

**DEPARTMENT OF COMMERCE****International Trade Administration**

[A-570-831]

**Fresh Garlic From the People's Republic of China: Final Rescission of New Shipper Reviews of Jining Yifa Garlic Produce Co., Ltd., Shenzhen Bainong Co., Ltd., and Yantai Jinyan Trading Inc.**

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

**SUMMARY:** On May 3, 2011, the Department of Commerce (Department) published a preliminary intent to rescind the new shipper reviews (NSRs) of fresh garlic from the People's Republic of China (PRC) covering the period of review (POR) November 1, 2009, through April 30, 2010, for Jining Yifa Garlic Produce Co., Ltd. (Jining Yifa) and Shenzhen Bainong Co., Ltd. (Shenzhen Bainong) and November 1, 2009, through May 31, 2010, for Yantai Jinyan Trading Inc. (Yantai Jinyan). See *Fresh Garlic From the People's Republic of China: Preliminary Intent To Rescind New Shipper Reviews*, 76 FR 24857 (May 3, 2011) (*Preliminary Intent to Rescind*). The Department preliminarily found that Jining Yifa's and Shenzhen Bainong's sales were not *bona fide*. The Department preliminarily found that Yantai Jinyan was not entitled to an NSR.

The Department continues to find that the U.S. sales of subject merchandise exported by Jining Yifa and Shenzhen Bainong during the POR were not *bona fide* and is rescinding the NSRs of Jining Yifa and Shenzhen Bainong. After analyzing the comments submitted by parties with respect to Yantai Jinyan, the Department continues to find that Yantai Jinyan was not entitled to an NSR. Therefore, the Department is rescinding Yantai Jinyan's NSR.

**DATES:** *Effective Date:* August 22, 2011.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline Arrowsmith, Milton Koch, or Justin Neuman, 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) 482-5255, (202) 482-2584, and (202) 482-0486, respectively.

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

Since the Department issued the *Preliminary Intent to Rescind*, the following events have occurred with respect to Jining Yifa, Shenzhen

Bainong, and Yantai Jinyan. On May 16, 2011, the Department issued a supplemental questionnaire to Jining Yifa. On May 18, 2011, Jining Yifa informed the Department that it would not respond to the supplemental questionnaire. On May 19, 2011, the Department issued a supplemental questionnaire to Shenzhen Bainong. On June 9, 2011, Shenzhen Bainong filed its response to our supplemental questionnaire. No parties filed case briefs with respect to Jining Yifa. Yantai Jinyan and Shenzhen Bainong timely filed case briefs. The Fresh Garlic Producers Association and its individual Members, Christopher Ranch LLC, The Garlic Company, Valley Garlic, and Vessey and Company (collectively, Petitioners) timely filed rebuttal briefs separately addressing the parties' case briefs.

**Scope of the Order**

The products covered by the order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay. The scope of the order does not include the following: (a) Garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed. The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive. In order to be excluded from the order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to U.S. Customs and Border Protection (CBP) to that effect.

**Final Rescission of NSR: Jining Yifa**

In the *Preliminary Intent to Rescind*, the Department analyzed the *bona fides* of Jining Yifa's sales, and preliminarily found Jining Yifa's sales to the United States to be not *bona fide*. In the *Preliminary Intent to Rescind*, we stated that we would continue to gather information with respect to this issue. The Department subsequently issued a supplemental questionnaire to Jining Yifa; in response, Jining Yifa provided a letter explaining that it would not respond. No party submitted briefs regarding Jining Yifa.

Absent any new information on the record or arguments regarding Jining Yifa and the *Preliminary Intent to Rescind*, the Department continues to find that the sales by Jining Yifa are not *bona fide*; therefore, these sales do not provide a reasonable or reliable basis for calculating a dumping margin. Thus, the Department is rescinding the NSR of Jining Yifa.

**Final Rescission of NSR: Shenzhen Bainong**

In the *Preliminary Intent to Rescind*, the Department analyzed the *bona fides* of Shenzhen Bainong's sales and preliminarily found Shenzhen Bainong's sales to the United States to be not *bona fide*. In the *Preliminary Intent to Rescind*, we stated that we would continue to gather information with respect to this issue. The Department subsequently issued a supplemental questionnaire to Shenzhen Bainong, to which Shenzhen Bainong responded. Shenzhen Bainong filed a case brief and Petitioners filed a rebuttal brief. The Department has analyzed Shenzhen Bainong's supplemental questionnaire response and the case and rebuttal briefs. We continue to find that Shenzhen Bainong's sale is not *bona fide* and does not provide a reasonable or reliable basis for calculating a dumping margin. Thus we are rescinding the NSR for Shenzhen Bainong.

**Final Rescission of NSR: Yantai Jinyan**

As noted above, the Department received a case brief and a rebuttal brief from Yantai Jinyan and Petitioners, respectively. In the *Preliminary Intent to Rescind*, the Department stated that its decision to initiate the NSR and to extend the POR was based on the information provided by Yantai Jinyan in its request for an NSR. The Department reached a preliminary decision to rescind the NSR of Yantai Jinyan because the Department found that Yantai Jinyan's request for review contained a misrepresentation regarding

the timing of the sale at issue. The Department continues to find that Yantai Jinyan's request for an NSR did not meet the minimum requirements for an NSR under 19 CFR 351.214(b)(2)(iv)(C). Specifically, the sale that Yantai Jinyan certified in its request as the first sale to an unaffiliated customer in the United States was later identified by Yantai Jinyan as a sale to an affiliated customer. In order to qualify for an NSR under 19 CFR 351.214, a company must certify and document, among other things, the date of the first sale to an unaffiliated customer in the United States. Once all the facts surrounding the transaction were established, it became clear that Yantai Jinyan did not have a sale or entry during the standard POR; as such, there was in fact no basis upon which to initiate an NSR. Consequently, we preliminarily determined that the Department's decision to initiate the NSR of Yantai Jinyan was based on inaccurate information provided by Yantai Jinyan. *See Preliminary Intent to Rescind*, 76 FR at 24858. After analyzing Yantai Jinyan's case brief and Petitioners' rebuttal brief, the Department continues to find that Yantai Jinyan's request for an NSR did not meet the requirements for initiation. As such, it is appropriate to rescind the NSR of Yantai Jinyan.

The Department is currently conducting an antidumping duty administrative review for the POR November 1, 2009, through October 31, 2010, to which Yantai Jinyan is subject. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 75 FR 81565, 81569 (December 28, 2010). As indicated in the *Preliminary Intent to Rescind*, the Department has moved Yantai Jinyan's separate rate application from the record of this NSR to the record of the 2009–2010 administrative review, and will consider it in the context of the administrative review. *See* "Memorandum from Jacqueline Arrowsmith to the File through Dana S. Mermelstein, Program Manager, AD/CVD Operations 6, Moving Yantai Jinyan's Separate Rates Application to the November 1, 2009 through October 31, 2010 (16th) Administrative Review," dated concurrently with this notice.

#### Analysis of Comments Received

All issues raised in the case and rebuttal briefs are addressed in the "Memorandum to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty

Operations, Issues and Decision Memorandum: Fresh Garlic from the People's Republic of China; Final Rescission of New Shipper Reviews of Jining Yifa Garlic Produce Co. Ltd., Shenzhen Bainong Co., Ltd., and Yantai Jinyan Trading Inc." (Decision Memorandum), dated concurrently with this notice and hereby adopted by this notice. A list of the issues raised in the briefs and addressed in the Decision Memorandum is appended to this notice. The Decision Memorandum is a public document on file in the Central Records Unit (CRU) main Commerce building, Room 7046, and is also accessible directly on the Web at <http://ia.ita.doc.gov/frn>. The paper copy and electronic version of the Decision Memorandum are identical in content. The Department has made the transition to an electronic filing system, IA ACCESS; CRU will continue to maintain the official record in paper form for those documents that were filed prior to the implementation of IA ACCESS. *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263, 39264 (July 6, 2011).

#### Cash Deposit Requirements

Effective upon publication of the final rescission of the NSRs of Jining Yifa, Shenzhen Bainong, and Yantai Jinyan, the Department will instruct CBP to discontinue the option of posting a bond or security in lieu of a cash deposit for entries of subject merchandise by Jining Yifa, Shenzhen Bainong, and Yantai Jinyan. Cash deposits will be required for exports of subject merchandise by Jining Yifa, Shenzhen Bainong, and Yantai Jinyan entered, or withdrawn from warehouse, for consumption on or after the publication date at the per-unit PRC-wide rate, \$4.71 per kilogram.

#### Assessment Instructions

As a result of the rescission of the NSR of Jining Yifa and Shenzhen Bainong, the entries of subject merchandise by Jining Yifa and Shenzhen Bainong covered by these NSRs will be assessed at the PRC-wide rate. Because these entries are also covered by the POR of the 2009–2010 administrative review currently being conducted (*see Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 75 FR 81565), we will issue liquidation instructions for Jining Yifa's and Shenzhen Bainong's entries upon completion of the administrative review. Upon completion of the administrative review, the Department will instruct CBP to assess

antidumping duties on entries for Jining Yifa and Shenzhen Bainong at the PRC-wide rate pursuant to the final results of the 2009–2010 administrative review.

In addition, the Department has moved Yantai Jinyan's separate rate application from the record of this NSR to the record of the 2009–2010 administrative review, and, during the course of the administrative review, the Department will evaluate whether Yantai Jinyan's separate rate application establishes its eligibility for a separate rate. Upon completion of the administrative review, the Department will instruct CBP to assess antidumping duties on entries of subject merchandise by Yantai Jinyan now covered by the administrative review, at the appropriate rate pursuant to the final results of the 2009–2010 administrative review.

#### Notification to Importers

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

#### Return or Destruction of Proprietary Information

This notice serves as a reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(2)(B) and 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.214.

Dated: August 15, 2011.

**Christian Marsh,**

*Acting Deputy Assistant Secretary for Import Administration.*

#### Appendix I—List of Issues Addressed in the Decision Memorandum

- Comment 1: Whether Yantai Jinyan's NSR Request Satisfied the Requirements for Initiation  
 Comment 2: Whether Yantai Jinyan Made Inaccurate Representations in Its NSR Request

- Comment 3: Whether Yantai Jinyan's Sale to Its Unaffiliated Customer Should Be Reviewed Because the POR Was Expanded
- Comment 4: Whether the Department Has the Discretion To Continue Yantai Jinyan's NSR or Initiate Another NSR
- Comment 5: Yantai Jinyan's Cash Deposit and Assessment Rate
- Comment 6: Whether the Department's Authority To Rescind Shenzhen Bainong's New Shipper Review Is Limited to a Sale That Is Unrepresentative and Extremely Distortive
- Comment 7: Whether the Pricing of Shenzhen Bainong's Sale Is Commercially Reasonable
- Comment 8: Whether the Quantity of Shenzhen Bainong's Sale Is Commercially Reasonable
- Comment 9: Whether the Department's Concerns Regarding Shenzhen Bainong's Importer as Legitimate Ongoing Business Concern Are Justified
- Comment 10: Whether Shenzhen Bainong's Importer Behaved in a Commercially Reasonable Manner

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Proposed Information Collection; Comment Request; Northwest Region Vessel Identification Requirements

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before October 21, 2011.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Becky Renko, (206) 526-6110 or [becky.renko@noaa.gov](mailto:becky.renko@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

## I. Abstract

The success of fisheries management programs depends significantly on regulatory compliance. The vessel identification requirement is essential to facilitate enforcement. The ability to link fishing or other activity to the vessel owner or operator is crucial to enforcement of regulations issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. A vessel's official number is required to be displayed on the port and starboard sides of the deckhouse or hull, and on a weather deck. It identifies each vessel and should be visible at distances at sea and in the air. Vessels that qualify for particular fisheries are readily identified, gear violations are more readily prosecuted, and this allows for more cost-effective enforcement. Cooperating fishermen also use the number to report suspicious activities that they observe. Regulation-compliant fishermen ultimately benefit as unauthorized and illegal fishing is deterred and more burdensome regulations are avoided.

## II. Method of Collection

Fishing vessel owners physically mark vessel with identification numbers in three locations per vessel.

## III. Data

*OMB Control Number:* 0648-0355.

*Form Number:* None.

*Type of Review:* Regular submission (extension of a currently approved information collection).

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 1,693.

*Estimated Time per Response:* 45 minutes (15 minutes per marking).

*Estimated Total Annual Burden Hours:* 1,247.

*Estimated Total Annual Cost to Public:* \$66,520 in recordkeeping/reporting costs.

## IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques

or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 16, 2011.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XA641

#### Marine Mammals; File No. 16553

##### Correction

In notice document 2011-21001 appearing on page 51002 in the issue of August 17, 2011, make the following correction:

On page 51002, in the second column, under the **DATES** heading, in the third line, "August 17, 2011" should read "September 16, 2011".

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XA647

#### Endangered and Threatened Species; Recovery Plans

**AGENCY:** National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice of Availability.

**SUMMARY:** The National Marine Fisheries Service (NMFS) announces the adoption of an Endangered Species Act (ESA) recovery plan for the Upper Willamette Chinook salmon (*Oncorhynchus tshawytscha*) Evolutionarily Significant Unit (ESU) and the Upper Willamette River steelhead (*Oncorhynchus mykiss*) Distinct Population Segment (DPS), which spawn and rear in tributaries to the Willamette River in western Oregon. The Final Upper Willamette River Conservation and Recovery Plan for Chinook Salmon and Steelhead (Final Recovery Plan) and our summary of and