

entered, or withdrawn from warehouse, for consumption on or after February 1, 2003, the effective date of the revocation of the order. The Department will further instruct CBP to refund with interest any estimated duties collected with respect to unliquidated entries of coumarin from the PRC entered, or withdrawn from warehouse, for consumption on or after February 1, 2003, in accordance with section 778 of the Act.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.306 of the Department's regulations. 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 sanctionable violation.

This notice of final results of changed circumstances review and revocation of the antidumping duty order is in accordance with sections 751(b) and (d), and 777(i)(1) of the Act and 351.216(d) and 351.222(g) of the Department's regulations.

Dated: April 26, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 04-9993 Filed 4-30-04; 8:45 am]

BILLING CODE 3510-DS-S

## 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 Reviews**

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

**ACTION:** Notice of preliminary results of antidumping duty new shipper reviews.

**SUMMARY:** In response to requests from interested parties, the Department of Commerce is conducting new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China. The period of review is November 1, 2002, through April 30, 2003. The reviews cover six manufacturers/exporters.

We preliminarily determine that Shanghai Ever Rich Trade Company, Linshu Dading Private Agricultural

Products Co., Ltd., Sunny Imp & Exp Limited, and Taian Ziyang Food Co., Ltd., have not made sales in the United States at prices below normal value. We preliminarily determine that Jinxiang Dong Yun Freezing Storage Co., Ltd., has made sales in the United States at prices below normal value. We have also preliminarily determined that, based on the use of adverse facts available, Linyi Sanshan Import & Export Trading Co., Ltd., 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 a statement of the issue and a brief summary of the argument.

**EFFECTIVE DATE:** May 3, 2004.

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

Minoo Hatten or Mark Ross, Office of Antidumping/Countervailing Duty Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-1690 or (202) 482-4794, respectively.

#### **Background**

On July 7, 2003, we published in the **Federal Register** the *Notice of Initiation of New Shipper Antidumping Duty Reviews* (68 FR 40242) in which we initiated new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China for Jinxiang Dong Yun Freezing Storage Co., Ltd. (Dong Yun), Shanghai Ever Rich Trade Company (Ever Rich), Linshu Dading Private Agricultural Products Co., Ltd. (Linshu Dading), Linyi Sanshan Import & Export Trading Co., Ltd. (Linyi Sanshan), Sunny Imp & Exp Limited (Sunny), Tancheng County Dexing Foods Co., Ltd. (Tancheng), and Taian Ziyang Food Co., Ltd. (Ziyang). On April 20, 2004, we issued a notice rescinding the new shipper review of Tancheng.

On December 19, 2003, we extended the deadline for the issuance of the preliminary results of the new shipper reviews by 120 days until April 25, 2004 (68 FR 70764).

#### **Scope of the Order**

The products subject to the 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, the written description of the scope of this proceeding 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 U.S. Customs and Border Protection (CPB) to that effect.

#### **Verification**

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), we verified information provided by respondents using standard verification procedures, including on-site inspection of the producers' facilities, the examination of relevant sales and financial records, and the selection of original documentation containing relevant information. Our verification results for Linshu Dading and Linyi Sanshan are outlined in the public versions of the verification reports, which are on file in the Central Records Unit (CRU), Room B-099 of the main Department of Commerce building. With respect to Dong Yun, Ever Rich, Sunny, and Ziyang, the verifications took place recently and, therefore, the reports are still pending completion and are not yet on file. We will issue the reports shortly after the issuance of these preliminary results of review and interested parties can comment on the applicability of the verification findings to our calculations.

#### **Separate Rates**

The Department of Commerce (the Department) has treated the PRC as a

non-market-economy (NME) country in all past antidumping investigations (see, e.g., *Bulk Aspirin From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 65 FR 33805 (May 25, 2000), and *Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 19873 (April 13, 2000)) and in prior segments of this proceeding. 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.

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 *Sparklers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified in *Silicon Carbide from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

For the reasons discussed in the section below titled "The PRC-Wide Rate and Use of Facts Otherwise Available", we have determined that Linyi Sanshan did not qualify for a separate rate and is deemed to be covered by the PRC-wide rate.

Dong Yun, Ever Rich, Linshu Dading, Sunny, and Ziyang provided separate-rate information in their responses to our original and supplemental questionnaires. Accordingly, we performed separate-rates analyses to determine whether each exporter is independent from government control of its export activities (see *Bicycles From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 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; (3) any other formal measures by the government decentralizing control of companies.

Each respondent 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., *Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of New Shipper Review*, 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; (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.

Dong Yun, Ever Rich, Linshu Dading, Sunny, and Ziyang reported that each is a limited-liability company owned by private investors. Each has 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. Dong Yun's, Ever Rich's, Linshu Dading's, Sunny's, and Ziyang's questionnaire responses 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 Dong Yun, Ever Rich, Linshu Dading, Sunny, and Ziyang have met the criteria for the application of a separate rate.

#### The PRC-Wide Rate and Use of Facts Otherwise Available

Section 776(a)(2) of 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 sections 782(d) and (e) of the Act, use the facts otherwise available in reaching the applicable determination.

As discussed further below, pursuant to section 776(a)(2)(D) of the Act, the Department determines that the application of adverse facts available is warranted for respondent Linyi Sanshan. Section 776(a)(2)(D) of the Act warrants the use of facts otherwise available in reaching a determination when information is provided by a respondent but that information cannot be verified. Linyi Sanshan's questionnaire responses cannot be verified.

On March 5, 2004, we received a letter from Linyi Sanshan's counsel notifying us that it was withdrawing as counsel to Linyi Sanshan in the November 1, 2002, through April 30, 2003, new shipper review of the antidumping duty order on fresh garlic from the PRC. On March 8, 2004, we faxed a letter to Linyi Sanshan referring to counsel's March 5, 2004, letter. We informed Linyi Sanshan that, as it should be aware, we had made plans to visit the company during the week of April 12, 2004, to verify the information it had submitted for the new shipper review. We stated that, "[g]iven the advanced stage of the segment of the proceeding, we have minimal flexibility with the verification dates." We asked the company to "confirm with us by close of business on Thursday, March 11, 2004, whether the verification can proceed as scheduled." We also stated that, "[i]f we do not receive a response from you by March 11, 2004, we will assume that you are not allowing us to

conduct the verification as scheduled.” On March 11, 2004, we received a letter from Linyi Sanshan informing us that it was preparing for verification. On April 1, 2004, the Department issued a verification outline to Linyi Sanshan. As indicated therein, the Department informed Linyi Sanshan that the verification of its questionnaire responses was scheduled for the week of April 12, 2004.

On April 12, 2004, the verification team contacted Linyi Sanshan by telephone and told company officials that they planned to visit the company that morning. Company officials stated that they were that they were expecting the verification team. When the verification team arrived at the company after a one-hour drive from their hotel, Linyi Sanshan's general manager informed the verification team that Linyi Sanshan could not participate in the verification. See *Verification of the Responses of Linyi Sanshan Import & Export Trading Company, Ltd., in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China* from Analyst to the File dated April 26, 2004.

As explained above, the information Linyi Sanshan submitted for this new shipper review cannot be verified because the company chose not to participate in the verification. As such, we find that, pursuant to section 776(a)(2)(D) of the Act, the use of facts available is warranted.

When we determine that the use of facts available is warranted, section 776(b) of the Act permits us to apply an adverse inference if we make the additional finding that “{a respondent} has failed to cooperate by not acting to the best of its ability to comply with a request for information.” To examine whether a respondent cooperated by acting to the best of its ability under section 776(b) of the Act, the Department considers, inter alia, the accuracy and completeness of the submitted information and whether the respondent has hindered the calculation of an accurate dumping margin. See *Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission of Review, in Part*, 69 FR 7193, 7196 (February 13, 2004). Linyi Sanshan's decision not to participate in the verification prevented the Department from checking the accuracy of the information that it submitted; therefore, the Department considers Linyi Sanshan to have hindered the calculation of an accurate dumping margin and impeded the proceeding within the meaning of section

776(a)(2)(C) of the Act. Consequently, we have determined that the application of adverse facts available is warranted for respondent Linyi Sanshan.

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 Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H. Doc. No. 103-316, at 870 (1994). Section 776(b) of the Act authorizes the Department to use as adverse facts-available information derived from the petition, the final determination from the less-than-fair-value (LTFV) investigation, a previous administrative review, or any other information placed on the record.

Since Linyi Sanshan chose not to participate in the verification of its questionnaire responses, the Department was unable to examine the company's eligibility for a separate rate. In the absence of verifiable information establishing Linyi Sanshan's eligibility for a separate rate, we have preliminarily determined that it is subject to the PRC-wide rate. As adverse facts available and reflecting the determination that it is not eligible for a separate rate, we have assigned the PRC-wide rate of 376.67 percent to Linyi Sanshan.

Section 776(c) of the Act requires that the Department corroborate, to the extent practicable, a figure which it applies as facts available. To be considered corroborated, information must be found to be both reliable and relevant. 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 *Fresh Garlic from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 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 referred to the history of corroboration and found that the Department received no information 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 *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), 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, 61 FR at 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 Linyi Sanshan and all exporters subject to the 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 adverse facts available, we determine that this rate has relevance. As the rate is both reliable and relevant, we determine that it has probative value. Therefore, for all sales of subject merchandise exported by Linyi Sanshan, 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).

#### Export Price

In accordance with section 772(a) of the Act, for responsive companies we have used the export-price methodology when the first sale to an unaffiliated purchaser was made outside the United States before importation of the

merchandise into the United States. We calculated the export price based on prices from Dong Yun, Ever Rich, Linshu Dading, Sunny, and Ziyang to unaffiliated U.S. customers. We made deductions, where appropriate, from the gross unit price to account for movement expenses such as foreign inland freight, international freight, customs duties, and brokerage and handling. Because certain domestic charges, such as those for foreign inland freight, were provided by NME companies, we valued those charges based on surrogate rates from India. See "Memorandum to the File" regarding the factors valuation for the preliminary results of the new shipper reviews (April 26, 2004) (*FOP Memorandum*).

For a more detailed explanation of the company-specific adjustments that we made in the calculation of the dumping margins for these preliminary results, see the company-specific preliminary results analysis memoranda dated April 26, 2004.

## Normal Value

### 1. Surrogate Country

When investigating imports from an NME country, section 773(c)(1) of the Act directs the Department to base normal value, in most circumstances, on the NME producer's factors of production 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 use, to the extent practicable, the prices or costs of factors of production in one or more market-economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the "Factor Valuations" section below.

The Department has determined that India, Pakistan, Indonesia, Sri Lanka, and the Philippines are countries comparable to the PRC in terms of economic development. See "Memorandum to Laurie Parkhill" regarding the request for a list of surrogate countries (August 25, 2003). In addition to being among the countries comparable to the PRC in economic development, India is a significant producer of the subject merchandise. We have used India as the surrogate country and, accordingly, have calculated normal value using Indian prices to value the PRC producers' factors of production, when available and appropriate. We have obtained and

relied upon publicly available information. See the April 26, 2004, "Memorandum to the File" regarding the selection of a surrogate country.

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of these new shipper reviews, interested parties may submit publicly available information to value the factors of production until 20 days following the date of publication of these preliminary results.

### 2. Factors of Production

Section 773(c)(1) of the Act provides that the Department shall determine the normal value using a factors-of-production methodology if (1) the merchandise is exported from an NME country and (2) the information does not permit the calculation of normal value using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Factors of production include the following elements: (1) Hours of labor required, (2) quantities of raw materials employed, (3) amounts of energy and other utilities consumed, and (4) representative capital costs. We used factors of production reported by the respondents for materials, energy, labor, and packing. We valued all the input factors using publicly available information, as discussed in the "Surrogate Country" and "Factor Valuations" sections of this notice.

### 3. Factor Valuations

In accordance with section 773(c) of the Act, we calculated normal value based on factors of production reported by the respondents for the period of review. To calculate normal value, we multiplied the reported per-unit factor quantities by publicly available surrogate values from India. 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 shortest reported distance from the domestic supplier to the factory and Indian surrogate values. This adjustment is in accordance with the decision in *Sigma Corporation v. United States*, 117 F. 3d 1401, 1407–08 (CAFC 1997). For a detailed description of all the surrogate values used, see the *FOP Memorandum*.

For those Indian rupee values not contemporaneous with the period of review, we adjusted for inflation using wholesale price indices for India published in the International Monetary Fund's *International Financial Statistics*.

Surrogate-value data or sources to obtain such data were obtained from the petitioners, the respondents, and Departmental research.

Except as specified below, we valued raw material inputs using the weighted-average unit import values derived from the World Trade Atlas Trade Information System (Internet Version 4.3e) (*World Trade Atlas*). The source of these values, contemporaneous with the period of review, was the Directorate General of Commercial Intelligence and Statistics of the Indian Ministry of Commerce and Industry. We valued garlic seed based on pricing data from the *NHRDF News Letter*, published by India's National Horticultural Research and Development Foundation. We valued diesel fuel and electricity based on data from the International Energy Agency's *Energy Prices & Taxes: Quarterly Statistics* (Third Quarter, 2003). We valued water using the averages of municipal water rates from Asian Development Bank's *Second Water Utilities Data Book: Asian and Pacific Region* (October 1997).

The respondents reported packing inputs consisting of mesh bags, cartons, plastic bands, and tape. All of these inputs were valued using import data from the *World Trade Atlas* that covered the period of review.

For labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rate that appears on the website for Import Administration (<http://ia.ita.doc.gov/wages/01wages/01wages.htm>). The source of the wage-rate data for the Import Administration's website is the International Labor Organization's *Yearbook of Labour Statistics 2002* (Geneva, 2002), chapter 5B: Wages in Manufacturing.

The respondents claimed an adjustment for revenue earned on the sale of garlic sprouts. We find that sprouts are a by-product of garlic and deducted an offset amount from normal value. As a surrogate value for the sale of sprouts in the PRC, we used an average of Indian wholesale prices for green onions published by the Azadpur Agricultural Produce Marketing Committee.

We valued the truck rate based on an average of truck rates that were published in the Indian publication *Chemical Weekly* during the period of review. We valued cold storage at a facility away from the production facility prior to shipment using a rate published in an article from Dawn Wire Service. We valued foreign brokerage and handling charges based on a value calculated for the LTFV investigation of certain hot-rolled carbon steel flat

products from India. For ocean freight, we used a ranged price from the public version of a respondent's submission.

As discussed in the *FOP Memorandum*, the respondents and the petitioners submitted the publicly available financial information of six companies. We concluded that the financial information of four of the companies reflected costs incurred for highly processed food products and that this processing was not comparable with the operations of the respondent garlic companies. We concluded that

the financial information for a fifth company was not representative of the financial experiences of the respondent companies because this company did not grow the agricultural products that it sold and, in some cases, performed no processing on these products. We found that the financial information of a tea company was most representative of the financial experiences of the respondent companies because it produced and processed a product that was not highly processed or preserved prior to its sale.

Thus, to value factory overhead, selling, general and administrative expenses, and profit, we used rates based on data taken from the 2001/2002 financial statements of Parry Agro Industries Limited.

#### Preliminary Results of the New Shipper Reviews

We preliminarily determine that the following dumping margins exist for the period November 1, 2002, through April 30, 2003:

Grower and exporter combinations	Weighted-average percentage margin
Grown by Pizhou Guangda Import and Export Co., Ltd. and Exported by Ever Rich Trade Company .....	0.00
Grown by Jinxing Jinda Agriculture Industrial & Trading Company Ltd. and Exported by Linshu Dading Private Agricultural Products Co., Ltd. ....	0.00
Grown and Exported by Linyi Sanshan Import & Export Trading Co., Ltd. ....	376.67
Grown and Exported by Sunny Import and Export Ltd. ....	0.00
Grown and Exported by Taian Ziyang Food Company, Ltd. ....	0.00
Grown and Exported by Jinxiang Dong Yun Freezing Storage Co., Ltd. ....	26.29

Case briefs or other written comments in at least six copies must be submitted to the Assistant Secretary for Import Administration no later than one week after the issuance of the Department's last verification report in these reviews. The Department will notify all parties of the applicable briefing schedule. Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs are due no later than five days after the submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. In accordance with 19 CFR 351.310, we will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If we receive a request for a hearing, we plan to hold the hearing three 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. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of the preliminary results of these reviews in the **Federal Register**. 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.

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

#### Assessment Rates

Upon completion of these new shipper reviews, the Department will determine, and CBP will assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to CBP upon completion of these reviews. If these preliminary results are adopted in our final results of review, we will direct CBP to assess the antidumping duties applicable to sales of the subject merchandise on each of the entries of each exporters' importer/customer during the period of review.

#### Cash-Deposit Requirements

The following cash-deposit requirements will be effective upon publication of the final results of the new shipper reviews for 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 Pizhou Guangda Import and Export Co., Ltd., and exported by Ever Rich Trade Company,

grown by Jinxing Jinda Agriculture Industrial & Trading Company Ltd., and exported by Linshu Dading Private Agricultural Products Co., Ltd., or grown and exported by Linyi Sanshan Import & Export Trading Co., Ltd., Sunny Import and Export, Ltd., Taian Ziyang Food Company, Ltd., and Jinxiang Dong Yun Freezing Storage Co., Ltd., the cash-deposit rate will be that established in the final results of these reviews; (2) for all other subject merchandise exported by Ever Rich Trade Company, Linshu Dading Private Agricultural Products Co., Ltd., Linyi Sanshan Import & Export Trading Co., Ltd., Sunny Import and Export, Ltd., Taian Ziyang Food Company, Ltd., and Jinxiang Dong Yun Freezing Storage Co., Ltd., the cash-deposit rate will be the PRC countrywide rate, which is 376.67 percent; (3) for all other PRC exporters of subject merchandise 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, when imposed, shall remain in effect until publication of the final results of the next administrative review.

#### Notification to Interested Parties

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 the period of these reviews. 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 reviews in accordance with sections 751(a)(2)(B)(iv) and 777(i) of the Act.

Dated: April 26, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 04-9998 Filed 4-30-04; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-863]

#### Notice of Final Results of Antidumping Duty New Shipper Review: Honey From the People's Republic of China

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

**SUMMARY:** On December 4, 2003, the Department published the preliminary results of the new shipper review of the antidumping duty order on honey from the People's Republic of China (68 FR 67832). The review covers one producer/exporter, Sichuan-Dujiangyan Dubao Bee Industrial Co., Ltd. ("Dubao"), and one exporter, Shanghai Xiuwei International Trade Co., Ltd. ("Shanghai Xiuwei"), of subject merchandise to the United States during the period February 10, 2001 through November 30, 2002.

Based on our analysis of the record, including factual information obtained since the preliminary results, we have made changes to Dubao's margin calculations and are now using a more contemporaneous labor rate, which was revised in September 2003 and was recently posted to IA's web site. Also, we have found Dubao's second sale to not be a *bona fide* transaction and are therefore only calculating an antidumping margin based on its first sale. For Shanghai Xiuwei, we are applying adverse facts available ("AFA"), which is 183.80 percent. Therefore, the final results differ from the preliminary results. See "Final Results of Review" section below.

**EFFECTIVE DATE:** May 3, 2004.

**FOR FURTHER INFORMATION CONTACT:**

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#### SUPPLEMENTARY INFORMATION:

##### Background

We published in the **Federal Register** the preliminary results of this new shipper review on December 4, 2003. See *Notice of Preliminary Results of Antidumping Duty New Shipper Review: Honey From the People's Republic of China*, 68 FR 67832 (December 4, 2003) (*Preliminary Results*). On February 25, 2004, the Department extended the final results of this new shipper review by 30 days until March 25, 2004. See *Notice of Extension of Time Limit on Final Results of New Shipper Review: Honey From the People's Republic of China*, 69 FR 8625 (February 25, 2004). On March 31, 2004, the Department extended the final results of this new shipper review by 14 days until April 8, 2004. See *Notice of Extension of Time Limit on Final Results of New Shipper Review: Honey From the People's Republic of China*, 69 FR 16892 (March 31, 2004). On April 14, 2004, the Department extended the final results of this new shipper review by 16 days until April 26, 2004. See *Notice of Extension of Time Limit on Final Results of New Shipper Review: Honey From the People's Republic of China*, 69 FR 19814 (April 14, 2004).

The period of review (POR) is February 10, 2001 through November 30, 2002. We invited parties to comment on our *Preliminary Results*. We received case briefs from petitioners (the American Honey Producers Association and the Sioux Honey Association (collectively, petitioners)), on January 21, 2004. We received rebuttal briefs from Dubao and Shanghai Xiuwei on January 27, 2004. On February 27, 2004, we invited petitioners to comment on the new information in Shanghai Xiuwei's rebuttal brief, but we did not receive any comments.

##### Scope of Antidumping Duty Order

The products covered by this order are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut

comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to this review is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and the U.S. Customs and Border Protection (CBP) purposes, the Department's written description of the merchandise under order is dispositive.

##### Analysis of Comments Received

All issues raised in the briefs are addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice. A list of the issues raised, all of which are in the Issues and Decision Memorandum, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in the briefs and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B-099 of the main Department building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Web at <http://ia/ita/doc/gov>. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

##### Changes Since the Preliminary Results

Based on the comments received from the interested parties, we have made changes to the margin calculation for Shanghai Xiuwei and for Dubao. For Shanghai Xiuwei, we are now applying an AFA rate. See the AFA rate section below for details. For Dubao, we are calculating an antidumping margin based only on its first sale and not its second sale because we have determined that its second sale was not a *bona fide* transaction. For this second sale, we are applying an adverse facts available rate of 183.80 percent for assessment purposes because the U.S. importer is an interested party, according to 771(9)(A) of the Act, and failed to cooperate with the Department's numerous requests for it to respond to the Department's importer questionnaire. See the discussion below on the specifics of this U.S. importer's failure to cooperate. Also, with respect to Dubao's other sale, we are changing the labor wage rate. See the discussion below for specifics on the labor wage rate change. For a detailed discussion of the Shanghai Xiuwei AFA rate and an analysis of the *bona fides* of Dubao's second sale, see Issues and Decision Memorandum. For business proprietary details of our analysis of the change