and current PRC-wide rate), is in accordance with section 776(c)’s requirement that secondary information be corroborated (*i.e.*, that it have probative value). For more information, *see QXF AFA Memo*.

#### PRC-Wide Entity/Qingyuan

As mentioned in the “Summary” section above, the Department initiated an administrative review with respect to Qingyuan. Subsequently, on January 6, 2006, and January 13, 2006, respectively, the Department made two requests for Qingyuan’s quantity and value information, which the Department never received. Qingyuan did not submit comments during the course of the review regarding its status in this proceeding. As such, we find it appropriate to apply facts available to Qingyuan in accordance with sections 776(a)(2)(A) and (B) of the Act. Moreover, we find that Qingyuan did not cooperate to the best of its ability and therefore, adverse facts available is appropriate. As Qingyuan did not provide the information necessary to conduct a separate rates analysis, we also consider Qingyuan as part of the PRC-wide entity. Therefore, an adverse inference is appropriate to the PRC-wide entity (including Qingyuan) in accordance with section 776(b) of the Act.

Under section 782(c) of the Act, a respondent has a responsibility not only to notify the Department if it is unable to provide the requested information but also to provide a full explanation as to

why it cannot provide the information and suggest alternative forms in which it is able to submit the information. Because Qingyuan did not establish its entitlement to a separate rate and failed to provide requested information, we find that, in accordance with sections 776(a)(2)(A) and (B) of the Act, it is appropriate to base the PRC-wide margin in these reviews on facts available.<sup>24</sup>

Section 776(b) of the Act permits the Department to use as AFA information derived in the LTFV investigation or any prior review. In selecting an AFA rate, where warranted, the Department’s practice has been to assign respondents who fail to cooperate with the Department’s requests for information the highest margin determined for any party in the LTFV investigation or in any administrative review.<sup>25</sup> As AFA, we are assigning to the PRC-wide entity’s sales of fresh garlic 376.67 percent. As stated above, the Department notes that, pursuant to section 776(c) of the Act, the PRC-wide rate of 376.67 percent has been corroborated. As there is no information on the record of this review that demonstrates that this rates is not appropriate to use as AFA, we determine that this rate has relevance. As this rate is both reliable and relevant, we determine that it has probative value and has been corroborated, to the extent practicable and as necessary, in accordance with section 776(c) of the Act.

#### 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 Longtai, Qingdao Camel, Qingdao Saturn, XuZhou Simple, Trans-High, Sunny, Shanyang Freezing, and Dongyun because the first sale to an unaffiliated party was made before the date of importation and the use of

<sup>24</sup> *See, e.g., Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People’s Republic of China: Final Results of Antidumping Duty Administrative Reviews and Final Rescission and Partial Rescission of Antidumping Duty Administrative Reviews*, 71 FR 54269 (September 14, 2006) and *Final Results of Antidumping Duty Administrative Review for Two Manufacturers/ Exporters: Certain Preserved Mushrooms from the People’s Republic of China*, 65 FR 50183, 50184 (August 17, 2000).

<sup>25</sup> *See, e.g., Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People’s Republic of China: Final Results of Antidumping Duty Administrative Reviews and Final Rescission and Partial Rescission of Antidumping Duty Administrative Reviews*, 71 FR 54269 (September 14, 2006) and *Stainless Steel Plate in Coils from Taiwan: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 67 FR 5789 (February 7, 2002).

constructed EP ("CEP") was not otherwise warranted. We calculated EP based on the 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 foreign inland freight and brokerage and handling. For Qingdao Saturn, Qingdao Camel, XuZhou Simple, Sunny, Trans-High, Dongyun, and Shanyang Freezing, each of these services was either provided by an NME vendor or paid for using an NME currency. Thus, we based the deduction of these movement charges on surrogate values. See *Factors Valuation Memo* for details regarding the surrogate values for movement expenses. Additionally, Longtai reported expenses beyond foreign inland freight and brokerage and handling that must be deducted from the starting price to unaffiliated purchasers. Accordingly, we will deduct the U.S. brokerage and handling expense and the U.S. customs duty expense from the starting price to unaffiliated purchasers, as reported by Longtai. See *Memorandum to the File, through Alex Villanueva, Program Manager, Office 9, from Nicole Bankhead, Senior Analyst, Office 9; Company Analysis Memorandum in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China ("PRC"): Shandong Longtai Fruits & Vegetables Co., Ltd. ("Longtai")*, dated November 30, 2006.

## Normal Value

### 1. Methodology

The Department's general policy, consistent with section 773(c)(1)(B) of the Act, is to calculate NV using each of the FOPs that a respondent consumes in the production of a unit of the subject merchandise. There are circumstances, however, 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, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China*, 68

FR 4753 (August 11, 2003), and accompanying Issues and Decision Memorandum at Comment 1 ("PVA") (which cites to *Certain Preserved Mushrooms from the People's Republic of China: Final Results of First New Shipper Review and First Antidumping Duty Administrative Review*, 66 FR 31204 (June 11, 2001), and accompanying Issues and Decision Memorandum at Comment 2 ("Mushrooms")).

In the 9<sup>th</sup> Review Final Results, the Department recognized that there were serious discrepancies between the reported FOPs of the different respondents and that the standard FOP methodology might not be adequate to apply in future reviews.<sup>26</sup> For the final results of the tenth administrative review, the Department determined that, to capture the complete costs of producing fresh garlic, the methodology of valuing the intermediate product, fresh garlic bulb, would more accurately capture the complete costs of producing subject merchandise.<sup>27</sup> In the 10<sup>th</sup> administrative review, we also stated that "should a respondent be able 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 10<sup>th</sup> Review Final Results at 26331.

In the course of this review, the Department has requested and obtained a vast amount of detailed information from the respondents with respect to each company's garlic production practices. Based on our analysis of the information on the record and for the reasons outlined in the *Memorandum to the File through James C. Doyle, Director, Office 9 and Alex Villanueva, Program Manager, Office 9 from Paul Walker, Senior Analyst, Office 9: 11<sup>th</sup> Administrative Review and New Shipper Review of the Antidumping Duty Order on Fresh Garlic From the People's Republic of China: Intermediate Input Methodology*, November 30, 2006 ("Intermediate Product Memo"), we continue to believe that the respondents were unable to accurately record and substantiate the complete costs of growing garlic during the POR.

<sup>26</sup> See *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 34082 (June 13, 2005) ("9<sup>th</sup> Review Final Results").

<sup>27</sup> See 10<sup>th</sup> Review Final Results and accompanying Issues and Decision Memorandum at Comment 1.

Thus, in the preliminary results of review, in order to eliminate the distortions in our calculation of NV for all of the reasons identified above and described in the *Intermediate Product Memo*, we applied an "intermediate-product valuation methodology" to all companies. Using this methodology, we 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, and for a more detailed analysis of these issues with respect to each respondent, see *Intermediate Product Memo*.

### 2. Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on the intermediate product value and processing FOPs reported by the respondents for the POR. To calculate NV, we 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, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. We 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"). 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. sale(s) as certified by the U.S. Federal Reserve Bank.

### Garlic Bulb Value

In applying the intermediate input methodology, the Department sought foremost to identify the best available SV for the fresh garlic bulb input to production, as opposed to identifying a surrogate value for garlic seed. Therefore, we have valued the fresh garlic bulb using prices for the "super-A" grade garlic bulb in India, as published by Azadpur Agriculture Produce Marketing Committee ("APMC") in its "Market Information

Bulletin" (the "Bulletin").<sup>28</sup> Azadpur APMC is the largest fruit and vegetable market in Asia and has become a "National Distribution Centre" for important Indian agricultural products such as garlic. We note that the "super-A" grade denotes a garlic bulb which is over 40 millimeters ("mm") in diameter and that the Respondents' subject merchandise is, on average, greater than 40 mm in diameter, as identified within the Respondents' questionnaire responses. As the Department determined in past reviews, the price at which garlic is sold is heavily dependent upon physical characteristics, such as bulb size and number of cloves. See *9th Review Final Results* at Comment 2; see also *10th Review Final Results* at Comment 2. For these preliminary results, we find that the "super-A" data from Azadpur APMC is the best available and most appropriate information on the record to value the garlic bulb input, pursuant to section 773(c) of the Act.

To value fresh garlic bulb in the last administrative review, the Department used information from the Agricultural Marketing Information Network ("Agmarknet") database. The database on the Agmarknet website contains daily prices from APMCs throughout India and has information on prices and varieties of garlic sold in India, but does not contain information on the grade/size of the bulb. In the last administrative review, the Department concluded that the "China" variety bulb, found in the Agmarknet database, is reflective of the larger bulb used by the Respondents in the production of subject merchandise. See *10th Review Final Results* at Comment 2. The Department believes the Azadpur APMC data to be a superior source of information for purposes of this review for the reasons states below.

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.

#### (1) Publicly Available

We note that the Bulletin is published for public distribution on each trading day (six days per week) and contains daily information on agricultural products sold at the APMC. In addition, the Bulletin is available electronically upon request from Azadpur APMC. Thus, we find that the Bulletin is publicly available information.

#### (2) Quality and Specificity

With respect to garlic prices, the Bulletin contains count size-specific data such as the grade of the bulb and prices (minimum, maximum and modal) in rupees of the various grades of garlic. As we have explained in past cases, this is extremely important data for purposes of our analysis, as Respondents' garlic bulb products/inputs are, on average, over 40mm in diameter, and most Indian garlic is not that large. "Super-A" garlic, however, is defined to be that size. Thus, the Department finds that the "super-A" garlic pricing information in the Bulletin to be more specific to the input in question than the Agmarknet data because it provides a surrogate value based on a quantifiable bulb size (grade) with which to value the intermediate product.

#### (3) Broad Market Average

As noted above, Azadpur APMC is a "National Distribution Centre" for agricultural products. A careful examination of the Bulletin shows that agricultural products from all over India are sold at Azadpur APMC, which claims to be the largest fruit and vegetable market (by quantity) in the world. See Azadpur APMC's website [www.apmcazadpurdelhi.com](http://www.apmcazadpurdelhi.com). Thus, we find the Bulletin's "super-A" garlic prices to be representative of a broad market average. Furthermore, there is no record evidence which suggests that the

prices included in the Bulletin are inclusive of taxes or duties.

#### Adjustments

In selecting the best available and most appropriate surrogate value for the fresh garlic bulb, the Department considered all surrogate value comments submitted by Petitioners, LSST and Dongyun and have determined that certain adjustments are necessary.

With respect to contemporaneity, we note that the Azadpur APMC data is not contemporaneous with the POR. We note that the data points for "super-A" garlic in the Azadpur Bulletin started being recorded in May 2006. However, we are able to adjust the post-POR surrogate value of "super-A" garlic by deflating the data points. The Department's methodology for deflation is described in detail in the *Factor Valuation Memo*. Thus, we believe such deflation addresses our concerns about the contemporaneity of the data.

With respect to the markets within India used by the Department, it is the Department's practice to use country-wide data instead of regional data when the former is available. See *Wuhan Bee Healthy Co., Ltd. v. United States*, Slip Op. 05-142 (CIT 2005) at 5. Thus, we have included all data points for "super-A" garlic in calculating a surrogate value for fresh garlic bulbs.

In addition, the Department used a simple average, as suggested by the Respondents in their submissions, rather than a weighted average of all "super-A" garlic prices to calculate the fresh bulb surrogate value, because daily arrivals are not recorded on a size basis and we were unable to determine the weight of the "super-A" garlic versus the weight of the other grades of garlic.

Finally, the Department deducted a six percent market fee imposed by Azadpur APMC on sales made at the APMC, as indicated on the APMC website.

#### Preliminary Results of the Reviews

The Department has determined that the following preliminary dumping margins exist for the period November 1, 2004, through October 31, 2005:

<sup>28</sup> For information concerning this surrogate value, see Petitioners' August 31 and September 12, 2006 submissions.

## FRESH GARLIC FROM THE PRC

Manufacturer/Exporter	Weighted-Average Margin (Percent)
Produced by Jinxiang County Lufeng Agricultural Production Material Co., Ltd. and Exported by Qingdao Camel Trading Co., Ltd. ....	63.87
Produced and Exported by Shandong Longtai Fruits and Vegetables Co., Ltd. ....	37.32
Produced and Exported by Qingdao Xintianfeng Foods Co., Ltd. ....	376.67
Produced by Cangshan County Taifeng Agricultural By-Products Processing Co., Ltd. and Exported by Qingdao Saturn International Trade Co., Ltd. ....	2.87
Produced and Exported by XuZhou Simple Garlic Industry Co., Ltd. ....	62.74
Sunny Import & Export Limited ....	23.28
Jining Trans-High Trading Co., Ltd. ....	21.72
Jinxiang Dongyun Freezing Storage Co., Ltd. ....	85.04
Jinxiang Shanyang Freezing Storage Co., Ltd. ....	56.78
Fook Huat Tong Kee Foodstuffs Co., Ltd. ....	43.66
Heze Ever-Best International Trade Co., Ltd. ....	43.66
Huaiyang Hongda Dehydrated Vegetable Company ....	43.66
Linshu Dading Private Agricultural Products Co., Ltd. ....	43.66
Taiyan Ziyang Food Co., Ltd. ....	43.66
PRC-wide Rate <sup>29</sup> ....	376.67

<sup>29</sup> The PRC-Wide entity includes Qingyuan.

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(d).

Any interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If we receive a request for a hearing, we plan to hold the hearing seven days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Department will issue the final results of this administrative review and new shipper reviews, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

#### Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP

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

For Weifang Shennong and Jinan Yipin, companies for which this review is preliminarily rescinded, antidumping duties shall be assessed 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)(2). As discussed above, we are also preliminarily rescinding the administrative review with respect to Ever-Rich because we found no evidence that it made shipments of the subject merchandise during the POR, despite the CBP entry data analyzed by the Department, which showed possible exports by Ever-Rich. Therefore, for entries of subject merchandise exported by Ever-Rich, antidumping duties shall be assessed at the PRC-Wide rate required at the time of entry, or withdrawal from warehouse, for

consumption, in accordance with Department practice and 19 CFR 351.212(c)(2). *See Notice of Final Results and Final Rescission, In Part of Antidumping Administrative Review: Honey from the People's Republic of China ("Honey from the PRC")*, 70 FR 38873, 38881 (July 6, 2005). Lastly, for all shipments of subject merchandise exported by Trans-High and imported by companies *other than* those identified by Trans-High as its customers/importers in this administrative review, antidumping duties shall be assessed at the PRC-Wide rate required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with Department practice and 19 CFR 351.212(c)(2). *See Id.*

#### Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of these new shipper reviews for all shipments of subject merchandise from Qingdao Camel, Qingdao Saturn, Longtai, and XuZhou Simple entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) for subject merchandise produced and exported by XuZhou Simple, produced and exported by Longtai, produced and exported by QXF, produced by Lufeng and exported by Qingdao Camel, or produced by Taifeng and exported by Qingdao Saturn, the cash-deposit rate will be that established in these final results of reviews; (2) for subject merchandise exported by Qingdao Camel but not manufactured by Lufeng and for subject merchandise exported by Qingdao Saturn but not manufactured

by Taifeng, the cash deposit rate will continue to be the PRC-wide rate (*i.e.*, 376.67 percent); and (3) for subject merchandise exported by Qingdao Camel, Qingdao Saturn, QXF, Longtai, and XuZhou Simple, but manufactured by any other party, the cash deposit rate will be the PRC-wide rate (*i.e.*, 376.67 percent).

Further, the following cash deposit requirements will be effective upon publication of the final results of the administrative review for 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)(2)(C) of the Act: (1) For subject merchandise exported by Dongyun, Sunny, Trans-High, and Shanyang Freezing, the cash-deposit rate will be that established in these final results of review; (2) for previously reviewed or investigated companies not listed above that have separate rates, FHTK, Ever-Best, Hongda, Linshu Dading Ziyang and Ever-Rich, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) for all other PRC exporters of subject merchandise, including Qingyuan, which 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; (4) for all non-PRC exporters of subject merchandise, the cash-deposit rate will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

#### Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) 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.

This administrative review, the new shipper reviews and this notice are in accordance with sections 751(a)(1), 751(a)(2)(B), and 777(i) of the Act, and 19 CFR 351.213(g), 351.214(h) and 352.221(b)(4) of the Department's regulations.

Dated: November 30, 2006.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E6-21011 Filed 12-8-06; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**A-421-807**

#### **Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands; Preliminary Results of Antidumping Duty Administrative Review**

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

**SUMMARY:** In response to requests from Nucor Corporation, Mittal Steel USA ISG Inc. (Mittal) and United States Steel Corporation (USS) (collectively, petitioners), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products (hot-rolled steel) from the Netherlands. This administrative review covers imports of subject merchandise from Corus Staal BV (Corus Staal). The period of review (POR) is November 1, 2004, through October 31, 2005.

We preliminarily determine that sales of hot-rolled steel from the Netherlands in the United States have been made below normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties based on the difference between the export price (EP) or constructed export price (CEP) and NV. Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument: 1) a statement of the issues, 2) a brief summary of the argument, and 3) a table of authorities.

**EFFECTIVE DATE:** December 11, 2006.

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

David Cordell or Robert James, Antidumping and Countervailing Duty Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482-0408 or (202) 482-0649, respectively.

#### **SUPPLEMENTARY INFORMATION:**

## Background

On November 29, 2001, the Department published the antidumping duty order on hot-rolled steel from the Netherlands. *See Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands*, 66 FR 59565 (November 29, 2001). Subsequently, on December 23, 2003, the order was amended. *See Notice of Amended Antidumping Duty Order; Certain Hot-Rolled Carbon Steel Flat Products From The Netherlands*, 68 FR 74214 (December 23, 2003).

On November 1, 2005, the Department published the opportunity to request administrative review of, *inter alia*, hot-rolled steel from the Netherlands for the period November 1, 2004 through October 31, 2005. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 65883 (November 1, 2005).

In accordance with 19 CFR 351.213(b)(1), on November 30, 2005, petitioners requested that we conduct an administrative review of sales of the subject merchandise made by Corus Staal, a producer and exporter of the subject merchandise.<sup>1</sup> On December 22, 2005, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review covering the period November 1, 2004, through October 31, 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 76024 (December 22, 2005).

On January 3, 2006, the Department issued its antidumping duty questionnaire to Corus Staal. Corus Staal submitted its response to sections A B, C, D, and E of the questionnaire on February 9, 2006.

On January 23, 2006, USS requested that the Department determine whether antidumping duties have been absorbed during the period of review by the respondent Corus Staal. On January 24, 2006, the Department issued a letter inviting Corus Staal to submit on the record evidence that unaffiliated purchasers will pay the antidumping duties that may be assessed on entries during the period of review. On February 9, 2006, Corus Staal submitted its response to the Department's letter.

On January 31, 2006, Corus Staal requested the Department to excuse certain affiliates, Corus Vlietjone BV, Ijzerleeuw BV and Multisteel, from reporting home market sales. On August 1, 2006, the Department granted Corus's

<sup>1</sup> Nucor, Mittal Steel USA, and United States Steel Corporation each submitted a separate request for review.