

2005).<sup>1</sup> In our preliminary results, we found that revocation of the orders would likely lead to continuation or recurrence of dumping.

On January 27, 2006, the Department received case briefs from the following parties: *Japan* - Koyo Seiko Co., Ltd., and Koyo Corporation of USA (collectively, Koyo), NTN Corporation and American NTN Bearing Manufacture Corporation (collectively, NTN), and NSK Corp. and NSK Ltd. (collectively, NSK); *Singapore* - NMB Singapore Ltd. and Pelmec Industries (Pte.) Ltd. (collectively, NMB/Pelmec). On February 1, 2006, the Department received a rebuttal brief from the Timken Company, Pacamor Kubar Bearings, and RBC Bearings (collectively, the domestic interested parties).

**Scope of the Order**

The products covered by these orders are ball bearings and parts thereof. These products include all bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following *Harmonized Tariff Schedule of the United States* (HTSUS) subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.2580, 8482.99.35, 8482.99.6595, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.70.8050, 8708.93.30, 8708.93.5000, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4960, 8708.99.50, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

Although the HTSUS subheadings above are provided for convenience and customs purposes, written descriptions of the scopes of these orders remain dispositive.

**Analysis of Comments Received**

All issues raised in these sunset reviews are addressed in the "Issues and Decision Memorandum" from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M.

<sup>1</sup> For a full discussion of the history of these orders prior to the preliminary results of these sunset reviews, see the December 28, 2005, decision memorandum accompanying the preliminary results of sunset reviews.

Spooner, Assistant Secretary for Import Administration, dated April 27, 2006 (Decision Memo), which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping, the magnitude of the margins likely to prevail if the antidumping duty orders were revoked, and support of the domestic industry. Parties can find a complete discussion of all issues raised in these sunset reviews and the corresponding recommendations in this public memorandum, which is on file in room B-099 of the main Department building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at <http://ia.ita.doc.gov/frn>. The paper copy and electronic version of the Decision Memo are identical in content.

**Final Results of Review**

We determine that revocation of the antidumping duty orders on ball bearings from Japan and Singapore would be likely to lead to continuation or recurrence of dumping at the following weighted-average margins:

| Manufacturers/Exporters/Producers                             | Weighted-Average Margin (Percent) |
|---|-----------------------------------|
| <b>Japan.</b>   |                                   |
| Koyo Seiko Co., Ltd. ....                                     | 12.78                             |
| Minebea Co., Ltd. ....  | 106.61                            |
| Nachi-Fujikoshi Corp. ....                                    | 48.69                             |
| NSK Ltd. ....   | 8.28                              |
| NTN Corp. ....  | 5.93                              |
| All Other Japanese Manufacturers/Exporters/Producers .....    | 45.83                             |
| <b>Singapore.</b>   |                                   |
| NMB/Pelmec .....  | 25.08                             |
| All Other Singaporean Manufacturers/Exporters/Producers ..... | 25.08                             |

**Notification Regarding Administrative Protective Order**

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or 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 these results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: April 27, 2006.

**David M. Spooner,**  
*Assistant Secretary for Import Administration.*

[FR Doc. E6-6763 Filed 5-3-06; 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 2004-2005 Semi-Annual New Shipper Reviews**

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

**SUMMARY:** In response to requests from Shandong Chengshun Farm Produce Trading Company, Ltd. ("Chengshun"), Shenzhen Fanhui Import and Export Co., Ltd. ("Fanhui"), Qufu Dongbao Import and Export Trade Co., Ltd. ("Dongbao"), and Anqiu Friend Food Co., Ltd. ("Anqiu Friend"), the U.S. Department of Commerce ("the Department") is conducting new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China ("PRC"). The period of review ("POR") is November 1, 2004, through April 30, 2005.

We preliminarily determine that none of these companies have made sales in the United States at prices below normal value. If these preliminary results are adopted in our final results of this 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 the importer-specific assessment rates are above *de minimis*.

We invite interested parties to comment on these preliminary results. Parties who submit comments are requested to submit with each argument a statement of the issue and a brief summary of the argument. We will issue the final results no later than 90 days from the date of publication of this notice.

**EFFECTIVE DATE:** May 4, 2006.

**FOR FURTHER INFORMATION CONTACT:** Jim Nunno or Ryan Douglas, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0783 and (202) 482-1277, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

The Department published an antidumping duty order on fresh garlic from the PRC on November 16, 1994. See *Antidumping Duty Order: Fresh Garlic from the People's Republic of China*, 59 FR 28462. On May 17, 2005, we received timely requests for new shipper reviews from Chengshun) and Anqiu Friend. On May 26, 2005, we received a timely request for new shipper review from Xi'an XiongLi Foodstuff Co., Ltd. ("XiongLi"). On May 31, 2005, we received timely requests for new shipper reviews from Fanhui and Dongbao. Pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 351.214(d)(1), we initiated the following three new shipper reviews for shipments of fresh garlic from the PRC:

- 1) grown by Jinxiang Chengsen Agricultural Trade Company, Ltd. ("CATC") and exported by Chengshun,
- 2) grown by Jinxiang Tianshan Foodstuff Co., Ltd. ("JTFC") and exported by XiongLi, and
- 3) grown and exported by Fanhui.

On July 11, 2005, the Department published a notice of the initiation of the new shipper reviews of Chengshun, Fanhui, and XiongLi. See *Fresh Garlic From the People's Republic of China; Initiation of New Shipper Reviews*, 70 FR 39733 (July 11, 2005).

In July 2005 we issued antidumping duty questionnaires to Chengshun, Fanhui, and XiongLi. Also in July 2005, we issued questionnaires to the importers of merchandise exported by Chengshun, Fanhui, and XiongLi. In August 2005, we received questionnaire responses from Chengshun, Fanhui, and XiongLi and from the importers of merchandise exported by Chengshun and Fanhui.

On August 9, 2005, the Department received a timely request from XiongLi to withdraw its request for this review. On September 7, 2005, the Department rescinded the new shipper review with respect to XiongLi. See *Fresh Garlic From the People's Republic of China: Rescission of Antidumping Duty New Shipper Review*, 70 FR 54358 (September 14, 2005). We also initiated two additional new shipper reviews for merchandise grown and exported by Dongbao and Anqiu Friend.

On October 3, 2005, the Department published a notice of the initiation of the new shipper review of Dongbao. See *Fresh Garlic From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review*, 70 FR 57561 (October 3, 2005). On October 26, 2005, the Department published a notice of

the initiation of the new shipper review of Anqiu Friend. See *Fresh Garlic From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review*, 70 FR 61787 (October 26, 2005).

In October and November 2005, we issued antidumping duty questionnaires to Dongbao and Anqiu Friend, which included questionnaires to the importers of merchandise exported by Dongbao and Anqiu Friend. We received questionnaire responses from Dongbao in November 2005 and from Anqiu Friend in December 2005. The Department issued supplemental questionnaires to and received responses from all four respondents from November 2005 through March 2006.

On November 30, 2005, we extended the deadline for the issuance of the preliminary results of these new shipper reviews until April 26, 2006. See *Fresh Garlic From the People's Republic of China: Extension of Time Limit for the Preliminary Results of New Shipper Reviews*, 70 FR 72608 (December 6, 2005).

In March 2006, the Department conducted verifications of all four respondents. Also in March 2006, the Department amended the administrative protective orders in these new shipper reviews to allow parties to use business proprietary information in the record of the Chengshun and Fanhui new shipper reviews in making comments in either of the other two new shipper reviews (i.e., of Dongbao or Anqiu), and vice-versa.<sup>1</sup>

## Period of Review

The POR is November 1, 2004, through April 30, 2005.

## Scope of the Order

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

The scope of this order does not include the following: (a) garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has

been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive. In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to CBP to that effect.

## 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. In accordance with 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 *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results 2001-2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003). None of the parties to this proceeding has contested such treatment. Accordingly, we calculated normal value ("NV") in accordance with section 773(c) of the Act, which applies to NME countries.

## Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's FOPs, valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. The sources

<sup>1</sup> See Memorandum to the File titled, "2004-2005 Semi-Annual New Shipper Reviews of Fresh Garlic from the People's Republic of China: Use of Business Proprietary Information in Parallel Segments," dated March 21, 2006.

of the surrogate factor values are discussed under the "Normal Value" section below and in the Memorandum to the File titled, "Factors Valuations for the Preliminary Results of the New Shipper Reviews," dated April 26, 2006 ("Factor Valuation Memorandum"), which is on file in the Central Records Unit ("CRU"), Room B-099 of the main Department building.

The Department has determined that India, Indonesia, Sri Lanka, the Philippines, and Egypt are countries comparable to the PRC in terms of economic development. See Memorandum to the File titled "New Shipper Reviews of Fresh Garlic from the People's Republic of China (PRC): Request for a List of Surrogate Countries," dated January 9, 2006, which is on file in the CRU.

In addition to being among the countries comparable to the PRC in terms of economic development, India is a significant producer of the subject merchandise. Therefore, we have used India as the surrogate country and, accordingly, have calculated NV using Indian prices to value the PRC producers' FOPs, when available and appropriate. See Memorandum to the File titled, "Semi-Annual New Shipper Reviews of the Antidumping Duty Order of Fresh Garlic from the People's Republic of China: Selection of a Surrogate Country," dated April 26, 2006, ("Surrogate Country Memorandum"), which is on file in the CRU. For a detailed discussion of these comments, see *Factor Valuation Memorandum*. We have obtained and relied upon publicly available information wherever possible.

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in an antidumping new shipper review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results.

#### Separate Rates

The Department has treated the PRC as an NME country in all past antidumping investigations. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China*, 65 FR 33805 (May 25, 2000), and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China*, 65 FR 19873 (April 13, 2000). A designation as an NME remains in effect until it is revoked by the Department. See section 771(18)(C) of the Act. Accordingly, there is a rebuttable presumption that all companies within the PRC are subject to

government control and, thus, should be assessed a single antidumping duty rate.

It is the Department's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in the *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*").

Chengshun, Fanhui, Dongbao and Anqiu Friend all provided the requested separate-rate information in their responses to our original and supplemental questionnaires. Accordingly, consistent with *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 56570 (April 30, 1996), we performed separate-rates analyses to determine whether each producer/exporter is independent from government control.

#### A. 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; and (2) any legislative enactments decentralizing control of companies.

Each respondent has placed on the record a number of documents to demonstrate absence of *de jure* control including the "Foreign Trade Law of the People's Republic of China," the "Company Law of the People's Republic of China," and the "Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations." The Department has analyzed such PRC laws and found that they establish an absence of *de jure* control. See, e.g., *Preliminary Results of New Shipper Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 30695 (June 7, 2001). We have no information in this proceeding that would cause us to reconsider this determination. Thus, we believe that the evidence on the record supports a preliminary finding of an

absence of *de jure* government control based on: (1) an absence of restrictive stipulations associated with the exporter's business license; and (2) the legal authority on the record decentralizing control over the respondent.

#### B. Absence of De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. See *Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255 (December 31, 1998). Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of 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 exporter sets its own export prices independent of the government and without the approval of a government authority; (2) whether the respondent has the authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

Chengshun reported that it is a limited liability company. Fanhui reported that it is a privately owned limited liability corporation. Dongbao reported that it is a privately owned company. Anqiu Friend reported that it is an independently managed limited liability company. Each has asserted the following: (1) There is no government participation in setting export prices; (2) sales managers and authorized employees have the authority to bind sales contracts; (3) they do not have to notify any government authorities of management selections; (4) there are no restrictions on the use of export revenue; (5) each is responsible for financing its own losses. The questionnaire responses of Chengshun, Fanhui, Dongbao and Anqiu Friend do not suggest that pricing is coordinated among exporters. During our analysis of the information on the record, we found no information indicating the existence of government control. Consequently,

we preliminarily determine that Chengshun, Fanhui, Dongbao and Anqiu Friend have met the criteria for the application of a separate rate.

### Export Price

For Chengshun, Fanhui, Dongbao, and Anqiu Friend, we based the U.S. price on export price ("EP"), in accordance with section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation and constructed export price ("CEP") was not otherwise warranted by the facts on the record. We calculated EP based on the packed price from the exporter to the first unaffiliated customer in the United States.

For Chengshun, we deducted foreign inland freight and foreign brokerage and handling from the gross unit price, in accordance with section 772(c) of the Act because Chengshun did not incur any other shipping and handling expenses.

For Fanhui, we deducted foreign inland freight and foreign brokerage and handling from the gross unit price, in accordance with section 772(c) of the Act because Fanhui reported that all shipments were FOB Qingdao and all other shipping and handling expenses were paid by the U.S. customer.

For Dongbao, we deducted foreign inland freight and foreign brokerage and handling from the gross unit price, in accordance with section 772(c) of the Act because Dongbao reported that all shipments were FOB China port and all other shipping and handling expenses were paid by the U.S. customer.

For Anqiu Friend, we deducted foreign inland freight and foreign brokerage and handling from the gross unit price, in accordance with section 772(c) of the Act because Anqiu Friend did not incur any other shipping and handling expenses.

As all foreign inland freight and foreign brokerage and handling expenses (where applicable) were provided by PRC service providers or paid for in renminbi, we valued these services using Indian surrogate values (see "Factor Valuations" section below for further discussion). See *Factor Valuation Memorandum*. For a more detailed explanation of the company-specific adjustments that we made in the calculation of the dumping margins for these preliminary results, see the company-specific preliminary results analysis memoranda, dated April 26, 2006, on file in the CRU.<sup>2</sup>

<sup>2</sup> See Memorandum to the File titled, "Analysis for the Preliminary Results of the New Shipper Review of Fresh Garlic from the People's Republic of China: Shandong Chengshun Farm Produce

### Normal Value

#### 1. Methodology

The Department's general policy, consistent with section 773(c)(1)(B) of the Act, is to calculate NV using each of the FOPs that a respondent consumes in the production of a unit of the subject merchandise. There are circumstances, however, in which the Department will modify its standard FOP methodology, choosing to apply a surrogate value to an intermediate input instead of the individual FOPs used to produce that intermediate input. In some cases, a respondent may report factors used to produce an intermediate input that accounts for an insignificant share of total output. When the potential increase in accuracy to the overall calculation that results from valuing each of the FOPs is outweighed by the resources, time, and burden such an analysis would place on all parties to the proceeding, the Department has valued the intermediate input directly using a surrogate value. See, e.g., *Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003), and accompanying *Issues and Decision Memorandum* at Comment 3 ("*Fish Fillets Final*").

Also, there are circumstances in which valuing the FOPs used to yield an intermediate product would lead to an inaccurate result because the Department would not be able to account for a significant element of cost adequately in the overall factors buildup. In this situation, the Department would also value the intermediate input directly. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Ukraine*, 67 FR 55785 (August 30, 2002), and *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China*, 66 FR 49632 (September 28, 2001). See also *Certain Preserved Mushrooms from the People's*

*Trading Company, Ltd.*," dated April 26, 2006, Memorandum to the File titled, "Analysis for the Preliminary Results of the New Shipper Review of Fresh Garlic from the People's Republic of China: Shenzhen Fanhui Import and Export Co., Ltd.," dated April 26, 2006, Memorandum to the File titled, "Analysis for the Preliminary Results of the New Shipper Review of Fresh Garlic from the People's Republic of China: Qufu Dongbao Import and Export Trade Co., Ltd.," dated April 26, 2006, and Memorandum to the File titled, "Analysis for the Preliminary Results of the New Shipper Review of Fresh Garlic from the People's Republic of China: Anqiu Friend Food Co., Ltd.," dated April 26, 2006.

*Republic of China: Final Results of First New Shipper Review and First Antidumping Duty Administrative Review*, 66 FR 31204 (June 11, 2001), and accompanying *Issues and Decision Memorandum* at Comment 2; *Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam*, 68 FR 498, 449 (January 31, 2003); and *Fish Fillets Final*.

For the final results of the most recently completed (10th) administrative review,<sup>3</sup> the Department applied an intermediate-product valuation methodology to all companies in order to eliminate the distortions in our calculation of NV. Using this methodology, we calculated NV by starting with a surrogate value for the garlic bulb (i.e., the "intermediate product"), adjusted for yield losses during the processing stages, and adding the respondents' processing costs, which were calculated using their reported usage rates for processing fresh garlic.<sup>4</sup>

In the course of these new shipper reviews, the Department has requested and obtained a vast amount of detailed information from the respondents with respect to each company's garlic production practices. Based on our analysis of the information on the record and for the reasons outlined in the Memorandum to the File titled, "2004-2005 Semi-Annual New Shipper Reviews of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Intermediate Input Methodology," dated April 26, 2006 ("*NSR Intermediate Product Memorandum*"), we believe that the respondents are unable to accurately record and substantiate the complete costs of growing garlic.

Specifically, evidence on the record indicates that the respondents' records

<sup>3</sup> See *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews*, signed April 26, 2006 (publication forthcoming) and accompanying *Issues and Decisions Memorandum* at Comment 1 ("*Garlic 10th Final Results*").

<sup>4</sup> For a complete explanation of the Department's analysis, and for a more detailed analysis of the issues with respect to each respondent, see *Fresh Garlic from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Preliminary Results of New Shipper Reviews*, 70 FR 69942, 69950 (November 18, 2005) ("*Garlic 10th Preliminary Results*"), and accompanying Memorandum to the File titled, "2003-2004 Administrative and New Shipper Reviews of the Antidumping Duty Order on Fresh Garlic From the People's Republic of China: Intermediate Input Methodology," dated November 10, 2005.

are deficient in recording reported labor usage. The processes required for growing, harvesting, and processing fresh garlic in the PRC are very labor-intensive. From planting, tending (e.g., taking care of plants), maintenance, harvesting, transporting from one area to another, to processing into subject merchandise, PRC garlic producers rely on a sizeable workforce, which incurs many man-hours to carry out these activities. In order to address several concerns which were raised during the course of previous administrative reviews with respect to the companies' reported growing- and harvesting-related labor FOPs, the Department issued supplemental questionnaires to all four respondents in these new shipper reviews. Also, in March 2006, the Department conducted verification of all four respondents.<sup>5</sup> Based on the responses to these questionnaires, and on the information gathered during verification, we conclude that, in general, the respondents in this industry do not track actual labor hours incurred for these activities and, thus, do not maintain appropriate records which would allow them to quantify, report and substantiate this information. For further discussion, see *NSR Intermediate Product Memorandum and Verification Reports*.

Further, we found that the respondents also differed in the means and specificity with which each reported its garlic seed usage. For example, although all four respondents purchased all of the seed required for planting, it appears that one of the respondents reported to the Department the amount of seed actually planted (i.e., net), whereas the remaining three respondents used the gross weight of the seeds when purchased. Accordingly, consistent with our findings in the *10th AR Final Results*, we have determined

<sup>5</sup> See Memorandum to the File titled, "Verification of Sales and Factors Response of Shandong Chengshun Farm Produce Trading Company, Ltd. in the Semi-Annual New Shipper Review of Fresh Garlic from the People's Republic of China," dated April 26, 2006 ("Chengshun Verification Report"), Memorandum to the File titled, "Verification of Sales and Factors Response of Shenzhen Fanhui Import and Export Co., Ltd. in the Semi-Annual New Shipper Review of Fresh Garlic from the People's Republic of China," dated April 26, 2006 ("Fanhui Verification Report"), Memorandum to the File titled, "Verification of Sales and Factors Response of Qufu Dongbao Import and Export Trade Co., Ltd. in the Semi-Annual New Shipper Review of Fresh Garlic from the People's Republic of China," dated April 25, 2006 ("Dongbao Verification Report"), and Memorandum to the File titled, "Verification of Sales and Factors Response of Anqiu Friend Food Co., Ltd. in the Semi-Annual New Shipper Review of Fresh Garlic from the People's Republic of China," dated April 25, 2006 ("Anqiu Verification Report") (collectively "Verification Reports"), on file in the CRU.

that NV is understated because the respondent incurred a cost for the gross amount of seed purchased for planting that is not accounted for in the FOP reported for seed consumption. For further discussion, see *NSR Intermediate Product Memorandum*.

The Department conducts verification in administrative and new shipper reviews to confirm the accuracy of the data reported by the respondents to the Department in a proceeding. As part of verification in cases involving NMEs, the Department must be able to reconcile the data submitted in the questionnaire responses to the respondent's books and records, and, observe on-site production activities during verification. When the respondent's books and records do not contain a level of detail sufficient to substantiate the information required to report accurate FOP data, there is, in essence, no document trail through which the Department can conduct such a verification. We find that the PRC garlic industry has adopted and accepted a practice of maintaining either very basic records of its farms' growing and harvesting activities or, as detailed in the *NSR Intermediate Product Memorandum*, no records at all. This record-keeping is sufficient for farmers in the PRC garlic industry to successfully grow and harvest garlic. However, the combination of lack of detailed records, unclear schedules, and the multi-staged production process occurring over several months as it relates to planting, tending, and harvesting activities significantly inhibits the Department's ability to conduct a meaningful verification of reported information.

Finally, we also noted that there are many unknown variables that may affect or influence reported FOPs which are not accounted for in the respondents' books and records. The respondents' ability to measure and report accurate FOPs to the Department is greatly diminished by the fact that they lease the land on which the garlic is grown. Respondents in these reviews typically lease the land used for growing garlic for a period of nine months (i.e., the garlic growing season). The remaining three months are referred to as the "off-season." None of the respondents have reported detailed knowledge of either the off-season crops produced on such leased land, crops produced on this leased land concurrently with the garlic, or the impact that residual inputs (e.g., nutrients, pesticide, herbicide, water) may have on their garlic crops. For further discussion, see *NSR Intermediate Product Memorandum*.

Accordingly, the Department has determined that the books and records maintained by the respondents do not report or account for all of the relevant information and do not allow the respondents to identify all of the FOPs necessary to grow and harvest garlic. See *NSR Intermediate Product Memorandum*. Further, the respondents' books and records (e.g., inventory ledgers) do not allow us or the respondents themselves to derive accurate factor usage rates, which are necessary to the NME calculation methodology for NV. In addition, actual farms operated by each respondent are difficult to identify and locate as the respondents cannot provide detailed maps clearly marking the territories of their farms. Thus, the only way to derive complete and precise FOP data, without sufficiently detailed records, is for the Department to physically measure and observe each of these various production activities as they occur, as part of verification. As this would require the Department to be present throughout every stage of planting, tending, and harvesting for each respondent, the calculation (and verification) of accurate and complete FOPs is a virtual impossibility. Given that garlic is grown and harvested in one production cycle over a nine-month period, the Department can only verify the one growing/harvesting activity that is occurring at a particular point in the growing season.

Thus, in these reviews, for all of the reasons identified above and described in the *NSR Intermediate Product Memorandum*, we applied an intermediate input methodology to all companies for these preliminary results of review. This is consistent with our findings in the 10th administrative review.<sup>6</sup> For a complete explanation of the Department's analysis, and for a more detailed analysis of these issues with respect to each respondent, see *NSR Intermediate Product Memorandum*.

In future reviews, should a respondent be able to provide sufficient factual evidence that it maintains the necessary information in its internal books and records that would allow us to establish the completeness and accuracy of the reported FOPs, we will revisit this issue and consider whether to use its reported FOPs in the calculation of NV. For further details, see *NSR Intermediate Product Memorandum*.

<sup>6</sup> See *Garlic 10th Final Results* at Comment 1.

## 2. Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on the intermediate product value and processing FOPs reported by the respondents for the POR. To calculate NV, we multiplied the reported per-unit factor quantities by publicly available surrogate values in India with the exception of the surrogate value for ocean freight, which we obtained from an international freight company. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. We calculated these freight costs based on the shorter of the reported distance from the domestic supplier to the factory or the distance from the port in accordance with the decision in *Sigma Corporation v. United States*, 117 F. 3d 1401, 1407–08 (Fed. Cir. 1997). We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sale(s) as certified by the U.S. Federal Reserve Bank. For a detailed description of all the surrogate values we used, see the *Factor Valuation Memorandum*.

For those Indian rupee values not contemporaneous with the POR, we adjusted for inflation using wholesale price indices for India published in the International Monetary Fund's *International Financial Statistics*. Surrogate-value data or sources to obtain such data were obtained from the petitioners, the respondents, and the Department's research.

Except as specified below, we valued the intermediate and processing inputs using the weighted-average unit import values derived from the *World Trade Atlas*, provided by the Global Trade Information Services, Inc. The source of these values, contemporaneous with the POR, was the Directorate General of Commercial Intelligence and Statistics of the Indian Ministry of Commerce and Industry.

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to value FOPs, but when a producer sources an input from a market economy and pays for it in market economy currency, the Department will normally value the factor using the actual price paid for the input. See 19 CFR 351.408(c)(1). See also *Lasko Metal Products v. United States*, 43 F.3d 1442, 1445–46 (Fed. Cir. 1994). However, when the Department has reason to believe or suspect that

such prices may be distorted by subsidies, the Department will disregard the market economy purchase prices and use surrogate values to determine the NV. See *Notice of Amended Final Determination of Sales at Less than Fair Value: Automotive Replacement Glass Windshields from the People's Republic of China* ("PRC"), 67 FR 11670 (March 15, 2002).

**Garlic Bulb:** To value the garlic bulb we used garlic values sourced from the Agricultural Marketing Information Network ("Agmarknet") website because we have found it is the best publicly available source to value the garlic bulb for the preliminary results. We obtained and used this information in the concurrent administrative review in order to value the garlic bulb.<sup>7</sup> This database contains daily wholesale prices from markets throughout India and has information on variety, minimum price, maximum price, and arrivals (quantities). Specifically, we find that the weighted average subset of the Agmarknet data which reflect values for Indian domestic garlic identified as "China" variety to be the best available information to value the intermediate product. See *Factor Valuation Memorandum* for a more complete discussion of the Department's analysis.

In addition, if a respondent reported that it, or its grower, purchased the garlic from an unaffiliated supplier prior to processing, we included a freight cost from the garlic bulb supplier to the company's processing facility. We did not include a freight cost for the garlic bulb if the respondent, or its grower, grew and processed its own garlic. For further details, see *Factor Valuation Memorandum*.

**Energy and Water:** To value electricity and diesel, we used values from the International Energy Agency to calculate a surrogate value for each in India for 2000, and adjusted for inflation. To value water, we used the rates from the website maintained by the Maharashtra Industrial Development Corporation (<http://www.midcindia.org/>), which shows industrial water rates from various areas within the Maharashtra Province, India ("Maharashtra Data"). The Department determined in the 2002–2003 administrative review that agrarian water rates for irrigation are highly subsidized by the Indian government and, therefore, it is appropriate to use Indian industrial rates as a surrogate value for water in the PRC.<sup>8</sup> Furthermore, the Maharashtra data is publicly available.

<sup>7</sup> See *Garlic 10th Final Results* at Comment 2.

<sup>8</sup> See *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty*

**Packing:** The respondents reported packing inputs consisting of plastic nets/mesh bags, paper cartons, plastic packing bands. All of these inputs were valued using import data from the *World Trade Atlas* that covered the POR, with the exception of paper cartons purchased by Fanhui, which sourced this input from market economies and paid for it in a market-economy currency. Therefore, for Fanhui, we have used its market-economy purchase price in our calculations.

**Labor:** We valued labor, consistent with 19 CFR 351.408(c)(3), using the PRC regression-based wage rate as reported on Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in November 2005, and posted to Import Administration's website at <http://www.ia.ita.doc.gov>. The source of this wage rate data on Import Administration's web site is the Yearbook of Labour Statistics 2003, International Labor Office, (Geneva: 2003), Chapter 5B: Wages in Manufacturing (<http://laborsta.ilo.org>). The years of the reported wage rates range from 1998 to 2003. Because this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by the respondent. See *id.*

**Land Value and Cold Storage:** We find that, based on the use of intermediate product, the market value of the intermediate product (*i.e.*, the garlic bulb) already accounts for the cost of leasing the land used to grow garlic as well as any cold storage costs incurred prior to processing. Therefore, we did not value land or cold storage for these preliminary results of review because doing so might result in double counting of these costs.<sup>9</sup>

**By-product:** The respondents claimed an adjustment for revenue earned on the sale of garlic sprouts. We find that because the market value of the intermediate product (*i.e.*, the garlic bulb) already accounts for the experience of the grower's sale of any by-product produced while growing garlic, we have not made a by-product offset amount from NV. See *Garlic 10th Preliminary Results*, 70 FR at 69950 (unchanged in the final results; see *Garlic 10th Final Results* at Comment 5).

**Movement Expenses:** We valued the truck rate based on an average of truck

*Administrative Review*, 70 FR 34082 (June 13, 2005), and accompanying *Issues and Decision Memorandum* at Comment 3.

<sup>9</sup> See *Garlic 10th Preliminary Results*, 70 FR at 69950 (unchanged in the *Garlic 10th Final Results*).

rates that were published in the Indian publication *Chemical Weekly* during the POR. We valued foreign brokerage and handling charges based on an average value calculated in *Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From India*, 66 FR 50406 (October 3, 2001), and *Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 71 FR 10646 (March 2, 2006). We adjusted data not contemporaneous with the POR when appropriate.

**Financial Expenses:** As discussed in the *Factor Valuation Memorandum*, Dongbao submitted the publicly available financial information of one company. The petitioners did not submit any financial statements for

these preliminary results. Because we are using an intermediate methodology for all respondents in these reviews, it is important to use financial ratios derived from a surrogate company whose financial expenses do not include upstream costs (*i.e.*, growing costs) to avoid double-counting factory overhead, selling, general and administrative expenses, and profit. We preliminarily conclude that the financial information of Preethi Tea Industry Private Limited (“Preethi”) and Limtex India Limited (“Limtex”), tea producers in India, are most representative of the financial experiences of the respondent companies because they process an intermediate product prior to its sale.

Thus, to value factory overhead, and selling, general and administrative

expenses, we used rates based on data taken from the 2003/2004 financial statements of Preethi and the 2003/2004 and 2004/2005 financial statements of Limtex for these preliminary results. Preethi’s 2003/2004 financial statement did not report a profit. Therefore, for purposes of these preliminary results we excluded the profit ratio that was reported on its 2003/2004 financial statement. *See Factor Valuation Memorandum* for a more complete discussion of the Department’s analysis.

**Preliminary Results of Review**

We preliminarily determine that the following dumping margins exist for the period November 1, 2004, through April 30, 2005:

| Exporter   | Grower   | Margin (percent) |
|--|--|------------------|
| Shandong Chengshun Farm Produce Trading Company, Ltd. .... | Jinxiang Chengsen Agricultural Trade Company, Ltd. | 0.00             |
| Shenzhen Fanhui Import and Export Co., Ltd. ....           | Shenzhen Fanhui Import and Export Co., Ltd.        | 0.00             |
| Qufu Dongbao Import and Export Trade Co., Ltd. ....        | Qufu Dongbao Import and Export Trade Co., Ltd.     | 0.00             |
| Anqiu Friend Food Co., Ltd. ....                           | Anqiu Friend Food Co., Ltd.                        | 0.00             |

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(d).

Any interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Requests should contain the following information: (1) The party’s name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If we receive a request for a hearing, we plan to hold the hearing seven days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Department will issue the final results of these new shipper reviews, which will include the results of its analysis of issues raised in the briefs, within 90 days of publication of these preliminary results, in accordance with

19 CFR 351.224(i)(1), unless the time limit is extended.

**Assessment Rates**

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of these new shipper reviews. In accordance with 19 CFR 351.212(b)(1), we have calculated an exporter/importer (or customer), specific assessment rate or value for merchandise subject to these reviews. For these preliminary results we divided the total dumping margins for the reviewed sales by the total entered quantity of those reviewed sales for each applicable importer. In these reviews, we will direct CBP to assess importer (or customer) specific assessment rates based on the resulting per-unit (*i.e.*, per kilogram) amount on each entry of the subject merchandise during the POR.

**Cash Deposit Requirements**

Bonding will no longer be permitted to fulfill security requirements for shipments of fresh garlic from the PRC grown by CATC and exported by Chengshun, grown and exported by Fanhui, grown and exported by Dongbao, and grown and exported by Anqiu Friend that are entered, or withdrawn from warehouse, for consumption on or after the publication

date of the final results of these new shipper reviews. The following cash deposit requirements will be effective upon publication of the final results of these new shipper reviews for all shipments of subject merchandise from Chengshun, Fanhui, Dongbao, and Anqiu Friend 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) For subject merchandise grown by CATC and exported by Chengshun, grown and exported by Fanhui, grown and exported by Dongbao, or grown and exported by Anqiu Friend, the cash deposit rate will be that stipulated in the final results of review, except, no cash deposit will be required if the cash deposit rate calculated in the final results is zero or *de minimis*, *i.e.*, less than 0.5 percent; (2) for subject merchandise exported by Chengshun but not grown by CATC, the cash deposit rate will continue to be the PRC-wide rate (*i.e.*, 376.67 percent); and (3) for subject merchandise exported by Fanhui, Dongbao, or Anqiu Friend, but grown by any other party, the cash deposit rate will be the PRC-wide rate. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

**Notification to Importers**

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR

351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These new shipper reviews and this notice are published in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act and 19 CFR 351.214(h).

Dated: April 26, 2006.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E6-6757 Filed 5-3-06; 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: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews**

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

**SUMMARY:** On November 18, 2005, the Department of Commerce ("the Department") published the preliminary results of the administrative review and the preliminary results of the new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China. The period of review is November 1, 2003, through October 31, 2004. The administrative review covers twenty-one exporters, and the new shipper reviews cover two exporters.

We invited interested parties to comment on our preliminary results. We specifically invited comments on surrogate country selection for water valuation; however, no parties submitted comments on this issue.<sup>1</sup>

Based on our analysis of the comments received, we have made certain changes to our calculations. The final dumping margins for these reviews are listed in the "Final Results of the Reviews" section below.

**EFFECTIVE DATE:** May 4, 2006.

<sup>1</sup> The Department determined in the 2002-2003 administrative review that agrarian water rates for irrigation are highly subsidized by the Indian government and, therefore, it is appropriate to use an Indian industrial rate as a surrogate value for water in the PRC.

**FOR FURTHER INFORMATION CONTACT:** Katharine Huang or Blanche Ziv, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-5047 and (202) 482-4207, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On November 18, 2005, the Department published the preliminary results of the administrative review and new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China. See *Fresh Garlic from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Preliminary Results of New Shipper Reviews*, 70 FR 69942 (November 18, 2005) ("*Preliminary Results*"). On December 19, 2005, Taian Fook Huat Tong Kee Foodstuffs Co., Ltd. ("FHTK") submitted comments on minor errors contained in the Department's preliminary margin calculation for FHTK. In December 2005, we extended the deadline by which interested parties may submit publicly available information to value factors of production to January 5, 2006. Also in December 2005, we postponed the briefing schedule until January 2006 and notified interested parties.

On January 5, 2006, we received surrogate value submissions from the petitioners<sup>2</sup> and five respondents.<sup>3</sup> On January 17, 2006, we received additional surrogate value information from the petitioners in rebuttal to the January 5, 2006, submissions from respondents. We also received submissions from seven respondents<sup>4</sup> in rebuttal to the January 5, 2006, submission from the petitioners. On January 23, 2006, we received a case brief from the petitioners and their request for a public hearing. We also received case briefs from Linshu Dading, Sunny, Harmoni, Shanyang, Jinan Yipin, FHTK, Weifang Shennong

<sup>2</sup> The Fresh Garlic Producers Association ("FGPA") and its individual members. The individual members are Christopher Ranch L.L.C., The Garlic Company, Valley Garlic, and Vessey and Company, Inc.

<sup>3</sup> The five respondents are Linshu Dading Private Agricultural Products Co., Ltd. ("Linshu Dading"), Sunny Import and Export Ltd. ("Sunny"), Zhengzhou Harmoni Spice Co., Ltd. ("Harmoni"), Jinxiang Shanyang Freezing Storage Co., Ltd. ("Shanyang"), and Jinan Yipin Co., Ltd. ("Jinan Yipin").

<sup>4</sup> The seven respondents are Linshu Dading, Sunny, Harmoni, Shanyang, Jinan Yipin, FHTK, and Taian Ziyang Food Co., Ltd. ("Ziyang").

Foodstuff Co., Ltd. ("WSFC"), Jining Trans-High Trading Co., Ltd. ("Trans-High"), Shanghai LJ International Trading Company ("Shanghai LJ"), and Jinxiang Dong Yun Freezing Storage Co., Ltd. ("Dong Yun"). On January 30, 2006, we received rebuttal submissions from the petitioners, Linshu Dading, Sunny, Harmoni, Shanyang, Jinan Yipin, FHTK, Trans-High, Shanghai LJ, Dong Yun, and Taian Ziyang Food Co., Ltd. ("Ziyang"). No comments were submitted by Huaiyang Hongda Dehydrated Vegetable Company ("Hongda") or Zhangqiu Qingyuan Vegetable Co., Ltd. ("Qingyuan").

On February 14, 2006, the petitioners submitted a letter withdrawing their request for a hearing. As there were no other requests for a hearing, the Department did not conduct a hearing in these reviews.

On February 14, 2006, we evaluated Trans-High's comments in its case briefs with regard to the copying error in the verification report and identified that Trans-High had based its comments on a draft of the report released for bracketing of business proprietary information, rather than on the official version of the verification report released to the parties. Pursuant to its relevant comments in its case brief, the Department discovered that Trans-High had not picked up the official version of the report from the Department's Central Records Unit ("CRU"). In response to Trans-High's omission, we re-released the official version of the verification report to Trans-High and allowed it one week to submit any comments relevant to the official version. See Letter from Blanche Ziv to Francis Sailer, dated February 14, 2006. Trans-High did not submit any comments in response to this opportunity. See Memorandum from Jennifer Moats to the File entitled, "No Comments on Official Version of Trans-High Verification Report," dated March 9, 2006.

On March 1, 2006, we issued a letter to all interested parties requesting comments on a change in our allocation of certain labor items from direct labor to manufacturing overhead in the calculation of the surrogate financial ratios. We received comments on our allocation methodology from Linshu Dading, Sunny, Harmoni, Shanyang, and Jinan Yipin on March 10, 2006.

On March 16, 2006, we extended the time limit for the completion of the final results of these reviews, including our analysis of issues raised in case or rebuttal briefs until April 17, 2006. See *Notice of Extension of Time Limit for Final Results of Antidumping Duty Administrative Review and New*