Cash Deposit Requirements

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of CWP from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the companies listed above will be the rates established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less–than-fair–value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 4.80 percent, the ''all others'' rate established in the LTFV investigation. *See CWP Order*. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 30, 2009.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E9–29237 Filed 12–7–09; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Preliminary Results of, and Intent To Rescind, in Part, the Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (Department) is conducting an administrative review of the antidumping duty order on fresh garlic from the People's Republic of China (PRC) covering the period of review (POR), November 1, 2007 through October 31, 2008. This review covers the 19 producers/exporters of the subject merchandise listed in Attachment 1 to this notice. As discussed below, the Department has preliminarily applied total adverse facts available (AFA) to the six mandatory respondents who each failed to cooperate to the best of its ability in this proceeding. The Department also preliminarily finds that eight companies subject to this review failed to demonstrate their eligibility for separate rate status. In addition, the Department preliminarily grants a separate rate to the four companies, which demonstrated their eligibility for separate rate status. For the rates assigned to each of these companies, see the ''Preliminary Results of Review'' section of this notice.

The Department also intends to preliminarily rescind the review with respect to a certain exporter which timely submitted a ''no shipment'' certification. Interested parties are invited to comment on these preliminary results. If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on entries of subject merchandise during the POR for which assessment rates are above *de minimis.*

DATES: *Effective Date:* December 8, 2009.

FOR FURTHER INFORMATION CONTACT: Scott Lindsay, Nicholas Czajkowski, or Summer Avery, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0780, (202) 482–1395, and (202) 482–4052, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 16, 1994, the Department published in the **Federal Register** the antidumping duty order on fresh garlic from the PRC. *See Antidumping Duty Order: Fresh Garlic From the People's Republic of China,* 59 FR 59209 (November 16, 1994) (*Order*). On November 3, 2008, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on fresh garlic from the PRC for the period November 1, 2007 through October 31, 2008. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review and Request for Revocation in Part,* 73 FR 65288 (November 3, 2008).

On December 24, 2008, the Department initiated administrative reviews for 63 producers/exporters of subject merchandise from the PRC. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 73 FR 79055 (December 24, 2008) (*Initiation Notice*). On October 21, 2009, in accordance with 19 CFR 351.213(d)(1), we rescinded the administrative review with respect to 44 companies for whom all relevant requests for review had been withdrawn. *See Fresh Garlic from the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review,* 74 FR 54029 (October 21, 2009) (*Rescission Notice*).

On November 26, 2008, Anqiu Haoshun Trade Co., Ltd. (Anqiu Haoshun), Hebei Golden Bird Trading Co., Ltd. (Hebei Golden Bird), Jinan Farmlady Trading Co., Ltd. (Jinan Farmlady), Jining Yongjia Trade Co., Ltd. (Jining Yongjia), Jinxiang Tianheng Trade Co., Ltd., Qingdao Tiantaixing Foods Co., Ltd. (Qingdao Tiantaixing), Shandong Jinxiang Zhengyang Import & Export Co., Ltd., and Weifang Chenglong Import & Export Co., Ltd. each timely certified that it had no shipments during the POR.[1] On January 12, 2009, and February 11, 2009, the Department released CBP data to interested parties. Comments on the CBP data and respondent selection were

[1] Petitioners subsequently withdrew their request to review Anqiu Haoshun Trade Co., Ltd., Jinxiang Tianheng Trade Co., Ltd., Qingdao Tiantaixing Foods Co., Ltd., Shandong Jinxiang Zhengyang Import & Export Co., Ltd., and Weifang Chenglong Import & Export Co., Ltd. Thus, the Department rescinded its review of these companies. *See Rescission Notice.* Moreover, we note that there were no requests for review for either Jinan Farmlady or Hebei Golden Bird. Thus, as Jinan Farmlady and Hebei Golden Bird were not named in the *Initiation Notice,* neither company was subject to this review.

due February 17, 2009. No interested parties submitted comments.

On January 23, 2009, Anqiu Friend Food Co., Ltd. (Anqiu Friend), Jinxiang Tianma Freezing Storage Co., Ltd. (Tianma Freezing), Qingdao Xintianfeng Foods Co., Ltd. (Qingdao Xintianfeng), Weifang Hongqiao International Logistic Co., Ltd. (Weifang Hongqiao), and Weifang Shennong Foodstuff Co., Ltd. (Weifang Shennong) timely submitted separate rate certifications. Henan Weite and Shanghai LJ International Trading Co. Ltd. (Shanghai LJ) timely submitted separate rate applications on February 22, 2009.

On March 6, 2009, in accordance with section 777A(c)(2) of the Tariff Act of 1930, as amended (the Act), the Department selected the following companies for individual evaluation in this review: Anqiu Friend; Jining Trans-High Trading Co., Ltd. (Jining Trans-High); Qingdao Saturn International Trade Co., Ltd. (Qingdao Saturn); Shanghai Ever Rich Trade Company (Shanghai Ever Rich); Shenzhen Fanhui Import & Export Co., Ltd. (Shenzhen Fanhui); Shenzhen Xinboda Industrial Co., Ltd. (Shenzhen Xinboda); Tianma Freezing; and Weifang Shennong. *See* Memorandum from Martha V. Douthit, International Trade Analyst, Office 6, Re: Antidumping Administrative Review of Fresh Garlic from the People's Republic of China: Respondent Selection Memorandum (March 6, 2009) (*Respondent Selection Memorandum*), available on file in the Central Records Unit, Room 1117 of the Department's main building.

On March 16, 2009, the Department issued antidumping questionnaires to the eight mandatory administrative review respondents.[2] Anqiu Friend, Qingdao Saturn, and Weifang Shennong responded to the Department's initial questionnaire in a timely manner. Jining Trans-High, Shenzhen Fanhui, and Tianma Freezing did not respond to the Department's questionnaire. On April 13, counsel for Tianma Freezing informed the Department that they were no longer representing Tianma Freezing in this instant proceeding, stating that Tianma Freezing had not made a substantial effort to complete the questionnaire. *See* Letter from Trade Bridge, Re: Fresh Garlic from the PRC—Withdrawal of Representation (April 13, 2009). On May 1, the Department reissued the antidumping duty questionnaire directly to Tianma Freezing. Tianma Freezing did not respond to the reissued questionnaire. On May 27, as explained *infra,* the Department rescinded the review as to the other mandatory respondent, Shenzhen Xinboda. The Department issued supplemental questionnaires to Anqiu Friend, Qingdao Saturn, and Weifang Shennong on July 9, July 24, and July 31, respectively. On July 24, Qingdao Saturn notified the Department that it was no longer participating in this administrative review. *See* Letter from Qingdao Saturn International Trade Co., Ltd., Re: Fresh Garlic from the People's Republic of China (July 24, 2009) (*Qingdao Letter*). On August 17, Anqiu Friend and Weifang Shennong advised the Department that they were no longer participating in this administrative review. *See* Letter from Trade Bridge, Re: Fresh Garlic from the People's Republic of China (August 17, 2009).

On July 14, 2009, the Department extended the deadline for the preliminary results of this administrative review until November 30, 2009. *See Fresh Garlic from the People's Republic of China: Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review,* 74 FR 33995 (July 14, 2009). The Fresh Garlic Producers Association and its individual members (Christopher Ranch L.L.C., The Garlic Company, Valley Garlic, and Vessey and Company, Inc.) (collectively, Petitioners) submitted comments regarding the calculation of a separate rate for these preliminary results on October 7, 2009.

Finally, Anqiu Friend, Anqiu Haoshun, Jinxiang Dongyun Freezing Storage Co., Ltd., Juye Homestead Fruits and Vegetables Co., Ltd., Qingdao Tiantaixing, Qufu Dongbao Import & Export Trade Co., Ltd., Shandong Chenhe International Trading Co., Ltd., Shandong Longtai Fruits and Vegetables Co., Ltd., Shenzhen Fanhui, Shenzhen Sunny Import & Export Co., Ltd., and Weifang Shennong (Anqiu Friend, *et al.*) submitted a letter on November 18, 2009, challenging the Department's determination to rescind the review as to Shenzhen Xinboda.

Period of Review

The POR is November 1, 2007 through October 31, 2008.

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.

Rescission of Shenzhen Xinboda's Review

As noted above, Anqiu Friend, *et al.* submitted a letter on November 18, 2009, challenging the Department's determination to rescind the review as to Shenzhen Xinboda. As the Department stated in its *Rescission Notice,* both Petitioners and Shenzhen Xinboda withdrew their respective requests for review of Shenzhen Xinboda. Although Shenzhen Xinboda's withdrawal was filed after the extended deadline, the Department decided to accept its withdrawal, given that Petitioners timely withdrew their request for review of Shenzhen Xinboda. *See* Memorandum from Jack Zhao, Office 6, Re: Antidumping Administrative Review of Fresh Garlic from the People's Republic of China: Rescission of Review on Shenzhen Xinboda Industrial Co., Ltd. (May 27, 2009) (*Rescission Memorandum*). We

[2] The Department sent the questionnaire to Shanghai Ever Rich via FedEx to the address shown on its business license and separate rate certification from the prior administrative review. This questionnaire was returned as undeliverable. On April 1, 2009, the Department reissued the questionnaire to the address shown on Petitioners' request for review. This questionnaire was also returned as undeliverable. On April 16 and May 1, the Department reissued questionnaires to the above addresses via DHL, which were also returned as undeliverable.

continue to find that consistent with 19 CFR 351.213(d)(1), it was reasonable to extend this deadline and rescind the review for Shenzhen Xinboda.

Intent To Rescind, in Part, the Administrative Review

Under 19 CFR 351.213(d)(3), the Department may rescind a review where there are no exports, sales, or entries of subject merchandise during the respective period of review listed below. In the *Initiation Notice,* the Department stated that any company named in the notice of initiation that had no exports, sales, or entries during the period of review should notify the Department within 30 days of publication of this notice in the **Federal Register**. The Department stated that it would consider rescinding the review only if the company submitted a properly filed and timely statement certifying that it had no exports, sales, or entries of subject merchandise during the period of review. *See Initiation Notice.* The deadline to submit ''no shipment'' certifications was January 23, 2009.

On November 26, 2008, Jining Yongjia timely certified that it had made no shipments of subject merchandise to the United States during the POR. The Department's examination of shipment data from CBP indicates that Jining Yongjia made no entries of subject merchandise during the POR. Consequently, because there is no evidence on the record to indicate that this company had sales of subject merchandise under this order during the POR, pursuant to 19 CFR 351.213(d)(3), the Department is preliminarily rescinding the review with respect to Jining Yongjia.[3]

On August 19, 2009, Shenzhen Greening Trading Co., Ltd. (Shenzhen Greening) submitted an untimely no shipment certification. In its untimely certification, Shenzhen Greening provided no explanation as to why it submitted its certification nearly seven months after the deadline established in the *Initiation Notice* or any argument as to why the Department should consider accepting its untimely submission. Thus, we are not rescinding the review with respect to Shenzhen Greening.

Non-Market Economy Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a non-market economy (NME) country. *See, e.g., Polyethylene Retail Carrier Bags from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Review,* 72 FR 51588, 51590 (September 10, 2007) (unchanged in final results). Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See, e.g., Carbazole Violet Pigment 23 From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission in Part,* 71 FR 65073, 65074 (November 7, 2006) (unchanged in final results) (*CVP–23*). None of the parties to this proceeding have contested such treatment.

Separate Rates

In proceedings involving non-market economy (NME) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control, and thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of subject merchandise subject to review in an NME country a single rate unless an exporter can demonstrate that it is sufficiently independent of government control to be eligible for a separate rate. *See, e.g., Honey from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review,* 70 FR 74764, 74766 (December 16, 2005) (unchanged in final results).

In the *Initiation Notice,* the Department instructed all named firms that wished to qualify for separate rate status in the instant administrative review to complete, as appropriate, either a separate-rate certification or a separate-rate application, due no later than 30 or 60 calendar days, respectively, after publication of the *Initiation Notice. See Initiation Notice,* 73 FR at 79056. The deadlines and requirements for submitting separate rate status documentation applied equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States. As noted above, Anqiu Friend, Henan Weite, Qingdao Xintianfeng, Shanghai LJ, Tianma Freezing, Weifang Hongqiao, and Weifang Shennong each timely submitted separate-rate documentation.

The Department's separate rate status test to determine whether the exporter is independent from government control does not consider, in general, 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., Notice of Final Determination of Sales at Less than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Ukraine,* 62 FR 61754, 61758 (November 19, 1997), and *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).

To establish whether an exporter is sufficiently independent of government control to be eligible for a separate rate, the Department analyzes the exporter in light of select criteria, discussed below. *See 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 *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585, 22586–87 (May 2, 1994) (*Silicon Carbide*). Under this test, exporters in NME countries are entitled to separate, company-specific margins when they can demonstrate an absence of government control over exports, both in law (*de jure*) and in fact (*de facto*).

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; or (3) any other formal measures by the government decentralizing control of companies. *See Sparklers,* 56 FR at 20589. Henan Weite and Shanghai LJ placed on the administrative record documents to demonstrate an absence of *de jure* control (*i.e.,* the Company Law of the People's Republic of China (revised in 2005), Regulations of PRC on Administration of Registration of Companies (revised in 2005), the Foreign Trade Law of the People's Republic of China (revised in 2004), the Regulations of the People's Republic of China on the Import and Export of Goods, and the Regulations of the People's Republic of China for Controlling the Registration of Enterprises as Legal Persons). As in prior cases, we analyzed the laws presented to us and found them to establish sufficiently an absence of *de jure* control. *See, e.g., Honey from the*

[3] On November 26, 2008, Hebei Golden Bird and Jinan Farmlady each certified that they made no shipments of subject merchandise to the United States during the POR. However, as noted in footnote 5, neither company was subject to this review.

People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 72 FR 102, 105 (January 3, 2007) (unchanged in final results); *Hand Trucks and Certain Parts Thereof from the People's Republic of China; Preliminary Results and Partial Rescission of Administrative Review and Preliminary Results of New Shipper Review,* 72 FR 937, 944 (January 9, 2007) (unchanged in final results). Thus, we find that evidence on the record supports a preliminary finding of an absence of *de jure* government control with regard to the export activities of Henan Weite and Shanghai LJ.

In addition, Anqiu Friend, Jinxiang Tianma, Qingdao Xintianfeng, Weifang Hongqiao, and Weifang Shennong each certified that, consistent with the most recent segment of this proceeding in which it participated and was granted a separate rate, there is an absence of *de jure* government control of its exports.[4] Each of these company's separate-rate certifications, stated, where applicable, that the company had no relationship with any level of the PRC government with respect to ownership, internal management, and business operations. In this segment, we have no new information on the record that would cause us to reconsider the previous *de jure* control determination with regard to Anqiu Friend, Jinxiang Tianma, Qingdao Xintianfeng, Weifang Hongqiao, and Weifang Shennong. Thus, we find that evidence on the record supports a preliminary finding of an absence of *de jure* government control with regard to the export activities of Anqiu Friend, Jinxiang Tianma, Qingdao Xintianfeng, Weifang Hongqiao, and Weifang Shennong.

2. Absence of De Facto Control

As stated in previous cases, there is 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,* 59 FR at 22586–87. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by, or subject to the approval of, a government 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 management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses. *See Silicon Carbide,* 59 FR at 22586–87; *see also Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China,* 60 FR 22544, 22544–45 (May 8, 1995).

The Department conducted a separate-rate analysis for companies subject to the administrative review that submitted separate rate applications. In their separate-rate applications, the companies requesting separate rates submitted evidence indicating an absence of *de facto* governmental control over their export activities. Specifically, for Henan Weite and Shanghai LJ,[5] the evidence we reviewed indicates that: (1) Each company sets its own export prices independent of the government and without the approval of a government authority; (2) each company retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) each company has a general manager, branch manager or division manager with the authority to negotiate and bind the company in an agreement; (4) the general manager is selected by the board of directors or company employees, and the general manager appoints the deputy managers and the manager of each department; and (5) there is no restriction on each company's use of export revenues. The separate-rate applications of each company 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. Therefore, the Department preliminarily finds an absence of *de facto* government control with regard to the export activities of Henan Weite and Shanghai LJ.

In addition, Anqiu Friend, Jinxiang Tianma, Qingdao Xintianfeng, Weifang Hongqiao, and Weifang Shennong each submitted separate rate certifications which stated that, as with the previous period where each company was granted a separate rate, there is an absence of *de facto* government control of each company's exports. The separate-rate respondents' separate-rate certifications, stated, where applicable, that the respondent had no relationship with any level of the PRC government with respect to ownership, internal management, and business operations. In this segment, we have no new information on the record that would cause us to reconsider the previous period's *de facto* control determination with regard to Anqiu Friend, Jinxiang Tianma, Qingdao Xintianfeng, Weifang Hongqiao, and Weifang Shennong. Therefore, the Department preliminarily finds that Henan Weite, Shanghai LJ, Anqiu Friend, Jinxiang Tianma, Qingdao Xintianfeng, Weifang Hongqiao, and Weifang Shennong have established, *prima facie,* that they qualify for separate rates under the criteria established by *Silicon Carbide* and *Sparklers.*

We note that Shanghai Ever Rich, a mandatory respondent, did not file either a separate rate certification or application. Furthermore, as noted above in footnote 6, the questionnaire sent to Shanghai Ever Rich was undeliverable. As such, there is no information on the record which indicates that Shanghai Ever Rich's export activities are free from government control. Thus, we find Shanghai Ever Rich to be part of the PRC-wide entity. In addition, there were seven other companies for which a review was requested but which were not selected as mandatory respondents and which did not submit separate rate documentation. Therefore, we find these

[4] The most recently completed segment of this proceeding in which Anqiu Friend and Weifang Shennong participated and were granted separate rate status was *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 13th Antidumping Duty Administrative Review and New Shipper Reviews,* 74 FR 29174 (June 19, 2009). The most recently completed segment of this proceeding in which Qingdao Xintianfeng participated and was granted separate rate status was *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 12th Administrative Review,* 73 FR 34251 (June 17, 2008) (*05/06 Administrative Review*). The most recently completed segment of this proceeding in which Jinxiang Tianma and Weifang Hongqiao participated and were granted separate rate status was *Fresh Garlic From the People's Republic of China: Final Results of the Eleventh New Shipper Reviews,* 72 FR 54896 (September 27, 2007).

[5] In the *Initiation Notice,* the Department notified companies for whom a review was requested and that were assigned a separate rate in the most recent segment of this proceeding in which they participated, that they should certify that they continue to meet the criteria for obtaining a separate rate in this POR. At the time of filing their separate rate documentation, Henan Weite and Shanghai LJ were assigned a separate rate in the most recently completed segment of this proceeding in which they participated. *See 05/06 Administrative Review.* Although eligible to file the shorter separate rate certification, each company filed a separate rate application package, which covers all of the information requested in the separate rate certification. Our analysis of each company's separate rate application materials is discussed below.

companies to be part of the PRC-wide entity. *See* Attachment 2.

Selection of Rate Applicable to Non-Selected Respondents That Qualify for a Separate Rate

The Department must assign a rate to the four cooperative separate rate respondents not selected for individual examination that qualify for a separate rate, *i.e.* Henan Weite, Qingdao Xintianfeng, Shanghai LJ, and Weifang Hongqiao. We note that the statute and the Department's regulations do not directly address the establishment of a rate to be applied to individual companies not selected for examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. The Department's practice in this regard, in cases involving limited selection based on exporters accounting for the largest volumes of trade, has been to average the rates for the selected companies, excluding zero and *de minimis* rates and rates based entirely on AFA. *See, e.g., Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances,* 73 FR 33977 (June 16, 2008), and accompanying Issues and Decision Memorandum at Comment 23; and *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 13th Antidumping Duty Administrative Review and New Shipper Reviews,* 74 FR 29174 (June 19, 2009) (*06/07 Administrative Review*). In the instant administrative review, however, the rate for the three mandatory respondents granted ''separate rate status'' is based on total AFA, pursuant to section 776 of the Act. *See* ''Application of Facts Available to Anqiu Friend, Tianma Freezing and Weifang Shennong'' section, below.

While the statute does not specifically address this particular set of circumstances, section 735(c)(5)(B) of the Act does specify the methodology to be followed when a similar fact pattern arises in the context of the all-others rate established in an investigation. While not entirely analogous to the determination of a rate to be applied to responsive separate rate respondents in the context of a NME review, we find the methodology to be instructive in these circumstances.

Section 735(c)(5)(B) of the Act states that in situations where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis,* or are determined entirely under section 776 of the Act (facts available section), ''the administering authority may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated.''

The Statement of Administrative Action accompanying the Uruguay Round Agreements Act states that in using any reasonable method to calculate the all-others rate in investigations, ''{t}he expected method in such cases will be to weight-average the zero and *de minimis* margins and margins determined pursuant to the facts available, provided that volume data is available.'' *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, vol. 1 (1994) (SAA) at 873. However, the SAA also provides that ''{i}f this method is not feasible, or if it results in an average that would not be reasonably reflective of potential dumping margins for non-investigated exporters or producers, Commerce may use other reasonable methods.'' *Id.*

In the instant administrative review, the Department preliminarily concludes that it cannot accurately determine a margin based on information provided by the separate rate entities. Specifically, while the separate rates entities have given us some sales volume and value information with respect to subject merchandise, we note that garlic prices vary depending on the type and packaging of the garlic. Because the Department has available, in this garlic administrative review proceeding, information that would not be available in an investigation, namely rates from prior administrative reviews, the expected method articulated in the SAA, averaging rates based entirely on facts available, *de minimis* rates, or zero rates, does not apply. Therefore, we find we may look to other reasonable bases on which to base the margin applied to the separate rate entities subject to this review.

The Department has determined that in cases where we have found dumping margins in previous segments of a proceeding, a reasonable method for determining the rate for non-selected companies is to use the most recent rate calculated for the non-selected company in question, unless we calculated in a more recent review a rate for any company that was not zero, *de minimis* or based entirely on facts available. *See, e.g., Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 73 FR 52273, 52275 (September 9, 2008), and accompanying Issues and Decision Memorandum at Comment 6; *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Review in Part,* 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum at Comment 16; *see also Certain Fish Fillets from the Socialist Republic of Vietnam: Notice of Preliminary Results of the New Shipper Review and Fourth Antidumping Duty Administrative Review and Partial Rescission of the Fourth Administrative Review,* 73 FR 52015 (September 8, 2008) (changed in final results as final calculated rate for mandatory respondent was above *de minimis*). The Department has therefore preliminarily determined to assign Henan Weite, Qingdao Xintianfeng, Shanghai LJ, and Weifang Hongqiao, the separate rate margin calculated in the most recently completed administrative review of fresh garlic from the PRC in which a separate rate margin was calculated. *See* Memorandum from Nicholas Czajkowski, Case Analyst, Office 6, Re: Final Results of the Administrative Review of Fresh Garlic from the People's Republic of China: Separate Rate Companies and PRC-Wide Entity—Per-Unit Assessment Rates (June 8, 2009) (Per Unit Memorandum) placed on the record of this review concurrent with these preliminary results.

The per-unit rate of $1.03 per kilogram calculated in the *06/07 Administrative Review* was an average rate based on the Department's thorough examination of the two cooperative companies during that period of review. *See 06/07 Administrative Review,* 74 FR at 29176. Therefore, under the circumstances in the instant review where the margins applied to all mandatory respondents are based entirely on facts available, we find it a reasonable means by which to determine a rate for non-examined cooperative separate rate entities, and have employed this methodology for purposes of these preliminary results.

Application of Facts Available to Anqiu Friend, Tianma Freezing, and Weifang Shennong

As discussed above, subsequent to their submission of separate-rates documentation, Anqiu Friend, Tianma Freezing, and Weifang Shennong were selected as mandatory respondents.

Each of these companies failed to cooperate to the best of its ability by not responding to the Department's questionnaires. We note that mandatory respondents must fully participate in an investigation or administrative review. In other words, a mandatory respondent must respond to all the information that has been requested by the Department and not selectively choose which requests to respond to or which information to submit. It cannot fully participate in one aspect of the review, while simultaneously failing to provide complete, accurate, and verifiable data with respect to other required elements of that review.

In the instant case, in response to the *Initiation Notice,* Anqiu Friend, Tianma Freezing, and Weifang Shennong submitted certain information related to their separate rate status. However, as mandatory respondents, each company failed to cooperate to the best of its ability in the review as a whole by providing incomplete and unverifiable sales, cost, and factors of production data. However, because the Department did not notify Anqiu Friend, Tianma Freezing, and Weifang Shennong in advance of submission of the separate rate information that a respondent would not qualify for separate rate status if it failed to cooperate to the best of its ability throughout the investigation and/or review, Anqiu Friend, Tianma Freezing, and Weifang Shennong will keep their separate rate status. *See, e.g., Amended Final Results of Antidumping Duty Administrative Review and New Shipper Reviews: Wooden Bedroom Furniture From the People's Republic of China,* 72 FR 46957 (August 22, 2007) and accompanying Issues and Decision Memorandum at Comment 43.

Sections 776(a)(1) and (2) of the Act provide that, if necessary information is not available on the record, or if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information in a timely matter or in the form or manner requested subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the administering authority shall, subject to section 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department shall promptly inform the party submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that party with an opportunity to remedy or explain the deficiency. Section 782(d) of the Act additionally states that if the party submits further information that is unsatisfactory or untimely, the administering authority may, subject to subsection (e), disregard all or part of the original and subsequent responses. 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 administering authority with respect to the information; and (5) the information can be used without undue difficulties.

Tianma Freezing did not respond to the Department's original questionnaire, and Anqiu Friend and Weifang Shennong each did not respond to the Department's supplemental questionnaire. Thus, the information necessary for the Department to conduct its analysis is not available in the record. *See* Section 776(a)(1) of the Act. Moreover, the decision by Anqiu Friend, Tianma Freezing, and Weifang Shennong to not respond to the Department's questionnaires constitutes a refusal to provide the Department with information necessary to conduct its antidumping analysis. *See* Sections 776(a)(2)(A) and (B) of the Act. As Anqiu Friend, Tianma Freezing, and Weifang Shennong have withheld necessary information that has been requested by the Department, the Department shall, pursuant to sections 776(a)(1), (a)(2)(A), and (a)(2)(B) of the Act, use facts otherwise available to reach the applicable determination.

Section 776(b) of the Act provides that, if the Department finds that an interested party has failed to comply by not acting to the best of its ability to comply with a request of information, the Department may use an adverse inference in selecting from among the facts otherwise available. Because Anqiu Friend, Tianma Freezing, and Weifang Shennong did not respond to the Department's questionnaires, the Department finds that each of these companies has failed to cooperate by not acting to the best of its ability to comply with the Department's request for information. Tianma Freezing did not request additional time to respond to the Department's questionnaire. Although Anqiu Friend and Weifang Shennong requested additional time to submit their responses to the Department's supplemental questionnaires, which the Department granted, neither company ultimately responded to those supplemental questionnaires. Further, Anqiu Friend and Weifang Shennong affirmatively stated on the record that each was no longer participating in this administrative review. By withholding the requested information, Anqiu Friend, Tianma Freezing, and Weifang Shennong prevented the Department from conducting any company-specific analysis or calculating dumping margins for the POR. Therefore, pursuant to section 776(b) of the Act, the Department preliminarily determines that an inference that is adverse to the interests of Anqiu Friend, Tianma Freezing, and Weifang Shennong is warranted.

Section 776(b) of the Act also provides that an adverse inference may include reliance on information derived from the petition, the final determination in the investigation segment of the proceeding, a previous review under section 751 of the Act or a determination under section 753 of the Act, or any other information placed on the record. The Department's practice, when selecting an AFA rate from among the possible sources of information, has been to ensure that the margin is sufficiently adverse ''as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See, e.g., Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan,* 63 FR 8909, 8932 (February 23, 1998) (*SRAMS from Taiwan*). Additionally, the Department's practice has been to assign the highest margin determined for any party in the less-than-fair-value (LTFV) investigation, or in any administrative review of a specific order, to respondents who have failed to cooperate with the Department. *See, e.g., Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products From Japan: Preliminary Results of Antidumping Duty Administrative* Review, 74 FR 10019 (March 9, 2009)

(unchanged in final results). As such, the Department is assigning Anqiu Friend, Tianma Freezing, and Weifang Shennong the per kilogram rate of $4.71 calculated in the *06/07 Administrative Review. See* Per Unit Memorandum.

Corroboration of Secondary Information Used as Adverse Facts Available

Section 776(c) of the Act provides that, where the Department selects from among the facts otherwise available and relies on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. Secondary information is described in the SAA as ''{i}nformation derived from the petition that gave rise to the investigation or review, the final determination covering the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See* SAA at 870. The SAA states that ''corroborate'' means to determine that the information used has probative value. *Id.* The Department has determined that to have probative value, information must be reliable and relevant. *See, e.g., 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) (unchanged in final results). The SAA also states that independent sources used to corroborate such evidence may include, for example, 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; *see also Notice of Preliminary Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators from Japan,* 68 FR 35627, 35629 (June 16, 2003) (unchanged in final determination); and *Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada,* 70 FR 12181, 12183 (March 11, 2005).

To be considered corroborated, information must be found to be both reliable and relevant. Unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only sources for calculated margins are administrative determinations. The AFA rate we are applying for the current review was calculated with respect to the original investigation of garlic from the PRC. *See Garlic LTFV.* Furthermore, 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 will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. *See, e.g., Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 6812, 6814 (February 22, 1996). Similarly, the Department does not apply a margin that has been discredited. *See D&L Supply Co.* v. *United States,* 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated). None of these unusual circumstances are present with respect to the rate being used here. Moreover, the rate selected, *i.e.* $4.71 per kilogram, is the rate currently applicable to the PRC-wide entity. The Department assumes that if an uncooperative respondent could have obtained a lower rate, it would have cooperated. *See Rhone Poulenc, Inc.* v. *United States,* 899 F. 2d 1185, 1190–91 (Fed. Cir. 1990); *Ta Chen Stainless Steel Pipe, Inc.* v. *United States,* 24 CIT 841, 848 (2000) (respondents should not benefit from failure to cooperate). As there is no information on the record of this review that demonstrates that this rate is not appropriate to use as AFA in the current review, we determine that this rate has relevance.

As this AFA rate is both reliable and relevant, we determine that it has probative value, and is thus in accordance with the requirement, under section 776(c) of the Act, that secondary information be corroborated to the extent practicable (*i.e.,* that it has probative value).

Application of Facts Available to the PRC-Wide Entity

As stated above in the ''Background'' section, on March 6, 2009, the Department selected Jining Trans-High, Qingdao Saturn, and Shenzhen Fanhui as mandatory respondents. On March 16, the Department sent an antidumping questionnaire to each of these companies. Jining Trans-High and Shenzhen Fanhui did not respond to the questionnaire. Qingdao Saturn did respond to the questionnaire. Subsequently, on July 9, the Department issued Qingdao Saturn a supplemental questionnaire, to which it did not respond. On July 24, Qingdao Saturn notified the Department that it was no longer participating in this administrative review. *See Qingdao Letter.* Unlike Anqiu Friend, Tianma Freezing, and Weifang Shennong, these three mandatory respondents did not submit separate-rate documentation. Thus, the Department has no basis upon which to find that any of these three companies are eligible for separate rate status. Therefore, the Department is treating Jining Trans-High, Qingdao Saturn, and Shenzhen Fanhui as part of the PRC-wide entity. *See* Attachment 2. Because we have determined these three companies to be part of the PRC-wide entity, the PRC-wide entity is now under review. The PRC-wide entity also includes the eight other companies subject to this review which did not file the appropriate separate-rate documentation (*see* Attachment 2).

As noted above, sections 776(a)(1) and (2) of the Act mandate that if necessary information is not available on the record of an antidumping proceeding, or if an interested party or any other person: (A) Withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the Department shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination under this title.

As selected respondents, Jining Trans-High, Qingdao Saturn, and Shenzhen Fanhui are required to provide full questionnaire responses. Thus, the decision by Jining Trans-High, Qingdao Saturn, and Shenzhen Fanhui to not respond to the Department's questionnaires and to not participate in this review constitutes a refusal to provide the Department with information necessary to conduct its antidumping analysis. Accordingly, because Jining Trans-High, Qingdao Saturn, and Shenzhen Fanhui are part of the PRC-wide entity, the Department preliminarily finds that the PRC-wide entity did not respond to our requests for information and that necessary information is not available on the record. Moreover, the Department

preliminarily finds that the PRC-wide entity has significantly impeded the proceeding by withholding information and failing to respond to the Department's request for information within the specified deadlines. Therefore, pursuant to sections 776(a)(1) and (a)(2) of the Act, the Department preliminarily determines that the application of facts otherwise available is warranted for the PRC-wide entity. Because Jining Trans-High and Shenzhen Fanhui did not respond to the Department's requests for information, sections 782(d) and (e) of the Act are not applicable.

As noted above, Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act also authorizes the Department to use as AFA information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

Pursuant to section 776(b) of the Act, we find the PRC-wide entity, which includes the companies named in Attachment 2, failed to cooperate by not acting to the best of its ability. As noted above, the PRC-wide entity did not provide the requested information, which was in the sole possession of the respondents and could not be obtained otherwise. Thus, because the PRC-wide entity refused to participate fully in this proceeding, we preliminarily determine that in selecting from among the facts otherwise available, an adverse inference is warranted for the PRC-wide entity pursuant to section 776(b) of the Act. By using an inference that is adverse to the interests of the PRC-wide entity, we ensure the companies that are part of the PRC-wide entity will not obtain a more favorable result by failing to cooperate than had they cooperated fully in this review.

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c) authorize the Department to rely on information derived from: (1) The petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any information placed on the record. In reviews, the Department normally selects, as AFA, the highest rate on the record of any segment of the proceeding. *See, e.g., Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review,* 68 FR 19504, 19506 (April 21, 2003). The U.S. Court of International Trade (CIT) and the Court of Appeals for the Federal Circuit have consistently upheld the Department's practice in this regard. *See Rhone Poulenc, Inc.* v. *United States,* 899 F.2d 1185, 1190 (Fed. Circ. 1990) (*Rhone Poulenc*); *NSK Ltd.* v. *United States,* 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in a less-than-fair-value investigation); *see also Kompass Food Trading Int'l* v. *United States,* 24 CIT 678, 683–84 (2000) (upholding a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd.* v. *United States,* 360 F. Supp. 2d 1339, 1348 (CIT 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is ''sufficiently adverse so as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See SRAMS from Taiwan* at 8932. The Department's practice also ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* SAA at 870; *see also Notice of Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Brazil,* 69 FR 76910, 76912 (December 23, 2004). In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior margin ''reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.'' *See Rhone Poulenc,* 899 F.2d at 1190.

Consistent with the statute, court precedent, and its normal practice, the Department has preliminarily assigned the rate of $4.71 per kilogram, the highest rate determined in any segment of this proceeding, to the PRC-wide entity, which includes the companies named in Attachment 2. *See 06/07 Administrative Review.* As discussed further in the ''Corroboration of Secondary Information Used as Adverse Facts Available'' section above, this rate has been corroborated.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margins exist for the period November 1, 2007 through October 31, 2008: [6]

FRESH GARLIC FROM THE PRC 2007–2008 ADMINISTRATIVE REVIEW

Manufacturer/exporter	Weighted-average margin (dollars per kilogram)
Henan Weite	1.03
Qingdao Xintianfeng Foods Co., Ltd.	1.03
Shanghai LJ International Trading Co., Ltd.	1.03
Weifang Hongqiao International Logistic Co., Ltd.	1.03
Anqiu Friend Food Co., Ltd.	4.71
Jinxiang Tianma Freezing Storage Co., Ltd.	4.71
Weifang Shennong Foodstuff Co., Ltd.	4.71
PRC-wide Entity (*see* Attachment 2)	4.71

[6] As discussed above, the Department selected eight mandatory respondents. Because we previously rescinded this review with respect to Shenzhen Xinboda, the preliminary results relate to the remaining seven respondents, including Shanghai Ever Rich, which, as discussed in footnote 10 above, has been found to be part of the PRC-wide entity.

Disclosure

We will disclose the calculations used in our analysis to parties to these proceedings within five days of the date of publication of this notice. *See* 19 CFR 351.224(b).

Comments

Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments within 30 days of the date of publication of this notice. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs, limited to issues raised in the case briefs, will be due five days later, pursuant to 19 CFR 351.309(d). Parties who submit case or rebuttal briefs in these proceedings are requested to submit with each argument: (1) A statement of the issue, and (2) a brief summary of the argument. Parties are requested to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Additionally, parties are requested to provide their case briefs and rebuttal briefs in electronic format (*e.g.,* preferably Microsoft Word or Adobe Acrobat). 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 within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in case and rebuttal briefs. The Department will issue the final results of these reviews, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

Assessment Rates

Pursuant to 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. For assessment purposes, where possible, the Department normally calculates importer-specific assessment rates for fresh garlic from the PRC. However, as discussed above, we are not calculating any company-specific antidumping duties in these preliminary results. As such, it is not possible to calculate importer-specific assessment rates in this review. Rather, those companies demonstrating eligibility for a separate rate (Henan Weite, Qingdao Xintianfeng, Shanghai LJ, and Weifang Hongqiao) were assigned the most recently calculated separate rate, while Anqiu Friend, Tianma Freezing, and Weifang Shennong were assigned a separate rate based on total AFA. Other companies subject to review (discussed in detail above and listed in Attachment 2) are found to be part of the PRC-wide entity. If these preliminary results are adopted in the final results of this review, we will instruct CBP to assess antidumping duties on entries of subject merchandise during the period of review as follows.

Consistent with the *06/07 Administrative Review,* we will direct CBP to assess a per-unit (*i.e.,* per kilogram) amount on each entry of the subject merchandise during the POR. In the *06/07 Administrative Review,* we calculated a per-unit assessment rate for separate rate companies, which is the same separate rate (both in value and per unit terms) applicable in this review. *See* Per Unit Memorandum. This same per-unit assessment will be applied to subject merchandise exported by Henan Weite, Qingdao Xintianfeng, Shanghai LJ, or Weifang Hongqiao.

Also in the *06/07 Administrative Review,* we calculated per-unit assessment rates for the companies that were determined to be part of the PRC-wide entity. *See* Per Unit Memorandum. This is the highest per unit rate calculated in any segment of the proceeding and, as such, will be applied in this review to all companies that are part of the PRC-wide entity. (*See* Attachment 2). In addition, this same per-unit assessment rate will be applied to entries of subject merchandise exported by Anqiu Friend, Tianma Freezing, or Weifang Shennong as total AFA. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

Consistent with *06/07 Administrative Review,* we will establish and collect a per-kilogram cash deposit amount which will be equivalent to the company-specific dumping margin published in the final results of this review. Specifically, the following cash deposit requirements will be effective upon publication of the final results of this review for all 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)(1) of the Act: (1) For subject merchandise exported by Henan Weite, Qingdao Xintianfeng, Shanghai LJ, or Weifang Hongqiao, the cash deposit rate will be the per-unit rate determined in the final results of the administrative review; (2) for subject merchandise exported by Anqiu Friend, Tianma Freezing, or Weifang Shennong the cash deposit rates will be the per-unit rate determined in the final results of the administrative review; (3) for subject merchandise exported by PRC exporters subject to this administrative review that have not been found to be entitled to a separate rate (*see* Attachment 2), the cash deposit rate will be the per-unit PRC-wide rate determined in the final results of administrative review; (4) for subject merchandise exported by all other PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the per-unit PRC-wide rate determined in the final results of administrative review; (5) for previously-investigated or previously-reviewed PRC and non-PRC exporters who received a separate rate in a prior segment of the proceeding (which were not reviewed in this segment of the proceeding), the cash deposit rate will continue to be the rate assigned in that segment of the proceeding; (6) the cash deposit rate for non-PRC exporters of subject merchandise which have not received their own rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213.

Dated: November 30, 2009.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Attachment 1—Companies Subject to the Administrative Review

1. Anqiu Friend Food Co., Ltd.
2. Henan White.
3. Heze Ever-Best International Trade Co., Ltd. (f/k/a Shandong Heze International Trade and Developing Company).
4. Jinan Trans-High Trading Co., Ltd.
5. Jinan Yipin Corporation Ltd.
6. Jining Yongjia Trade Co., Ltd.

7. Jinxiang Dongyun Freezing Storage Co., Ltd. (a/k/a Jinxiang Eastward Shipping Import and Export Limited Company).
8. Jinxiang Shanyang Freezing Storage Co., Ltd.
9. Jinxiang Tianma Freezing Storage Co., Ltd.
10. Qingdao Xintianfeng Foods Co., Ltd.
11. Qingdao Saturn International Trade Co., Ltd.
12. Qufu Dongbao Import & Export Trade Co., Ltd.
13. Shanghai Ever Rich Trade Company.
14. Shanghai LJ International Trading Co., Ltd.
15. Shenzhen Fanhui Import & Export Co., Ltd.
16. Shenzhen Greening Trading Co., Ltd.
17. Taiyan Ziyang Food Co., Ltd.
18. Weifang Hongqiao International Logistic Co., Ltd.
19. Weifang Shennong Foodstuff Co., Ltd.

Attachment 2—Companies Under Review Subject to the PRC-Wide Rate

1. Jinan Trans-High Trading Co., Ltd.
2. Qingdao Saturn International Trade Co., Ltd.
3. Shenzhen Fanhui Import & Export Co., Ltd.
4. Heze Ever-Best International Trade Co., Ltd. (f/k/a Shandong Heze International Trade and Developing Company).
5. Jinan Yipin Corporation Ltd.
6. Jinxiang Dongyun Freezing Storage Co., Ltd. (a/k/a Jinxiang Eastward Shipping Import and Export Limited Company).
7. Jinxiang Shanyang Freezing Storage Co., Ltd.
8. Qufu Dongbao Import & Export Trade Co., Ltd.
9. Shenzhen Greening Trading Co., Ltd.
10. Shanghai Ever Rich Trade Company.
11. Taiyan Ziyang Food Co., Ltd.

[FR Doc. E9–29239 Filed 12–7–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XT21

Marine Mammals; File No. 555–1870

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application for permit amendment.

SUMMARY: Notice is hereby given that James T. Harvey, Ph.D., Moss Landing Marine Laboratories, 8272 Moss Landing Road, Moss Landing, CA 95039, has applied for an amendment to Scientific Research Permit No. 555–1870–00.

DATES: Written, telefaxed, or e-mail comments must be received on or before January 7, 2010.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species home page, *https://apps.nmfs.noaa.gov*, and then selecting File No. 555–1870 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301)713–0376, or by email to *NMFS.Pr1Comments@noaa.gov*. Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Tammy Adams, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 555–1870–00 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Permit No. 555–1870–00, issued on April 10, 2007(74 FR 19469), authorizes the permit holder to conduct research on the biology and ecology of harbor seals (Phoca vitulina) in California, Oregon, Washington, and Alaska. Researchers are authorized to capture, handle, flipper tag, instrument, and biologically sample (blood, skin, hair, swabs, lavage/enema) 670 harbor seals annually; an additional 2,910 seals may be taken by incidental disturbance during capture, scat collection, experimental harassment, and exposure to playback of vocalizations annually. Of those animals captured, 140 may have surgical procedures conducted to implant subcutaneous radio transmitters. Up to two incidental mortalities per year are authorized. California sea lions and northern elephant seals are authorized to be incidentally harassed during research activities.

The permit holder is requesting the permit be amended to include authorization for increasing the number of harbor seal pups of both sexes captured in California from 40 animals (20 of each sex) to 70 (35 of each sex) annually to allow for a more robust survival estimate model. The applicant also proposes to bring a subset of harbor seals captured in California (seals one year or older of either sex excluding pregnant or lactating females) into temporary captivity in quarantine at The Marine Mammal Center (Sausalito, California) to conduct trials to modify the currently permitted sedation and surgical protocols for subcutaneous implantation of radio transmitters. The purposes of these modifications are to (1) minimize the amount of time needed for surgery; and (2) test three different tag types and a revised suture protocol to improve tag retention. The amendment would be valid through the expiration date on April 15, 2012.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: December 2, 2009.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–29259 Filed 12–7–09; 8:45 am]

BILLING CODE 3510–22–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9090–4]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C.