

December 17, 1996 in the Federal Register. The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. The reviews cover 64 manufacturers/exporters. The review period is May 1, 1993, through April 30, 1994.

After issuance of our final results, we realized that we did not publish the correct margin we calculated for the final results with respect to ball bearings exported by NMB/Pelmec.

#### Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references

to the provisions as they existed on December 31, 1994.

#### Amended Final Results of Review

We have determined the following weighted-average margin to exist for the period May 1, 1993, through April 30, 1994:

Country	Company	Class or kind	Rate (percent)
Singapore .....	NMB/Pelmec .....	Ball Bearings .....	12.47

This deposit requirement is effective upon publication of this notice of amended final results of administrative review for all shipments entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Tariff Act of 1930 (as amended). This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This administrative review and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 18, 1996.

Robert S. LaRussa,

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 96-32872 Filed 12-26-96; 8:45 am]

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#### [A-570-831]

#### **Fresh Garlic From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review**

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

**ACTION:** Notice of Preliminary Results of Antidumping Duty Administrative Review.

**SUMMARY:** In response to a request by the petitioner, the Fresh Garlic Producers Association and its individual members, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on fresh garlic from the People's Republic of China (PRC). The period of review (POR) is July 11, 1994, through October 31, 1995. The petitioner's request covered 159 producers/exporters of subject merchandise. Only one company, Top Pearl Ltd. (Top Pearl), a Hong Kong company, along with its U.S. importer of record, Merex Corporation, requested a review of its sales and has responded to our questionnaire. Because we have determined that (1) the review of Top Pearl should be terminated, and (2) the other PRC producers/exporters failed to submit responses to our questionnaires, we have preliminarily determined to use facts otherwise available for cash deposit and assessment purposes for all PRC producers/exporters of the subject merchandise.

Interested parties are invited 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:** December 27, 1996.

**FOR FURTHER INFORMATION CONTACT:** Andrea Chu or Kris Campbell, Office of AD/CVD Enforcement, Import Administration, International Trade

Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-4733.

#### **SUPPLEMENTARY INFORMATION:**

##### **Applicable Statute**

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

##### **Background**

On September 26, 1994, the Department published in the Federal Register (59 FR 49058) the final affirmative antidumping duty determination on fresh garlic from the PRC and published an antidumping duty order on November 16, 1994 (59 FR 59209). On November 15, 1995, the Department published in the Federal Register (60 FR 55541) a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on fresh garlic from the PRC. On November 30, 1995, petitioner requested an administrative review of 159 producers/exporters of this merchandise to the United States. On the same date, Top Pearl, along with its U.S. importer of record, Merex Corporation, requested a review of its sales. We initiated the review on December 15, 1995 (60 FR 64413).

##### **Scope of the Review**

The products subject to 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: (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 0703.20.0000, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9500 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 proceeding 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 Customs Service to that effect.

#### Use of Facts Otherwise Available

On January 25, 1996, we sent a questionnaire to the Embassy of the People's Republic of China, requesting that any designated party answer the questions to the extent possible for all companies that manufactured or exported the subject merchandise during the period of review (POR), whether or not they were owned by the PRC-government or subject to PRC government control of export pricing. We also stated that all companies named in the notice of initiation were presumed to be under PRC-government control and we requested that the government designate a person or organization as our contact for this review. The embassy named the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) as our contact. We did not receive any response from MOFTEC regarding the questionnaire nor did we receive a response from any PRC companies. Therefore, we must rely on facts otherwise available in accordance with section 776(a) of the Act for these preliminary results of review.

Because necessary information is not available on the record with regard to

sales by these firms, as a result of their withholding the requested information, we are preliminarily determining to apply antidumping duties based on facts otherwise available pursuant to section 776(a) of the Act. In addition, the Department finds that, in not responding to the questionnaire, the firms named in the notice of initiation failed to cooperate by not acting to the best of their ability to comply with requests for information from the Department.

Where the Department must base the entire dumping margin for a respondent in an administrative review on facts available because that respondent failed to cooperate, section 776(b) of the Act authorizes the Department to use an inference adverse to the interests of that respondent in choosing facts available. Section 776(b) of the Act also authorizes the Department to use, as adverse facts available, information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. Because information from prior segments of the proceeding constitutes secondary information, section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value.

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render the secondary information not relevant. Where circumstances indicate that the selected data is not appropriate as adverse facts available, the Department will disregard that data and determine an appropriate alternative (see, e.g., *Bicycles from the PRC; Final Determination of Sales at Less than Fair Value*, 61 FR 19026, 19027 (April 30, 1996) (where the Department disregarded certain information from the petition as adverse facts available because the data was not reflective of the industry and, therefore, did not have probative value)). In this case, we relied upon information from the petition as secondary information. Based on our review of several major items (i.e., general and administrative expense, packing cost and profit, as well as the

factor value for seed cost and labor cost) contained in the petition which individually comprise a significant portion of the normal value (NV) calculations, there is no indication that the selected margin is not appropriate as facts available.

In this case, in accordance with the facts-available formula stated above, we have preliminarily assigned these companies the rate determined for companies involved in the less-than-fair-value investigation (376.67 percent). Moreover, we have determined that the non-responsive companies do not merit separate rates. See, e.g., *Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 57390 (November 6, 1996). Therefore, the facts available for these companies forms the basis for the PRC rate, which is 376.67 percent for this review.

#### Partial Termination of Review

We also preliminarily determine to terminate our review of Top Pearl, the sole responding party in this proceeding. This determination is based on the principle that it is not appropriate to review U.S. sales made by a third-country company (in this case, Top Pearl) whose supplier (here, the PRC exporter Wallong) had knowledge that the merchandise was destined for the United States. Instead, the appropriate respondent in this instance is Wallong. We are assigning the PRC rate to transactions made during the period between Wallong and Top Pearl, for the reasons stated in our November 22, 1996 memorandum: *Partial Termination of 1994-95 Administrative Review of Fresh Garlic from the PRC* (November 22, 1996). Specifically, we did not receive a request for review of Wallong; accordingly, Wallong is not entitled to a review of its POR sales as a separate entity (as opposed to its participation as part of the PRC entity). In order for Wallong to participate in this review as an independent company and not as part of the PRC entity, a request for review of this company must have been made during the anniversary month (see 19 CFR 353.22) and the company must have established that it is entitled to a separate rate.

#### Preliminary Results of the Review

As a result of our review, we preliminarily determine that a margin of 376.67 percent exists for all producers/exporters of the subject merchandise for the period July 11, 1994 through October 31, 1995.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the publication of this notice or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will issue a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results.

The Department will determine, and the Customs Service will assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of fresh garlic from the PRC 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: For all PRC exporters and for all non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the PRC-wide rate established in the final results of this review.

These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 18, 1996.

Robert S. LaRussa,  
*Acting Assistant Secretary for Import Administration.*

[FR Doc. 96-32877 Filed 12-26-96; 8:45 am]

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[A-614-801]

### **Fresh Kiwifruit From New Zealand; Results of Antidumping Administrative Review**

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

**ACTION:** Notice of amendment to final results of antidumping duty administrative review.

**SUMMARY:** On September 3, 1996, the Department of Commerce (the Department) published the final results of its administrative review of the antidumping duty order on fresh kiwifruit from New Zealand. The review covers one exporter, the New Zealand Kiwifruit Marketing Board (NZKMB), and the period from June 1, 1994, through May 31, 1995. Based on the correction of ministerial errors, we are amending the final results.

**EFFECTIVE DATE:** December 27, 1996.

**FOR FURTHER INFORMATION CONTACT:** Paul M. Stolz or Thomas F. Futtner, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-4474 or 482-3814, respectively.

#### **SUPPLEMENTARY INFORMATION**

##### **Background**

On September 3, 1996, the Department published the final results (61 FR 46438) of its administrative review of the antidumping duty order on fresh kiwifruit from New Zealand (57 FR 23203 (June 2, 1992)). The review covered one exporter, the New Zealand Kiwifruit Marketing Board (NZKMB). The Department has now amended the final results of this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute are references to the provisions on January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act), by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

##### **Scope of the Review**

The product covered by the order under review is fresh kiwifruit. Processed kiwifruit, including fruit jams, jellies, pastes, purees, mineral waters, or juices made from or

containing kiwifruit, are not covered under the scope of the order. The subject merchandise is currently classifiable under subheading 0810.90.20.60 of the Harmonized Tariff Schedule (HTS). Although the HTS number is provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

##### **Analysis of Comments Received**

After publication of our final results, we received timely allegations of ministerial errors from the respondent, NZKMB, and the petitioner, the California Kiwifruit Commission.

##### **Comments**

The petitioner alleged that the Department's calculation of cost of production (used for comparison with net home market sales prices) did not include an amount for pallet expense.

The respondent alleged three ministerial errors pertaining to the Department's preliminary calculations: (1) packing costs were double-counted in calculating constructed value; (2) home market transportation insurance was incorrectly treated as an indirect selling expense rather than as a movement cost; and (3) U.S. indirect selling expenses incurred in New Zealand were erroneously deducted from constructed export price.

##### **DOC Position**

With respect to the ministerial error allegations noted above, the Department agrees that it made these errors and has corrected these errors for the final results. (See memorandum to the file dated October 30, 1996, for a detailed description of all adjustments made.)

##### **Amended Final Results of Review**

As a result of our correction of the ministerial errors, we have determined the following margin exists for the period June 1, 1994, through May 31, 1995:

Manufacturer exporter	Margin (percent)
New Zealand Kiwifruit Marketing Board .....	3.5

The Customs Service shall assess antidumping duties on all appropriate entries. Individual differences between U.S. price and NV may vary from the percentage stated above. The Department will issue appraisement instructions concerning the respondent directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise