

and accompanying Issues and Decision Memorandum.

**DATES:** *Effective Date:* June 6, 2011.

**FOR FURTHER INFORMATION CONTACT:** Myrna Lobo or Milton Koch, 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) 482-2371 or (202) 482-2584, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On June 30, 2009, the Department issued its final results in the antidumping duty review of certain welded stainless steel pipes from the Republic of Korea covering the POR of December 1, 2006, through November 30, 2007. *See Final Results.* SeAH challenged the following aspects of the Department's *Final Results*: (1) The decision to depart from its practice of using an annual cost averaging period and to instead rely on quarterly costs for the sales below cost test; (2) the decision not to apply its normal "90/60" day window period for comparing home market and U.S. sales; (3) the use of an adjusted weighted average annual cost recovery test that incorporated an indexing methodology; and (4) the application of the major input rule with regard to hot-rolled stainless steel coils purchased from a company affiliated with SeAH.

In *SeAH Steel Corporation v. United States*, 704 F. Supp. 2d 1353 (Ct. Int'l Trade 2010), the CIT affirmed the Department's decisions to rely on quarterly average costs and to not apply the "90/60" day window in making price-to-price comparisons. The CIT granted the Department's request for a voluntary remand to consider steel specification data for the major input analysis and remanded to the Department for further explanation the adjusted weighted average annual cost recovery test that incorporated an indexing methodology.

On September 17, 2010, the Department filed its first remand redetermination explaining its indexed cost recovery methodology in detail. The Department also determined in its remand redetermination that it was appropriate to consider SeAH's steel specification data in its major input analysis, and accordingly adjusted and recalculated the major input analysis conducted in the *Final Results*.

On March 29, 2011, the CIT concluded in *SeAH II* that the adjusted cost recovery methodology which was employed by the Department in the

*Final Results* and further explained in the first remand redetermination, was inconsistent with the text of the cost recovery statutory provision. The Court directed the Department to employ a cost recovery test using an unadjusted annual weighted average per unit cost of production. The CIT also affirmed the Department's use of the steel specification data in the first remand redetermination with respect to the Department's major input analysis.

On April 26, 2011, the Department filed its second remand redetermination (*Remand Results*). In accordance with the Court's instructions, the Department recalculated SeAH's dumping margin by employing an unadjusted annual weighted average per unit cost of production for the POR in its cost recovery test.

On May 26, 2011, the CIT sustained the Department's *Remand Results* in *SeAH III*. As a result of the two remand redeterminations, SeAH's antidumping margin changed from 9.05 percent to 6.01 percent.

**Timken Notice**

In its decision in *Timken*, 893 F.2d at 341, as clarified by *Diamond Sawblades*, the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's holding in *SeAH III*, sustaining the Department's *Remand Results*, constitutes a final decision of that court that is not in harmony with the Department's *Final Results*. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. The cash deposit rate will remain the company-specific rate established for the subsequent and most recent period during which the respondents were reviewed. *See Certain Welded Stainless Steel Pipes From the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 75 FR 27987 (May 19, 2010).

**Amended Final Results**

Because there is now a final court decision with respect to SeAH, the dumping margin is:

Manufacturer/exporter	Margin (percent)
SeAH Steel Corporation (SeAH) .....	6.01

In the event the CIT's ruling is not appealed or, if appealed, upheld by the CAFC, the Department will instruct U.S. Customs and Border Protection to assess antidumping duties on entries of the subject merchandise during the POR from SeAH based on the revised assessment rates calculated by the Department.

This notice is issued and published in accordance with sections 516A(e), 751(a)(1), and 777(i)(1) of the Act.

Dated: June 20, 2011.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 2011-16067 Filed 6-24-11; 8:45 am]

**BILLING CODE 3510-DS-P**

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[A-570-831]

**Fresh Garlic From the People's Republic of China: Final Results and Final Rescission, in Part, of the 2008-2009 Antidumping Duty Administrative Review**

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

**SUMMARY:** On December 22, 2010, the Department of Commerce (Department) published the preliminary results of the administrative review of the antidumping duty order on Fresh Garlic from the People's Republic of China (PRC) covering the period of review (POR) of November 1, 2008, through October 31, 2009.

Based on the analysis of the record and the comments received, the Department has made certain changes to the margin calculation for the individually examined respondent, Shenzhen Xinboda Industrial Co. Ltd. (Xinboda). The Department also has assigned a separate rate to four fully-cooperative producers/exporters which were not selected for individual examination, but which demonstrated their eligibility for separate rate status. In addition, the Department is rescinding the review with respect to eight exporters who timely submitted "no shipment" certifications. Finally, the Department finds that 17 companies subject to this review, including mandatory respondents, Jinxiang Tianma Freezing Storage Co., Ltd.

(Tianma Freezing) and Shenzhen Greening Trading Co. Ltd. (Shenzhen Greening), did not demonstrate their eligibility for separate rate status and thus will be considered part of the PRC-Wide Entity for purposes of these final results.

**DATES:** *Effective Date:* June 27, 2011.

**FOR FURTHER INFORMATION CONTACT:**

Scott Lindsay, David Lindgren, Nicholas Czajkowski, or Lingjun Wang, 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) 482-3870, (202) 482-1395, and (202) 482-2316, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 22, 2010, the Department published in the **Federal Register** the preliminary results of the 2008-2009 administrative review of the antidumping duty order on fresh garlic from the PRC. *See Fresh Garlic from the People's Republic of China: Preliminary Results of, Partial Rescission of, and Intent to Rescind, in Part, the 15th Antidumping Duty Administrative Review*, 75 FR 80458 (December 22, 2010) (*Preliminary Results*).<sup>1</sup> Since the *Preliminary Results*, the following events have occurred.

On January 10, 2011, the Department extended the deadline for submission of surrogate value information to January 24, 2011; the Department also extended the deadline for submission of case briefs. On January 20, 2011, Xinboda timely requested a hearing to address the issues related to surrogate values. On January 24, 2011, the Fresh Garlic Producers Association (FGPA) and its individual members<sup>2</sup> (collectively, Petitioners) and Xinboda both timely submitted publicly available surrogate value data to value Xinboda's factors of production.

On January 13, 2011, and January 28, 2011, in accordance with 19 CFR 351.303(g), Jinxiang Hejia Co., Ltd. (Hejia) submitted two certifications which were not enclosed with the no-shipments certificate that Hejia submitted on January 13, 2010.

<sup>1</sup> The Department initiated this review for 84 producers/exporters. Based on timely withdrawal of requests for review, the Department rescinded the review with respect to 54 producers/exporters in the *Preliminary Results*. The remaining 30 producers/exporters are discussed in these final results.

<sup>2</sup> The individual members of the FGPA are Christopher Ranch L.L.C., The Garlic Company, Valley Garlic, and Vessey and Company, Inc.

On February 3, 2011, both Petitioners and Xinboda submitted rebuttal comments concerning the valuation of factors of production. On February 4, 2011, Xinboda submitted photographs which were referenced in its submission made on February 3, 2011, but which were unavailable for filing at that time. On February 14, 2011, Petitioner submitted rebuttal comments to Xinboda's February 3 submission concerning surrogate values for factors of production.

On March 7, 2011, the Department issued a no-shipment inquiry to the U.S. Customs and Border Protection (CBP) regarding fresh garlic from the PRC exported by Hejia. On March 9, 2011, the Department placed the inquiry on the record of this review and notified interested parties.<sup>3</sup>

On March 25, 2011, Xinboda submitted a response to the third supplemental questionnaire.

On April 1, 2011, the Department placed on the record of this review DLC Trading Inc.'s 2009 public request for a changed circumstances review, along with Xinboda's 2010 response to the request and the Department's decision not to initiate a changed circumstances review.<sup>4</sup> On April 4, 2011, the Department issued a verification agenda to Xinboda. From April 12, 2011, through April 19, 2011, Department officials conducted verification of Xinboda and its affiliated producer, Zhengzhou Dadi Garlic Industry Co., Ltd. (Dadi). On April 28, 2011, upon return from the verification, the Department officials who conducted verification received an e-mail to which three photographs were attached. Because the e-mail and the attached photographs pertained to verification, and because the subject of this e-mail was similar to the claims made in the 2009 request for a changed circumstances review, the Department conducted various internet searches in an attempt to corroborate the information contained in the e-mail allegation. The results of our internet research called into question the facts on the record and the Department placed the e-mail and the results of our research on the record on May 9, 2011.<sup>5</sup>

<sup>3</sup> See Memorandum to the File, Re: No Shipment Inquiry re Fresh Garlic from China Exported by Jinxiang Hejia Co., Ltd. (March 9, 2011).

<sup>4</sup> See Memorandum to the File, Re: 15th Administrative Review of Antidumping Duty Order on Fresh Garlic from People's Republic of China: Placing on the Record Documents Related to DLC Trading Co., Ltd.'s request for a Changed Circumstance Review of Shenzhen Xinboda Industrial Co., Ltd. (April 1, 2011).

<sup>5</sup> See Memorandum to the File, Re: 15th Administrative Review of Antidumping Duty Order on Fresh Garlic from People's Republic of China:

On May 13, 2011, the Department released the verification report for Xinboda. Also on May 13, 2011, the Department notified the parties about the due dates for submitting factual information in accordance with 19 CFR 351.301(c)(1) "to rebut, clarify, or correct" the information placed on the record by the Department. At the same time, the Department set the schedule for the case briefs and rebuttal briefs. On May 20, 2011, Xinboda submitted its case brief and factual information to rebut or correct the information placed on the record by the Department. Also on May 20, 2011, Jinan Farmlady Trading Co., Ltd. submitted its comments. On May 27, 2011, after receiving a one-day extension from the Department, Petitioners submitted a rebuttal brief. On June 1, 2011, the Department returned the rebuttal brief to Petitioners due to untimely filed new factual information. On June 2, 2011, Xinboda requested the Department to strike further portions of Petitioners' rebuttal brief. On June 3, 2011, Petitioners re-filed the rebuttal brief after removing untimely filed new factual information. Also on June 3, 2011, after determining that Petitioners had made affirmative arguments in the rebuttal brief, the Department requested Petitioners to strike the new arguments and resubmit the rebuttal brief. On June 6, 2011, Petitioners re-filed the rebuttal brief after removing the new arguments.

On June 7, 2011, the Department conducted a hearing pursuant to Xinboda's request mentioned above.

On June 9, 2011, the Department placed on the record its response to Xinboda's concern regarding administrative protective order (APO) access for DLC Trading, Inc.<sup>6</sup>

**Period of Review**

The POR is November 1, 2008, through October 31, 2009.

**Scope of the Order**

The products covered by the 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 the order

Placing on the Record Documents and Information Related to Shenzhen Xinboda Industrial Co., Ltd. (May 9, 2011).

<sup>6</sup> See Memorandum to the File, Re: Administrative Review of Fresh Garlic from the People's Republic of China: APO Access for DLC Trading Inc. (June 9, 2011).

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 the 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 U.S. Customs and Border Protection to that effect.

#### Analysis of Comments Received

All issues addressed in the case and rebuttal briefs by parties in this review are discussed in the Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, regarding, "Issues and Decision Memorandum for the Final Results of the 15th Administrative Review of Fresh Garlic from the People's Republic of China," dated June 20, 2011 (Decision Memorandum), which is hereby adopted by this notice. A list of the issues that parties raised and to which we responded in the Decision Memorandum follows as Appendix I to this notice. The Decision Memorandum is a public document and is on file in the Central Records Unit (CRU), Main Commerce Building, Room 7046, and is also accessible on the Web at <http://ia.ita.doc.gov/frn>. The paper copy and electronic version of the Decision Memorandum are identical in content.

#### Changes Since the Preliminary Results

Based on our review of the record, including additional information placed on the record by Hejia and the Department, the Department is rescinding the review with respect to Hejia. See "Final Rescission, in Part,

Based on No Shipments" section, below.

Based on the surrogate value information placed on the record by the parties, and comments received from interested parties, the Department has revised the surrogate value for garlic bulbs by expanding the period during which prices for large-size garlic were averaged and by applying a garlic-specific wholesale price index. The Department has also changed the source of the financial ratios. In addition, based on the results of verification, the Department has added water as a factor of production and calculated a surrogate value for the water consumed in the production of subject merchandise at one of Xinboda/Dadi's production facilities. Furthermore, as a result of verification, the Department has added freight between Xinboda/Dadi's production facilities as a factor of production.<sup>7</sup> Finally, in the *Preliminary Results*, the Department did not take into account in the margin program the inland freight reported by Xinboda for certain factors of production; we have corrected this omission for these final results. A full discussion of these changes and the Department's calculations is contained in the Decision Memorandum, Final Calculation Memorandum<sup>8</sup> and Final SV Memorandum.<sup>9</sup>

#### Final Rescission, In Part, Based on No Shipments

As discussed in the *Preliminary Results*, Hebei Golden Bird Trading Co., Ltd., Jinan Yipin Corporation Ltd., Jining Yongjia Trade Co., Ltd., Qingdao Tiantaixing Foods Co., Ltd., Shandong Chenhe Int'l Trading Co., Ltd., Qingdao Sea-line International Trading Co., Ltd., and Shanghai LJ International Trading Co. each timely certified that it had no shipments during the POR. After we verified the claims with CBP and examined CBP shipment data, the Department announced its intent to rescind the administrative review with respect to these companies in the *Preliminary Results*. No parties

<sup>7</sup> See Memorandum to the File, Re: Verification of the Sales and Factors Response of Shenzhen Xinboda Industrial Co., Ltd. in the Antidumping Administrative Review of Fresh Garlic from People's Republic of China (May 13, 2011) at 10–11 and 19.

<sup>8</sup> See Memorandum to the File, Re: Administrative Review of Fresh Garlic from the People's Republic of China: Calculation Memorandum for the Final Results of Shenzhen Xinboda Industrial Co., Ltd. (June 20, 2011) (Final Calculation Memorandum).

<sup>9</sup> See Memorandum to the File, Re: Administrative Review of Fresh Garlic from the People's Republic of China: Surrogate Values for the Final Results (June 20, 2011) (Final SV Memorandum).

commented on our preliminary intent to rescind. Thus, there is no information or argument on the record of the current review that warrants reconsidering our preliminary decision to rescind. Therefore, we are rescinding this administrative review with respect to all seven aforementioned companies.

As noted above, Hejia certified it had no shipments during the POR. The Department confirmed Hejia's claim by issuing a no-shipment inquiry to CBP and examining electronic CBP data.<sup>10</sup> We received no responses from CBP regarding our no-shipment inquiry. Our examination of shipment data from CBP for Hejia indicated that there were no entries of subject merchandise which it exported during the POR and no information has been submitted to suggest that Hejia had shipments of subject merchandise during the POR. Therefore, we are rescinding this administrative review with respect to Hejia.

#### 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 in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be eligible for a separate rate.<sup>11</sup> In the *Preliminary Results*, the Department found that Xinboda, Jinan Farmlady Trading Co., Ltd. (Farmlady), Qingdao Xintianfeng Foods Co., Ltd. (QXF), Shandong Longtai Fruits and Vegetables Co., Ltd. (Longtai), and Weifang Hongqiao International Logistic Co., Ltd. (Hongqiao) demonstrated their eligibility for separate rate status. See *Preliminary Results*, 75 FR at 80461. For the final results, we continue to find that the evidence placed on the record of this review by Xinboda, Farmlady, QXF, Longtai, and Hongqiao demonstrates both a *de jure* and *de facto* absence of government control, with respect to their exports of the merchandise under review, and, thus, these companies are eligible for separate rate status. The per-unit separate rate to

<sup>10</sup> See Memorandum to the File, Re: No Shipment Inquiry re Fresh Garlic from China Exported by Jinxiang Hejia Co., Ltd. (March 9, 2011).

<sup>11</sup> See *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991), as further developed in *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).

be applied to Farmlady, QXF, Longtai, and Hongqiao is discussed in the “Margin for the Separate Rate Companies” section, below.

As discussed in the *Preliminary Results*, the Department found that Shenzhen Greening and Tianma Freezing, two mandatory respondents, did not respond to the initial questionnaire. Thus, these two companies have not demonstrated their eligibility for separate rate status and will be considered part of the PRC-Wide Entity for purposes of this review. See “Application of Total AFA to the PRC-Wide Entity” section, below. In addition, in the *Preliminary Results*, the Department found 16 other companies were part of the PRC-Wide Entity because they were subject to the review but did not submit separate rate documentation. Hejia was among these 16 companies but, as discussed above, the Department is rescinding its review. For the remaining 15 companies, there is no information on the record of this review that warrants reconsideration of our preliminary decision to consider them part of the PRC-wide entity. Therefore, the Department has found that these 15 companies, plus the two uncooperative mandatory respondents, are part of the PRC-Wide Entity. See Appendix II.

#### Margin for the Separate Rate Companies

As discussed above, the Department continues to find that Farmlady, QXF, Longtai, and Hongqiao have demonstrated their eligibility for a separate rate. For the exporters subject to a review that are determined to be eligible for separate rate status, but are not selected as individually examined respondents, the Department generally weight-averages the rates calculated for the individually examined respondents, excluding any rates that are zero, *de minimis*, or adverse facts available (AFA).<sup>12</sup> Consistent with the Department’s practice, in the *Preliminary Results*, the Department preliminarily determined that the margin to be assigned to these separate companies should be the rate calculated for the single cooperative mandatory respondent, Shenzhen Xinobda; for these final results, the Department continues to assign the rate calculated

<sup>12</sup> See, e.g., *Wooden Bedroom Furniture From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Results of New Shipper Review and Partial Rescission of Administrative Review*, 73 FR 8273, 8279 (February 13, 2008), unchanged in *Wooden Bedroom Furniture from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review*, 73 FR 49162 (August 20, 2008).

for the single cooperative mandatory respondent to Farmlady, QXF, Longtai, and Hongqiao.

#### Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), we verified the information submitted by Xinboda for use in our final results of review.<sup>13</sup> We used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by Xinboda.

#### Use of Facts Otherwise Available and AFA

Section 776(a) of the Act provides that the Department shall apply “facts otherwise available” if (1) Necessary information is not on the record, or (2) an interested party or any other person (A) Withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

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 will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

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 applicable requirements established by the administering authority” if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information supplied if it can do so without undue difficulties.

<sup>13</sup> See Memorandum to the File, Re: Verification of the Sales and Factors Response of Shenzhen Xinboda Industrial Co., Ltd. in the Antidumping Duty Administrative Review of Fresh Garlic from the People’s Republic of China (May 9, 2011).

Section 776(b) of the Act further 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. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. For the reasons discussed below, the Department determines that, in accordance with sections 776(a)(1), 776(a)(2) and 776(b) of the Act, the use of AFA is appropriate for the final results with respect to the PRC-Wide Entity, which includes Shenzhen Greening and Tianma Freezing.

#### Application of Total AFA to the PRC-Wide Entity

Because Shenzhen Greening and Tianma Freezing were selected as mandatory respondents, but did not respond to the initial questionnaire, they did not demonstrate eligibility for separate rate status. Thus, for purposes of this review, Shenzhen Greening and Tianma Freezing are considered part of the PRC-Wide Entity. Further, because these two companies, which are part of the PRC-Wide Entity, did not respond to the questionnaire, the Department determines that the PRC-Wide Entity withheld information requested by the Department in accordance with sections 776(a)(2)(A) and (B) of the Act, and significantly impeded the proceeding in accordance with section 776(a)(2)(C) of the Act.

As a result, the Department is basing the dumping margin of the PRC-Wide Entity on the facts otherwise available on the record. No other party provided any additional information regarding the PRC-Wide Entity. In addition, because Shenzhen Greening and Tianma Freezing, which are part of the PRC-Wide Entity, failed to cooperate to the best of their ability, we find 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.<sup>14</sup> Hence, pursuant to section 776(b) of the Act, the Department has determined

<sup>14</sup> See *Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1383 (Fed. Cir. 2003), where the Court of Appeals for the Federal Circuit (CAFC) provided an explanation of the “failure to act to the best of its ability” standard noting that the Department need not show intentional conduct existed on the part of the respondent, but merely that a “failure to cooperate to the best of a respondent’s ability” existed (*i.e.*, information was not provided “under circumstances in which it is reasonable to conclude that less than full cooperation has been shown”).

that, when selecting from among the facts otherwise available, an adverse inference is warranted with respect to the PRC-Wide Entity.

### Selection of AFA Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) provide that the Department may 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. The Department's practice is to select an AFA rate that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner" and that ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."<sup>15</sup> Specifically, the Department's practice in reviews, in selecting a rate as total AFA, is to use the highest rate on the record of the proceeding which, to the extent practicable, can be corroborated (assuming the rate is based on secondary information).<sup>16</sup> The Court of International Trade (CIT) and the CAFC have affirmed decisions to select the highest margin from any prior segment of the proceeding as the AFA rate on numerous occasions.<sup>17</sup> In choosing the

appropriate balance between providing a respondent 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."<sup>18</sup> Therefore, as AFA, the Department has assigned the PRC-Wide Entity a dumping margin of \$4.71 per kilogram, the highest calculated per-unit rate on the record of any segment of this proceeding.

### Corroboration of Secondary Information Used as AFA

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.<sup>19</sup> To corroborate means that the Department will satisfy itself that the secondary information to be used has probative value.<sup>20</sup> To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.<sup>21</sup> 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.<sup>22</sup>

As discussed above, the \$4.71 per kilogram is the highest rate on the record of any segment of this antidumping duty order. This rate was calculated using the *ad valorem* rate contained in the petition in the original investigation of garlic from the PRC and was applied to the PRC-Wide Entity in the immediately preceding administrative review.<sup>23</sup> Furthermore, no information has been presented in this review that calls into question the reliability of the 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.<sup>24</sup> Similarly, the Department does not apply a margin that has been discredited.<sup>25</sup> None of these circumstances are present with respect to the rate being used here.

Moreover, the rate selected is the rate currently applicable to the PRC-Wide Entity. The CAFC has held that the Department "is permitted to use 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.'" <sup>26</sup> In this regard, we note that no party has provided information related to the PRC-Wide Entity's actual rate of dumping and we have not received any comments on this matter. As there is no information on the record of this review that demonstrates that this rate is not appropriate to use as AFA for the PRC-Wide Entity in the current review, we determine that this rate has relevance.

*Voltage Ceramic Station Post Insulators from Japan*, 68 FR 35627 (June 16, 2003), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: High and Ultra High Voltage Ceramic Station Post Insulators from Japan*, 68 FR 62560 (November 5, 2003); and *Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada*, 70 FR 12181, 12183-84 (March 11, 2005).

<sup>23</sup> See, e.g., *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 14th Antidumping Duty Administrative Review*, 75 FR 34976 (June 21, 2010).

<sup>24</sup> See, e.g., *Fresh Cut Flowers From Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996).

<sup>25</sup> 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).

<sup>26</sup> *KYD, Inc. v. United States*, 607 F.3d 760 (Fed. Cir. 2010) (quoting *Rhone Poulenc, Inc. v. United States*, 899 F.2d at 1190).

<sup>15</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8911 (February 23, 1998); see also *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review*, 70 FR 69937, 69939 (November 18, 2005) and the Statement of Administrative Action accompany the Uruguay Round Agreement Act, H.R. Rep. No. 316, 103d Cong., 2d Sess. 870 (SAA).

<sup>16</sup> See *Glycine from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 15930, 15934 (April 8, 2009), unchanged in *Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 41121 (August 14, 2009); see also *Fujian Lianfu Forestry Co., Ltd. v. United States*, 638 F. Supp. 2d 1325, 1336 (CIT August 10, 2009) ("Commerce may, of course, begin its total AFA selection process by defaulting to the highest rate in any segment of the proceeding, but that selection must then be corroborated, to the extent practicable.").

<sup>17</sup> See, e.g., *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (affirming a 73.55 percent total AFA rate, the highest available dumping margin calculated for a different respondent in the investigation); *Kompass Food Trading International v. United States*, 24 CIT 678, 683-84 (2000) (affirming a 51.16 percent total AFA rate, the highest available dumping margin for a different, fully cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd. v. United States*, 360 F. Supp. 2d 1339, 1348 (CIT 2005) (affirming a 223.01 percent total AFA rate, the highest available dumping margin for a different respondent in a previous administrative review).

<sup>18</sup> *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (CAFC 1990).

<sup>19</sup> See SAA.

<sup>20</sup> See *id.*

<sup>21</sup> See *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 *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: Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

<sup>22</sup> See *Notice of Preliminary Determination of Sales at Less Than Fair Value: High and Ultra-High*

As this 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.

**Final Results of Review**

As a result of our review, we determine that the following margins exist for the period November 1, 2008, through October 31, 2009.<sup>27</sup>

Manufacturer/exporter	Weighted-average margin (dollars per kilogram)
Shenzhen Xinboda Industrial Co., Ltd .....	\$0.06
Jinan Farmlady Trading Co., Ltd .....	0.06
Qingdao Xintianfeng Foods Co., Ltd .....	0.06
Shandong Longtai Fruits and Vegetables Co., Ltd .....	0.06
Weifang Hongqiao International Logistic Co., Ltd .....	0.06
PRC-Wide Entity (see Appendix II) .....	4.71

**Assessment Rates**

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. The Department will direct CBP to assess importer-specific assessment rates based on the resulting per-unit (*i.e.*, per kilogram) amount on each entry of the subject merchandise during the POR. The Department intends to issue appropriate assessment instructions for such companies directly to CBP 15 days after the publication of this notice in the **Federal Register**.

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be the rate established in these final results of review (except, if the rate is zero or *de minimis*, *i.e.*, less than 0.5 percent, a zero cash deposit rate will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of \$4.71 per kilogram; and (4) for all non-PRC exporters of subject merchandise which

have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

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

**Notification to Interested Parties**

This notice also serves as a reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with regulations and terms of an APO is a violation which is subject to sanction.

**Disclosure**

In accordance with 19 CFR 351.224(b), we will disclose the calculations performed for these final results to parties in this proceeding within five days of the date of publication of this notice.

We are issuing and publishing this notice of these final results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 20, 2011.  
**Ronald K. Lorentzen**,  
*Deputy Assistant Secretary for Import Administration.*

**Appendix I**

- Comment 1: Whether the Application of Total Adverse Facts Available to Xinboda Is Warranted
- Comment 2: Whether the Department Properly Compiled the Record Regarding Allegations Against Xinboda
- Comment 3: Surrogate Values for Garlic Bulbs
- Comment 4: Wholesale Price Index
- Comment 5: Xinboda's Water Valuation
- Comment 6: Surrogate Financial Ratios
- Comment 7: Surrogate Wage Rates
- Comment 8: Partial Rescission in Administrative Reviews
- Comment 9: Means To Exclude Separate Rate Companies From Administrative Reviews
- Comment 10: Zeroing in Administrative Reviews

**Appendix II**

- Companies under Review Subject to the PRC-Wide Entity Rate
1. Anqiu Friend Food Co., Ltd.
  2. Chengwu County Yuanxiang Industry & Commerce Co., Ltd.
  3. Heze Ever-Best International Trade Co., Ltd. (f/k/a Shandong Heze International Trade and Developing Company)
  4. Jinxiang Dongyun Freezing Storage Co., Ltd. (a/k/a Jinxiang Eastward Shipping Import and Export Limited Company).
  5. Jinxiang Shanyang Freezing Storage Co., Ltd.
  6. Linshu Dading Private Agricultural Products Co., Ltd.
  7. Qingdao Saturn International Trade Co., Ltd.
  8. Qufu Dongbao Import & Export Trade Co., Ltd.
  9. Shandong Wonderland Organic Food Co., Ltd.

<sup>27</sup> As discussed in the *Preliminary Results*, the Department selected four mandatory respondents.

In the *Preliminary Results*, the Department rescinded this review with respect to Harmoni and

found Tianma Freezing and Shenzhen Greening to be part of the PRC-Wide Entity.

10. Shanghai Ever Rich Trade Company
11. Shenzhen Fanhui Import & Export Co., Ltd.
12. Taian Fook Huat Tong Kee Pte. Ltd.
13. Taiyan Ziyang Food Co., Ltd.
14. Weifang Shennong Foodstuff Co., Ltd.
15. XuZhou Simple Garlic Industry Co., Ltd.
16. Jinxiang Tianma Freezing Storage Co., Ltd.
17. Shenzhen Greening Trading Co., Ltd.

[FR Doc. 2011-16072 Filed 6-24-11; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XA504

#### Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

**ACTION:** Notice; request for comments.

**SUMMARY:** The Regional Administrator, Southwest Region, NMFS, has made a preliminary determination that an application for an Exempted Fishing Permit (EFP) warrants further consideration. The application was submitted by members of the Pacific sardine fishing industry who request an exemption from seasonal closures of the directed fishery to conduct a survey designed to estimate the population size of Pacific sardine. NMFS requests public comment on the application. NMFS will make a final decision about whether to issue an EFP after consideration of those comments.

**DATES:** Comments must be received by July 12, 2011.

**ADDRESSES:** You may submit comments on this notice identified by 0648-XA504 by any one of the following methods:

- **Mail:** Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802.

- **Fax:** (562) 980-4047, **Att:** Joshua Lindsay.

**FOR FURTHER INFORMATION CONTACT:** A copy of the application can be viewed at the following Web site: <http://swr.nmfs.noaa.gov>; or by contacting Joshua Lindsay, Southwest Region, NMFS, (562) 980-4034; [joshua.lindsay@noaa.gov](mailto:joshua.lindsay@noaa.gov).

**SUPPLEMENTARY INFORMATION:** On May 25, 2011, NMFS published a final rule implementing the harvest guideline

(HG) and annual specifications for the 2011 Pacific sardine fishing season off the U.S. West Coast (76 FR 30276). As part of these management measures the Council recommended, and NMFS approved, that 4,200 metric tons (mt) of the maximum harvest guideline (HG) be initially subtracted and set aside for potential industry-based research projects. Members of the Pacific sardine fishing industry, concerned about the difficulty of securing fishing vessels for research purposes during the normal fishing season, requested this separate allocation so that they could conduct research fishing activities after fishing is closed. The 4,200 mt set-aside was intended to allow for potential research fishing in the second seasonal period (July 1–September 14, 2009) and third seasonal period (September 15–December 31, 2009), to continue if that period's directed fishery allocation is reached and directed fishing is closed.

An EFP is required to conduct the fishing activities proposed by the applicants to occur when directed fishing is otherwise not allowed. At the March 2011 Council meeting, the Council reviewed an EFP application that proposed to utilize 2,700 mt of the 4,200 mt initially set aside. The applicants proposed using 2,700 mt to replicate the summer survey conducted under similar EFPs in 2009 and 2010, but with an expanded sample size. The proposal went forward for public comment and was reviewed by the Council again at their April meeting, at which time the Council recommended that NMFS approve and issue the EFP. Any public comment received in response to this notice will be considered by NMFS in determining whether to approve and issue the EFP.

One of the goals set forth in the EFP application is the development of an index of biomass for Pacific sardine, with the desire that this index be included in the subsequent Pacific sardine stock assessment. If NMFS does not issue an EFP, then the set-aside will be re-allocated to the directed harvest allocation of the third allocation period. Any research set aside attributed to an EFP for use during the closed fishing time in the second allocation period (prior to September 15), but not utilized, would also roll into the directed fishery allocation for the third allocation period.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: June 22, 2011.

**Margo Schulze-Haugen,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2011-16037 Filed 6-24-11; 8:45 am]

BILLING CODE 3510-22-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XA518

#### Endangered Species; File No. 16253

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

**ACTION:** Notice; receipt of application.

**SUMMARY:** Notice is hereby given that NMFS Southeast Fisheries Science Center (SEFSC; Responsible Party: Bonnie Ponwith), has applied in due form for a permit to take green (*Chelonia mydas*), Kemp's ridley (*Lepidochelys kempii*), hawksbill (*Eretmochelys imbricata*), leatherback (*Dermochelys coriacea*), olive ridley (*Lepidochelys olivacea*), and loggerhead (*Caretta caretta*) sea turtles for scientific research.

**DATES:** Written, telefaxed, or e-mail comments must be received on or before July 27, 2011.

**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 (APPS) home page, <https://apps.nmfs.noaa.gov>, and then selecting File No. 16253 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)427-8401; fax (301)713-0376;

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978)281-9328; fax (978)281-9394; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727)824-5312; fax (727)824-5309.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division

- by e-mail to [NMFS.Pr1Comments@noaa.gov](mailto:NMFS.Pr1Comments@noaa.gov) (include the File No. in the subject line of the e-mail),

- by facsimile to (301)713-0376, or
- at the address listed above.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed