

See 19 CFR 351.310(c). Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs. See 19 CFR 351.310(d). 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 35 days after the date of publication. See 19 CFR 351.309(d). Further, we would appreciate that parties submitting written comments also provide the Department with an additional copy of those comments on diskette. The Department will issue the 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, pursuant to section 751(a)(3)(A) of the Act.

#### Assessment

Upon issuance of the final results of this review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b), the Department has calculated an assessment rate applicable to all appropriate entries. We calculated importer-specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value, or entered quantity, as appropriate, of the examined sales for that importer. Upon completion of this review, where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer.

#### Cash Deposit

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publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for each of the reviewed companies will be the rate listed in the final results of review (except that if the rate for a particular product is *de minimis*, i.e., less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the

exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the "All Others" rate of 51.01 percent, which is the "All Others" rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

#### Notification to Interested Parties

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

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of the proprietary information disclosed under APO in accordance with 19 CFR 351.305, that 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 the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 29, 2004.

**Jeffrey May,**

*Acting Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-201-601]

#### **Fresh Cut Flowers From Mexico; Notice of Amended Final Results of Administrative Review in Accordance With North American Free Trade Agreement Panel Decision**

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

**SUMMARY:** On December 16, 1996, the North American Free Trade Agreement (NAFTA) Panel (the Panel) remanded the final results of review for certain fresh cut flowers from Mexico (for the period April 1, 1991 through March 31, 1992) to the Department of Commerce (the Department) directing the Department to assign to the Complainants a rate of 18.20 percent. As there is now a final and conclusive NAFTA Panel decision in this action, we are amending our final results.

**EFFECTIVE DATE:** July 7, 2004.

#### **FOR FURTHER INFORMATION CONTACT:**

Mark Hoadley at (202) 482-3148, Office of AD/CVD Enforcement VII, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On September 26, 1995, the Department issued the final results of the antidumping duty administrative review on certain fresh cut flowers from Mexico (*see Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review*, 60 FR 49569 (September 26, 1995) (*Final Results*)). In the *Final Results*, the Department assigned to the three Complainants, Rancho El Aguaje (Aguaje), Rancho Guacatay (Guacatay), and Rancho El Toro (Toro), antidumping duty rates based on the best information otherwise available (BIA), because the Department found that they had been uncooperative in responding to the Department's questionnaires, and had impeded the administrative review. The Department determined that the use of BIA was appropriate in accordance with section 776(c) of the Tariff Act of 1930, as amended (the Act). The Department designated the Complainants as uncooperative respondents, and assigned a "first-tier" dumping margin of 39.95 percent, the second highest rate found for any firm in either the less than

fair value (LTFV) investigation or any administrative review.<sup>1</sup>

On November 27, 1995, the Complainants requested a panel review of the Final Results pursuant to Article 1904 of the North American Free Trade Agreement. On December 16, 1996, the Panel issued its decision in this matter.

In its decision, the Panel upheld the Department's assignment of dumping margins based on BIA, stating that there was substantial evidence in the administrative record to support the Department's determination in the *Final Results* that the Complainants' responses were misleading, evasive, and impeded the progress of review. The Panel also determined that the Department's decision to resort to BIA was in accordance with the broad discretion granted to it by section 776(c) of the Act.

The Panel disagreed with the Department's determination to assign a first-tier BIA rate to the Complainants, however, because the record indicated that the Complainants cooperated with the Department's requests for information in many respects. The Panel noted that the Department has previously assigned second-tier BIA rates in situations in which respondents were cooperative but failed to provide certain information. The Panel cited *Yamaha Motor Co., v. United States*, 910 F.Supp. 679 (CIT 1995), *Emerson Power Transmission Corp. v. United States*, 903 F.Supp. 48 (CIT 1995), and *NSK Ltd. v. United States*, 910 F.Supp. 663 (CIT 1995), in which the Department assigned second-tier BIA rates to respondents, in spite of substantial omissions and misrepresentations in their questionnaire responses.

The Panel also noted that the Complainants are small ranches that have only recently been required to maintain information for the purpose of filing income tax returns, as a result of a change in Mexican law, and that they each developed an accounting system solely for the purpose of responding to the Department's antidumping questionnaires. In light of these factors, the Panel found that Aguaje, Guacatay, and Toro "exhibited substantial cooperation and that any misleading or evasive information supplied by Complainants did not rise to the level of uncooperativeness required, under the Department's own precedents, to apply a first-tier analysis." See *Decision of the Panel in the Matter of Fresh Cut Flowers from Mexico, Final Results of*

*Antidumping Duty Administrative Review (Panel Decision)*, December 16, 1996, at 86.

In assigning a second-tier BIA rate, the Panel considered the following options, in accordance with the Department's normal practice:<sup>2</sup> 1) the Complainants' rates from the LTFV investigation, if they were part of the investigation; 2) the "all others" rate from the investigation, if the Complainants were not part of the LTFV investigation; and, 3) the highest rate calculated in this review for any firm. As the second-tier BIA rate, the Panel chose 18.20 percent, the "all others" rate from the LTFV investigation, because none of the Complainants had participated in the LTFV investigation, and there was no calculated rate in this review that could be assigned. The Panel remanded the *Final Results* to the Department, and directed the Department to assign to each of the Complainants a less adverse, or "second-tier" BIA rate of 18.20 percent, based on the "all others" rate established in the LTFV investigation.

#### Amendment to Final Results of Review

Because no further appeals have been filed and there is now a final and conclusive decision in the panel proceeding, we are amending the *Final Results*, pursuant to the Panel's order, and assigning the second-tier BIA rate of 18.20 percent to Aguaje, Guacatay, and Toro for the period April 1, 1991 through March 31, 1992:

Company	Amended Final Results 1991–1992
Rancho El Aguaje .....	18.20%
Rancho Guacatay .....	18.20%
Rancho El Toro .....	18.20%

Accordingly, the Department will determine, and U.S. Customs and Border Protection will assess, antidumping duties on all entries of subject merchandise from these three companies during the period April 1, 1991, through March 31, 1992, in accordance with these amended final results.

<sup>2</sup> We note that on page 81 of the *Panel Decision* the Panel misstates the Department's normal practice, in place at the time of the review, for assigning second-tier BIA rates. In *Antifriction Bearings from France, et al.; Final Results of Antidumping Duty Administrative Reviews*, 57 FR 28360 (June 24, 1992), cited by the Panel, we described second-tier BIA as "the higher of 1) the highest rate (including the ≥all others≥ rate) ever applicable to the firm for the same class or kind of merchandise from either the LTFV investigation or a prior administrative review; or 2) the highest calculated rate in this review for the class or kind of merchandise for any firm from the same country of origin." (Emphasis added.)

This notice is issued and published in accordance with section 751(a)(1) of the Act.

Dated: June 24, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A–570–831]

#### Fresh Garlic From the People's Republic of China: Notice of Initiation of New Shipper Antidumping Duty Review

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

**SUMMARY:** In May 2004, the Department of Commerce received three requests to conduct new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China. Two of these requests were withdrawn. With respect to the third request, we have determined that it meets the statutory and regulatory requirements for the initiation of a new shipper review. In addition, we believe that there is sufficient information on the record to support the initiation of a middleman dumping inquiry involving the parties named in this request.

**EFFECTIVE DATE:** July 7, 2004.

**FOR FURTHER INFORMATION CONTACT:** Sochieta Moth or Mark Ross at (202) 482–5047 and (202) 482–4794, respectively, AD/CVD Enforcement 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

#### SUPPLEMENTARY INFORMATION:

##### Background

The notice announcing the antidumping duty order on fresh garlic from the People's Republic of China (PRC) was published on November 16, 1994. On May 11, 24, and 28, 2004, we received three timely requests, in accordance with 19 CFR 351.214(d), to conduct new shipper reviews of the antidumping duty order from Texing Trading Co., Ltd. (Texing Trading), Shandong Dongyue Produce Co., Ltd. (Dongyue), and Shandong Jining Jinshan Textile Co., Ltd. (Jining Jinshan), respectively. Texing Trading and Dongyue withdrew their requests for

<sup>1</sup> The Department found that the highest rate was aberrational, and therefore, was unsuitable for use as BIA.