

**DEPARTMENT OF COMMERCE****International Trade Administration****[A-570-831]****Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review**

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

**ACTION:** Notice of Preliminary Results of Antidumping Duty New Shipper Review.

**SUMMARY:** In response to a request from a new shipper, the Department of Commerce is conducting a new shipper review of the antidumping duty order on fresh garlic from the People's Republic of China. The period of review is November 1, 2001, through April 30, 2002. The review covers subject merchandise produced by two companies, of which one, the respondent company in this review, exported the merchandise to the United States. We have preliminarily determined that, based on the use of adverse facts available, the respondent sold subject merchandise to the United States at prices below normal value.

We invite interested parties to comment on these preliminary results. Parties who submit comments are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

**EFFECTIVE DATE:** April 29, 2003.

**FOR FURTHER INFORMATION CONTACT:** Edythe Artman, Office of AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C., 20230; telephone: (202) 482-3931.

**SUPPLEMENTARY INFORMATION:****Background**

On June 26, 2002, the Department of Commerce (the Department) initiated a new shipper antidumping duty review of shipments of fresh garlic from the People's Republic of China (PRC) produced or exported by Hongda Dehydrated Vegetable Company (Hongda). See *Fresh Garlic from the People's Republic of China: Rescission of New Shipper Antidumping Duty Review and Initiation of New Shipper Antidumping Duty Review*, 67 FR 44594 (July 3, 2002). The Department issued an antidumping duty questionnaire to Hongda on June 27, 2002.

The Department received responses to sections A, C, and D of the Department's

original and supplemental questionnaires from Hongda on August 5, 2002, and September 5, 2002, respectively. On September 27, 2002, Hongda submitted a correction to its September 5, 2002, response. Hongda submitted a response to an additional supplemental questionnaire on December 2, 2002. On December 27, 2002, we extended the time limit for the preliminary results of review to no later than April 22, 2003. See *Fresh Garlic from the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of a New Shipper Antidumping Duty Review*, 67 FR 79049.

There were multiple transactions during the period of review (POR) in which Hongda acted as the exporter. In some of these transactions, Hongda produced the merchandise. In other transactions, another party supplied the merchandise that Hongda exported. We issued a supplemental questionnaire to Hongda on January 3, 2003, in which we requested that Hongda forward section D (request for factors-of-production information) and appendices of our original questionnaire to its supplier, Jin Xiang Jin Ma Fruit and Vegetable Products Co., Ltd. (Kima), so that Kima could respond to section D and specified items in appendix V of the questionnaire. On January 27, 2003, Hongda submitted a response to the supplemental questionnaire; it resubmitted this response on April 2, 2003, with modifications pertaining to treatment of business proprietary information. It stated in its response that Kima was unable to provide the requested information. On March 14, 2003, we issued an antidumping questionnaire to Hongda's supplier, Kima, directly and requested that it respond to section D of the questionnaire. Kima did not respond to our request.

On November 14, 2002, we requested comments on surrogate-country selection. We received comments from the petitioners, the Fresh Garlic Producers Association and its individual members, on November 27, 2002. On February 4, 2003, we requested that parties provide surrogate factors-of-production values by February 14, 2003, for consideration in our preliminary results. Hongda submitted publicly available factors-of-production information on November 26, 2002, and the petitioners submitted factors-of-production information on February 14, 2003.

**Scope of the Order**

The products covered by this 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, our 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 the Bureau of Customs and Border Protection (Customs) to that effect.

**Separate Rate**

In proceedings involving non-market-economy (NME) countries, the Department begins with a presumption that all companies within the country are subject to government control and thus should be assigned a single antidumping 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 its exports. In this review, Hongda has requested a separate company-specific rate.

To establish whether a company is sufficiently independent in its export activities from government control to be entitled to a separate, company-specific rate, the Department analyzes the 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, 20589 (May 6, 1991) (*Sparklers*), and amplified