

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, which 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: September 24, 2004.

**James J. Jochum,**

*Assistant Secretary, Import Administration.*

#### Appendix:

Issues and Decision Memorandum  
*Comment 1: Credit Expenses for Home Market Sales.*

[FR Doc. E4-2443 Filed 9-29-04; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-831]

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

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

**SUMMARY:** On July 6, 2004, the Department of Commerce published the preliminary results of new shipper review of the antidumping duty order on fresh garlic from the People's Republic of China (PRC). The period of review (POR) is November 1, 2002, through October 31, 2003.

We invited interested parties to comment on our preliminary results. We did not make any changes to the margin calculation for the final results based on comments submitted by interested parties. We did, however, use a different surrogate value for the cost of leasing land. The final dumping margin for this review is listed in the "Final Results of Review" section below.

**EFFECTIVE DATE:** September 30, 2004.

**FOR FURTHER INFORMATION CONTACT:** Janis Kalnins or Minoo Hatten, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-1392 or (202) 482-1690, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On January 7, 2004, we published in the **Federal Register** the *Notice of*

*Initiation of New Shipper Antidumping Duty Review: Fresh Garlic from the People's Republic of China* (69 FR 903) for entries of subject merchandise grown by Kaifeng Wangtun Fresh Vegetables Factory (Wangtun) and exported by Jinxiang Shanyang Freezing Storage Co., Ltd. (Shanyang). The POR is November 1, 2002, through October 31, 2003.

On July 6, 2004, the Department of Commerce (the Department) published the preliminary results of this new shipper review. *See Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review*, 69 FR 40607 (July 6, 2004) (*Preliminary Results*). We invited parties to comment on our preliminary results. We received timely comments from Shanyang and from the Fresh Garlic Producers Association and its individual members (collectively, the petitioners).

We have conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.214.

#### Scope of the Order

The products subject to this order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay.

The scope of this order does not include the following: (a) Garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the *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 (CBP) to that effect.

#### Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this review are addressed in the Issues and Decision Memorandum, dated September 24, 2004 (*Decision Memo*), which is hereby adopted by this notice. A list of the issues which parties raised and to which we respond in the *Decision Memo* is attached to this notice as an Appendix. The *Decision Memo* is a public document on file in the Central Records Unit (CRU), Main Commerce Building, Room B-099, and is accessible on the Web at <http://www.ia.ita.doc.gov/frn>. The paper copy and electronic version of the memorandum are identical in content.

#### Separate Rates

In the *Preliminary Results*, we determined that Shanyang met the criteria for the application of a separate rate. *See Preliminary Results*, 69 FR at 40608. We have not received any information since the issuance of the *Preliminary Results* that provides a basis for reconsideration of this determination.

#### Changes Since the Preliminary Results

We did not make any changes to the margin calculation for the final results based on comments submitted by interested parties. We did, however, use a different surrogate value for the cost of leasing land based on data collected in the final results of the immediately preceding new shipper reviews. *See Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty New Shipper Reviews*, 69 FR 46498 (August 3, 2004) (11/02 to 4/03 NSRs) and the memorandum from Janis Kalnins to The File entitled "Analysis for the Final Results of the New Shipper Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Jinxiang Shanyang Freezing Storage Co., Ltd., and Wangtun Fresh Vegetable Factory," dated September 24, 2004.

#### The 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.

For the reasons outlined in the *Preliminary Results* at 69 FR 40609, we have continued to apply facts available in the final results of review for calculating the labor hours worked by Shanyang for processing activities and by Wangtun for production activities.

For the final results of this new shipper review, we have clarified that the use of facts available is appropriate for calculating a consumption factor for water. Shanyang did not report a consumption factor for the water used in the production of subject merchandise. For the preliminary results of review we calculated a consumption factor for water using the pump specifications for the model type and corresponding water flow rate (based on water depth) used by Shanyang in the production of garlic during the POR as reported in its supplemental questionnaire response. See the memorandum from Brian Ellman to The File entitled "Analysis for the Preliminary Results of the New Shipper Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Jinxiang Shanyang Freezing Storage Co., Ltd., and Wangtun Fresh Vegetable Factory," dated June 28, 2004.

In its August 5, 2004, case brief, Shanyang attempted to submit new factual information for the Department to use in our calculation of a water-usage rate for the final results. We rejected Shanyang's case brief because it contained untimely new factual information, and allowed it to submit a redacted case brief (less any new factual information).

In its case brief, Shanyang argues that the flow rate used by the Department in its calculation of a water-usage rate is incorrect because the flow rate is not based on the actual depth of the water table at Wangtun's fields. Moreover, Shanyang argues that the Department should correct its calculation for a water-usage rate by requesting data from Wangtun demonstrating the actual depth at which Wangtun's water pumps operated during the POR.

Prior to and during verification Shanyang had the opportunity to inform the Department that its actual water depth was different from the water depth indicated in its questionnaire response. As such, we determine that, in accordance with section 776(a)(2)(B) of the Act, the use of facts available is appropriate for calculating a consumption factor for water for the

final results. Therefore, we will continue to calculate a consumption factor for water using the pump specifications for the model type used by Shanyang as indicated in its questionnaire response and as verified by the Department. For a complete discussion of this issue see Comment 1 of the *Decision Memo*.

#### Final Results of the New Shipper Review

For the final results of the new shipper review the following dumping margin exists for the period November 1, 2002, through October 31, 2003:

Grower and exporter combination	Weighted-average percentage margin
Grown by Kaifeng Wangtun Fresh Vegetables Factory and Exported by Jinxiang Shanyang Freezing Storage Co., Ltd .....	29.04

#### Duty Assessment and Cash-Deposit Requirements

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of this review. Further, the following cash-deposit requirements will be effective upon publication of the final results of this new shipper 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 grown by Kaifeng Wangtun Fresh Vegetables Factory, and exported by Jinxiang Shanyang Freezing Storage Co., Ltd., the cash-deposit rate will be the rate listed above; (2) for all other subject merchandise exported by Jinxiang Shanyang Freezing Storage Co., Ltd., the cash-deposit rate will be the PRC-wide 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 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 the review period. Pursuant to 19 CFR 351.402(f)(3) failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO as explained in the administrative protective order itself. 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 the terms of an APO is a sanctionable violation.

Bonding is no longer permitted to fulfill security requirements for shipments from Shanyang of fresh garlic from the PRC entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this notice in the **Federal Register**.

These final results of the new shipper review and notice are issued and published in accordance with sections 751(a)(2)(B) and 777(i) of the Act.

Dated: September 24, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

#### Appendix:

- Decision Memo
- 1. Valuation of Water
- 2. Selling, General, and Administrative Expenses and Profit Calculation
- 3. Valuation of Leased Land
- 4. Valuation of Upstream Input Factors

[FR Doc. E4-2446 Filed 9-29-04; 8:45 am]

BILLING CODE 3510-DS-P

#### DEPARTMENT OF COMMERCE

##### International Trade Administration

[A-533-813]

#### Certain Preserved Mushrooms From India: Notice of Partial Rescission of Antidumping Duty Administrative Review

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

**EFFECTIVE DATE:** September 24, 2004.