

Dated: June 11, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief
Information Officer.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-831]

Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 12th Administrative Review

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

EFFECTIVE DATE: June 17, 2008.

FOR FURTHER INFORMATION CONTACT:
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482-2312.

SUPPLEMENTARY INFORMATION:

Case History

On December 10, 2007, the Department of Commerce (the "Department") published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on fresh garlic from the People's Republic of China ("PRC"). See *Fresh Garlic from the People's Republic of China: Notice of Preliminary Results and Preliminary Partial Rescission of the Twelfth Administrative Review*, 72 FR 69652 (December 10, 2007) ("Preliminary Results"). Since the *Preliminary Results*, the following events have occurred.

On January 9, 2008, The Fresh Garlic Producers Association: Christopher Ranch L.L.C.; The Garlic Company; Valley Garlic; and Vessey and Company, Inc. ("Petitioners"), Jinxiang Dong Yun Freezing Storage Co., Ltd. ("Dong Yun"), Shanghai LJ International Trading Co., Ltd. ("Shanghai LJ"), and Qingdao Saturn International Trade Co., Ltd. ("Qingdao Saturn") submitted case briefs. After reviewing the case briefs, the Department instructed Dong Yun and Shanghai LJ to re-file their case briefs because they contained untimely new factual information. Dong Yun and Shanghai LJ filed the final versions of their redacted case briefs on January 16, 2008. Also on January 16, 2008, the Petitioners, Dong Yun, and Shanghai LJ submitted rebuttal briefs. On January 23,

2008, the Department extended the time limit for completion of the final results of this administrative review by 60 days. See *Fresh Garlic from the People's Republic of China: Extension of Time Limit for Final Results of the Twelfth Administrative Review*, 73 FR 16640 (March 28, 2008). On April 10, 2008, the Department conducted a public hearing, and counsel for the Petitioners, Dong Yun, and Qingdao Saturn participated.

Scope Of The Order

The products covered by this Order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay. The scope of this order does not include the following: (a) garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed. The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive. In order to be excluded from the Order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to CBP to that effect.

Analysis Of Comments Received

All issues raised in the case and rebuttal briefs by parties to this proceeding and to which we have responded are listed in the Appendix to this notice and addressed in the Issues and Decision Memorandum ("Final Decision Memo"), which is hereby adopted by this notice. Parties can find a complete discussion of the issues raised in this administrative review and the corresponding recommendations in this public memorandum which is on

file in the Central Records Unit ("CRU"), Room 1117 of the main Department building. In addition, a copy of the *Final Decision Memo* can be accessed directly on our website at <http://www.ia.ita.doc.gov/>. The paper copy and electronic version of the *Final Decision Memo* are identical in content.

Changes Since The Preliminary Results

Based on a review of the record as well as comments received from parties regarding our *Preliminary Results*, we have made revisions to the margin calculations for Dong Yun and Shanghai LJ for the final results. For all changes to the calculations for Dong Yun and Shanghai LJ, see the *Final Decision Memo* and the company-specific analysis memoranda.

Adverse Facts Available

Section 776(a)(2) of the Tariff Act of 1930, as amended ("the Act") provides that if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Furthermore, 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 information that is adverse to the interests of that party as facts otherwise available. 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 ("SAA") accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Session at 870 (1994). An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. See section 776(b) of the Act.

In the *Preliminary Results*, the Department assigned a rate based on the use of total adverse facts available ("AFA") to the PRC-Wide Entity, including Huaiyang Hongda Dehydrated Vegetable Company ("Huaiyang

Hongda”), and 19 other companies¹, because they failed either to respond to the Department’s two quantity and value questionnaires, or in the case of Huaiyang Hongda, to the Department’s two supplemental questionnaires. *See Preliminary Results*, 73 FR at 69656–57. As no parties provided comments on these issues, we continue to find it appropriate to apply total AFA to the PRC–Wide Entity, including Huaiyang Hongda, and the 19 other companies.

Voluntary Respondent

In the *Preliminary Results*, the Department did not calculate an individual margin for Qingdao Saturn, which requested to be considered as a voluntary respondent. *See Preliminary Results*, 73 FR at 69657–58. For these final results, the Department continues to treat Qingdao Saturn as a separate rate respondent, rather than a voluntary respondent, and is not calculating an individual margin for it. For a full discussion of this issue, *see* Comment 6 of the *Final Decision Memo*.

Final Partial Rescission

In the *Preliminary Results*, the Department preliminarily rescinded this review with respect to the following three companies: Golden Bridge International, Inc. (“Golden Bridge”), Shanghai McCormick Foods Co., Ltd. (“Shanghai McCormick”), and Zhangqiu Qingyuan Vegetable Co., Ltd. (“Zhangqiu Qingyuan”).² Golden Bridge, Shanghai McCormick, and Zhangqiu Qingyuan reported that they had no shipments of subject merchandise to the United States during the POR. *See Preliminary Results*, 73 FR at 69654. As we stated in the

Preliminary Results, our examination of shipment data from CBP for the three no shipment companies confirmed that there were no entries of subject merchandise from them during the POR. *See Preliminary Results* 73 FR at 69654. We also received no comments or information to change our preliminary rescission. Therefore, we are rescinding this administrative review with respect to all three aforementioned companies.

Changes Since The Preliminary Results

We have revised the calculation of the garlic bulb surrogate value. In the *Preliminary Results*, the Department used an average of Grade A and Super–A (from May 2006 to January 2007) prices in its calculations. For these final results, however, using Respondents’ size data on the record (and the July 2007 Foreign Market Research Report’s clarification on the size ranges of Grade A and Super–A), the Department calculated a surrogate value based on the most appropriate Bulletin data. We have concluded that a more accurate analysis would be for the Department to use only Grade Super–A values for all Respondents that reported bulb sizes in ranges of 55 mm and above because bulb sizes that are 55 mm and above are typically classified as Grade Super–A. However, we have also concluded that it is appropriate to average Grade A and Super–A values for all Respondents that reported bulb sizes in ranges below 55 mm because both A and Super–A reflect bulb sizes greater than 40 mm. Moreover, for the final results, we are also only using garlic bulb price data that are contemporaneous with the POR. For a complete explanation of the Department’s analysis, *see the Issues and Decision Memo* at Comment 2. In addition, we are using the updated NME wage rate for the PRC, *see the Issues and Decision Memo* at Comment 4. Lastly, we are calculating the separate rate based on the simple average of the two mandatory respondents because using a weighted average risks disclosure of business proprietary information. *See, e.g., Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008).

Final Results Of Review

The weighted–average dumping margins for the POR are as follows:

FRESH GARLIC FROM THE PRC

Manufacturer/Exporter	Weighted–Average Margin (Percent)
Jinxiang Dong Yun Freezing Storage Co., Ltd.	19.97
Shanghai LJ International Trading Co., Ltd.	31.15
Qufu Dongbao Import & Export Trade Co., Ltd.	25.56
Weifang Shennong Foodstuff Co., Ltd.	25.56
Jinxiang Shanyang Freezing Storage Co., Ltd.	25.56
Qingdao Xintianfeng Foods	25.56
Shandong Longtai Fruits and Vegetables Co., Ltd.	25.56
Jining Trans–High Trading Co., Ltd.	25.56
Shenzhen Fanhui Import & Export Co., Ltd.	25.56
Taian Ziyang Food Co., Ltd.	25.56
Anqiu Friend Food Co., Ltd.	25.56
Shanghai Ever Rich Trade Company	25.56
Heze Ever–Best International Trade Co., Ltd.	25.56
Qingdao Saturn International Trade Co., Ltd.	25.56
Sunny Import & Export Co., Ltd.	25.56
Henan Weite Industrial Co., Ltd.	25.56
Jinan Farmlady Trading Co., Ltd.	25.56
PRC–Wide Entity ³	376.67

³The PRC–Wide entity includes Huaiyang Hongda, APS Qingdao, Fujian Meitan, Hongchang, Jining Haijiang, Jining Solar, Jinxian County Huaguang, Laiwu Hongyang, Pizhou Guangda, Qingdao Bedow, Qingdao Camel, Qingdao H&T, Qingdao Potenza, Qingdao Shiboliang, Rizhao Xingda, Shandong Chengshun, Shandong Dongsheng, Shandong Garlic, Shanghai Ba–Shi, and T&S.

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review. For assessment purposes, where possible, we calculated importer–specific assessment rates for subject merchandise from the PRC via *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review.

Cash Deposit Requirements

The following cash–deposit requirements will be effective upon publication of the final results of this administrative review for all shipments

¹ APS Qingdao; Fujian Meitan Import & Export Xiamen Corporation (“Fujian Meitan”); Hongchang Fruits & Vegetable Products (“Hongchang”); Jining Haijiang Trading Co., Ltd. (“Jining Haijiang”); Jining Solar Summit Trade Co., Ltd. (“Jining Solar”); Jinxian County Huaguang Food Import & Export Co., Ltd. (“Jinxian County Huaguang”); Laiwu Hongyang Trading Company Ltd. (“Laiwu Hongyang”); Pizhou Guangda Import and Export Co., Ltd. (“Pizhou Guangda”); Qingdao Bedow Foodstuffs Co., Ltd. (“Qingdao Bedow”); Qingdao Camel Trading Co., Ltd. (“Qingdao Camel”); Qingdao H&T Food Co., Ltd. (“Qingdao H&T”); Qingdao Potenza Imp & Exp Co., Ltd. (“Qingdao Potenza”); Qingdao Shiboliang Food Co., Ltd. (“Qingdao Shiboliang”); Rizhao Xingda Foodstuffs Co., Ltd. (“Rizhao Xingda”); Shandong Chengshun Farm Produce Trading Co., Ltd. (“Shandong Chengshun”); Shandong Dongsheng Eastsun Foods Co., Ltd. (“Shandong Dongsheng”); Shandong Garlic Company (“Shandong Garlic”); Shanghai Ba–Shi Yuexin Logistics Development (“Shanghai Ba–Shi”); T&S International, LLC (“T&S”).

² The review requests for Qingdao Tiantaixing Foods Co., Ltd. (“Qingdao Tiantaixing”), Zhengzhou Harmoni Spice Co., Ltd. (“Zhengzhou Harmoni”) were withdrawn, so in the *Preliminary Results* the Department rescinded the review for these two companies and subsequently issued the appropriate liquidation instructions.

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) the cash deposit rate for each of the reviewed companies that received a separate rate in this review will be the rate listed in the final results of review (except that if the rate for a particular company is *de minimis*, i.e., less than 0.5 percent, a zero cash deposit will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, including those companies for which this review has been rescinded, the cash deposit rate will be the PRC-wide rate of 376.67 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Reimbursement Of Duties

This notice also serves as a final 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 POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this administrative review and notice in

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

Dated: June 9, 2008.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

Appendix I

General Issues:

Comment 1: Intermediate Input Methodology

Comment 2: Garlic Bulb Surrogate Value

- A. Product Specificity
- B. Broad Market Average
- C. Public Availability
- D. Contemporaneity
- E. Tax and Duty Exclusivity

Comment 3: Surrogate Financial Ratios

Comment 4: Labor Surrogate Value

Comment 5: By-product Offset

Company-Specific Issues:

Comment 6: Individual Margin Calculation for Qingdao Saturn

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DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 080609747-8749-01]

Market Development Cooperator Program (MDCP)

AGENCY: International Trade Administration (ITA), Department of Commerce.

ACTION: Notice and request for applications.

SUMMARY: ITA is soliciting projects to strengthen U.S. competitiveness to be conducted by eligible entities for periods of up to three years. Project award periods normally begin between October 1, 2008 and January 1, 2009, but may begin as late as April 1, 2009.

MDCP awards help to underwrite the start-up costs of new competitiveness-strengthening ventures that industry groups are often reluctant to undertake without federal support. MDCP aims to develop, maintain and expand foreign markets for non-agricultural goods and services produced in the United States.

DATES: Proposals must be received by ITA no later than 5 p.m. EDT, Thursday, July 31, 2008. A public meeting to discuss the competition will be held on Tuesday, June 24, 2008, at 2 p.m.

ADDRESSES: Proposals must be submitted to ITA, U.S. Department of Commerce, HCHB Rm. 3215; Washington, DC 20230, or via e-mail to Brad.Hess@mail.doc.gov. The full funding opportunity announcement and

the application kit for this request for applications are available at <http://www.trade.gov/mdcp>, or by contacting Brad Hess at 202-482-2969. The public meeting will be held at the U.S. Department of Commerce, HCHB, 14th & Constitution, NW., Washington, DC in Room B 841-B.

FOR FURTHER INFORMATION CONTACT:

Interested parties who are unable to access information via Internet or who have questions may contact Mr. Brad Hess by mail (see **ADDRESSES**), by phone at 202-482-2969, by fax at 202-482-4462, or via Internet at Brad.Hess@mail.doc.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access: The full funding opportunity announcement for MDCP is available at <http://www.trade.gov/mdcp>.

Funding Availability: Approximately \$600,000 will be available through this announcement for fiscal year 2008. No award will exceed \$250,000. ITA anticipates making a minimum of two awards. Additional awards might be made depending on the amounts requested and the availability of funds.

Statutory Authority: 15 U.S.C. 4723.

CFDA: 11.112, Market Development Cooperator Program.

Eligibility: Trade associations, state departments of trade and their regional associations, and non-profit industry organizations, including organizations such as World Trade Centers, centers for international trade development and small business development centers are eligible to apply for an MDCP award. In cases where no entity described above represents the industry, private industry firms or groups of firms may be eligible to apply for an MDCP award. Such private industry firms or groups of firms must provide in their applications, documentation demonstrating that no entity in the first three categories listed below represents their industry.

Cost Sharing Requirements:

Applicants must contribute two dollars for every federal dollar received. At least 50% of the applicant's cost share must be cash. The remaining percentage of the applicant's cost share may be cash or in kind.

Intergovernmental Review:

Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Limitation of Liability: In no event will the Department of Commerce or ITA be responsible for proposal preparation costs if this program fails to receive funding or is cancelled because of other agency priorities. Publication of this announcement does not obligate the Department of Commerce or ITA to