

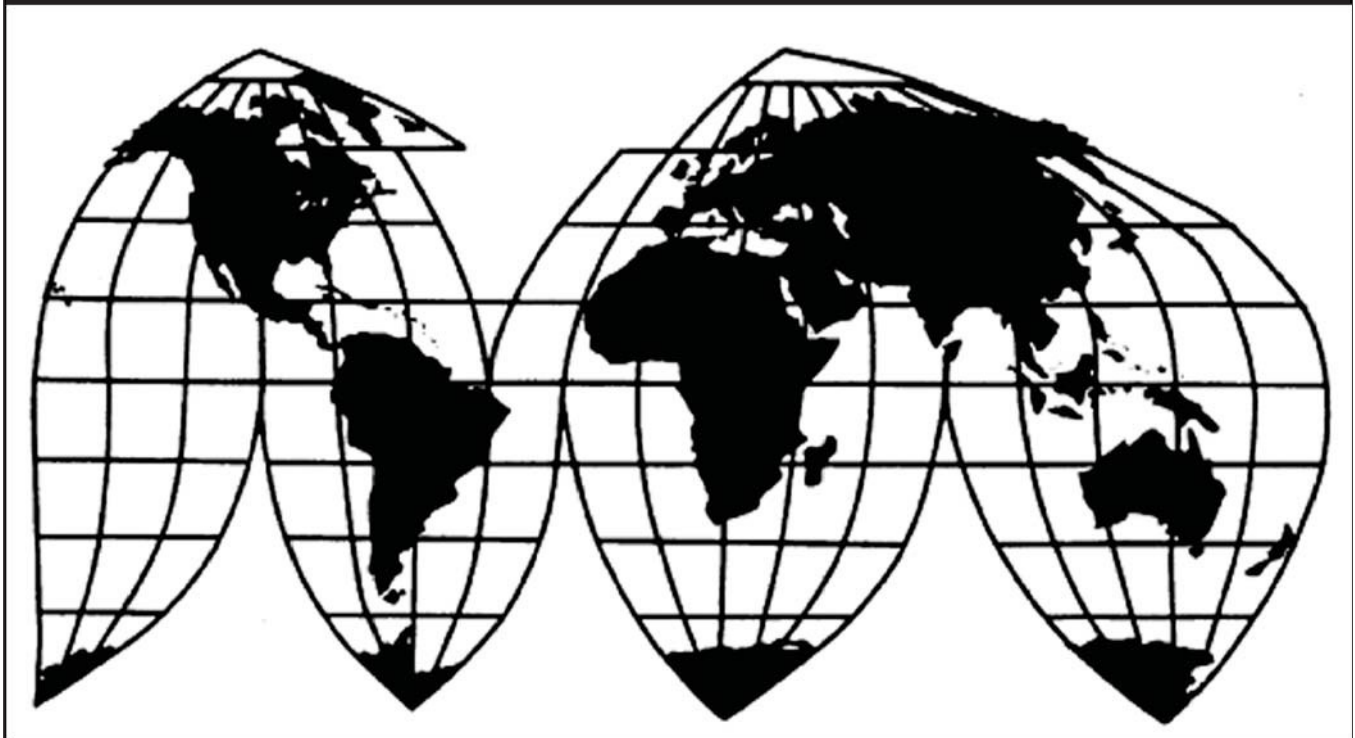
# **Fresh Garlic from China**

Investigation No. 731-TA-683 (Third Review)

**Publication 4316**

**April 2012**

**U.S. International Trade Commission**



Washington, DC 20436

# U.S. International Trade Commission

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**Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been identified by the use of \*\*\*. Final identification of confidential information is in the public version of the staff report.**



# UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-683 (Third Review)

## FRESH GARLIC FROM CHINA

### DETERMINATION

On the basis of the record<sup>1</sup> developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)), that revocation of the antidumping duty order on fresh garlic from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

### BACKGROUND

The Commission instituted this review on September 1, 2011 (76 F.R. 54487) and determined on December 5, 2011 that it would conduct an expedited review (76 F.R. 78694, December 19, 2011).

The Commission transmitted its determination in this review to the Secretary of Commerce on April 27, 2012. The views of the Commission are contained in USITC Publication 4316 (April 2012), entitled *Fresh Garlic from China: Investigation No. 731-TA-683 (Third Review)*.

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<sup>1</sup> The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).





## VIEWS OF THE COMMISSION

Based on the record in this five-year review, we determine under section 751(c) of the Tariff Act of 1930, as amended (the Act), that revocation of the antidumping duty order on fresh garlic from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

### I. BACKGROUND

On November 7, 1994, the Commission found that an industry in the United States was materially injured by reason of imports of fresh garlic sold at less than fair value (“LTFV”) from China.<sup>1</sup> The Commission also determined that the domestic dehydrated garlic and domestic seed garlic industries were not materially injured by reason of subject imports from China. Commerce published the antidumping duty order on imports of fresh garlic from China on November 16, 1994.<sup>2</sup>

On December 1, 1999, the Commission instituted the first five-year review of the order on fresh garlic from China.<sup>3</sup> The Commission subsequently determined that an industry in the United States would likely be materially injured by subject imports from China within a reasonably foreseeable time if the order were revoked.<sup>4</sup>

The Commission instituted a second five-year review on February 1, 2006, with respect to the order on fresh garlic from China.<sup>5</sup> In September 2006, the Commission determined that revocation of the order would be likely to lead to the continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.<sup>6</sup>

The Commission instituted the current review of the antidumping duty order on fresh garlic from China on September 1, 2011.<sup>7</sup> On October 3, 2011, the Commission received a joint substantive response to its notice of institution on behalf of the Fresh Garlic Producers Association (“FGPA”) and its individual members: Christopher Ranch LLC (“Christopher Ranch”), The Garlic Co. (“Garlic Co.”), Valley Garlic, Inc. (“Valley Garlic”), and Vessey and Co., Inc. (“Vessey”) (collectively “domestic interested parties”). No respondent interested party, whether foreign producer, exporter, or U.S. importer, responded to the Commission’s notice of institution. On December 5, 2011, the Commission determined

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<sup>1</sup> Fresh Garlic from the People’s Republic of China, Inv. No. 731-TA-683 (Final), USITC Pub. 2825 (Nov. 1994)(“USITC Pub. 2825”).

<sup>2</sup> 59 Fed. Reg. 59209 (Nov. 16, 1994).

<sup>3</sup> Fresh Garlic from China, Inv. No. 731-TA-683 (Review), USITC Pub. 3393 (Feb. 2001) (“USITC Pub. 3393”) at 4. The Commission determined that it would conduct a full review of the order. 64 Fed. Reg. 67315 (Dec. 1, 1999).

<sup>4</sup> USITC Pub. 3393 at 3. Commerce published its continuation of the antidumping duty order on imports from China in March 2001. 66 Fed. Reg. 14544 (Mar. 13, 2001).

<sup>5</sup> 71 Fed. Reg. 5374 (Feb. 1, 2006). On May 8, 2006, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930, as amended. 19 U.S.C. § 1675(c)(3). Fresh Garlic from China, Inv. No. 731-TA-683 (Second Review), USITC Pub. 3886 (Sept. 2006) (“USITC Pub. 3886”) at 3-4.

<sup>6</sup> USITC Pub. 3886 at 3-4. Commerce subsequently published its notice of continuation of the antidumping duty order on subject imports from China. 71 Fed. Reg. 61708 (Oct. 19, 2006).

<sup>7</sup> 76 Fed. Reg. 54487 (Sept. 1, 2011).

that it would conduct an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930, as amended.<sup>8</sup>

## II. DOMESTIC LIKE PRODUCT AND INDUSTRY

### A. Domestic Like Product

In making its determination under section 751(c) of the Act, the Commission defines “the domestic like product” and the “industry.”<sup>9</sup> The Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.”<sup>10</sup> The Commission’s practice in five-year reviews is to look to the like product definition from the original determination and any completed reviews and consider whether the record indicates any reason to revisit the prior findings.<sup>11</sup>

In its expedited sunset determination, Commerce defined the subject merchandise in this review as follows:

[A]ll grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally prepared, 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 the 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 uses as seed. The subject merchandise is used principally as a food product and for seasoning.<sup>12</sup>

Fresh garlic is classified by the U.S. Department of Agriculture (“USDA”) as USDA Grade No. 1 or unclassified. Fresh garlic is packaged according to size (ranging from 1-1/2 inches in diameter to 2-3/4

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<sup>8</sup> 19 U.S.C. § 1675(c)(3). See Confidential Staff Report (“CR”) and Public Staff Report (“PR”) at App’x B, Explanation of Commission Determination on Adequacy.

<sup>9</sup> 19 U.S.C. § 1677(4)(A).

<sup>10</sup> 19 U.S.C. § 1677(10); see, e.g., Cleo, Inc. v. United States, 501 F.3d 1291, 1299 (Fed. Cir. 2007); NEC Corp. v. Department of Commerce, 36 F. Supp. 2d 380, 383 (Ct. Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996); Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991); see also S. Rep. No. 249, 96th Cong., 1<sup>st</sup> Sess. 90-91 (1979).

<sup>11</sup> See, e.g., Stainless Steel Sheet and Strip from Germany, Italy, Japan, Korea, Mexico, and Taiwan, Inv. Nos. 701-TA-382 and 731-TA-798-803 (Second Review), USITC Pub. 4244 (July 2011) at 6; Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom, Inv. Nos. AA1921-197 (Second Review), 701-TA-319, 320, 325-27, 348, and 350 (Second Review), and 731-TA-573-74, 576, 578, 582-87, 612, and 614-618 (Second Review), USITC Pub. 3899 (January 2007) at 31, n. 117; Internal Combustion Industrial Forklift Trucks from Japan, Inv. No. 731-TA-377 (Second Review), USITC Pub. 3831 (December 2005) at 8-9; Crawfish Tail Meat from China, Inv. No. 731-TA-752 (Review), USITC Pub. 3614 (July 2003) at 4; Steel Concrete Reinforcing Bar from Turkey, Inv. No. 731-TA-745 (Review), USITC Pub. 3577 (February 2003) at 4.

<sup>12</sup> 77 Fed. Reg. 777 (Jan. 6, 2012).

inches or more).<sup>13</sup> In the prior reviews, 80 to 85 percent of fresh garlic sold in the U.S. market was USDA Grade No. 1. Additionally, the remaining fresh garlic sold in the U.S. market was unclassified; unclassified is believed to be further processed.<sup>14</sup>

In the original investigation, the Commission found three separate domestic like products consisting of fresh garlic, dehydrated garlic, and seed garlic. Commerce's scope later was narrowed to cover only fresh garlic to conform to the fact that the Commission made an affirmative determination only with respect to fresh garlic.<sup>15</sup> In both the first and second reviews of the order on fresh garlic from China, the Commission defined the domestic like product as fresh garlic, consistent with its definition in the original investigation and corresponding to Commerce's amended scope of the investigation.<sup>16</sup>

In this third review, the domestic interested parties agree that the domestic like product should continue to be defined as fresh garlic, consistent with the Commission's definition of the domestic like product in the original investigation and prior reviews.<sup>17</sup> The record of this third review contains no information that would lead us to reconsider the domestic like product definition. Accordingly, we define a single domestic like product consisting of fresh garlic corresponding to Commerce's scope.

## **B. Domestic Industry**

Section 771(4)(A) of the Act defines the relevant domestic industry as the "producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."<sup>18</sup>

In the original investigation, consistent with its domestic like product definition, the Commission defined three separate domestic industries, consisting of all domestic producers of each respective industry.<sup>19</sup> In the first and second reviews, the Commission defined the domestic industry as all producers of fresh garlic consistent with its domestic like product definition in the original investigation and with Commerce's narrower scope.<sup>20</sup>

In this third review, the domestic interested parties agree that the domestic industry should continue to be defined as all U.S. producers of fresh garlic.<sup>21</sup> Based on our domestic like product definition and absent record evidence warranting reconsideration of the issue, we define the domestic industry as all domestic producers of fresh garlic.<sup>22</sup>

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<sup>13</sup> CR at I-11; PR at I-10.

<sup>14</sup> USITC Pub. 3393 at 5; USITC Pub. 3886 at 4.

<sup>15</sup> 59 Fed. Reg. 59209 (Nov. 16, 1994).

<sup>16</sup> USITC Pub. 3395 at 5; USITC Pub. 3886 at 5.

<sup>17</sup> Domestic Interested Parties Response to the Notice of Institution at 30.

<sup>18</sup> 19 U.S.C. § 1677(4)(A). In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States. See United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (Ct. Int'l Trade 1994), aff'd, 96 F.3d 1352 (Fed.Cir. 1996).

<sup>19</sup> USITC Pub. 2825 at I-23.

<sup>20</sup> USITC Pub. 3393 at 9-10; USITC Pub. 3886 at 6.

<sup>21</sup> Domestic Interested Parties Response to the Notice of Institution at 30.

<sup>22</sup> Section 771(4)(B) of the Act allows the Commission, if appropriate circumstances exist, to exclude domestic producers from the domestic industry if they are related to an exporter or importer of subject merchandise. 19 U.S.C. § 1677(4)(B). There are no related party issues in this review.

### III. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF MATERIAL INJURY IF THE ANTIDUMPING DUTY ORDER IS REVOKED

#### A. Legal Standard In A Five-Year Review

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping duty order unless (1) it makes a determination that dumping or subsidization is likely to continue or recur and (2) the Commission makes a determination that revocation of the antidumping duty order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”<sup>23</sup> The SAA states that “under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation or termination of a proceeding and the elimination of its restraining effects on volumes and prices of imports.”<sup>24</sup> Thus, the likelihood standard is prospective in nature.<sup>25</sup> The U.S. Court of International Trade has found that “likely,” as used in the five-year review provisions of the Act, means “probable,” and the Commission applies that standard in five-year reviews.<sup>26 27</sup>

The statute states that “the Commission shall consider that the effects of revocation or termination may not be imminent, but may manifest themselves only over a longer period of time.”<sup>28</sup> According to

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<sup>23</sup> 19 U.S.C. § 1675a(a).

<sup>24</sup> SAA, H.R. Rep. No. 103-316, vol. I, at 883-84 (1994). The SAA states that “[t]he likelihood of injury standard applies regardless of the nature of the Commission’s original determination (material injury, threat of material injury, or material retardation of an industry). Likewise, the standard applies to suspended investigations that were never completed.” SAA at 883.

<sup>25</sup> While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued [sic] prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

<sup>26</sup> See NMB Singapore Ltd. v. United States, 288 F. Supp. 2d 1306, 1352 (Ct. Int’l Trade 2003) (“‘likely’ means probable within the context of 19 U.S.C. § 1675(c) and 19 U.S.C. § 1675a(a)”), aff’d mem., 140 Fed. Appx. 268 (Fed. Cir. 2005); Nippon Steel Corp. v. United States, 26 CIT 1416, 1419 (2002) (same); Usinor Industeel, S.A. v. United States, 26 CIT 1402, 1404 nn.3, 6 (2002) (“more likely than not” standard is “consistent with the court’s opinion”; “the court has not interpreted ‘likely’ to imply any particular degree of ‘certainty’”); Indorama Chemicals (Thailand) Ltd. v. United States, 26 CIT 1059 (Ct. Int’l Trade 2002) (“standard is based on a likelihood of continuation or recurrence of injury, not a certainty”); Usinor v. United States, 26 CIT 767, 794 (2002) (“‘likely’ is tantamount to ‘probable,’ not merely ‘possible’”).

<sup>27</sup> For a complete statement of Chairman Okun’s interpretation of the likely standard, see Additional Views of Vice Chairman Deanna Tanner Okun Concerning the “Likely” Standard in Certain Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Argentina, Brazil, Germany, and Italy, Invs. Nos. 701-TA-362 (Review) and 731-TA-707 to 710 (Review) (Remand), USITC Pub. 3754 (Feb. 2005).

<sup>28</sup> 19 U.S.C. § 1675a(a)(5).

the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ timeframe applicable in a threat of injury analysis in original investigations.”<sup>29</sup>

Although the standard in a five-year review is not the same as the standard applied in an original antidumping duty investigation, it contains some of the same fundamental elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked or the suspended investigation is terminated.”<sup>30</sup> It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order or the suspension agreement under review, whether the industry is vulnerable to material injury if the order is revoked or the suspension agreement is terminated, and any findings by Commerce regarding duty absorption pursuant to 19 U.S.C. § 1675(a)(4).<sup>31</sup>

As discussed above, the Commission received a joint response to its notice of institution from the domestic interested parties and did not receive a response from any respondent interested party. Accordingly, when appropriate in this review, we have relied on the facts otherwise available, which consist of information from the original investigation and the first and second five-year reviews, as well as information obtained in this review, including information provided by the domestic interested parties, and information available from published sources.<sup>32 33</sup>

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<sup>29</sup> SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” *Id.*

<sup>30</sup> 19 U.S.C. § 1675a(a)(1).

<sup>31</sup> 19 U.S.C. § 1675a(a)(1). The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission’s determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

<sup>32</sup> 19 U.S.C. § 1677e(a) authorizes the Commission to “use the facts otherwise available” in reaching a determination when (1) necessary information is not available on the record or (2) an interested party or any other person withholds information requested by the agency, fails to provide such information in the time or in the form or manner requested, significantly impedes a proceeding, or provides information that cannot be verified pursuant to 19 U.S.C. § 1677m(i). The verification requirements in 19 U.S.C. § 1677m(i) are applicable only to Commerce. *See Titanium Metals Corp. v. United States*, 155 F. Supp. 2d 750, 765 (Ct. Int’l Trade 2002) (“the ITC correctly responds that Congress has not required the Commission to conduct verification procedures for the evidence before it, or provided a minimum standard by which to measure the thoroughness of Commission investigations.”).

<sup>33</sup> Chairman Okun notes that the statute authorizes the Commission to take adverse inferences in five-year reviews, but such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination. *See* 19 U.S.C. § 1677e. She generally gives credence to the facts supplied by the participating parties and certified by them as true, but bases her decision on the evidence as a whole, and does not automatically accept participating parties’ suggested interpretations of the record evidence. Regardless of the level of participation, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. “In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive.” SAA at

(continued...)

## B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry, the statute directs the Commission to consider all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>34</sup>

*U.S. Demand.* During the original investigation and prior review periods, apparent U.S. consumption increased steadily with the largest increase occurring from 2000 to 2005.<sup>35</sup> Since the period examined in the second review, apparent U.S. consumption rose by \*\*\* percent, from \*\*\* pounds in 2005 to \*\*\* pounds in 2011.<sup>36</sup>

*Supply.* As the Commission observed in the original investigation and prior reviews, garlic is a seasonal crop. Once a garlic crop has been planted, it takes nine months for the crop to be ready for harvesting. The domestic industry plants its crop in the fall and harvests it in June and July of the following year. As such, U.S. producers will make market projections a year in advance and plant their garlic crops accordingly. U.S. producers supply the market during the late summer and early autumn months. Chinese garlic is planted slightly earlier than domestically produced garlic and is sold in the U.S. market during the last six months of the year. Thus, subject imports directly compete with the domestic like product. The growing season for fresh garlic in Argentina, Chile, and Mexico, the largest sources of nonsubject imports, differs from that for U.S. garlic. As a result, unlike subject imports, nonsubject imports of fresh garlic are predominantly present in the U.S. market during the winter or spring months of the year.<sup>37</sup>

In the prior reviews, the Commission noted that the seasonal nature of the garlic crop has been moderated somewhat by the increased use of cold-storage and controlled atmosphere storage facilities. The Commission found that one-third of the U.S. fresh garlic crop was stored using either of these two methods. The Commission also observed that cold storage facilities had become more commonplace in China.<sup>38</sup>

In its determination in the second review, the Commission found that the domestic industry had undergone significant restructuring from 2001 through 2005. Specifically, thirteen companies exited the industry and the largest domestic producer, Christopher Ranch, took 40.2 percent of its garlic fields out of production.<sup>39</sup> As a result, domestic production of fresh garlic decreased from 152.6 million pounds in 2000 to \*\*\* pounds in 2005.<sup>40</sup> Additionally, the Commission observed that USDA data showed a decline in total acreage planted and harvested for domestic garlic production in the United States from 2000 through 2005.

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<sup>33</sup> (...continued)

869.

<sup>34</sup> 19 U.S.C. § 1675a(a)(4).

<sup>35</sup> During the period examined in the original investigation, apparent U.S. consumption increased from 85.6 million pounds in 1991 to 180.3 million pounds in 1994. CR/PR at Appendix C. During the period examined in the first review, apparent U.S. consumption increased from 160.8 million pounds in 1998 to 186.4 million pounds in 2000. CR/PR at Appendix C, Table C-1. During the period examined in the second review, apparent U.S. consumption increased to \*\*\* pounds in 2005. CR/PR at Table I-4.

<sup>36</sup> CR/PR at Table I-4.

<sup>37</sup> USITC Pub. 2825 at I-33 to I-34.

<sup>38</sup> USITC Pub. 3393 at 10.

<sup>39</sup> USITC Pub. 3886 at 9-10.

<sup>40</sup> USITC Pub. 3886 at 10; CR/PR at Table I-2.

In this third review, the domestic interested parties report that the number of domestic producers has remained unchanged.<sup>41</sup> Although U.S. capacity figures are unavailable for 2005, reported U.S. capacity to produce fresh garlic was \*\*\* in 2011. U.S. production of fresh garlic increased by \*\*\* percent over the period of review, from \*\*\* pounds in 2005 to \*\*\* pounds in 2011.<sup>42</sup> USDA data for total U.S. production of garlic (including production for the fresh market and for processing), however, show that total garlic plantings in the United States fell from 30,400 acres in 2005 to 23,100 acres in 2010, a decline of 24.0 percent.<sup>43</sup>

The U.S. fresh garlic market has been and continues to be supplied by the domestic industry, subject imports, and nonsubject imports. In the original investigation, the domestic industry's market share by quantity increased from 49.4 percent in 1991 to 63.5 percent in 1993 but declined by 18 percentage points to 45.5 percent in 1994.<sup>44</sup> In contrast, subject imports' market share by quantity increased slightly from 7.1 percent in 1991 to 8.0 percent in 1993 but then spiked to 35.2 percent in 1994.<sup>45</sup> Nonsubject imports' market share of the U.S. market by quantity declined steadily from 43.5 percent in 1991 to 19.3 percent in 1994.<sup>46</sup>

In the first five-year review, the Commission found that subject imports were virtually nonexistent in the U.S. market following imposition of the order. Subject imports' market share by quantity was less than one percent throughout the period. With subject imports virtually abandoning the U.S. market, the domestic industry's market share by quantity increased from 45.5 percent in 1994 to 68.9 percent in 2000. The market share of nonsubject imports, in quantity terms, also increased from 1994 to 2000.<sup>47</sup>

In the second five-year review, the Commission found that the presence of subject imports in the U.S. market had increased dramatically and, in 2005, accounted for \*\*\* percent of the U.S. market in terms of quantity.<sup>48</sup> In contrast, the market share held by the domestic industry and by nonsubject imports declined.<sup>49</sup>

During this third review period, the domestic industry's market share by quantity increased slightly from \*\*\* percent in 2005 to \*\*\* percent in 2011. Subject imports by quantity accounted for \*\*\* of the U.S. market at \*\*\* percent in 2011. Nonsubject imports' market share by quantity fell from \*\*\* percent in 2005 to \*\*\* percent in 2011.<sup>50</sup>

*Other Considerations.* In the original investigation and prior reviews, the Commission found that the domestic like product and subject imports were highly substitutable, and that fresh garlic was sold on the basis of price.<sup>51</sup> In the original investigation, the Commission also emphasized that the perishability of fresh garlic was a key concern driving product sales.<sup>52</sup>

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<sup>41</sup> Domestic Interested Parties' Response to the Notice of Institution at 14.

<sup>42</sup> CR/PR at Table I-2.

<sup>43</sup> CR at I-16, PR at I-13.

<sup>44</sup> CR/PR at Appendix C.

<sup>45</sup> USITC Pub. 2825 at I-43 to I-44.

<sup>46</sup> CR/PR at Appendix C.

<sup>47</sup> CR/PR at Table I-4.

<sup>48</sup> USITC Pub. 3886 at 11; CR/PR at Table I-4.

<sup>49</sup> USITC Pub. 3886 at 9, 11.

<sup>50</sup> CR/PR at Table I-4.

<sup>51</sup> USITC Pub. 3886 at 9.

<sup>52</sup> USITC Pub. 2825 at I-20.

Since the original investigation, numerous import restraints, including antidumping and phytosanitary measures, have been instituted around the world against Chinese garlic.<sup>53</sup> During the current review period, major third-country markets have continued to take action to limit imports of fresh garlic from China, thereby increasing the likelihood that large volumes of fresh garlic from China would be diverted to the U.S. market if the order were revoked.<sup>54</sup>

We find that these market conditions for fresh garlic are likely to persist in the reasonably foreseeable future and provide us with a reasonable basis on which to assess the effects of revocation of the order.

**C. Revocation of the Order on Subject Imports From China Is Likely to Lead to Continuation or Recurrence of Material Injury Within a Reasonably Foreseeable Time**

**1. Likely Volume**

In evaluating the likely volume of imports of subject merchandise if the antidumping duty order were revoked, the Commission is directed to consider whether the likely volume of imports would be significant, either in absolute terms or relative to production or consumption in the United States.<sup>55</sup> In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.<sup>56</sup>

**a. Original Investigation and Prior Reviews**

In its original determination, the Commission found that the volume and market share of subject imports, in terms of quantity and value, increased significantly throughout the period examined.<sup>57</sup> The volume of subject imports increased by 949.2 percent over the period, from 6.1 million pounds in 1991 to 63.5 million pounds in 1994. Further, the market share held by subject imports increased over the period, while the market shares held by the domestic industry and nonsubject imports decreased. The Commission concluded that the increase in the volume and market share of subject imports came primarily at the expense of the domestic industry.<sup>58</sup>

In the first five-year review, the Commission found that the antidumping duty order had had a restraining effect on subject import volumes as virtually no imports of fresh garlic from China entered the U.S. market after the order was imposed. According to the Commission, several factors supported the conclusion that subject import volume would likely be significant if the order were revoked. Specifically, it found that subject producers were export-oriented, that there were substantial barriers to imports from China in other world markets that made the growing U.S. market attractive to subject producers, and that,

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<sup>53</sup> CR at I-I-22-I-23, PR at 17-18.

<sup>54</sup> CR at I-22-I-23, PR at 17-18.

<sup>55</sup> 19 U.S.C. § 1675a(a)(2).

<sup>56</sup> 19 U.S.C. § 1675a(a)(2)(A-D).

<sup>57</sup> USITC Pub. 2897 at I-17.

<sup>58</sup> USITC Pub. 2825 at I-43 to I-44.



during the original investigation, subject producers demonstrated the ability to rapidly increase their exports to the U.S. market.<sup>59</sup>

In the second five-year review, the Commission found that the likely volume of imports from China would be significant if the order were revoked. The Commission emphasized that the quantity and value of imports from China had increased dramatically since the period examined in the first review, despite the presence of the antidumping duty order. The Commission noted that the volume of subject imports increased from 1 million pounds in 2000 to 112 million pounds in 2005, which corresponded to a significant increase in subject imports' share of apparent U.S. consumption.<sup>60</sup> Subject imports' market share by quantity increased from 0.6 percent of apparent U.S. consumption in 2000 to \*\*\* percent in 2005.<sup>61</sup>

The Commission found that Chinese producers continued to have substantial capacity. The Commission also emphasized that according to data from the United Nations Food and Agriculture Organization, China's capacity to produce the larger category of "all garlic" increased by 48 percent over the period of review to reach over 24.5 billion pounds in 2005. Additionally, the Commission noted that data from the World Trade Atlas indicated that total exports from China of fresh garlic increased by 200 percent, from 383 million kilograms in 2000 to 1.15 billion kilograms in 2005, as subject producers continued to export substantial quantities of fresh garlic.<sup>62</sup>

In the second review, the Commission also found that numerous import restraints, including antidumping and phytosanitary measures, had been imposed on Chinese fresh garlic throughout the world since the original investigation.<sup>63</sup> According to the Commission, if the order were revoked, the U.S. market would become more attractive to Chinese producers, resulting in increased Chinese exports of fresh garlic to the United States.<sup>64</sup>

For all these reasons, the Commission found that subject imports would likely increase significantly upon revocation of the antidumping duty order.<sup>65</sup>

#### **b. The Current Review**

Since the last review period, subject imports have continued to increase and capture market share in terms of quantity and value, reaching record levels despite the presence of the order. The volume of subject imports increased from 112 million pounds in 2005 to 137 million pounds in 2011. In 2011, subject imports' market share by quantity represented over half of the U.S. market at \*\*\* percent.<sup>66</sup>

In contrast to subject imports, the domestic industry, which lost half of its U.S. market share to subject imports during the second review period, gained little ground. The domestic industry's market

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<sup>59</sup> USITC Pub. 3393 at 11-12.

<sup>60</sup> USITC Pub. 3886 at 11.

<sup>61</sup> USITC Pub. 3886; CR/PR at Table I-4.

<sup>62</sup> USITC Pub. 3886 at 11-12.

<sup>63</sup> USITC Pub. 3886 at 12.

<sup>64</sup> USITC Pub. 3886 at 12.

<sup>65</sup> USITC Pub. 3886 at 12.

<sup>66</sup> CR/PR at Table I-4.

share by quantity increased from \*\*\* percent in 2005 to \*\*\* percent in 2011.<sup>67</sup> At the same time, nonsubject imports' volume and market share declined.<sup>68</sup>

Due to the lack of response from subject producers, there is limited information in this record concerning current levels of production capacity in China. According to the domestic interested parties, there are 121 foreign producers/exporters of fresh garlic from China, but the current production capacity of these firms is not available.<sup>69</sup> UN data show, however, that China is the world's top producer of garlic,<sup>70</sup> accounting for an estimated 78 percent of global garlic production between 2005 to 2009. UN data also indicate that, although production of garlic in China fell slightly in 2009 from 2008, it was 60 percent higher in 2009 than in 2005.<sup>71</sup> Additionally, UN data show that acres of garlic harvested in China increased by 20.2 percent between 2005 and 2009, from 648,136 hectares to 779,232 hectares.<sup>72</sup>

The record indicates that subject producers rely extensively on their export markets. In the prior reviews, subject producers exported a substantial portion of their production to third-country markets, and they continue to do so.<sup>73</sup> Subject producers' exports of fresh garlic increased from 2.4 billion pounds in 2005 to 3.0 billion pounds in 2010.<sup>74</sup> These exports captured 88 percent of the global export market in 2010, down from 90 percent in 2009.<sup>75</sup>

In addition to being export-oriented, Chinese producers would likely find the United States to be an attractive export market if the order were revoked. As noted above, since the original investigation, numerous import restraints, including antidumping and phytosanitary measures, have been instituted around the world against Chinese garlic.<sup>76</sup> Various countries have continued to take actions to limit imports of fresh garlic from China, thereby increasing the likelihood that large volumes of fresh garlic from China would be exported to the U.S. market if the order were revoked.

Given Chinese producers' massive exports, trade barriers in third-country markets, the large and increasing volume of subject imports in the United States despite the existing order, and Chinese producers' apparent substantial capacity, we find that the likely volume of subject merchandise, both in absolute terms and relative to consumption and production in the United States, would likely be significant within a reasonably foreseeable time if the order were revoked.

## 2. Likely Price Effects

In evaluating the likely price effects of subject imports if the antidumping duty order were revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports of the domestic like product and whether the subject imports are likely to enter the

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<sup>67</sup> CR/PR at Table I-4.

<sup>68</sup> USITC Pub. 3886 at 11.

<sup>69</sup> Domestic Interested Parties' Response to the Notice of Institution at Ex. 4; CR at I-25, PR at I-19.

<sup>70</sup> CR at I-25, PR at I-19.

<sup>71</sup> CR at I-25, PR at I-19-I-20.

<sup>72</sup> CR at I-25, PR at I-20.

<sup>73</sup> CR at I-25, PR at I-20; CR/PR at Appendix C; USITC Pub. 3393 at 11; USITC Pub. 3886 at 12.

<sup>74</sup> Calculated from Domestic Interested Parties Response to the Notice of Institution at Ex. 7 (citing Chinese Customs data).

<sup>75</sup> CR at I-25, PR at I-20.

<sup>76</sup> CR at I-I-22-I-23, PR at I-17-I-18.

United States at prices that otherwise would have a significant depressing or suppressing effect on prices for the domestic like product.<sup>77</sup>

**a. Original Investigation and Prior Reviews**

In the original determination, the Commission found that the domestic like product and subject imports were highly fungible, competed head-to-head due to overlapping marketing seasons, and that price was a key factor in purchasing decisions. It also observed that pricing data showed that subject imports undersold the domestic like product in 20 out of 21 price comparisons, with underselling margins reaching 70.0 percent. As a result of this pervasive underselling by subject imports, the Commission found that subject imports had a significant depressing effect on the prices of the domestic like product.<sup>78</sup>

In the first review, the Commission found that subject imports, which were virtually absent during the period examined, would likely be aggressively priced to recapture market share if the order were revoked. In light of subject imports' underselling the domestic like product during the original investigation and the resulting adverse price effects, the Commission concluded that if the order were revoked, subject imports would likely have significant price depressing or suppressing effects on the domestic like product.<sup>79</sup>

In the second review, the Commission found that the average unit values ("AUVs") of fresh garlic imports from China fluctuated during the period of review, but remained well below the AUVs for domestic producers' shipments. The Commission further found that, given the substantial and increasing presence of fresh garlic imports from China despite the existing antidumping duty order, and the fungibility between the domestic and subject products, subject producers had an incentive to lower their prices to increase their U.S. market share. In light of the past history of underselling by subject imports, the Commission therefore determined that, if the order were revoked, significant volumes of subject imports would be likely to undersell the domestic like product in order to gain market share and would likely significantly depress or suppress domestic prices within a reasonably foreseeable time.<sup>80</sup>

**b. Current Review**

Based on the information available in the current review, we again find that significant price effects would be likely if the order were revoked. As noted above, the domestic product and subject imports are highly fungible, compete head-to-head due to overlapping marketing seasons, and price is a key factor in purchasing decisions. Additionally, the perishable nature of fresh garlic is a key concern driving fresh garlic sales.

There are no new product-specific pricing data available on the record of this expedited review. During the original investigation, the Chinese product undersold the domestic like product in almost all possible price comparisons.<sup>81</sup> In the second review, when subject imports reentered the U.S. market in substantial quantities, the AUVs for subject imports from China fluctuated but remained well below the AUVs for the domestic like product. In the current review, the AUV for the subject merchandise was

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<sup>77</sup> 19 U.S.C. § 1675a(a)(3). The SAA states that, "[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices." SAA at 886.

<sup>78</sup> USITC Pub. 2825 at I-40 to I-41.

<sup>79</sup> USITC Pub. 3396 at 16.

<sup>80</sup> USITC Pub. 3886 at 13.

<sup>81</sup> USITC Pub. 2825 at I-26.

\$0.71 per pound in 2011, \*\*\* percent lower than the AUV for domestic producers' U.S. shipments for that year (\$\*\*\*).<sup>82</sup>

In the absence of the order, subject imports from China would likely undersell the U.S. product in order to gain further market share. Given the importance of price and the fungibility of the subject imports and the domestic like product, the Chinese product would likely be aggressively priced. As a result, domestic producers would likely be forced to cut their prices to maintain their already reduced share of the U.S. market.

Accordingly, we find that, if the order were revoked, the likely significant increase in subject import volume at prices that would likely undersell the domestic like product would likely have significant adverse price effects on the domestic industry including significant price depression or suppression within a reasonably foreseeable time.

### **3. Likely Impact of Subject Imports<sup>83</sup>**

In evaluating the likely impact of imports of subject merchandise if the antidumping duty order under review were revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including, but not limited to the following: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industries, including efforts to develop a derivative or more advanced version of the domestic like product.<sup>84</sup> All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.<sup>85</sup> As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the order at issue and whether the industry is vulnerable to material injury if the order were revoked.

In the original determination, the Commission found that the increasing volume of subject imports, and the significant market share accounted for by those imports, depressed prices to a significant degree leading to the domestic industry's loss of market share, reduced capacity utilization rates, and financial losses.<sup>86</sup>

In the first five-year review, the Commission found that the domestic industry would be vulnerable to material injury within a reasonably foreseeable time if the order were revoked, due in part to the decline in operating income over the period of review. Due to the highly substitutable nature of the domestic product and subject merchandise and the increasing volume of subject imports, the Commission

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<sup>82</sup> CR/PR at Tables I-3 and I-2.

<sup>83</sup> Section 752(a)(6) of the Tariff Act states that "the Commission may consider the magnitude of the margin of dumping or the magnitude of the net countervailable subsidy" in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the Commission in five-year reviews as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). See also SAA at 887. Commerce conducted an expedited third five-year review with respect to the antidumping duty order on imports of fresh garlic from China. It found a likely PRC-wide weighted-average antidumping duty margin of 376.67 percent. 77 Fed. Reg. 777 (Jan. 6, 2012). Commerce has not issued any duty absorption determination with respect imports of garlic from China.

<sup>84</sup> 19 U.S.C. § 1675a(a)(4).

<sup>85</sup> 19 U.S.C. § 1675a(a)(4).

<sup>86</sup> USITC Pub. 2825 at I-42-I-43.

found that the volume and price effects of the subject imports would likely cause the domestic industry to lose market share, which would have a significant adverse impact on the domestic industry's production, shipments, sales, and revenues. It noted that this likely reduction in the industry's production, sales, and revenues would be likely to have a direct adverse impact on the industry's profitability as well as its ability to raise capital.<sup>87</sup>

In the second five-year review, given the contraction of the domestic industry and resulting decrease in its production and U.S. shipments, the Commission found that the domestic industry would be vulnerable to material injury if the antidumping duty order on imports from China were revoked.<sup>88 89</sup> In light of the substitutable nature of subject imports and the domestic like product and the attractiveness of the U.S. market, the Commission found that the likely significant volume of subject imports, when combined with the likely adverse price effects of those imports, would likely have a significant adverse impact on the domestic industry's production, shipments, sales, and revenues.<sup>90</sup> According to the Commission, reductions in these indicators likely would have a direct adverse impact on the domestic industry's profitability and employment levels, as well as on its ability to raise capital and make and maintain necessary capital investments.<sup>91</sup> Accordingly, the Commission concluded that, if the antidumping duty order were revoked, subject imports would likely have a significant adverse impact on the domestic industry within a reasonably foreseeable time.<sup>92</sup>

In this expedited review, the record information on the domestic industry's condition is limited. Based on the current record, in 2011 the domestic industry's production capacity was \*\*\* pounds, its production was \*\*\* pounds, and its capacity utilization rate was a low \*\*\* percent.<sup>93</sup> At the same time, the domestic industry's U.S. shipments were \*\*\* pounds, accounting for a mere \*\*\* percent of apparent U.S. consumption by volume.<sup>94</sup> Its net sales value was \$\*\*\*, and its operating income was \$\*\*\*, equivalent to \*\*\* percent of net sales.<sup>95</sup> The limited evidence in this expedited review is insufficient for us to make a finding on whether the domestic industry is vulnerable to the continuation or recurrence of material injury in the event of revocation of the order.

We find that, if the order were revoked, subject imports from China would be likely to increase their presence in the U.S. market in significant quantities at the expense of the domestic industry. As discussed above, revocation of the antidumping duty order likely would lead to significant increases in the volume of subject imports at prices that would likely undersell the domestic like product and significantly suppress or depress U.S. prices. In addition, the likely volume and price effects of subject imports would likely cause the domestic industry to lose market share, with a significant adverse impact on the domestic industry's production, shipments, sales, and revenues. This reduction in the industry's production, shipments, sales, and revenues would have a direct adverse impact on the industry's

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<sup>87</sup> USITC Pub. 3393 at 17.

<sup>88</sup> USITC Pub. 3886 at 15.

<sup>89</sup> Then-Chairman Daniel R. Pearson and then-Commissioner Deanna Tanner Okun did not make a finding with regard to whether the domestic industry was vulnerable to the continuation or recurrence of material injury if the order were revoked. They noted that the record in the expedited second review was not sufficiently developed with respect to the financial condition of the industry to make such a determination. USITC Pub. 3886 at n.98.

<sup>90</sup> USITC Pub. 3886 at 15.

<sup>91</sup> USITC Pub. 3886 at 15.

<sup>92</sup> USITC Pub. 3886 at 15.

<sup>93</sup> CR/PR at Table I-2.

<sup>94</sup> CR/PR at Tables I-2 and I-4.

<sup>95</sup> CR/PR at Table I-2.

profitability as well as its ability to raise capital and make and maintain necessary capital investments. In addition, we find it likely that revocation of the order would result in employment declines for the domestic industry.

In evaluating the likely impact of subject imports, we have considered the role of nonsubject imports in the U.S. market. As noted above, the domestic product, subject imports, and nonsubject imports are fungible. In the original investigation, the Commission found that nonsubject imports' market share by quantity and value declined, indicating that domestic producers' loss of market share was attributable to subject imports' gain.<sup>96</sup> During the first review period, both the domestic industry's and nonsubject imports' market share by quantity increased from 1994 to 2000 as subject imports were largely absent from the U.S. market.<sup>97</sup> During the second review period, nonsubject imports' market share by quantity declined by \*\*\*, while subject imports' market share grew dramatically.<sup>98</sup>

In the current review, nonsubject imports' market share by quantity and value declined to its lowest level. In any event, due to their differing growing seasons, imports from nonsubject sources are generally not present in the U.S. market concurrently with the domestic like product. In effect, nonsubject imports, unlike subject imports which compete head-to-head with the domestic like product, complement U.S. production. Based on the information available, we conclude if the order were revoked, that nonsubject imports would be unlikely to prevent subject imports from China from penetrating the U.S. market significantly and causing significant adverse volume and price effects with respect to the domestic industry.

## CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping duty order on fresh garlic from China would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

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<sup>96</sup> USITC Pub. 2825 at I-25

<sup>97</sup> CR/PR at Table I-4.

<sup>98</sup> USITC Pub. 3886 at 11.

**INFORMATION OBTAINED IN THE REVIEW**





## INTRODUCTION

On September 1, 2011, in accordance with section 751(c) of the Tariff Act of 1930, as amended (“the Act”),<sup>1</sup> the U.S. International Trade Commission (“Commission” or “USITC”) gave notice that it had instituted a five-year review to determine whether revocation of the antidumping duty order on fresh garlic from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.<sup>2 3</sup> On December 5, 2011, the Commission determined that the domestic interested party group response to its notice of institution was adequate<sup>4</sup> and that the respondent interested party group response was inadequate.<sup>5</sup> In the absence of respondent interested party responses and any other circumstances that would warrant the conduct of a full review, the Commission determined to conduct an expedited review of the antidumping duty order pursuant to section 751(c)(3) of the Act (19 U.S.C. § 1675(c)(3)).<sup>6</sup> The following tabulation presents selected information relating to the schedule of the third five-year review.<sup>7</sup>

Effective date	Action
September 1, 2011	Commission’s institution of five-year review (76 FR 54487)
September 1, 2011	Commerce’s initiation of five-year review (76 FR 54430)
December 5, 2011	Commission’s determination to conduct expedited five-year review (76 FR 78694, December 19, 2011)
January 6, 2012	Commerce’s final determination in its expedited five-year review (77 FR 777)
April 12, 2012	Commission’s vote
April 27, 2012	Commission’s determination transmitted to Commerce

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<sup>1</sup> 19 U.S.C. 1675(c).

<sup>2</sup> 76 FR 54487, September 1, 2011. All interested parties were requested to respond to this notice by submitting the information requested by the Commission. The Commission’s notice of institution is presented in app. A.

<sup>3</sup> In accordance with section 751(c) of the Act, the U.S. Department of Commerce (“Commerce”) published a notice of initiation of the five-year review of the subject antidumping duty order concurrently with the Commission’s notice of institution. 76 FR 54430, September 1, 2011.

<sup>4</sup> The Commission received one submission in response to its notice of institution in the subject review. It was filed on behalf of the Fresh Garlic Producers Association (“FGPA”), and its four individual members: Christopher Ranch LLC (“Christopher Ranch”), The Garlic Co. (“Garlic Co.”), Valley Garlic, Inc. (“Valley Garlic”), and Vessey and Co., Inc. (“Vessey”) (collectively “domestic interested parties”). These four participating producers are believed to have accounted for approximately \*\*\* percent of U.S. fresh garlic production in 2011. *Response* of domestic interested parties, October 3, 2011, p. 12.

<sup>5</sup> The Commission did not receive a response from any respondent interested parties to its notice of institution.

<sup>6</sup> 76 FR 78694, December 19, 2011. The Commission’s notice of an expedited review appears in app. A. The Commission’s statement on adequacy is presented in app. B.

<sup>7</sup> Cited *Federal Register* notices are presented in app. A.

## The Original Investigation and Subsequent Five-Year Reviews

The Commission completed its original investigation<sup>8</sup> in November 1994, determining that an industry in the United States was materially injured by reason of imports from China of fresh garlic found by Commerce to be sold at less than fair value (“LTFV”).<sup>9</sup> The Commission found three domestic like products and associated domestic industries in the original investigation, consisting of fresh, dehydrated (“dehy”) and seed garlic.<sup>10</sup> However, the Commission found no material injury or threat of material injury to the industry in the United States producing dehy and seed garlic.<sup>11</sup> After receipt of the Commission’s affirmative determination regarding fresh garlic, Commerce issued an antidumping duty order on November 16, 1994 on imports of fresh garlic from China.<sup>12</sup>

The Commission instituted the first five-year review of the subject order on December 1, 1999.<sup>13</sup> On February 22, 2001, following a full review, the Commission determined that revocation of the antidumping duty order on fresh garlic from China would be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time.<sup>14</sup> Effective March 13, 2001, Commerce issued a continuation of the antidumping duty order on imports of fresh garlic from China.<sup>15</sup>

The Commission instituted the second five-year review of the subject order on February 1, 2006.<sup>16</sup> On September 28, 2006, following an expedited review, the Commission determined that revocation of the antidumping duty order on fresh garlic from China would be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time.<sup>17</sup> Effective October 19, 2006, Commerce issued a continuation of the antidumping duty order on imports of fresh garlic from China.<sup>18</sup>

## Commerce’s Final Results of Expedited Five-Year Review

Commerce published the result of its review based on the facts available on January 6, 2012. Commerce concluded that revocation of the antidumping duty order on fresh garlic from China would be likely to lead to continuation or recurrence of dumping at a weighted-average margin of 376.67 percent.<sup>19</sup>

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<sup>8</sup> The investigation resulted from a petition filed on January 31, 1994 on behalf of the FGPA, consisting then of the following firms: Christopher Ranch, Gilroy, CA; Belridge Packing Co., Wasco, CA; Colusa Produce Corp., Colusa, CA; Denice & Filice Packing Co., Hollister, CA; El Camino Packing Co., Gilroy, CA; The Garlic Co., Shafter, CA; and Vessey, El Centro, CA.

<sup>9</sup> 59 FR 59247, November 16, 1994. See also *Fresh Garlic from the People’s Republic of China, Inv. No. 731-TA-683 (Final)*, USITC Publication 2825, November 1994.

<sup>10</sup> *Fresh Garlic from the People’s Republic of China, Inv. No. 731-TA-683 (Final)*, USITC Publication 2825, November 1994, p. I-12.

<sup>11</sup> *Ibid.* p. I-3.

<sup>12</sup> 59 FR 59209, November 16, 1994.

<sup>13</sup> 64 FR 67315, December 1, 1999.

<sup>14</sup> 66 FR 12810, February 28, 2001.

<sup>15</sup> 66 FR 14544, March 13, 2001.

<sup>16</sup> 71 FR 5374, February 1, 2006.

<sup>17</sup> 71 FR 58630, October 4, 2006.

<sup>18</sup> 71 FR 61708, October 19, 2006.

<sup>19</sup> 77 FR 777, January 6, 2012.

## Commerce's Administrative Reviews

Since 2006, when the antidumping duty order was last continued, Commerce has completed four administrative reviews and six new shipper reviews of the antidumping duty order on fresh garlic from China. There have been no changed circumstances reviews and no duty absorption rulings since the end of the second five-year review.<sup>20</sup> Table I-1 presents these administrative and new shipper reviews, their period of review, and resulting margins.

**Table I-1**  
**Fresh garlic: Commerce's administrative and new shipper reviews, 2006-2011**

Period of review	Action	Manufacturer/Exporter	Firm-specific margin <sup>1</sup>
11/01/2004 - 10/31/2005 (72 FR 34438, June 22, 2007; amended 72 FR 39788, July 20, 2007)	New shipper review	Produced by Jinxiang County Lufeng Agricultural Production Material Co., Ltd.; Exported by Qingdao Camel Trading Co., Ltd.	70.47
		Produced/Exported by Shandong Longtai Fruits and Vegetables Co., Ltd.	46.80
		Produced by Cangshan County Taifeng Agricultural By-Products Processing Co., Ltd.; Exported by Qingdao Saturn International Trade Co., Ltd.	<i>De minimis</i> <sup>2</sup>
		Produced/Exported by XuZhou Simple Garlic Industry Co., Ltd.	68.58
	Administrative review	Produced/Exported by Qingdao Xintianfeng Foods Co., Ltd.	376.67
		Sunny Import & Export Ltd.	1.45
		Jining Trans-High Trading Co., Ltd.	1.73
		Jinxiang Dongyun Freezing Storage Co., Ltd.	14.72
		Jinxiang Shanyang Freezing Storage Co., Ltd.	24.73
		Fook Huat Tong Kee Foodstuffs Co., Ltd.	9.84
		Heze Ever-Best International Trade Co., Ltd.	
		Huaiyang Hongda Dehydrated Vegetable Co.	
		Linshu Dading Private Agricultural Products Co., Ltd.	
		Taiyan Ziyang Food Co., Ltd.	
		Country-wide rate <sup>3</sup>	376.67

Table continued on next page

<sup>20</sup> However, there was one changed circumstances review in October 2004, in which Commerce determined that Heze Ever-Best International Trade Co., Ltd. is the successor-in-interest to Shandong Heze International Trade and Developing Co. *Fresh Garlic from China, Investigation No. 731-TA-683 (Second Review)*, USITC Publication 3886, September 2006, p. I-6.

**Table I-1--Continued**

**Fresh garlic: Commerce's administrative and new shipper reviews, 2006-2011**

Period of review	Action	Manufacturer/Exporter	Firm-specific margin <sup>1</sup>
11/01/2005 - 04/30/2006 (72 FR 54896, September 27, 2007)	New shipper review	Produced by Jinxiang Dingtai Garlic Product Co., Ltd. and Exported by Weifang Hongqiao International Logistics Co., Ltd.	18.56
		Produced and Exported by Jinxiang Tianma Freezing Storage Co., Ltd.	21.79
		Produced and Exported by Shandong Wonderland Organic Food Co., Ltd.	17.31
		Produced by Zhengzhou Dadi Garlic Industry Co., Ltd. and Exported by Shenzhen Xinboda Industrial Co., Ltd.	<i>De minimis</i> <sup>2</sup>
11/01/2005 - 10/31/2006 (73 FR 34251, June 17, 2008)	Administrative review	Jinxiang Dong Yun Freezing Storage Co., Ltd.	19.97
		Shanghai LJ International Trading Co., Ltd.	31.15
		Qufu Dongbao Import & Export Trade Co., Ltd.	25.56
		Weifang Shennong Foodstuff Co., Ltd.	
		Jinxiang Shanyang Freezing Storage Co., Ltd.	
		Qingdao Xintianfeng Foods	
		Shandong Longtai Fruits and Vegetables Co., Ltd.	
		Jining Trans-High Trading Co., Ltd.	
		Shenzhen Fanhui Import & Export Co., Ltd.	
		Taian Ziyang Food Co., Ltd.	
		Anqiu Friend Food Co., Ltd.	
		Shanghai Ever Rich Trade Company	
		Heze Ever-Best International Trade Co., Ltd.	
		Qingdao Saturn International Trade Co., Ltd.	
		Sunny Import & Export Co., Ltd.	
		Henan Weite Industrial Co., Ltd.	
		Jinan Farmlady Trading Co., Ltd.	
Country-wide rate	376.67		

Table continued on next page

**Table I-1--Continued**

**Fresh garlic: Commerce's administrative and new shipper reviews, 2006-2011**

<b>Period of review</b>	<b>Action</b>	<b>Manufacturer/Exporter</b>	<b>Firm-specific margin<sup>1</sup></b>
11/01/2006 - 04/30/2007 (73 FR 56550, September 29, 2008)	New shipper review	Exported/Produced by Shenzhen Greening Trading Co., Ltd.	2.12
		Exported/Produced by Qingdao Tiantaixing Foods Co., Ltd.	32.78
		Exported by Hebei Golden Bird Trading Co., Ltd. and Produced by Cangshan County Hongyang Vegetables & Foods Co., Ltd.	13.83
		Exported by Jining Yongjia Trade Co., Ltd. and Produced by Jinxiang County Shanfu Frozen Co., Ltd.	18.88
11/01/2006 - 10/31/2007 (74 FR 29174, June 19, 2009; Amended 76 FR 13983, March 15, 2011)	Administrative review	Anqiu Friend Food Co., Ltd.	64.78
		Weifang Shennong Foodstuff Co., Ltd.	80.69
		Jinxiang Dongyun Freezing Storage Co., Ltd.	72.74
		Qingdao Saturn International Trade Co., Ltd.	
		Qufu Dongbao Import & Export Trade Co., Ltd.	
		Shanghai LJ International Trading Co., Ltd.	
	Country-wide rate	376.67	
New shipper review	Exported and Produced by Zhengzhou Yuanli Trading Co., Ltd. (New shipper)	120.18	
11/01/2007 - 04/30/2008 (74 FR 50953, October 2, 2009)	New shipper review	Exported and Produced by Chengwu County Yuanxiang Industry & Commerce, Ltd.	115.29
		Exported and Produced by Jinxiang Hejia Co., Ltd.	15.37
11/01/2007 - 10/31/2008 (75 FR 34976; June 21, 2010)	Administrative review	Henan Weite Industrial Co., Ltd.	\$1.03/kg
		Qingdao Xintianfeng Foods Co., Ltd.	
		Shanghai LJ International Trading Co., Ltd.	
		Weifang Hongqiao International Logistic Co., Ltd.	
		Anqiu Friend Food Co., Ltd.	\$4.71/kg
		Jinxiang Tianma Freezing Storage Co., Ltd.	
		Weifang Shennong Foodstuff Co., Ltd.	
		Country-wide rate	
11/01/2008 - 04/30/2009 (75 FR 61130, October 4, 2010)	New shipper review	Exported by Qingdao Sea-line Trade Co. Ltd. and Produced by Jinxiang County Juxingyuan Trading Co., Ltd.	\$1.28/kg

Footnotes on next page.

<sup>1</sup> Except as otherwise noted, firm-specific margins are presented *in percent*.

<sup>2</sup> Margins less than 0.50 percent were considered *de minimis* and liquidated without regard to antidumping duties.

<sup>3</sup> The country-wide rate applies to Zhangqui Qingyuan Vegetable Co., Ltd. ("Qingyuan").

Note.--The country-wide rate applies to all companies that otherwise have not received a "firm specific" rate.

Source: Cited *Federal Register* notices.

## **Related Commission Investigations and Reviews**

The Commission has not conducted any other investigations or reviews concerning fresh garlic.

## **THE PRODUCT**

### **Scope**

In the results of its expedited five-year review, Commerce defined the subject merchandise as:

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 the 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 then harvested and otherwise prepared for use as seed. The subject merchandise is used principally as a food product and for seasoning.<sup>21 22</sup>

### **Tariff Treatment**

Subject fresh garlic is currently classifiable in subheading 0703.20.00 of the Harmonized Tariff Schedule of the United States ("HTS") and imported under the following statistical reporting numbers: 0703.20.0010 (fresh whole bulbs), 0703.20.0020 (fresh whole peeled cloves), and 0703.20.0090 (other fresh garlic). Fresh garlic enters the United States at a column 1-general duty rate, applicable to China, of 0.43¢ per kilogram, free under special tariff treatment programs (none covering products of China),<sup>23</sup> or at a column-2 rate of 3.3¢ per kilogram.<sup>24</sup> The remaining HTS provisions cited in Commerce's scope are residual or "basket" categories that cover imports of various vegetables: 0710.80.7060, with a column 1-general duty rate, applicable to China, of 11.3 percent ad valorem, 0710.80.9750, with a column 1-general

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<sup>21</sup> 77 FR 777, January 6, 2012.

<sup>22</sup> Although the HTS subheading is provided for convenience and customs purposes, the written description of the scope is dispositive.

<sup>23</sup> Eligible imports under the following special tariff treatment programs can enter free of duty: imports under Generalized System of Preferences ("GSP"); and imports under free trade agreements from Australia, Bahrain, Canada, Chile, Israel, Jordan, Korea, Morocco, Oman, Peru, Mexico, and Singapore. Duty-free entry also applies to imports from countries eligible for preferential treatment pursuant to the Andean Trade Preference Act, the Caribbean Basin Economic Recovery Act, and the African Growth and Opportunity Act (available under 0710.80.97 only).

<sup>24</sup> Applies to imports from a small number of countries that do not enjoy normal trade relations duty status.

duty rate of 14.9 percent, 0711.90.6500,<sup>25</sup> with a column 1-general duty rate of 7.7 percent, and 2005.99.9700,<sup>26</sup> with garlic dutiable at a column 1-general rate of 11.2 percent. The first two cover frozen vegetables and the latter cover prepared or preserved products.

### **Domestic Like Product and Domestic Industry**

In its original 1994 determination, the Commission found three separate domestic like products consisting of fresh garlic, dehy garlic, and seed garlic corresponding with the broader scope of the original investigation, but found that only the domestic industry producing fresh garlic was materially injured by LTFV imports from China.<sup>27</sup> The Commission found that there were pronounced differences in the actual uses for the three types of garlic; actual practice indicated that the products were not interchangeable; the three types of garlic did not share channels of distribution; customer and producer perceptions differed among the three garlic types; there was virtually no overlap between fresh and dehy producers and therefore no overlap in production facilities or employees; and fresh garlic prices were considerably higher than prices for either dehy or seed garlic. In the first and second five-year reviews, the Commission again defined the domestic like product as all fresh garlic, coextensive with Commerce's scope.<sup>28</sup>

In the original investigation, the Commission found three domestic industries consisting of the domestic producers of fresh garlic, the domestic producers of dehy garlic, and the domestic producers of seed garlic to coincide with the three like products. The Commission also found that crop tenders were not members of the domestic industry based on their limited involvement in the actual production of fresh garlic and the lack of coincidence of economic interest with producers of fresh garlic.<sup>29</sup> In the first and second five-year reviews, the Commission, consistent with its definition of the like product, defined a single domestic industry as all producers of fresh garlic.<sup>30</sup>

In its response to the Commission's notice of institution in this third five-year review, the FGPA stated that it agrees with the Commission's definitions of the domestic like product and the domestic

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<sup>25</sup> Effective January 10, 2002, HTS subheading 0711.90.60 was replaced by 0711.90.65 as a result of Presidential Proclamation 7515. *See* 66 FR 66549, December 26, 2001.

<sup>26</sup> Effective February 3, 2007, HTS subheading 2005.90.97 was replaced by 2005.99.97 as a result of Presidential Proclamation 8097. *See* 72 FR 453, January 4, 2006.

<sup>27</sup> *Fresh Garlic from The People's Republic of China, Inv. No. 731-TA-683 (Final)*, USITC Publication 2825, November 1994, pp. I-3-I-5. The Commission found that the domestic industries producing dehy garlic and seed garlic were neither materially injured nor threatened with material injury by reason of the subject imports from China. *Ibid.*, p. I-54. Commissioner Crawford found one like product corresponding to the scope of the original investigation, and found that the domestic industry producing that product was materially injured by reason of the LTFV imports. *Ibid.* p. I-1.

<sup>28</sup> *Fresh Garlic From China, Inv. No. 731-TA-683 (Review)*, USITC Publication 3393, February 2001, pp. 5-6; and *Fresh Garlic from China, Inv. No. 731-TA-683 (Second Review)*, USITC Publication 3886, September 2006, p. 5.

<sup>29</sup> The record in the original investigation indicated that crop tenders lease their land to a garlic producer and perform only minor "custodial" services on the producer's behalf. Therefore, the crop tenders' involvement in the production of garlic is minimal. *Fresh Garlic from The People's Republic of China, Inv. No. 731-TA-683 (Final)*, USITC Publication 2825, November 1994, pp. I-15-I-17.

<sup>30</sup> *Fresh Garlic From China, Inv. No. 731-TA-683 (Review)*, USITC Publication 3393, February 2001, pp. 5-6; and *Fresh Garlic from China, Inv. No. 731-TA-683 (Second Review)*, USITC Publication 3886, September 2006, p. 5-6.

industry.<sup>31</sup> The FGPA also reported that the high substitutability of Chinese and U.S. garlic remains unchanged in this third five-year review.<sup>32</sup>

### Description and Uses<sup>33</sup>

Garlic, *Allium sativum L.*, is a member of the onion family (Alliaceae). It is a bulb comprised of cloves (thickened storage leaves) individually wrapped in dried leaf sheaths or skins attached to a compressed stem plate. The whole bulb is also wrapped in several layers of dried leaf sheaths.<sup>34</sup> U.S. standards treat fresh garlic as either USDA Grade No. 1 or unclassified.<sup>35</sup> Fresh garlic that is not USDA Grade No. 1 is designated as unclassified, which is not a grade within the meaning of these standards. Typically, fresh garlic is sorted and packed according to size, ranging from 1-1/2 inches in diameter, in 1/4-inch increments, to 2-3/4 inches or more. Such practices also include the sale of USDA Grade No. 1-quality fresh garlic not labeled as such.<sup>36</sup> Most imported fresh garlic from China is considered USDA Grade No. 1 and generally ranges in size from 1-1/2 inches to 2-1/2 inches in diameter. Chinese and American garlic have a similar taste although U.S.-grown garlic has reportedly been marketed as having a more robust flavor than Chinese garlic.<sup>37</sup> Chinese cloves are the same size and firmness as the “California White” that is widely available in grocery stores, but Chinese garlic often has a tough, inedible stem shooting up from the center.<sup>38</sup>

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<sup>31</sup> *Response* of domestic interested parties, October 3, 2011, p. 30.

<sup>32</sup> *Ibid.*, p. 7.

<sup>33</sup> The content of this section is largely drawn from the report issued in the first five-year review. *Fresh Garlic From China, Inv. No. 731-TA-683 (Review)*, USITC Publication 3393, February 2001, pp. I-7-I-9.

<sup>34</sup> Cantwell, Maria, Department of Vegetable Crops, University of California, Davis, *Garlic*, found at <http://www.ba.arss.usda.gov/hb666/066garlic.pdf>, retrieved May 24, 2006.

<sup>35</sup> U.S. No. 1 consists of garlic of similar varietal characteristics which is mature and well cured, compact with cloves well filled and fairly plump, free from mold, decay, shattered cloves, and from damage caused by dirt or staining, sunburn, sunscald, cuts, sprouts, tops, roots, disease, insects or mechanical or other means. Each bulb shall be fairly well enclosed in its outer sheath. Unless otherwise specified, the minimum diameter of each bulb shall be not less than 1-1/2 inches. From the U.S. Department of Agriculture’s *United States Standards for Grades of Garlic*, reprinted January 1997, found at <http://www.ams.usda.gov/standards/vegfm.htm>, retrieved May 24, 2006.

<sup>36</sup> Large-diameter garlic, known as elephant garlic, is not recognized as a separate grade and, indeed, is a separate species. Elephant garlic, a vegetable, is not true garlic, but a type of leek that is a close relative of garlic and onions. Much larger than true garlic, elephant garlic tends to have a milder flavor. In California, the area devoted to elephant garlic is small relative to regular garlic. *Fresh Garlic From China, Inv. No. 731-TA-683 (Review)*, USITC Publication 3393, February 2001, p. I-8-I-9; and *Fresh Garlic from China, Inv. No. 731-TA-683 (Second Review)*, USITC Publication 3886, September 2006, p. I-9 and n. 33.

<sup>37</sup> U.S. Department of Agriculture, Economic Research Service, “Increased U.S. Imports of Fresh Fruit and Vegetables,” FTS-328-01, September 2007, p. 14.

<sup>38</sup> Cropchoice.com, *California farmers give up garlic battle*, July 23, 2003, found at <http://www.cropchoice.com/leadstryed7c.html?recid=1901>, retrieved May 24, 2006.



## Production Process<sup>39</sup>

In the Western Hemisphere, fresh garlic is grown primarily in sunny, relatively dry areas of California, Mexico, Argentina, and Chile. Moreover, the production of fresh garlic largely depends on the latitude of the growing area; the lower the latitude, the earlier the planting and harvesting. Whereas in California garlic is planted in the fall and harvested the following summer, in Mexico garlic is planted during the summer and harvested the following spring. By contrast, in Argentina and Chile, where the seasons are reversed from those of North America, planting takes place in March-May for harvest in the following December-February. The result of such staggered crop years is that garlic traditionally was available from one source or another in the Western Hemisphere throughout the entire year, and no two countries seriously affected one another in the U.S. market. The crop year in China, however, basically coincides with that in California, except that garlic in China is harvested somewhat earlier, allowing it to enter the U.S. market coincident with the harvesting of the U.S.-produced product.

In the United States, the garlic crop year begins with the acquisition of seed stock. Once seed supplies have been acquired, grower-packers (fresh market producers) contract with farmers for raising their crop. According to the USDA, virtually all major commercial garlic is grown under contract and the garlic industry is fairly concentrated in the fresh market. Several large shippers account for the majority of fresh-market volume.<sup>40</sup> Following the selection and allocation of desired acreage, field preparation and planting are performed by the grower-packers, which provide farmers with seed and all other necessary inputs for raising the crop. They also provide for harvesting of the matured garlic when the crop is ready. Under the direction of a grower-packer, the farmer is responsible for fertilizing, weeding, and irrigating the crop.

Most farmers raising garlic also raise a number of other crops, using garlic in their crop rotation programs. One crop is grown per season, and the same land cannot be used again in garlic production for at least four years. In California, fresh garlic is usually planted in September through November and harvested in June through August, expanding from individual cloves (seeds) to mature compound bulbs in about 9 months. The planting stage for garlic production is critical in that the intended end use of garlic determines the density of planting. Fresh garlic is planted at 130,000 to 200,000 seeds per acre (10-13 cloves per bed foot). This low density facilitates hand harvesting, which is used to minimize bulb damage. All garlic cultivation involves irrigation; weed, insect, and disease control; fertilization; harvesting; and windrowing. The next stage in garlic production is the determination of when to make the last application of water prior to harvesting, commonly referred to as “water shut-off.” Water shut-off usually occurs 2-3 weeks before harvest, in order to encourage the formation of extra skins, which enhances the appearance of the bulb. The grower-packer evaluates the soil moisture content of each field in order to determine whether a final watering is needed and, if so, when it should be applied. The timing of the final application of water determines the number of bulb skins. At maturity, garlic bulbs for the fresh market are compact and firm, usually with seven or eight skins. The number of skins is critical since, during undercutting, windrowing, harvesting, cleaning, grading, sorting, and packing, the bulbs often lose three or four of those skins. Specialized machinery is used to undercut the bulb and loosen the soil, but the actual harvesting is done by hand. After undercutting and hand-lifting out of the ground, the bulbs are carefully placed in windrows. The bulbs are then left to dry in the field for between 10 and 20 days. At that point, the garlic is hand-topped, clipped, and placed in large bins, which remain in the field

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<sup>39</sup> Purchaser \*\*\* reported that there have been no changes (and do not anticipate any changes) in technology, production methods, or development efforts to produce fresh garlic that would affect the availability of fresh garlic in the U.S. market or in the Chinese home market within a reasonably foreseeable time. Purchaser survey response of \*\*\*.

<sup>40</sup> U.S. Department of Agriculture, Economic Research Service, “Vegetable and Melons Outlook,” VGS-317, October 19, 2006, pp. 25-29.

for 2 to 3 weeks before being transported to special facilities where the garlic is cleaned, graded, sorted, and packed.

Fresh garlic held in dry storage normally will remain of marketable quality for up to 3 months after harvesting. However, under these conditions, bulbs will eventually become soft, spongy, and shriveled due to water loss.<sup>41</sup> For this reason, grower-packers and importers have increasingly invested in the use of cold storage and controlled-atmospheric storage facilities to extend the shelf life of fresh garlic in a marketable state for up to approximately 6 and 11 months, respectively, or well into the next crop year. Special storage allows grower-packers and importers to spread sales over a longer period, albeit at substantial additional cost.<sup>42</sup>

## THE INDUSTRY IN THE UNITED STATES

### U.S. Producers

The original investigation resulted from a petition filed on January 31, 1994 on behalf of the FGPA, consisting then of the following seven firms: Christopher Ranch; Belridge Packing Co.; Colusa Produce Corp.; Denice & Filice Packing Co.; El Camino Packing Co.; The Garlic Co.; and Vessey. At the time of the original investigation the combined fresh garlic production of those seven firms represented \*\*\* percent of U.S. production in crop year 2004. According to the petition filed in the original investigation there were a total of 10 producers of fresh garlic in the United States, eight of which responded to the Commission's questionnaire. In addition to the seven petitioning firms, Jenard Fresh provided a questionnaire response. All eight companies were located in California. In 1994, Christopher Ranch was the largest producer of fresh market garlic in the United States, accounting for \*\*\* percent of reported production of fresh garlic in that year.

Between the original investigation and the first five-year review, two domestic fresh garlic producers that participated in the original investigation as members of FGPA, \*\*\* and \*\*\*, ceased production of fresh garlic. New members of the FGPA that participated in the first five-year review, in addition to 1994 members, were as follows: Crinklaw Farms ("Crinklaw"); Dalena Farms ("Dalena"); Frank Pitts Farms ("Frank Pitts"); Spice World ("Jenard Fresh"); and Thomson International, Inc. ("Thomson"). According to the petitioner, those combined 10 firms accounted for the vast majority of all U.S. production of fresh garlic at the time. Christopher Ranch remained the largest producer of fresh garlic in the United States at the time of the first five-year review, accounting for \*\*\* percent of reported U.S. production in crop year 2000.

In response to the Commission's notice of institution in the second five-year review, the FGPA filed a substantive response on behalf of its four members: Christopher Ranch; The Garlic Co.; Valley Garlic; and Vessey. Those four producers were believed to have accounted for approximately \*\*\* percent of U.S. fresh garlic production in 2005. The FGPA identified two additional domestic fresh garlic producers that did not participate in that review: George Chiala Farms, Inc., and Harris Fresh. Once again, the domestic producers were all located in California. That state alone reportedly accounted for 84 percent of the domestic fresh and dehydrated garlic market. In addition, the FGPA identified eight domestic fresh garlic producers that ceased production of garlic following the conclusion of the first five-

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<sup>41</sup> Cantwell, Maria, Department of Vegetable Crops, University of California, Davis, *Garlic*, found at <http://www.ba.arss.usda.gov/hb666/066garlic.pdf>, retrieved May 24, 2006.

<sup>42</sup> At the time of the first five-year review, storage costs (per pound and per 5-month season), as reported during the Commission's hearing held in connection with that review, were \$0.02 for dry storage, \$0.04 for cold storage, and \$0.06 for controlled-atmosphere storage. *Fresh Garlic from China, Inv. No. 731-TA-683 (Review)*, USITC Publication 3393, February 2001, p. I-8, fn. 10.

year review--Frank Pitts, Belridge Packing Co., Colusa Produce Corp., Crinklaw Farms, El Camino Packing Co., Thompson International, Inc., Denice & Filice Packing Co., and Dalena.

The domestic interested parties participating in this third five-year review indicated in their response to the Commission's notice of institution that the same six domestic producers identified in the second five-year review currently produce fresh garlic in the United States.<sup>43</sup> The FGPA is not aware of any new market entrants or exits.<sup>44</sup> In addition, the U.S. garlic industry is concentrated in California's Central Valley, primarily in Fresno, Kern, and Kings counties.<sup>45</sup> Although garlic is grown in virtually every state in the country, only two other states consistently plant at least 500 acres of garlic per year: Nevada and Oregon.<sup>46</sup> The USDA reports that for total U.S. production of garlic (including that for the fresh market and for processing), the total garlic plantings decreased by 24.0 percent from 30,400 acres in 2005 to 23,100 acres by 2010.<sup>47</sup>

### **U.S. Producers' Trade, Employment, and Financial Data**

The Commission requested domestic interested parties to present certain data in their response to the notice of institution. Table I-2 presents responding U.S. producers' 2011 data on their operations for fresh garlic as well as historical data from 1994, 2000, and 2005, the last years for which data were collected in the original investigations and subsequent reviews.<sup>48</sup>

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<sup>43</sup> *Response* of domestic interested parties, October 3, 2011, pp. 9-10.

<sup>44</sup> *Ibid.*, p. 14.

<sup>45</sup> U.S. Department of Agriculture, National Agricultural Statistics Service, *2007 Census of Agriculture, California County Level Data, Table 30: Vegetables, Potatoes, and Melons Harvested for Sale: 2007 and 2002*, February 2009.

<sup>46</sup> U.S. Department of Agriculture, National Agricultural Statistics Service, *Vegetables 2010 Summary*, January 27, 2011.

<sup>47</sup> *Response* of domestic interested parties, October 3, 2011, p. 14.

<sup>48</sup> Harris Fresh and George Chiala Farms, the two nonparticipating producers, are believed to produce an estimated \*\*\* pounds of fresh garlic annually. *Response* of domestic interested parties, October 3, 2011, p. 12 n. 7.

**Table I-2**

**Fresh garlic: U.S. producers' trade and financial data, 1994, 2000, 2005, and 2011**

Item	1994	2000	2005	2011
Capacity (1,000 pounds)	141,274	198,995	( <sup>1</sup> )	***
Production (1,000 pounds)	100,307	152,571	***	***
Capacity utilization (percent)	66.7	76.7	( <sup>1</sup> )	***
U.S. shipments:				
Quantity (1,000 pounds)	82,102	128,415	***	***
Value (1,000 dollars)	52,966	89,616	***	***
Unit value (per pound)	\$0.65	\$0.70	\$***	\$***
Net sales (\$1,000)	60,554	94,902	( <sup>1</sup> )	***
Cost of goods sold (COGS) (\$1,000)	54,757	75,595	( <sup>1</sup> )	***
Gross profit or (loss) (\$1,000)	5,797	19,307	( <sup>1</sup> )	***
SG&A (\$1,000)	***	16,029	( <sup>1</sup> )	***
Operating income or (loss) (\$1,000)	(960)	3,278	( <sup>1</sup> )	***
COGS/sales (percent)	90.4	79.7	( <sup>1</sup> )	***
Operating income or (loss)/sales (percent)	(1.6)	3.5	( <sup>1</sup> )	***
<sup>1</sup> Not available.				
Source: Compiled from data presented in the original staff report and subsequent five-year reviews, and <i>Response of domestic interested parties</i> , October 3, 2011, pp.12-13.				

**Related Party Issues**

In their response to the Commission's notice of institution, the domestic interested parties reported that none of the FGPA producing members is an importer of the subject merchandise from China and none is related to an importer or exporter of fresh garlic from China. They noted, however, that they had no knowledge of whether domestic producers George Chiala Farms and Harris Fresh are importers of the subject merchandise or are related to an importer or exporter of fresh garlic from China.<sup>49</sup>

<sup>49</sup> *Response of domestic interested parties*, October 3, 2011, p. 9.

## U.S. IMPORTS AND APPARENT U.S. CONSUMPTION

### U.S. Imports

During the original investigation, the Commission identified 52 importers that were believed to have accounted for 100 percent of total garlic imports from China at that time. The Commission received usable importer questionnaire responses from 17 firms in the original investigation. In the first five-year review, the Commission identified 21 importing firms. Of these 21 firms, only two reported imports of fresh garlic from China, but these were outside the 3-year reporting period. Therefore, the Commission relied on official Commerce statistics in that review. In response to the Commission's request in its notice of institution in the second five-year review, the FGPA listed 81 importers of the subject merchandise from China. The domestic interested parties participating in this third five-year review provided information concerning 84 companies that are believed to be possible importers of subject merchandise from China.<sup>50</sup>

Data regarding U.S. imports of fresh garlic, as reported by Commerce, are presented in table I-3. Chinese imports decreased slightly by 0.8 percent between 2006 and 2011, from 138.1 million pounds to 137.0 million pounds. Nonsubject imports decreased by 40 percent between 2006 and 2011, from 37.9 million pounds to 22.5 million pounds. While the quantity of overall imports decreased, the value of imports increased, resulting in higher unit values during the period.

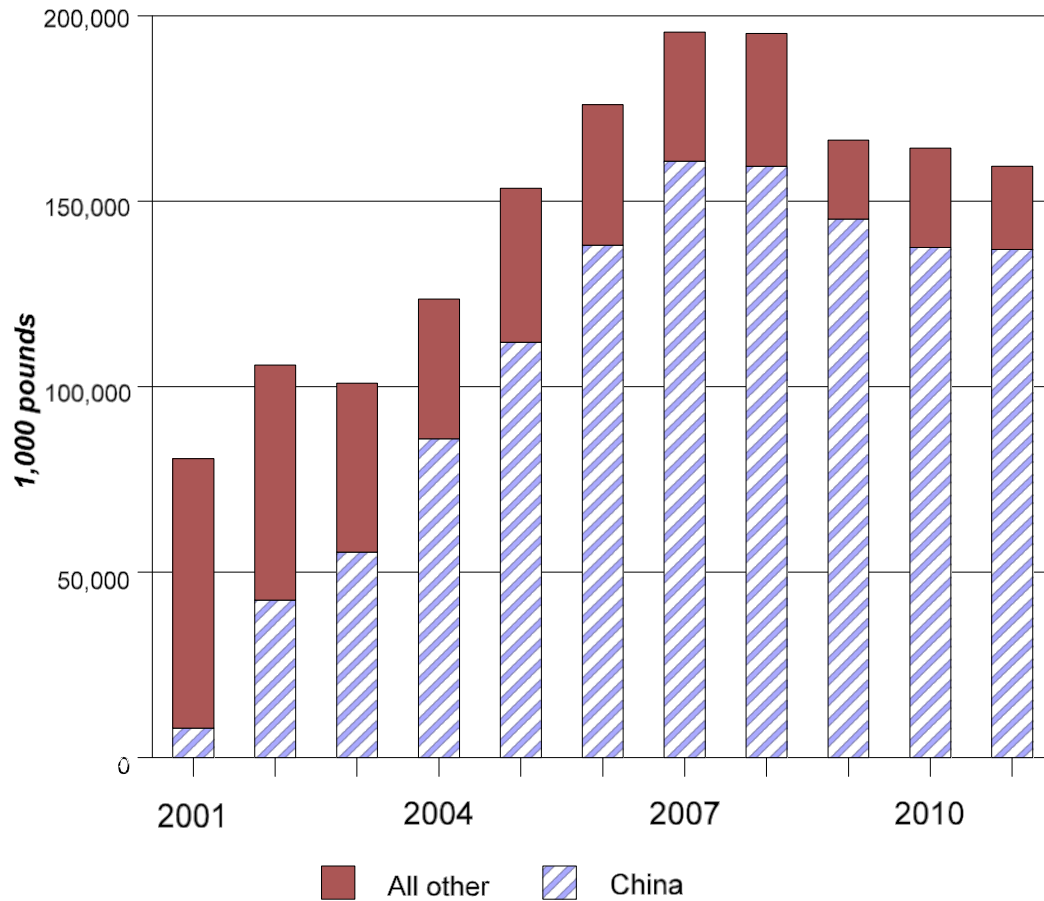
**Table I-3**  
**Fresh garlic: U.S. imports, by source, 2006-11**

Item	2006	2007	2008	2009	2010	2011
<b>Quantity (1,000 pounds)</b>						
China	138,142	160,790	159,485	145,233	137,512	137,018
All other <sup>1</sup>	37,889	34,819	35,761	21,229	26,849	22,464
Total imports	176,031	195,610	195,246	166,462	164,361	159,481
<b>Value (\$1,000)<sup>2</sup></b>						
China	79,199	104,436	79,572	61,918	117,711	97,947
All other <sup>1</sup>	22,417	21,746	25,134	13,683	21,382	17,002
Total imports	101,616	126,182	104,706	75,602	139,093	114,949
<b>Unit value (\$/pound)</b>						
China	\$0.57	\$0.65	\$0.50	\$0.43	\$0.86	\$0.71
All other <sup>1</sup>	\$0.59	\$0.62	\$0.70	\$0.64	\$0.80	\$0.76
Average, total	\$0.58	\$0.65	\$0.54	\$0.45	\$0.85	\$0.72
<sup>1</sup> The main sources of nonsubject imports are Mexico and Argentina, representing 9.6 percent and 3.8 percent of total imports during 2011, respectively. <sup>2</sup> Landed, duty-paid.						
Source: Official Commerce statistics, HTS statistical reporting numbers 0703.20.0010, 0703.20.0090, and 0703.20.0020.						

<sup>50</sup> Response of domestic interested parties, October 3, 2011, exh. 3.

Figure I-1 includes U.S. import data from the second five-year review.

**Figure I-1**  
**Fresh garlic: U.S. imports, 2001-10**



Source: Compiled from official Commerce statistics.

**Ratio of Imports to U.S. Production**

Imports of fresh garlic from China were equivalent to \*\*\* percent of reported U.S. production in 2011. The ratio of imports of fresh garlic from nonsubject countries to domestic production was \*\*\* percent in 2011.

**Apparent U.S. Consumption and Market Shares**

Apparent U.S. consumption and U.S. market shares of fresh garlic are shown in table I-4.

**Table I-4**  
**Fresh garlic: U.S. producers' U.S. shipments, U.S. imports, and apparent U.S. consumption, 1994, 2000, 2005, and 2011**

Item	1994	2000	2005	2011
<b>Quantity (1,000 pounds)</b>				
U.S. producers' U.S. shipments	82,102	128,415	***	***
U.S. imports from-- China	63,532	1,030	111,988	137,018
All other	34,677	56,972	41,540	22,464
Total imports	98,209	58,002	153,528	159,481
Apparent U.S. consumption	180,311	186,417	***	***
<b>Value (\$1,000)</b>				
U.S. producers' U.S. shipments	52,966	89,616	***	***
U.S. imports from-- China	20,014	182	59,494	97,947
All other	17,697	28,848	25,796	17,002
Total imports	37,711	29,031	85,290	114,949
Apparent U.S. consumption	90,677	118,647	***	***
<b>Share of consumption based on quantity (percent)</b>				
U.S. producers' U.S. shipments	45.5	68.9	***	***
U.S. imports from-- China	35.2	0.6	***	***
All other	19.3	30.6	***	***
Total imports	54.5	31.1	***	***
Apparent U.S. consumption	100.0	100.0	100.0	100.0
Note.--Because of rounding, figures may not add to the totals shown.				
Source: Compiled from data presented in the original staff report and subsequent five-year reviews, official Commerce statistics, and <i>Response</i> of domestic interested parties, October 3, 2011, pp. 12-13.				

## HISTORICAL DATA

Appendix C presents additional data from the original investigation and subsequent reviews that the Commission has compiled regarding fresh garlic.

## ANTIDUMPING AND OTHER ACTIONS OUTSIDE THE UNITED STATES

At the time of the original investigation, garlic exported from China was not subject to any known antidumping proceedings in other countries. Since that time, however, fresh garlic exports from China have faced antidumping duty orders and other import barriers in the form of phytosanitary measures and quotas. Brazil imposed antidumping duties on imports of garlic from China in 1996.

According to the WTO, these duties remain in effect.<sup>51</sup> Antidumping duties were also imposed by the government of South Africa on garlic imports from China in September 2000. As a result of its 2010 sunset review, the anti-dumping duty on fresh or chilled garlic originating in or imported from China increased from 6.07 rand to 10.37 rand per kilogram.<sup>52</sup> In 2006, Canada conducted a sunset review of its 1997 antidumping duty order on fresh garlic from China. The government determined that dumping of garlic from China was likely to recur if the order was revoked but based on the absence of domestic industry participation, the government could not make a finding as to whether injury was likely to result from revocation, and thus, rescinded the finding and order, effective March 2007.<sup>53</sup> In addition, the Korean government imposed a temporary increase in the import duty on garlic from China in November 1999, but in the face of a retaliatory ban on imports of Korean mobile phones and polyethylene into China, agreed in July 2000 to substantially reduce the duty.<sup>54</sup>

Phytosanitary measures such as pest risk-analysis requirements on imports and strict food-labeling requirements have also hindered Chinese exports in some markets. For example, in 1993 Mexico banned imports of garlic from China on phytosanitary grounds.<sup>55</sup> Phytosanitary measures specific to Chinese garlic have also been imposed by Brazil, Chile, and New Zealand.<sup>56</sup> In addition, phytosanitary measures affecting imports of garlic, including those from China, have been imposed by Canada, Korea, and Venezuela.<sup>57</sup>

China also has a quota agreement with the European Union (“EU”) that allows it to export 33,700 metric tons (74.3 million pounds) of garlic to the EU each year. Garlic imports to the EU are normally subject to a customs duty of 9.6 percent *ad valorem*, and a specific duty of 1,200 euros per metric ton. Chinese imports within the quota limit are subject to the customs duty of 9.6 percent *ad valorem*, and free of the specific duty. Any imports exceeding the quota limit are subject to the customs duty and the specific duty.<sup>58</sup> In 2003, Thailand established an import quota under the China-ASEAN Free Trade Agreement on garlic imports from China. Although Thailand has phased out in-quota import duties, above quota imports still face a tariff of 57.6 percent.<sup>59 60</sup>

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<sup>51</sup> *Response* of domestic interested parties, October 3, 2011, exh. 8.

<sup>52</sup> International Trade Administration Commission of South Africa, Report No 327, <http://www.itac.org.za/docs/Report%20327.pdf>; as presented in *Response* of domestic interested parties, October 3, 2011, exh. 11.

<sup>53</sup> *Fresh Garlic from China, Inv. No. 731-TA-683 (Second Review)*, USITC Publication 3886, September 2006, p. I-25; and Canada International Trade Tribunal, *Garlic, Expiry Review No. RR-2005-001*, [http://www.citt-tcce.gc.ca/dumping/reviews/orders/rr2f01b\\_e.asp](http://www.citt-tcce.gc.ca/dumping/reviews/orders/rr2f01b_e.asp), accessed on March 20, 2012.

<sup>54</sup> *Fresh Garlic from China, Inv. No. 731-TA-683 (Review)*, USITC Publication 3393, February 2001, p. IV-4.

<sup>55</sup> *Fresh Garlic from The People’s Republic of China, Inv. No. 731-TA-683 (Final)*, USITC Publication 2825, November 1994, p. II-51-II-52.

<sup>56</sup> World Trade Organization, Committee on Phytosanitary Measures, G/SPS/N/BRA/76/Rev.1, April 23, 2010 (Brazil); G/SPS/N/CHL/75, March 27, 2001 (Chile); and G/SPS/N/NZL/345, February 24, 2006 (New Zealand).

<sup>57</sup> World Trade Organization, Committee on Phytosanitary Measures, G/SPS/N/CAN/540, July 4, 2011 (Canada); G/SPS/N/KOR/358, March 25, 2010 (Korea); and G/SPS/N/VEN/5, March 12, 2003 (Venezuela).

<sup>58</sup> Official Journal of the European Union, “Commission Regulation (EC) No. 341/2007 of March 29, 2007,” March 30, 2007.

<sup>59</sup> “Thailand’s ACFTA Tariff Reduction Schedule for SL and HSL,” ASEAN-China Agreement, Thai Department of Trade Negotiations, March 6, 2008, [www.thaifta.com/thaifta/Portals/0/File/storyboard/ascn\\_tabsl.xls](http://www.thaifta.com/thaifta/Portals/0/File/storyboard/ascn_tabsl.xls).

<sup>60</sup> In their response to the Commission’s notice of institution, the domestic interested parties reported that the import quota maintained by Thailand on imports of Chinese garlic is 10,000 metric tons annually. *Response* of domestic interested parties, October 3, 2011, p. 19.



## THE SUBJECT INDUSTRY IN CHINA

In the original 1994 investigation the Commission did not receive any foreign producer questionnaire responses. The only data provided on the industry in China was furnished by the U.S. Embassy in Beijing, the Embassy of China in Washington, D.C., and the Ministry of Foreign Trade and Economic Cooperation. During the time of the Commission's original investigation, Chinese officials maintained that accurate statistics on Chinese garlic production were not available because the garlic industry in China was highly fragmented with the number of garlic growers estimated to be in the millions.<sup>61</sup> Historically, the Chinese government limited the number of firms that could export garlic; in 1993, however, due primarily to rapid marketization in China and the transfer of regulatory authority from the central Government to the provinces, many small private firms entered the garlic exporting business.<sup>62</sup> In part as a response to the surge in exports, in early 1994 the Chinese Government announced new regulations regarding the export of garlic, along with 12 other agricultural commodities. Under these regulations, and as a result of a bidding process, only 16 firms were authorized to export garlic in 1994. The new regulations limited each of these firms to a fixed quota for which they paid a fee based on the quota allotment. According to the Chinese Chamber of Commerce, the total quota was 100,000 metric tons (220.5 million pounds) for calendar year 1994 and 120,000 metric tons (264.6 million pounds) for calendar year 1995.<sup>63</sup>

In the first five-year review, the Commission identified 24 possible foreign producers/exporters and issued questionnaires to these firms. Four respondent firms, represented by counsel, completed questionnaires and four other firms responded, indicating that they had not exported garlic to the United States since 1994.<sup>64</sup> The four Chinese respondent firms that completed questionnaires were exporters only, not producers, of fresh garlic. Therefore, the Commission received no data from Chinese producers of fresh garlic for the period 1998-2000. All four firms reported that if the order were revoked, they could once again resume exportation to the United States market.

In response to the Commission's request in its notice of institution in this review for a list of all known and currently operating producers of the subject merchandise in China that currently export or have exported subject merchandise to the United States or other countries since 2005, the FGPA identified 121 foreign producers/exporters in China.<sup>65</sup> The potential production capability of these specific firms was not submitted by the domestic interested parties and is not readily available from public sources. However, country-wide information is available and is presented below.

China is by far the world's top producer of fresh garlic. The Shandong Province, a prime agricultural area located southeast of Beijing, leads in production.<sup>66</sup> From 2005-2009, China averaged 78 percent of global production.<sup>67</sup> The Food and Agriculture Organization ("FAO") compiles information on worldwide food production for the United Nations and publishes data on the country-level production of

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<sup>61</sup> *Fresh Garlic from The People's Republic of China, Inv. No. 731-TA-683 (Final)*, USITC Publication 2825, November 1994, p. II-50.

<sup>62</sup> *Fresh Garlic from The People's Republic of China, Inv. No. 731-TA-683 (Final)*, USITC Publication 2825, November 1994, p. II-50.

<sup>63</sup> *Fresh Garlic from The People's Republic of China, Inv. No. 731-TA-683 (Final)*, USITC Publication 2825, November 1994, p. II-50.

<sup>64</sup> *Fresh Garlic from China, Inv. No. 731-TA-683 (Review)*, USITC Publication 3393, February 2001, p. IV-3-IV-4.

<sup>65</sup> *Response of domestic interested parties*, October 3, 2011, exh. 4.

<sup>66</sup> U.S. Customs Today, *Garlic-tracing its country-of-origin*, found at [http://www.cbp.gov/xp/CustomsToday/2002/August/garlic\\_origin.xml](http://www.cbp.gov/xp/CustomsToday/2002/August/garlic_origin.xml), retrieved May 24, 2006.

<sup>67</sup> FAOSTAT database.

all types of garlic (including garlic destined for dehydration). Table I-5 shows FAO data on the quantity of garlic produced in China and in several other of the largest garlic-producing countries during 2005-09.<sup>68</sup> While Chinese garlic production fell slightly in 2009, Chinese production volume that year represented greater than a 60 percent increase compared with 2005 levels. A speculative bubble pushed domestic Chinese prices of garlic up significantly in late 2009 and early 2010,<sup>69</sup> however the quantity of Chinese garlic exports dipped less than 15 percent in 2010, the last year for which export statistics were available at the time of review. Despite the period of higher domestic prices, China still captured 88 percent of the global garlic export market in 2010, by quantity, down from 90 percent in 2009.<sup>70</sup> In addition, according to the FAO, acres of garlic harvested in China increased by 20.2 percent between 2005 and 2009, from 648,136 hectares to 779,232 hectares.<sup>71</sup>

**Table I-5**

**Fresh garlic: World production of all types of garlic, by major producing countries, 2005-2009**

Producing country	Calendar year				
	2005	2006	2007	2008	2009
<b>Quantity (million pounds)</b>					
China	24,434	25,502	35,417	40,470	39,612
India	1,426	1,319	1,711	2,356	1,832
South Korea	827	731	766	828	788
Egypt	357	362	517	749	432
Russia	567	564	549	500	501
Myanmar	310	322	355	435	443
Ethiopia	236	151	151	228	396
United States	477	495	410	428	388
Bangladesh	199	226	390	319	341
Ukraine	321	321	290	302	331
Source: Food and Agricultural Organization of the United Nations, <a href="http://www.faostat.fao.org">http://www.faostat.fao.org</a> .					

<sup>68</sup> Appendix C presents FAO data for 1995-2005, as presented in the second five-year review.

<sup>69</sup> CNNMoney, *Inside China's Garlic Bubble*, March 24, 2010.

<sup>70</sup> Global Trade Atlas database.

<sup>71</sup> *Response* of domestic interested parties, October 3, 2011, exh. 2.

**APPENDIX A**  
***FEDERAL REGISTER* NOTICES**



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**INTERNATIONAL TRADE  
COMMISSION**

**[Investigation No. 731-TA-683; Third  
Review]**

**Fresh Garlic From China; Institution of  
a Five-Year Review Concerning the  
Antidumping Duty Order on Fresh  
Garlic From China**

**AGENCY:** United States International  
Trade Commission.

**ACTION:** Notice.

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**SUMMARY:** The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on fresh garlic from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;<sup>1</sup> to be assured of consideration, the deadline for responses is October 3, 2011. Comments on the adequacy of responses may be filed with the Commission by

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<sup>1</sup> No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117-0016/USITC No. 11-5-257, expiration date June 30, 2014. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

November 10, 2011. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

**DATES:** *Effective Date:* September 1, 2011.

**FOR FURTHER INFORMATION CONTACT:**

Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

**SUPPLEMENTARY INFORMATION:**

*Background.*—On November 16, 1994, the Department of Commerce ("Commerce") issued an antidumping duty order on imports of fresh garlic from China (59 FR 59209). Following first five-year reviews by Commerce and the Commission, effective March 13, 2001, Commerce issued a continuation of the antidumping duty order on imports of fresh garlic from China (66 FR 14544). Following second five-year reviews by Commerce and the Commission, effective October 19, 2006, Commerce issued a continuation of the antidumping duty order on imports of fresh garlic from China (71 FR 61708). The Commission is now conducting a third review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

*Definitions.*—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the

scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determination, the Commission found three separate *Domestic Like Products* consisting of fresh garlic, dehydrated garlic, and seed garlic corresponding with the broader scope of the original investigation. However, the Commission found that the domestic industries producing garlic for dehydration and seed garlic were neither materially injured nor threatened with material injury by reason of the subject imports from China. One Commissioner defined the *Domestic Like Product* differently in the original determination. In its full first five-year review determination, the Commission defined the *Domestic Like Product* as all fresh garlic. Consistent with its *Domestic Like Product* definition in the original investigation and first five-year review, the Commission found in its expedited second five-year review determination a single *Domestic Like Product* consisting of all fresh garlic, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission found three *Domestic Industries* consisting of the domestic producers of fresh garlic, the domestic producers of dehydrated garlic, and the domestic producers of seed garlic to coincide with the three *Domestic Like Products*. The Commission also found that crop tenders were not members of the *Domestic Industry*. One Commissioner defined the *Domestic Industry* differently in the original determination. In its full first five-year review determination, consistent with Commerce's narrower scope and the Commission's *Domestic Like Product* definition of a single *Domestic Like Product* consisting of all fresh garlic, the Commission found a single *Domestic Industry* consisting of all producers of fresh garlic. In its expedited second five-year review determination, the Commission once again found a single *Domestic Industry* consisting of all domestic producers of fresh garlic.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in

importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

*Participation in the review and public service list.*—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the "same particular matter" as the corresponding underlying original investigation for purposes of 18 U.S.C. § 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR § 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR § 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. § 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those

parties authorized to receive BPI under the APO.

**Certification.**—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

**Written submissions.**—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is October 3, 2011. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is November 10, 2011. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

**Inability to provide requested information.**—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative

forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

**Information To Be Provided in Response to This Notice of Institution:** As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and e-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. § 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. § 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after May 2005.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone

number, fax number, and e-mail address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during crop year 2011 (June 2010–May 2011), except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) The value of (i) Net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm's(s') operations on that product during crop year 2011 (June 2010–May 2011) (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.



(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country*, provide the following information on your firm's(s') operations on that product during crop year 2011 (June 2010–May 2011) (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in the *Subject Country* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after May 2005, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology;

production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority:** This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: August 25, 2011.

**James R. Holbein,**  
*Secretary to the Commission.*

[FR Doc. 2011-22275 Filed 8-31-11; 8:45 am]

**BILLING CODE 7020-02-P**



**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**Initiation of Five-Year (“Sunset”) Review**

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

**SUMMARY:** In accordance with section 751(c) of the Tariff Act of 1930, as amended (“the Act”), the Department of Commerce (“the Department”) is automatically initiating a five-year review (“Sunset Review”) of the antidumping duty orders listed below. The International Trade Commission (“the Commission”) is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers the same orders.

**DATES:** *Effective Date:* September 1, 2011.

**FOR FURTHER INFORMATION CONTACT:** The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Department’s procedures for the conduct of Sunset Reviews are set forth in its Procedures for Conducting Five-Year (“Sunset”) Reviews of Antidumping and Countervailing *Duty Orders*, 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department’s conduct of Sunset Reviews is set forth in the Department’s Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin*, 63 FR 18871 (April 16, 1998).

**Initiation of Review**

In accordance with 19 CFR 351.218(c), we are initiating the Sunset Review of the following antidumping duty orders:

DOC Case No.	ITC Case No.	Country	Product	Department contact
A–821–807 .....	731–TA–702	Russia .....	Ferrovandium and Nitrided Vanadium (3rd Review).	David Goldberger (202) 482–4136.
A–570–831 .....	731–TA–683	PRC .....	Fresh Garlic (3rd Review) .....	Dana Mermelstein (202) 482–1391.
A–570–835 .....	731–TA–703	PRC .....	Furfuryl Alcohol (3rd Review) .....	Julia Hancock (202) 482–1394.

**Filing Information**

As a courtesy, we are making information related to Sunset proceedings, including copies of the pertinent statute and Department's regulations, the Department schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's Internet Web site at the following address: <http://ia.ita.doc.gov/sunset/>. All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, and service of documents. These rules can be found at 19 CFR 351.303.

This notice serves as a reminder that any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information. See section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all AD/CVD investigations or proceedings initiated on or after March 14, 2011. See *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule*, 76 FR 7491 (February 10, 2011) ("Interim Final Rule") amending 19 CFR 351.303(g)(1) & (2). The formats for the revised certifications are provided at the end of the *Interim Final Rule*. The Department intends to reject factual submissions in investigations/proceedings initiated on or after March 14, 2011 if the submitting party does not comply with the revised certification requirements.

Pursuant to 19 CFR 351.103(d), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order ("APO") immediately following publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

**Information Required From Interested Parties**

Domestic interested parties defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b) wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review.

See 19 CFR 351.218(d)(1)(iii).

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in the Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews.<sup>1</sup> Please consult the Department's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: August 25, 2011.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2011–22465 Filed 8–31–11; 8:45 am]

**BILLING CODE 3510–DS–P**

<sup>1</sup> In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests to extend that five-day deadline based upon a showing of good cause.

Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

**SUPPLEMENTARY INFORMATION:**

**Background.**—On December 5, 2011, the Commission determined that the domestic interested party group response to its notice of institution (76 FR 54487, September 1, 2011) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.<sup>1</sup> Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

**Staff report.**—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on March 21, 2012, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

**Written submissions.**—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,<sup>2</sup> and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before March 26, 2012 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not

contain any new factual information) pertinent to the review by March 26, 2012. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please consult the Commission's rules, as amended, 76 FR 61937 (Oct. 6, 2011) and the Commission's Handbook on Filing Procedures, 76 FR 62092 (Oct. 6, 2011), available on the Commission's web site at <http://edis.usitc.gov>.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Determination.**—The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

**Authority:** This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: December 14, 2011.

**James R. Holbein,**

*Secretary to the Commission.*

[FR Doc. 2011-32399 Filed 12-16-11; 8:45 am]

**BILLING CODE 7020-02-P**

**INTERNATIONAL TRADE COMMISSION**

[Investigation No. 731-TA-683 (Third Review)]

**Fresh Garlic From China; Scheduling of an expedited five-year review**

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on fresh garlic from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

**DATES:** *Effective Date:* December 5, 2011.

**FOR FURTHER INFORMATION CONTACT:** Keysha Martinez (202) 205-2136, Office of Investigations, U.S.

International Trade Commission, 500 E

<sup>1</sup> A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

<sup>2</sup> The Commission has found the response submitted by the Fresh Garlic Producers Association and its individual members Christopher Ranch L.L.C., The Garlic Company, Valley Garlic, Inc., and Vessey and Company, Inc. to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).



duty order would be likely to lead to continuation or recurrence of dumping.  
**DATES:** *Effective Date:* January 6, 2012.  
**FOR FURTHER INFORMATION:** Sean Carey or Dana Mermelstein, 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) 482-3964 and (202) 482-1391, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On September 1, 2011, the Department published the notice of initiation of the third sunset review of the antidumping duty order on fresh garlic from the PRC pursuant to section 751(c) of the Act. *See Initiation of Five-Year ("Sunset") Review*, 76 FR 54430 (September 1, 2011). The Department received a notice of intent to participate from the Fresh Garlic Producers Association and its individual members: Christopher Ranch LLC; The Garlic Company; Valley Garlic, Inc.; and Vessey and Company, Inc. (collectively "the domestic interested parties"), within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status under section 771(9)(C) of the Act as domestic producers and packagers of fresh garlic and a trade association whose members produce and process a domestic like product in the United States. The Department received an adequate substantive response to the notice of initiation from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no responses from the respondent interested parties. As a result, pursuant to section 751(c)(5)(A) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited (120-day) sunset review of the order.

**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 the order does not include the following: (a) Garlic that has been mechanically harvested and that is primarily, but not exclusively, destined

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**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[A-570-831]

**Fresh Garlic From the People's Republic of China: Final Results of Expedited Sunset Review of the Antidumping Duty Order**

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

**SUMMARY:** On September 1, 2011, the Department of Commerce (the Department) initiated the third sunset review of the antidumping duty order fresh garlic from the People's Republic of China ("PRC"), pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). The Department has conducted an expedited (120-day) sunset review for this order pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2). As a result of this sunset review, the Department finds that revocation of the antidumping



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

**Analysis of Comments Received**

All issues raised in this review is addressed in the “Issues and Decision Memorandum for the Final Results of Expedited Sunset Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China” from Gary Taverman, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Susan Kuhbach, Acting Assistant Secretary for Import Administration, dated concurrently with this notice (“Decision Memorandum”), which is hereby adopted by this notice. The issues discussed in the Decision Memorandum consist of the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the orders were revoked. Parties can find a complete discussion of all issues raised in this review and corresponding recommendations in this public memorandum, which is on file electronically via Import Administration’s Antidumping and Countervailing Duty Centralized Electronic Services System (“IA ACCESS”). Access to IA ACCESS is available in the Central Records Unit, room 7046 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at <http://ia.ita.doc.gov/frn>. The signed Decision Memo and the electronic versions of the Decision Memo are identical in content.

**Final Results of Review**

We determine that revocation of the antidumping duty order on fresh garlic from the PRC would be likely to lead to continuation or recurrence of dumping. We determine that the following weighted-average percentage margin is likely to prevail:

Manufacturers/exporters/ producers	Weighted average margin
PRC-Wide .....	376.67%

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. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders 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(c), and 777(i)(1) of the Act.

Dated: December 29, 2011.

**Susan Kuhbach,**  
*Acting Assistant Secretary for Import Administration.*

[FR Doc. 2012-81 Filed 1-5-12; 8:45 am]

**BILLING CODE 3510-DS-P**

**APPENDIX B STATEMENT ON  
ADEQUACY**





## **EXPLANATION OF COMMISSION DETERMINATIONS ON ADEQUACY**

in

*Fresh Garlic from China*  
Inv. No. 731-TA-683 (Third Review)

On December 5, 2011, the Commission determined that it should conduct an expedited review in the subject five-year review pursuant to section 751(c)(3)(B) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1675(c)(3)(B).

The Commission received a joint response to its notice of institution, with company specific data, from four domestic producers of fresh garlic; Christopher Ranch LLC, The Garlic Co., Valley Garlic, Inc., and Vessey and Co., Inc. The Commission found the individual response of each of these domestic producers to be adequate. Because these producers collectively account for a substantial percentage of domestic production of fresh garlic, the Commission determined that the domestic interested party group response was adequate.

No responses were received from any respondent interested parties. Consequently, the Commission determined that the respondent interested party group response was inadequate.

The Commission did not find any circumstances that would warrant conducting a full review of the order. The Commission, therefore, determined to conduct an expedited review of the order.

A record of the Commissioners' votes is available from the Office of the Secretary and on the Commission's website (<http://www.usitc.gov>).



## **APPENDIX C**

### **HISTORICAL DATA**

Excerpted from:

*Fresh Garlic from China, Inv. No. 731-TA-683 (Final, First Review, and Second Review),*  
Publications 2825 (November 1994), 3393 (February 2001), and 3886 (September 2006)



TabkC-3

Summary data concerning the U.S. market, crop years 1991-94

(Quantities in thousands of metric tons; values in millions of dollars; unit values are in dollars per metric ton; percentage changes are in parentheses, except where noted)

Item	Reference data				Period changes			
	1991	1992	1993	1994	1991-94	1991-92	1992-93	1993-94
<b>U.S. consumption quantity:</b>								
Amount	85,620	96,150	117,441	180,310	+110.6	+12.3	+22.1	+53.5
Producers' share	49.4	60.5	63.5	45.5	-3.9	+11.1	+3.0	-17.9
<b>Importers' share:</b>								
Chile	7.1	3.7	8.0	35.2	+28.2	-3.4	+4.3	+27.2
Argentina	9.2	5.4	4.3	3.1	-6.2	-3.9	-1.1	-1.2
Chile	3.3	2.1	1.9	.9	-2.4	-1.2	-0.2	-1.1
Mexico	24.1	23.6	21.3	14.7	-9.3	-0.4	-2.3	-6.6
Taiwan	5.5	3.1	.8	.4	-5.1	-2.4	-2.3	-0.4
Other sources	1.4	1.7	.2	.2	-1.3	+0.2	-1.5	.0
Total	50.6	39.5	36.5	54.5	+3.9	-11.1	-3.0	+17.9
<b>U.S. consumption value:</b>								
Amount	55,790	61,439	74,825	90,677	+62.5	+10.1	+21.8	+21.2
Producers' share	58.3	64.7	71.1	58.4	+0.1	+6.4	+6.4	-12.7
<b>Importers' share:</b>								
Chile	4.4	2.4	5.0	22.1	+17.6	-2.1	+2.6	+17.1
Argentina	10.9	5.9	4.3	4.0	-6.9	-5.0	-1.6	-.3
Chile	4.7	3.0	2.6	1.6	-3.1	-1.8	-0.4	-1.0
Mexico	16.5	20.3	16.3	13.3	-3.2	+3.8	-4.0	-3.0
Taiwan	3.2	2.0	.5	.2	-3.0	-1.2	-1.5	-0.3
Other sources	1.8	1.7	.2	.3	-1.5	-0.1	-1.5	+0.1
Total	41.7	35.3	28.9	41.6	-0.1	-6.4	-6.4	+12.7
<b>U.S. importers' imports from:</b>								
<b>Chile:</b>								
Imports quantity	6,055	3,540	9,395	63,532	+949.2	-41.5	+165.4	+576.2
Imports value	2,474	1,446	3,719	20,014	+709.0	-41.6	+157.2	+438.2
Unit value	\$0.41	\$0.41	\$0.40	\$0.32	-22.9	(4)	-3.1	-20.4
<b>Argentina:</b>								
Imports quantity	7,886	5,147	5,024	5,511	-30.1	-34.7	-2.4	+9.7
Imports value	6,106	3,627	3,241	3,640	-40.4	-40.6	-10.6	+12.3
Unit value	\$0.77	\$0.70	\$0.65	\$0.66	-14.7	-9.0	-8.5	+2.4
<b>Chile:</b>								
Imports quantity	2,826	2,018	2,264	1,543	-45.4	-28.6	+12.2	-31.8
Imports value	2,634	1,813	1,946	1,496	-43.2	-31.2	+7.3	-23.1
Unit value	\$0.93	\$0.90	\$0.86	\$0.97	+4.0	-3.6	-4.3	+12.8
<b>Mexico:</b>								
Imports quantity	20,616	22,721	25,059	26,565	+28.9	+10.2	+10.3	+6.0
Imports value	9,222	12,499	12,203	12,065	+30.8	+35.5	-2.4	-1.1
Unit value	\$0.45	\$0.55	\$0.49	\$0.45	+1.5	+23.0	-11.5	-6.7
<b>Taiwan:</b>								
Imports quantity	4,712	2,973	947	711	-84.9	-36.9	-68.1	-24.9
Imports value	1,792	1,241	382	206	-88.5	-30.7	-69.2	-46.1
Unit value	\$0.38	\$0.42	\$0.40	\$0.29	-24.0	+9.8	-3.4	-28.3
<b>Other sources:</b>								
Imports quantity	1,239	1,615	233	346	-72.1	+30.3	-85.6	+48.5
Imports value	1,025	1,047	142	290	-71.7	+2.1	-86.4	+104.2
Unit value	\$0.83	\$0.65	\$0.61	\$0.84	+1.3	-21.6	-5.9	+37.3
<b>All sources:</b>								
Imports quantity	43,334	38,014	42,922	98,209	+126.6	-12.3	+12.9	+128.8
Imports value	23,252	21,673	21,634	37,711	+62.2	-6.8	-0.2	+74.3
Unit value	\$0.54	\$0.57	\$0.50	\$0.38	-28.4	+6.3	-11.6	-23.8

Table continued on next page.

Table C-3-Continued

Fresh garlic: Summary data concerning the U.S. market, crop years 1991-94

{Quantity=}1,000 pounds; value=\$1,000 dollars; unit values are per pound; period changes=percent, except where noted

Item	Reported data				Percent change			
	1991	1992	1993	1994	1991-94	1991-92	1992-93	1993-94
<b>U.S. producers'</b>								
Ending capacity quantity	97,932	104,456	141,274	141,274	+44.3	+6.7	+35.2	0
Production quantity	49,102	70,087	93,416	100,307	+104.3	+42.7	+33.3	+7.4
Capacity utilization <sup>1</sup>	50.1	66.3	62.5	66.7	+16.5	+16.2	-3.8	+4.2
<b>U.S. shipments:</b>								
Quantity	42,286	58,137	74,520	82,102	+94.2	+37.5	+28.2	+10.2
Value	32,538	39,766	53,191	52,966	+62.8	+22.2	+33.8	-0.4
Unit value	\$0.77	\$0.68	\$0.71	\$0.65	-16.2	-11.1	+4.4	-9.6
<b>Export shipments:</b>								
Quantity	3,482	5,885	7,883	12,042	+245.8	+69.0	+34.0	+52.8
Exports/shipments'	7.6	9.2	9.6	12.8	+5.2	+1.6	+0.4	+3.2
Value	3,078	4,329	■	7,588	+146.5	+40.6	***	***
Unit value	\$0.88	\$0.74	■	\$0.63	-28.7	-16.8	***	***
Ending inventory quantity	0	0	***	***	(6)	(6)	(6)	+689.1
Inventory/shipments'	0	0	***	***	+0.8	0	+0.1	+0.7
Production workers	599	710	1,021	1,087	+81.5	+18.5	+43.8	+6.5
Hours worked (1,000s)	1,007	1,247	1,475	1,584	+57.3	+23.8	+18.3	+7.4
Total compensation (\$1,000)	7,175	9,633	11,165	12,024	+67.6	+34.3	+15.9	+7.7
Hourly total compensation	\$7.13	\$7.72	\$7.57	\$7.59	+6.5	+8.4	-2.0	+0.3
Productivity (lbs./hour)	55.7	55.6	59.9	59.5	+6.8	-0.2	+7.7	-0.6
Unit labor costs (per 1,000 pounds)	\$138.79	\$139.03	\$126.45	\$127.63	-8.0	+0.2	-9.0	+0.9
<b>Net sales-</b>								
Quantity	45,768	64,022	82,402	94,144	+105.7	+39.9	+28.7	+14.2
Value	35,615	44,093	59,046	60,554	+70.0	+23.8	+33.9	+2.6
Unit sales value	\$0.78	\$0.69	\$0.72	\$0.64	-17.3	-11.5	+4.0	-10.2
All expenses	32,095	42,236	57,803	61,909	+92.9	+31.6	+36.9	+7.1
Net income (loss)	3,520	1,857	1,243	(1,355)	-138.5	-47.2	-33.1	-209.0
Capital expenditures	■	■	***	***	+16.5	+21.8	-19.1	+18.3
Total & sales	■	■	***	***	+47.1	+39.6	+23.3	-14.5
Unit expenses	\$0.70	\$0.66	\$0.70	\$0.66	-6.0	-5.7	+6.3	-6.3
Unit net income (loss)	\$0.08	\$0.03	\$0.02	(\$0.01)	-118.3	-63.0	-48.0	-195.4
Net income(loss)/sales'	9.9	4.2	2.1	(2.2)	-12.1	-5.7	-2.1	-4.3

<sup>1</sup> Reported data are in percent and period changes are in percentage points.<sup>2</sup> Includes imports from Hong Kong.<sup>3</sup> A decrease of less than 0.05 percentage points.<sup>4</sup> A decrease of less than 0.05 percent.<sup>5</sup> Data are for China only.<sup>6</sup> Not applicable.

Note.-Period changes are derived from the unrounded data. Period changes involving negative period data are positive if the amount of the negativity decreases and negative if the amount of the negativity increases. Because of rounding, figures may not add to the totals shown. Unit values and other ratios are calculated from the unrounded figures, using data of firms supplying both numerator and denominator information.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission and from official statistics of the U.S. Department of Commerce.

Table C-1

Fresh garlic: Summary data concerning the U.S. market, crop year 1998-2000

	(Quantities in 1,000 pounds, values in 1,000 dollars, unit values, unit labor costs, and unit values per pound; period changes in percent unless otherwise noted)					
	Reported data			Period changes		
	1998	1999	2000	1806-2000	1806-1899	1909-2000
<b>U.S. consumption quantity:</b>						
Amount	180,822	110,624	188,417	15.11	18.5	-2.2
Producers' share (1)	811.0	43.8	88.9	0.8	-24.2	25.1
<b>Importers' share (1):</b>						
China	0.3	0.5	0.8	0.2	0.2	0.1
Other sources	31.8	55.7	30.8	-1.1	24.1	-25.1
Total imports	32.0	58.2	31.1	-0.8	24.2	-25.1
<b>U.S. consumption value:</b>						
Amount	124,801.1	141,190.2	118,847	-4.9	20.1	-20.11
Producers' share (1)	78.5	59.5	75.5	-0.11	-17.0	18.0
<b>Importers' share (1):</b>						
China	0.1	0.2	0.2	0.1	0.1	-0.0
Other sources	23.5	40.3	24.3	0.11	18.11	-18.0
Total imports	23.5	40.5	24.5	0.11	17.0	-18.0
<b>U.S. Imports from:</b>						
<b>China:</b>						
Quantity	417	878	1,030	107.2	78.2	17.5
Value	112	281	182	111.11	184.8	-30.2
Unit value	\$0.18	\$0.30	\$0.18	-4.0	81.8	-40.8
Ending inventory quantity	0	0	0	(2)	(2)	(2)
<b>Other sources:</b>						
Quantity	50,888	106,137	58,972	12.0	106.8	-48.3
Value	29,285	80,445	28,848	-1.6	108.4	-52.3
Unit value	\$0.68	\$0.57	\$0.51	-12.0	-1.0	-11.1
Ending inventory quantity	615	1,788	1,138	120.8	242.11	-35.7
<b>Other sources:</b>						
Quantity	51,386	107,013	58,002	12.11	108.3	-45.8
Value	211,377	80,706	211,031	-1.2	108.8	-62.2
Unit value	\$0.57	\$0.67	\$0.50	-12.5	-0.8	-11.8
Ending inventory quantity	515	1,788	1,138	120.8	242.9	-35.7
<b>U.S. production:</b>						
Average capacity quantity	183,884	111,230.2	198,119.6	8.3	4.7	3.5
Production quantity	122,722	100,082	152,571	24.3	-18.5	52.5
Capacity utilization (1)	88.8	62.0	78.7	11.11	-14.8	24.8
<b>U.S. Shipments:</b>						
Quantity	109,437	83,511	128,415	17.3	-23.7	63.8
Value	116,432	89,196	811,816	e.1	-8.5	0.5
Unit value	\$0.67	\$1.07	\$0.70	-20.0	22.5	-34.7
<b>Export Shipments:</b>						
Quantity	3,884	2,401	5,384	38.1	-36.2	123.4
Value	3,338	2,242	2,911	-12.8	-32.8	211.6
Unit value	\$0.88	\$0.93	\$0.64	-36.9	8.7	-41.11
<b>Ending Inventory quantity (1)</b>						
Production workers	931	875	988	6.1	-6.0	12.9
Hours worked (1,000s)	1,503	1,409	1,673	11.3	e.3	18.7
Wages paid (\$1,000s)	10,282	10,111.2	12,195	18.8	-0.7	111.7
Hourly wages	\$8.63	\$7.23	\$7.211	6.8	5.9	0.8
Productivity (pounds per hour)	71.8	87.7	82.1	14.7	-6.4	21.3
Unit labor costs	\$0.10	\$0.11	\$0.09	-6.11	12.0	-16.9
<b>Net sales:</b>						
Quantity	113,137	84,611.0	133,071	17.8	-25.0	58.8
Value	102,011	114,110.5	114,110.2	-7.0	-7.0	-0.0
Unit value	\$0.110	\$1.12	\$0.71	-20.11	24.0	-38.2
Cost of goods sold (COGS)	88,573	72,616	75,511.5	10.2	6.11	4.1
Gross profit or (loss)	33,436	22,281.1	111,307	-42.3	-33.5	-13.4
SG&A expenses	17,706	15,082	18,021.1	-11.5	-14.8	8.3
Operating income or (loss)	16,732	7,207	3,278	-71.2	-64.2	-64.6
Capital expenditures	8,028	11,287	3,118	-48.3	84.1	-68.4
Unit COGS	\$0.81	\$0.88	\$0.57	-6.3	41.1	-33.8
Unit SG&A expenses	\$0.18	\$0.18	\$0.12	-23.0	13.5	-32.2
Unit operating income or (loss)	\$0.14	\$0.08	\$0.02	e.2.3	-38.9	-71.0
COGS/sale (1)	87.2	78.5	71.7	12.4	11.3	3.1
Operating income or (loss)/sale (1)	15.4	7.8	3.5	-12.0	-7.8	-4.1

(1) "Reported data" are in percent and "period changes" are in percentage points.

(2) Not applicable

Note: Financial data are reported on a fiscal year basis and may not necessarily be comparable to data reported on a calendar year basis. Because of rounding, figures may not add to the totals shown. Unit values and shares are calculated from the unrounded figures.

Source: Compiled from data submitted in response to Commission questionnaires and from official Commerce statistics.

Table I-9

## Fresh garlic: World production of all types of garlic, by major producing countries, 1995-2005

Producing country	Calendar year										
	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
<b>Quantity (million pounds)</b>											
Argentina	162	202	256	326	331	329	295	276	322	315	315
Brazil	130	115	134	122	159	186	225	252	271	188	195
China	11,848	12,377	12,545	12,818	13,148	16,504	17,403	20,018	22,219	23,354	24,457
India	889	1,080	965	1,068	1,141	1,157	1,095	1,102	1,102	1,102	1,102
Korea <sup>1</sup>	1,107	1,005	868	868	1,067	1,046	896	862	835	789	772
Mexico	96	144	165	147	147	122	123	91	98	98	98
Thailand	291	325	269	260	278	291	279	231	211	236	243
United States	470	613	561	551	660	558	588	565	624	522	522

<sup>1</sup> The Republic of Korea.

Source: Data for 1994-1999 were taken from *Fresh Garlic From China, Inv. No. 731-TA-683 (Review)*, USITC Publication 3393, February 2001, table IV-4, with the exception of data for, Brazil, Korea and Thailand which was obtained from The Food and Agriculture Organization of the United Nations website found at, <http://www.faostat.fao.org>, retrieved June 12, 2006. Data for 2000-05 are from The Food and Agriculture Organization of the United Nations as found in the domestic interested parties' response, exh. 6.