

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The Forest Service is the lead agency. The responsible official is the Forest Supervisor, for the Wallowa-Whitman National Forest. The responsible official will decide which, if any, of the proposed projects will be implemented and will document the Monument Fire Recovery Project-Whitman Unit decision and rationale for the decision, in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR part 215).

Dated: April 21, 2003.

John C. Schuyler,

Deputy Forest Supervisor.

[FR Doc. 03-10501 Filed 4-28-03; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes in the National Handbook of Conservation Practices.

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: Notice is hereby given of the intention of the Natural Resources Conservation Service (NRCS) to issue a series of new or revised conservation practice standards in its National Handbook of Conservation Practices. These standards include: Anaerobic Digester, Ambient Temperature; Anaerobic Digester, Controlled Temperature; Composting Facility; Constructed Wetland; Fish Raceway or Tank; Hedgerow Planting; Irrigation Water Management; Land Clearing; Land Reconstruction, Abandoned Mined Land; Land Reconstruction, Currently Mined Land; Monitoring Well; Mulching; Pasture and Hayland Planting; Residue Management, Mulch Till; Residue Management, No Till/Strip

Till; Residue Management, Ridge Till; Residue Management, Seasonal; Riparian Forest Buffer; Sediment Basin; Spoil Spreading; Stream Habitat Improvement and Management; Tree/Shrub Establishment; Tree/Shrub Pruning; Upland Wildlife Habitat Management; Waste Facility Cover; Waste Storage Facility; Waste Treatment Lagoon; Waste Utilization; Wetland Creation; Wetland Enhancement; Wetland Restoration; Wetland Wildlife Habitat Management; Windbreak/Shelterbelt Establishment; and Windbreak/Shelterbelt Renovation. These standards are used to convey national guidance in developing Field Office Technical Guide Standards used in the States and the Pacific Basin and Caribbean areas. NRCS State Conservationists and Directors for the Pacific Basin and Caribbean areas who choose to adopt these practices for use within their States/areas will incorporate them into Section IV of their Field Office Technical Guide. These practices may be used in resource management systems that treat highly erodible land, or on land determined to be wetland.

EFFECTIVE DATES: Comments will be received on or before May 29, 2003. This series of new or revised conservation practice standards will be adopted after the close of the 30-day period.

FOR FURTHER INFORMATION CONTACT:

Single copies of these standards are available from NRCS-CED in Washington, DC. Please submit individual inquiries and return any comments, in writing, to William Hughey, National Agricultural Engineer, Natural Resources Conservation Service, Post Office Box 2890, Room 6139-S, Washington, DC 20013-2890. The telephone number is (202) 720-5023. The standards are also available, and can be downloaded from the Internet, at: http://www.ftw.nrcs.usda.gov/practice_std.html.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 requires NRCS to make available, for public review and comment, proposed revisions to conservation practice standards used to carry out the highly erodible land and wetland provisions of the law. For the next 30 days, NRCS will receive comments on the proposed changes. Following that period, a determination will be made by NRCS regarding disposition of those comments, and a final determination of change will be made.

Signed in Washington, DC, on April 3, 2003.

Bruce I. Knight,

Chief, Natural Resources Conservation Service.

[FR Doc. 03-10546 Filed 4-28-03; 8:45 am]

BILLING CODE 3410-16-P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Iowa, Kansas, Nebraska, Oklahoma State Advisory Committees

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Iowa, Kansas, Nebraska, and Oklahoma State Advisory Committees to the Commission will convene at 10:30 a.m. and adjourn at 12 p.m. on April 24, 2003. The purpose of the meeting is to discuss civil rights in 5 states and plan future activities.

This conference call is available to the public through the following call-in number: 1-800-923-4217, access code 16409924. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1-800-977-8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Melvin L. Jenkins, Director of the Central Regional Office, 913-551-1400 (TDD 913-551-1414), by 4 p.m. on Wednesday, April 23, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 11, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03-10444 Filed 4-28-03; 8:45 am]

BILLING CODE 6335-01-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-831]

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

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

ACTION: Notice of Preliminary Results of Antidumping Duty New Shipper Review.

SUMMARY: In response to a request from a new shipper, the Department of Commerce is conducting a new shipper review of the antidumping duty order on fresh garlic from the People's Republic of China. The period of review is November 1, 2001, through April 30, 2002. The review covers subject merchandise produced by two companies, of which one, the respondent company in this review, exported the merchandise to the United States. We have preliminarily determined that, based on the use of adverse facts available, the respondent sold subject merchandise to the United States at prices below normal value.

We invite interested parties to comment on these preliminary results. Parties who submit comments are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: April 29, 2003.

FOR FURTHER INFORMATION CONTACT: Edythe Artman, Office of AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C., 20230; telephone: (202) 482-3931.

SUPPLEMENTARY INFORMATION:**Background**

On June 26, 2002, the Department of Commerce (the Department) initiated a new shipper antidumping duty review of shipments of fresh garlic from the People's Republic of China (PRC) produced or exported by Hongda Dehydrated Vegetable Company (Hongda). See *Fresh Garlic from the People's Republic of China: Rescission of New Shipper Antidumping Duty Review and Initiation of New Shipper Antidumping Duty Review*, 67 FR 44594 (July 3, 2002). The Department issued an antidumping duty questionnaire to Hongda on June 27, 2002.

The Department received responses to sections A, C, and D of the Department's

original and supplemental questionnaires from Hongda on August 5, 2002, and September 5, 2002, respectively. On September 27, 2002, Hongda submitted a correction to its September 5, 2002, response. Hongda submitted a response to an additional supplemental questionnaire on December 2, 2002. On December 27, 2002, we extended the time limit for the preliminary results of review to no later than April 22, 2003. See *Fresh Garlic from the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of a New Shipper Antidumping Duty Review*, 67 FR 79049.

There were multiple transactions during the period of review (POR) in which Hongda acted as the exporter. In some of these transactions, Hongda produced the merchandise. In other transactions, another party supplied the merchandise that Hongda exported. We issued a supplemental questionnaire to Hongda on January 3, 2003, in which we requested that Hongda forward section D (request for factors-of-production information) and appendices of our original questionnaire to its supplier, Jin Xiang Jin Ma Fruit and Vegetable Products Co., Ltd. (Kima), so that Kima could respond to section D and specified items in appendix V of the questionnaire. On January 27, 2003, Hongda submitted a response to the supplemental questionnaire; it resubmitted this response on April 2, 2003, with modifications pertaining to treatment of business proprietary information. It stated in its response that Kima was unable to provide the requested information. On March 14, 2003, we issued an antidumping questionnaire to Hongda's supplier, Kima, directly and requested that it respond to section D of the questionnaire. Kima did not respond to our request.

On November 14, 2002, we requested comments on surrogate-country selection. We received comments from the petitioners, the Fresh Garlic Producers Association and its individual members, on November 27, 2002. On February 4, 2003, we requested that parties provide surrogate factors-of-production values by February 14, 2003, for consideration in our preliminary results. Hongda submitted publicly available factors-of-production information on November 26, 2002, and the petitioners submitted factors-of-production information on February 14, 2003.

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 the Bureau of Customs and Border Protection (Customs) to that effect.

Separate Rate

In proceedings involving non-market-economy (NME) countries, the Department begins with a presumption that all companies within the country are subject to government control and thus should be assigned a single antidumping rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to its exports. In this review, Hongda has requested a separate company-specific rate.

To establish whether a company is sufficiently independent in its export activities from government control to be entitled to a separate, company-specific rate, the Department analyzes the 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, 20589 (May 6, 1991) (*Sparklers*), and amplified

by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586–22587 (May 2, 1994) (*Silicon Carbide*).

The Department's separate-rate test is unconcerned, in general, with macroeconomic/ border-type controls (e.g., export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. See, e.g., *Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less Than Fair Value*, 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997); and *Honey from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 60 FR 14725, 14726 (March 20, 1995).

Hongda provided separate-rate information in its responses to our original and supplemental questionnaires. Accordingly, we performed a separate-rates analysis to determine whether this producer/exporter is independent from government control (see *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 56570 (April 30, 1996)).

1. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

Hongda has 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, 30696 (June 7, 2001). We

have no information in this proceeding that would cause us to reconsider this determination.

2. Absence of *De Facto* Control

Typically the Department considers four factors in evaluating whether a respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of 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. See *Silicon Carbide* at 22587.

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 *Silicon Carbide* at 22586–22587. 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 governmental control which would preclude the Department from assigning separate rates.

According to Hongda, it is a privately owned company. It has asserted the following: (1) There is no government participation in setting export prices; (2) its sales manager and authorized employees have the authority to bind sales contracts; (3) it does not have to notify any government authorities of its management selection; (4) there are no restrictions on the use of its export revenue; and (5) it is responsible for financing its own losses. Hongda's questionnaire responses do not suggest that pricing is coordinated among exporters. Furthermore, our analysis of the responses reveals no other information indicating the existence of government control. Consequently, we preliminarily determine that Hongda has met the criteria for the application of a separate rate.

Use of Adverse Facts Available

In its August 5, 2002, response to our original questionnaire, Hongda reported sales of merchandise for which it both produced and exported the garlic and it reported sales of merchandise for which it had purchased the fresh garlic from Kima, its supplier, and exported the merchandise to the United States. In a supplemental questionnaire that we

issued on August 27, 2002, we asked Hongda to provide additional information about Kima, including a certification from Kima stating that it had not exported subject merchandise to the United States during the period of the less-than-fair-value investigation. Hongda complied with these requests in its September 5, 2002, response to the questionnaire. On September 17, 2002, Hongda then confirmed that Kima was its only supplier (besides itself) of subject merchandise during the POR.

In a supplemental questionnaire that we issued on November 14, 2002, we asked Hongda to provide a detailed description of Kima's business activities and its relationship to Hongda. In addition, we asked Hongda to provide a detailed narrative describing Hongda's purchase of garlic from Kima including information specifically relating to Kima's factors of production. In previous submissions, Hongda had already reported its own factors of production. With respect to Kima's production of subject merchandise, Hongda had claimed certain factors should not be used because they were not "relevant" for the Kima/Hongda transactions. In its earlier responses, Hongda had also provided a new factor of production to reflect per-unit amounts purchased from Kima and had stated generally that it had used indirect labor for merchandise purchased from Kima, although it had offered no details pertaining to the nature of this labor (i.e., processing or packing). Thus, in light of numerous questions surrounding Kima and the factors of production covering the garlic Kima supplied Hongda, the Department requested, in a November 14, 2002, supplemental questionnaire, that Hongda provide answers to very specific questions pertaining to Kima and its merchandise.

We asked Hongda that its factors information account for all stages beginning with the harvesting of the garlic at the farm and ending with possession of the garlic by Hongda. We asked further that Hongda specify the precise condition the degree of processing and packaging of the garlic at the time that it took possession of the garlic. We also asked Hongda to revise the narrative portions of its section D response to the questionnaire in order to reflect all processing that Hongda performed on the garlic it obtained from Kima. Finally, we asked Hongda to clarify all activities reflected in the factor amount it reported for indirect labor.

In its December 2, 2002, response to the supplemental questionnaire, Hongda identified Kima as a company that

"grows and sells garlic." It provided no description of the sales process between Kima and Hongda other than to say that it "simply purchased the garlic" from Kima. It stated further that Kima had packed the garlic in the same manner that Hongda had packed its self-produced garlic and that Kima had shipped the garlic directly to the port of export from its processing facility. It declined to revise its section D narrative responses on the basis that Kima shipped the processed garlic directly to the port. It stated, however, that the factor for indirect labor included labor Kima used for processing and packaging the garlic.

We issued another supplemental questionnaire to Hongda on January 3, 2003. We asked Hongda to resolve any inconsistencies and contradictions in its comments and questionnaire responses concerning the processing and packaging of the garlic that it purchased from Kima. We again asked for a step-by-step description of its purchase of the garlic from Kima. We asked that, in the description, Hongda identify the party performing each processing step. In light of its December 2, 2002, response, we asked for information about the supplier's knowledge of the ultimate destination of the merchandise. We requested that Hongda forward section D and appendices of our original questionnaire to Kima so that Kima could respond. Finally, we asked for additional detailed information concerning the factor for the amount of garlic purchased from Kima and the indirect labor factor.

In its January 27, 2003, response to the supplemental questionnaire, Hongda essentially undermined the validity of its December 2, 2002, response. It stated that the earlier response was incorrect and that Hongda took possession of the garlic from Kima before its export to the United States. It stated that it performed "further packing" on the garlic in which it incurred labor costs before the merchandise was shipped to the United States. Hongda also stated that Kima was unwilling to provide details on its production process or its factors of production. In support of its response, Hongda submitted a certification from Kima to the effect that it was "unable" to provide the requested information. There was no explanation about why Kima was "unable" to provide the requested information. Hongda provided an overview of its calculation for the indirect labor factor but did not identify specific tasks and allocate amounts to the tasks as we had requested in our supplemental questionnaire.

On March 14, 2003, we issued a questionnaire directly to Kima, requesting that it respond to the section D questionnaire. The company did not respond to our request.

Hongda has requested a new shipper review and submitted information to the Department with the expectation that the Department will calculate a dumping margin on its reported sales, despite the fact that it has not provided key information regarding the production and sales-process data for those transactions. Despite its many opportunities to clarify the record, Hongda and its supplier have failed to provide necessary information to the Department. Without a complete response to its requests for information, the Department cannot calculate an accurate dumping margin on Hongda's sales of merchandise to the United States. This is particularly true in this case, given that the overwhelming majority of Hongda's exports to the United States were of subject merchandise produced by Kima.

In a review involving an NME, the factors of production are crucial to determining normal value. As the Department has stated clearly in its recent Policy Bulletin covering new shipper reviews in general (found on the Department's Web site at <http://ia.ita.doc.gov>), it is the responsibility of the party requesting a new shipper review to provide all of the information necessary to the Department for initiating the new shipper review. It is furthermore the responsibility of the party requesting a new shipper review to provide the Department with the necessary information for it to calculate an accurate dumping margin. In other words, if a party desires to receive the benefits of a new shipper review, it has an affirmative obligation to provide the Department with the information necessary to calculate the new shipper dumping margin. This is particularly acute in NME cases, in which, absent complete factors-of-production information, the Department cannot calculate an accurate dumping margin.

Section 776(a)(2) of the Tariff Act of 1930, as amended (the Act), provides that, if, in the course of an antidumping review, 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, (C) significantly impedes a proceeding under the antidumping statute, or (D) provides such information but the information cannot be verified, then the Department shall, subject to section 782(d) of the Act, use the facts

otherwise available in reaching the applicable determination.

Because Hongda did not provide the Department with the information necessary to calculate a margin on the overwhelming majority of its sales, because it did not provide an explanation as to why it could not provide the information for those sales, and because Kima, an "interested party" to these transactions, did not provide the requested information, we preliminarily determine that the use of facts otherwise available is warranted to calculate a margin for all of Hongda's sales of subject merchandise during the POR.

Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority" if (1) the information is submitted by the deadline established for its submission, (2) the information can be verified, (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination, (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information, and (5) the information can be used without undue difficulties.

For the Department to calculate an accurate margin in an NME proceeding, it needs valid factors of production. Hongda and Kima failed to provide the factors-of-production information for the Kima/Hongda transactions. The Kima/Hongda transactions vastly eclipse the Hongda/Hongda transactions as a percentage of Hongda's POR sales. Therefore, we find that the submitted data is so incomplete that reliance on it would not result in an accurate measurement or reflection of Hongda's selling practices.

Further, as detailed above, Hongda and Kima had ample time to submit the requested production process information and factors-of-production data for this new shipper review, but they failed to do so. Hongda, with the cooperation of Kima, requested the new shipper review in this case. Their failure to provide the necessary information on the record is therefore a strong indication that they did not act to the best of their ability in providing the Department with the necessary information to calculate a margin.

Finally, calculating a normal value using the incomplete factors-of-production information submitted by

Hongda creates an undue difficulty for the Department. The large amount of missing information calls into question the potential manipulation of the Department's calculations through the selective reporting of factors of production. Absent confidence in the information provided, the Department cannot properly calculate a dumping margin using the limited, reported factors-of-production information. Thus, pursuant to sections 782(e)(3), (4), and (5) of the Act, the Department has not used the information Hongda has reported.

Section 776(b) of the Act provides 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, the Department may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. In addition, the *Statement of Administrative Action* accompanying the *Uruguay Round Agreements Act*, H. Doc. 316, Vol. 1, 103d Cong. (1994) (SAA), establishes that the Department may employ an adverse inference “* * * to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.” See SAA at 870. It also instructs the Department, in employing adverse inferences, to consider “* * * the extent to which a party may benefit from its own lack of cooperation.” *Id.*

As explained in detail below, the Department has applied total adverse facts available to Hongda. This is consistent with the Department's application of adverse facts available in past cases. See *Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review*, 68 FR 19504 (April 21, 2003), and accompanying *Issues and Decision Memorandum*, Comment 7 (*Crawfish*). In *Crawfish*, we applied adverse facts available to the respondent, China Kingdom, when it failed to provide total production and factors of production for the POR in a timely manner and when we determined that it did not act to the best of its ability to comply with our request for information and it demonstrated a pattern of non-compliance in its reporting of factors-of-production information. We found that “responsibility for submission of accurate factors of production lies with the respondent seeking a rate based on such information, and that failures, even if made by a supplier, may provide grounds for the application of adverse facts available.” *Crawfish* at Comment 7.

In *Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 48612 (July 25, 2002), and accompanying *Issues and Decision Memorandum*, Comment 10, citing also section 776(b) of the Act as well as 19 CFR 351.308(a), the Department explained that the language of the statute and regulation allow for the application of adverse inference when an “interested party” does not act to the best of its ability in responding to questionnaires. The Department explained that a supplier that refused to respond to requests for necessary information is an “interested party” to the review, and therefore application of adverse facts available was warranted. *Id.* Citing yet another case in support of the application of adverse facts available, the Department commented, “* * * [a]s there is no acceptable explanation on the record for the supplier's failure to provide factor of production information, an adverse inference in applying facts available is warranted due to the supplier's failure to act to the best of its ability.” *Id.* (citing *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China*, 64 FR 71104, 71108 (December 20, 1999)) (emphasis in original).

In this case, the application of adverse facts available is warranted for the following reasons. First, as this is a new shipper review, the requesting party has an obligation to provide the Department with all of the necessary information to calculate an accurate margin. Because this is an NME case, that means that Hongda has an affirmative responsibility to provide the Department with the necessary factors-of-production information so that the Department may calculate a margin. It did not provide this necessary information and, therefore, it did not act to the best of its ability. Second, neither Hongda nor Kima provided any explanation of the reasons that such information could not be obtained and provided to the Department except for a single sentence stating that Kima was “unable” to provide the necessary information. Such an explanation is inadequate. Therefore, pursuant to sections 776(a)(1), 776(a)(2)(A), and 776(b) of the Act, we have preliminarily determined to use adverse facts otherwise available in reaching the preliminary results of review.

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. Section 776(c) of the Act provides, however, that, when the Department relies on secondary information rather than on information obtained in the course of a review, the Department shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The SAA states that the independent sources may include published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation or review. See SAA at 870. The SAA clarifies that “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* As discussed in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) (TRBs), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. If there are no independent sources from which the Department can derive calculated dumping margins, however, unlike other types of information such as input costs or selling expenses, the only source for margins is previous administrative determinations. This is the case in this review.

Throughout the history of this proceeding, the highest rate ever calculated is 376.67 percent; it is currently the PRC-wide rate and was calculated based on information contained in the petition. See *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Garlic from the People's Republic of China*, 59 FR 49058, 49059 (September 26, 1994). The information contained in the petition was corroborated for the preliminary results of the first administrative review. See *Fresh Garlic from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review*, 61 FR 68229, 68230 (December 27, 1996). Further, it was corroborated in subsequent reviews to the extent that the Department noted the history of corroboration and found that no information was received by the Department that warranted revisiting

the issue. See *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002). Similarly, no information has been presented in the current review that calls into question the reliability of this information. Thus, the Department finds that the information is reliable.

With respect to the relevance aspect of corroboration, the Department stated in *TRBs* that it will "consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin." See *TRBs* at 61 FR 57392. See also *Fresh Cut Flowers from Mexico: Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (disregarding the highest margin in the case as best information available because the margin was based on another company's uncharacteristic business expense resulting in an extremely high margin). The rate used is the rate currently applicable to Hongda and all exporters subject to the PRC-wide rate. Further, there is no information on the administrative record of the current review that indicates the application of this rate would be inappropriate or that the margin is not relevant. Therefore, for all sales of subject merchandise exported by Hongda, we have applied, as adverse facts available, the 376.67 percent margin from a prior administrative review of this order and have satisfied the corroboration requirements under section 776(c) of the Act. See *Persulfates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 66 FR 18439, 18441 (April 9, 2001) (employing a petition rate used as adverse facts available in a previous segment as adverse facts available in the current review).

Preliminary Results of the Review

As a result of the application of adverse facts available, we preliminarily determine that a dumping margin of 376.67 percent exists for the period November 1, 2001, through April 30, 2002, on Hongda's exports of fresh garlic.

An interested party may request a hearing within 30 days of publication of these preliminary results. Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the

Department alters the date per 19 CFR 351.310(d). 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. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 35 days after the date of publication of this notice. Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.

The Department will publish the final results of this new shipper review, including the results of its analysis of issues raised in any case or rebuttal brief, within 90 days of publication of this notice. See 19 CFR 351.214(i)(1).

Assessment Rates

Upon completion of this new shipper review, the Department will determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to Customs upon completion of this review. If these preliminary results are adopted in our final results of review, we will direct Customs to assess the resulting rate against the entered customs value for the subject merchandise on each of Hongda's importer's/customer's entries during the POR.

Cash-Deposit Requirements

The following cash-deposit requirements will be effective upon publication of the final results of this new shipper review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for subject merchandise grown by Hongda or Jin Xiang Jin Ma Fruit and Vegetable Products Co. Ltd. (Kima) and exported by Hongda, the cash-deposit rate will be that established in the final results of this review; (2) for all other subject merchandise exported by Hongda, the cash-deposit rate will be the PRC countrywide rate, which is 376.67 percent; (3) for all other PRC exporters which have not been found to be entitled to a separate rate, the cash-deposit rate will be the PRC countrywide rate; and (4) for all non-PRC exporters of subject merchandise, the cash-deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, 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.

We are issuing and publishing these preliminary results of review in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: April 22, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03-10553 Filed 4-28-03; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-428-836]

Notice of Amended Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol From Germany

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

Correction

In notice document 03-9735 beginning on page 19509 in the issue of Monday, April 21, 2003, make the following correction:

On page 19510, under the subheading "ITC Notification," the second sentence should read, "As our final determination is affirmative, the ITC will, within 120 days from the date of the preliminary determination, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry."

Dated: April 23, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03-10551 Filed 4-28-03; 8:45 am]

BILLING CODE 3510-DS-P