

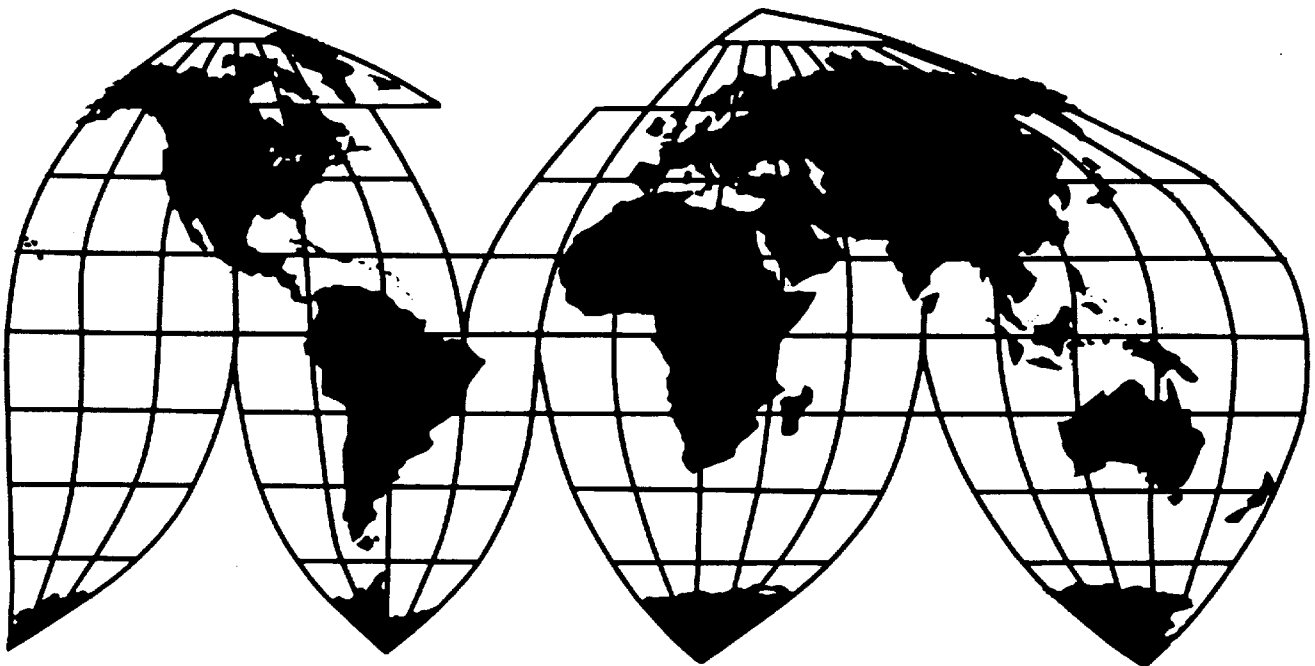
Fresh Garlic From China

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

Publication 3886

September 2006

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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.

COMPANY GLOSSARY

ABK Cherry	ABK Cherry
A&D Christopher Ranch L.L.C.	Christopher Ranch
Belridge Packing Co.	Belridge
Colusa Produce Corp.	Colusa
Crinklaw Farms	Crinklaw
Dalena Farms	Dalena
Denice & Felice Packing Co.	Denice & Felice
El Camino Packing	El Camino
Frank Pitts Farms	Frank Pitts
Fresh Garlic Producers Association	FGPA
George Chiala Farms, Inc.	George Chiala Farms
Harris Fresh	Harris Fresh
Heze Ever-Best International Trade Co., Ltd	Heze Ever-Best
Shandong Heze International Trade and Developing Co.	Shandong Heze
Spice World	Jenard Fresh
The Garlic Co.	The Garlic Co.
Thomson International, Inc.	Thomson
Valley Garlic, Inc.	Valley Garlic
Vessey and Co., Inc.	Vessey
Willow Glen Packing	Willow Glen Packing

UNITED STATES INTERNATIONAL TRADE COMMISSION

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

Fresh Garlic from China

DETERMINATION

On the basis of the record¹ 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)) (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.

BACKGROUND

The Commission instituted this review on February 1, 2006 (71 F.R. 5374) and determined on May 8, 2006 that it would conduct an expedited review (71 F.R. 29352, May 22, 2006). Notice of the scheduling of the Commission's review was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* on May 22, 2006 (71 FR 29352).

¹ 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

The original investigation of fresh garlic from China was instituted based on a petition filed by the Fresh Garlic Producers Association (“FGPA”) on January 31, 1994. On November 7, 1994, the Commission determined that the domestic fresh garlic industry in the United States was materially injured by reason of imports of fresh garlic from China that were being sold at less than fair value (“LTFV”).¹ The Commission also determined that the domestic dehydrated garlic and domestic seed garlic industries were neither materially injured nor threatened with material injury by reason of the LTFV imports.² On November 16, 1994, the U.S. Department of Commerce (“Commerce”) issued its antidumping duty order on fresh garlic from China.³

On December 1, 1999, the Commission instituted a review pursuant to section 751(c) of the Act to determine whether revocation of the antidumping duty order on fresh garlic from China would likely lead to continuation or recurrence of material injury.⁴ On February 22, 2001, following a full review, the Commission determined in its first five-year review 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.⁵

The Commission instituted this second review on February 1, 2006.⁶ The Commission received only one response to the notice of institution, which was filed on behalf of the FGPA and its four members: A & D Christopher Ranch LLC (“Christopher Ranch”), The Garlic Co., Valley Garlic, Inc. (“Valley Garlic”), and Vessey and Co., Inc. (“Vessey”).⁷ These four domestic producers are believed to have accounted for an estimated *** percent of U.S. fresh garlic production in 2005.⁸

On May 8, 2006, the Commission determined that the domestic interested party group response to the notice of institution was adequate, but that the respondent interested party group response was inadequate.⁹ The Commission did not find any circumstances that would warrant conducting a full review. Pursuant to 19 U.S.C. § 1675(c)(3)(B), the Commission determined to conduct an expedited review of this matter.

On July 7, 2006, the FGPA and its four individual members filed comments pursuant to 19 C.F.R. § 207.62(d) arguing, as they had in their response to the notice of institution, that revocation of the antidumping duty order on fresh garlic from China would likely lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

¹ Garlic from China, Inv. No. 731-TA-683 (Final), USITC Pub. 2825 (Nov. 1994).

² USITC Pub. 2825 at I-54.

³ 59 Fed. Reg. 59209 (Nov. 16, 1994).

⁴ 64 Fed. Reg. 67315 (Dec. 1, 1999).

⁵ Garlic from China, Inv. No. 731-TA-683 (Review), USITC Pub. 3393 (Feb. 2001).

⁶ CR at I-1; PR at I-1.

⁷ CR at I-1 n.1; PR at I-1 n.1.

⁸ CR at I-1 n. 4; PR at I-1 n. 4.

⁹ CR at I-1; PR at I-1.

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. Domestic Like Product

In making its determination under section 751(c), the Commission defines the “domestic like product” and the “industry.”¹⁰ The Act defines the “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.”¹¹ The Commission’s practice in five-year reviews is to look to the like product definition from the original determination and any previous reviews and consider whether the record indicates any reason to revisit that definition.¹² Commerce has defined the scope of the subject merchandise as:

[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 grades are based on color, size, sheathing, and level of decay. The scope of this order does not include the following: (a) garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed. The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750 and 2005.90.9700 of the Harmonized Tariff Schedule of the United States (HTSUS).¹³

U.S. standards designate fresh garlic as either United States Department of Agriculture (USDA) Grade No. 1 or unclassified. In recent years, an estimated 80 to 85 percent of fresh garlic was USDA Grade No.1; the remainder was believed to have been sold for processing. In normal industry practice, 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. 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 taste similar. Chinese cloves are the same size and firmness as the “California White” variety that is widely available in grocery stores, but Chinese garlic often has a tough, inedible stem shooting up from the center.¹⁴

In the original investigation, the Commission found three separate domestic like products consisting of fresh garlic, dehydrated garlic, and seed garlic, corresponding with the broader scope of the

¹⁰ 19 U.S.C. § 1677(4)(A).

¹¹ 19 U.S.C. § 1677(10). See 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., 1st Sess. 90-91 (1979).

¹² See Stainless Steel Sheet and Strip from France, Germany, Italy, Japan, Korea, Mexico, Taiwan and the United Kingdom, Inv. No. 701-TA-380-382 and 731-TA-797-804 (Review), USITC Pub. 3788 (July 2005) at 6; 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 (Feb. 2003) at 4.

¹³ 71 Fed. Reg. 33279 (June 8, 2006).

¹⁴ CR at I-11 to I-12; PR at I-9 to I-10.

original investigation. The Commission found that there were pronounced differences in the uses for the three types of garlic;¹⁵ actual practice indicated that the products were not interchangeable;¹⁶ the three types of garlic did not share channels of distribution;¹⁷ customer and producer perceptions were different for the three different types of garlic;¹⁸ there was virtually no overlap between producers of fresh and dehydrated garlic and therefore no overlap in production facilities or employees;¹⁹ and fresh garlic prices were considerably higher than prices for either dehydrated or seed garlic.²⁰ While the Commission determined that the domestic fresh garlic industry in the United States was materially injured by reason of subject imports of fresh garlic from China, the Commission also determined that the domestic dehydrated garlic and domestic seed garlic industries were neither materially injured nor threatened with material injury.²¹

In the first five-year review, the Commission found that there had been no significant changes in the product at issue or in the like product factors the Commission generally considers. It also did not find that any other circumstances warranted revisiting the Commission's original like product determination. Thus, consistent with its like product definition in its affirmative determination in the original investigation, the Commission again found all fresh garlic to be a single domestic like product for the reasons relied upon in the original investigation.²²

In its response to the Commission's notice of institution and comments submitted in this second five-year review, the FGPA and its members argue that the Commission should continue to find all fresh garlic to be a single domestic like product, co-extensive with Commerce's scope.²³

There is no new information obtained during this second review that would suggest any reason to revisit the Commission's domestic like product definition in the original investigation and the first five-year review. Accordingly, consistent with the Commission's like product definition in the original investigation and first review, we find a single domestic like product consisting of all fresh garlic, co-extensive with 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."²⁴

In the original investigation, the Commission found three separate domestic industries, consisting of the domestic producers of fresh garlic, the domestic producers of dehydrated garlic, and the domestic

¹⁵ USITC Pub. 2825 at I-10.

¹⁶ *Id.* at I-13.

¹⁷ *Id.*

¹⁸ *Id.* at I-14.

¹⁹ *Id.* at I-17 to I-18.

²⁰ *Id.*

²¹ *Id.* at I-54.

²² USITC Pub. 3393 at 5.

²³ FGPA Response at 32; FGPA Comments at 4.

²⁴ 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).

producers of seed garlic.²⁵ In the first review, 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 domestic producers of fresh garlic.²⁶ In this second review, the domestic interested parties expressly do not object to the Commission’s previous domestic industry definition in the original investigation and first review.²⁷ Because there is no new information obtained during this second review that would suggest any reason to revisit the Commission’s prior domestic industry definition, we find a single domestic industry consisting of all domestic producers of fresh garlic.

IV. 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.”²⁸ 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.”²⁹ Thus, the likelihood standard is prospective in nature.³⁰ The U.S. Court of International Trade has found that “likely,” as used in the five-year review

²⁵ USITC Pub. 2825 at I-23.

²⁶ USITC Pub. 3393 at 9-10.

²⁷ FGPA Comments at 4.

²⁸ 19 U.S.C. § 1675a(a).

²⁹ 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.

³⁰ 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.

provisions of the Act, means “probable,” and the Commission applies that standard in five-year reviews.³¹

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.”³⁴ According to 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.”^{35 36}

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 orders are revoked or the suspended investigation is terminated.”³⁷ 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

³¹ 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 without opinion, 05-1019 (Fed. Cir. August 3, 2005); Nippon Steel Corp. v. United States, Slip Op. 02-153 at 7-8 (Ct. Int’l Trade Dec. 24, 2002) (same); Usinor Industeel, S.A. v. United States, Slip Op. 02-152 at 4 n.3 & 5-6 n.6 (Ct. Int’l Trade Dec. 20, 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, Slip Op. 02-105 at 20 (Ct. Int’l Trade Sept. 4, 2002) (“standard is based on a likelihood of continuation or recurrence of injury, not a certainty”); Usinor v. United States, Slip Op. 02-70 at 43-44 (Ct. Int’l Trade July 19, 2002) (“‘likely’ is tantamount to ‘probable,’ not merely ‘possible’”).

³² For a complete statement of Commissioner 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, Inv. Nos. 701-TA-362 (Review) and 731-TA-707-710 (Review)(Remand), USITC Pub. 3754 (Feb. 2005).

³³ Commissioner Lane notes that, consistent with her views in Pressure Sensitive Plastic Tape from Italy, Inv. No. AA1921-167 (Second Review), USITC Pub. 3698 (June 2004) at 15-17, she does not concur with the U.S. Court of International Trade’s interpretation of “likely” but she will apply the Court’s standard in this review and all subsequent reviews until either Congress clarifies the meaning or the U.S. Court of Appeals for the Federal Circuit addresses the issue.

³⁴ 19 U.S.C. § 1675a(a)(5).

³⁵ 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.

³⁶ In analyzing what constitutes a reasonably foreseeable time, Commissioner Koplán examines all the current and likely conditions of competition in the relevant industry. He defines “reasonably foreseeable time” as the length of time it is likely to take for the market to adjust to a revocation or termination. In making this assessment, he considers all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, this analysis seeks to define “reasonably foreseeable time” by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

³⁷ 19 U.S.C. § 1675a(a)(1).

industry is vulnerable to material injury if the order is revoked or a suspension agreement is terminated, and any findings by Commerce regarding duty absorption pursuant to 19 U.S.C. § 1675(a)(4).³⁸ Commerce has not issued duty absorption determinations with respect to this order.³⁹

B. Conditions of Competition and the Business Cycle

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.”⁴⁰ The following conditions of competition are relevant to our determination.

In the original investigation, the Commission identified four conditions of competition distinctive to the fresh garlic industry. First, fresh garlic is a seasonal crop. Second, because garlic that is planted in the fall of one year will not be sold until the fall of the next year, fresh garlic producers must make projections a year in advance about market conditions, and make their planting decisions on this basis. Third, the perishability of fresh garlic is necessarily an underlying concern driving sales of the product. Fourth, many U.S. producers had invested in cold storage or controlled-atmosphere facilities to extend the selling period of their fresh garlic, allowing them to keep inventories for up to six months for garlic stored in cold storage and for up to 11 months for garlic stored in controlled-atmosphere facilities.⁴¹

In the first five-year review, the Commission identified several conditions of competition in the U.S. market for fresh garlic. First, the Commission discussed the seasonal nature of the fresh garlic industry and its impact upon the U.S. market, noting that, in the Western Hemisphere, garlic is grown in the relatively dry areas of California, Mexico, Argentina, and Chile.⁴² Garlic traditionally has been available from various sources in the Western Hemisphere throughout the year. 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. In Argentina and Chile, where the seasons are reversed from those of North America, garlic is planted in March-May and harvested the following December-February.⁴³ The difference in growing seasons allows domestic producers to supplement their own harvests with nonsubject imports, primarily from Mexico, Argentina, and Chile, as the crop year progresses, thereby ensuring a constant supply to their customers.⁴⁴ In contrast, the Commission found that the crop year in China coincides with that of California, except that garlic is harvested somewhat earlier in China, allowing it to enter the U.S. market in direct competition with the domestic industry at the time of the U.S. harvest. The Commission also found that Chinese garlic remained highly substitutable for domestic garlic.⁴⁵

³⁸ 19 U.S.C. § 1675a(a)(1). There have been no duty absorption findings by Commerce with respect to the order under review. CR at I-7; PR at I-6. 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.

³⁹ CR at I-7; PR at I-6.

⁴⁰ 19 U.S.C. § 1675a(a)(4).

⁴¹ USITC Pub. 2825 at I-29 to I-30.

⁴² USITC Pub. 3393 at 12.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ USITC Pub. 3393 at 12.

In the first five-year review, the Commission also noted that, in crop year 2000, the domestic industry accounted for 75.5 percent of the consumption value in the United States, compared to 58.4 percent in crop year 1994,⁴⁶ and that non-subject fresh garlic imports had grown since 1994 and paralleled the growth in the domestic industry.⁴⁷ It also observed that grower-packers and importers had increasingly invested in the use of cold storage and controlled atmosphere storage to extend the shelf life of fresh garlic, thus moderating somewhat the seasonal nature of domestic supply.⁴⁸ Finally, the Commission noted that demand for fresh garlic was increasing in the United States, with the largest area of growth occurring in the food service sector, which primarily used peeled garlic.⁴⁹

No respondent interested party has participated in this review. The record therefore contains limited information with respect to the fresh garlic industry in China. Accordingly, we rely on available information when appropriate, which consists primarily of information from the original investigation and first five-year review, and information collected in this second review, including that submitted by the domestic producers.^{50 51}

The limited record in this expedited review indicates that most of the conditions of competition have remained the same since the first five-year review. The FGPA reports that the U.S. market for fresh garlic remains highly competitive, and that domestic and import suppliers compete for sales in the United States.⁵² The record continues to show that the domestic like product and subject imports are highly substitutable, and that fresh garlic is sold primarily on the basis of price.⁵³ In two respects, however, there have been significant changes in conditions of competition.

First, while overall domestic demand increased significantly from 2000 to 2005, the absolute volume and relative share of domestic consumption supplied by domestic producers fell sharply.

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ Id. at 13.

⁴⁹ Id.

⁵⁰ 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 other person withholds information requested by the agency, fails to provide such information in the time, form, or manner requested, significantly impedes a proceeding, or provides information that cannot be verified pursuant to section 782(I) of the Act. 19 U.S.C. § 1677e(a). The verification requirements in section 782(i) are applicable only to Commerce. 19 U.S.C. § 1677m(i). See Titanium Metals Corp., 155 F. Supp. 2d at 765 (“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 a Commission investigation.”).

⁵¹ Commissioner 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. 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 and the interpretations urged by participating parties, 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 869.

⁵² FGPA Comments at 4.

⁵³ The FGPA reports that fresh garlic is still sold primarily on the basis of price, and that the price-based nature of competition for sales of fresh garlic in the United States “intensifies the negative impact that sales of low-priced imports from China would have on U.S. producers if revocation of the order were to occur.” FGPA Comments at 4-5.

Apparent U.S. consumption of fresh garlic, by volume, increased by *** percent between 2000 and 2005, from approximately 186.4 million pounds to *** million pounds.⁵⁴ U.S. producers' shipments, in contrast, fell from 128.4 million pounds in 2000 to *** million pounds in 2005, a decline of *** percent. The market share of U.S. producers' shipments plummeted from nearly 70 percent in 2000 to *** percent in 2005.⁵⁵ At the same time, imports of fresh garlic from China represented less than one percent of apparent consumption by volume in 2000, but rose to *** percent of apparent U.S. consumption in 2005.

Second, there have been changes in the structure of the U.S. industry since the time of the first review. According to the FGPA, eight garlic producers ceased production in the United States between 2000 and 2003.⁵⁶ These eight producers represented roughly *** percent of the domestic crop production during the periods of the original investigation and first five-year review.⁵⁷ The exit from the industry in 2001 of companies representing more than *** percent of the 1994 crop year production is reflected in the decrease from reported 2000 production of 152.6 million pounds to *** in 2001. Five additional firms representing more than *** and *** percent of crop year 1994 and 2000 production, respectively, exited the industry between 2000 and 2003, and domestic production accordingly decreased to *** million pounds.⁵⁸ The declining trend in production continued in 2004 and 2005. Since 2001, Christopher Ranch, the country's largest garlic grower, has taken 40.0 percent of its garlic fields out of production.⁵⁹ Data compiled by the U.S. Department of Agriculture show a steady decline in the area planted and harvested for fresh garlic production in the United States from 2000 through 2005.⁶⁰

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

C. Likely Volume of Subject Imports

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.⁶¹ 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.⁶²

In the original investigation, the Commission found, both in absolute terms and relative to consumption and production in the United States, that the increase in volume and market share of Chinese fresh garlic imports was significant during the period examined, rising by 17.7 percentage points from

⁵⁴ CR/PR at Table I-8.

⁵⁵ CR/PR at Table I-8.

⁵⁶ CR/PR at Table I-8.

⁵⁷ CR at I-21; PR at I-16.

⁵⁸ Id.

⁵⁹ Id.

⁶⁰ CR/PR at Table I-6; CR at I-23; PR at I-17.

⁶¹ 19 U.S.C. § 1675a(a)(2).

⁶² 19 U.S.C. § 1675a(a)(2)(A-D).

1991 through 1994.⁶³ The Commission noted that the rise in Chinese market share in crop year 1994 corresponded to an 18 percentage point loss in volume-based market share by the U.S. fresh garlic producers.⁶⁴ At the same time, the quantity and value-based market share held by imports from countries other than China also declined, indicating that the U.S. producers' loss in market share was attributable to the corresponding gain in Chinese market share.⁶⁵

In the first review, the Commission concluded that the likely volume of subject imports would be significant both in absolute terms and relative to consumption in the United States if the antidumping duty order on subject imports from China were revoked. The Commission based its conclusion on a number of factors including the demonstrated ability of producers in China to increase their U.S. market penetration rapidly, the existence of China's very large capacity to produce fresh garlic, the demonstrated export-orientation of the Chinese industry, the existence of third country restrictions which limit market access for exports from China, the restraining effect that the order had on subject import volumes, and the attractiveness of the growing U.S. market as an outlet for Chinese production.⁶⁶ The Commission also noted that, during the original investigation, Chinese producers demonstrated the ability to increase exports rapidly to the U.S. market.⁶⁷

The only import data available for this expedited review, as was the case in the first five-year review, are based on official Commerce statistics. Based on the data available, the quantity and value of fresh garlic from China have increased dramatically from very low levels during the period examined in the first five-year review, notwithstanding the antidumping duty order. The total volume of imports from China rose from 1 million pounds in 2000 to 112 million pounds in 2005.⁶⁸ Imports of fresh garlic from China represented less than one percent of apparent U.S. consumption by volume between 1998 and 2000, rising to *** percent of apparent U.S. consumption in 2005.⁶⁹ The value of the subject imports increased from \$182,000 in 2000 to \$59.5 million in 2005, representing *** percent of apparent U.S. consumption.⁷⁰ Import volumes of fresh garlic from nonsubject sources, in contrast, fell significantly from 57 million pounds in 2000 to 41.5 million pounds in 2005, representing a decline of 27 percent.⁷¹ This increase in subject volumes contrasts to the circumstances examined in the first five-year review, when the imposition of the order in 1994 led to an immediate and massive reduction in the volume of the subject imports, from 63.5 million pounds in 1994 to 3.7 million pounds in 1995.⁷²

Due to the lack of response from subject foreign producers in this expedited review, there is limited information in the record concerning current levels of fresh garlic production capacity in China. In the first five-year review, the Commission found that fresh garlic production in China had risen from

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.* at I-40.

⁶⁶ USITC Pub. 3393 at 15.

⁶⁷ *Id.* at I-17.

⁶⁸ CR/PR at Table I-8.

⁶⁹ *Id.*

⁷⁰ *Id.* The increase in subject import volumes during the second review period occurred in conjunction with the institution of several new shipper reviews. There were three new shipper reviews in 2002, one in 2003, five in 2004, and one in 2005. In a significant number of instances the company requesting the new shipper review subsequently withdrew its request. CR/PR at Table I-1.

⁷¹ *Id.*

⁷² USITC Pub. 3393 at I-16.

10.7 billion pounds in 1994 to 13.7 billion pounds in 2000.⁷³ The United Nations Food and Agriculture Organization, which compiles data on worldwide food production, indicates that China's production capacity for the somewhat larger category of "all garlic" continued to increase steadily from 2000 through 2005, growing by 48 percent over the period to reach 24.5 billion pounds in 2005.⁷⁴ The *World Trade Atlas* estimates that total Chinese exports of fresh garlic increased by 200 percent from 2000 to 2005, from 383 million kilograms to 1.15 billion kilograms.⁷⁵

In the years since the original investigation, numerous import restraints, including antidumping and phytosanitary measures, have been instituted around the world against Chinese fresh garlic. As the Commission noted in the first five-year review, Mexico in 1993 banned imports of garlic from China on phytosanitary grounds.⁷⁶ Phytosanitary measures such as these have also been imposed by Brazil, Chile, Thailand, and Venezuela.⁷⁷ Responding foreign producers/exporters in the first five-year review reported that their exports to Brazil were subject to an antidumping duty imposed in 1996.⁷⁸ In 1997, the government of Canada began levying antidumping duties on imports of fresh garlic from China, and later issued an order in 2002 continuing its original antidumping finding as a result of its first expiry review.⁷⁹ South Africa and South Korea have also imposed antidumping duties on fresh garlic from China.⁸⁰ China has agreed to export restraints on shipments of fresh garlic to the European Union and Thailand.⁸¹

In this second review, we find that the volume of subject imports would likely be significant if the order were revoked. Even with the order in place, Chinese producers continue to supply the United States with increasingly large volumes of subject imports. The record shows that China continues to produce and export substantial quantities of fresh garlic. China's export orientation and substantial subject exports, the rapid increase in subject exports to the United States between 2000 and 2005, Chinese producers' apparent substantial capacity, and the growth in third country import restraints, indicate that China is likely to significantly increase subject exports to the United States upon revocation of the antidumping duty order. The attractiveness of the U.S. market to Chinese exporters is demonstrated not only by the large increase in subject import volumes during the period of review, but also by the substantial number of new shipper reviews instituted by Chinese exporters/producers.⁸²

Accordingly, we conclude that the likely volume of the subject merchandise, both in absolute terms and relative to consumption and production in the United States, would be significant, absent the restraining effect of the order.

D. Likely Price Effects of Subject Imports

In evaluating the likely price effects of subject imports if the order under review were revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject

⁷³ Id.

⁷⁴ CR/PR at Table I-9.

⁷⁵ FGPA Comments at Exh. 13.

⁷⁶ USITC Pub. 3393 at IV-3.

⁷⁷ FGPA Comments at 25-26.

⁷⁸ USITC Pub. 3393 at IV-3.

⁷⁹ FGPA Comments at Exhibit 11.

⁸⁰ CR at I-36; PR at I-25.

⁸¹ CR at I-37; PR at I-25.

⁸² The FGPA asserts that Chinese producers have exploited the Commerce Department's New Shipper Review ("NSR") process, which, during the current period of review, permitted importation by putative new shippers without payment of antidumping duty deposits during the pendency of the NSR. FGPA Comments at 20-23.

imports as compared to the domestic like product and whether the subject imports are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of the domestic like product.⁸³

The record in this expedited review contains limited pricing data for the U.S. market. During the original investigation, the Commission found that the domestic product and subject imports were highly fungible. The Commission found that LTFV imports of fresh garlic from China adversely affected the prices for U.S.-produced fresh garlic. It found the pervasive underselling by subject imports from China to be significant, given that Chinese and U.S.-produced fresh garlic were substitutable and competed head-to-head, with price being a key determinative factor in purchasing decisions.⁸⁴ In 20 of the 21 price comparisons for which purchasers' data were provided in the original investigation, the Chinese fresh garlic undersold the U.S. fresh garlic by margins ranging from 24.5 percent to 76.3 percent, resulting in significantly depressed prices for U.S. fresh garlic.⁸⁵

In the first review, the Commission found significant likely price effects from Chinese subject imports of fresh garlic, reasoning that in the absence of the order the significantly higher prices in the United States, compared to China's export market prices, would give Chinese exporters considerable incentive to divert product to the U.S. market at lower prices in order to regain market share.⁸⁶ Noting declining prices for domestic fresh garlic through much of the period of review, the Commission found that it was likely that subject imports from China would undersell the domestic like product in order to increase exports to the United States at prices that would likely have a significant depressing or suppressing effect on prices for the domestic like product.⁸⁷

Based on the limited pricing data in this expedited review, we find it likely that, absent the antidumping duty order, competitive conditions would become more difficult for the domestic producers if the order were revoked. The average unit values ("AUV") of subject imports during the second review period fluctuated but remained significantly below the AUV of U.S. shipments. In 2005, the AUV for subject imports was \$0.62 versus \$0.98 for U.S. shipments.⁸⁸ Given the substantial and growing presence of subject imports in the U.S. market despite the existence of the antidumping duty order, and the fungibility between the domestic and subject fresh garlic, Chinese producers would have the incentive to lower their prices to further grow their U.S. market share. Thus, increased sales of subject imports likely would be achieved by means of aggressive pricing. Based upon the past history of underselling, we find that the subject imports from China would likely enter the United States at prices that would significantly depress or suppress U.S. prices if the order were revoked.

E. Likely Impact of Subject Imports

In evaluating the likely impact of imports of the subject merchandise if the antidumping duty order 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: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of

⁸³ 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.

⁸⁴ USITC Pub. 2825 at I-40.

⁸⁵ *Id.* at I-41.

⁸⁶ USITC Pub. 3393 at 16.

⁸⁷ *Id.*

⁸⁸ CR/PR Table I-5 and I-7.

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 industry, including efforts to develop a derivative or more advanced version of the domestic like product.⁸⁹ 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.⁹⁰ 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 is revoked.⁹¹

In the original investigation, the Commission found that, due to falling prices, the domestic industry was unable to operate profitably despite rising apparent consumption and sales revenues. The domestic industry experienced declining profits from 1991 to 1993 and operating losses in crop year 1994, immediately following the massive increase in imports of low-priced Chinese garlic.⁹² This operating income loss resulted primarily from the price depression and volume displacement caused by the LTFV imports.⁹³ Despite the industry's increased sales revenues, the Commission observed that this forced lowering of prices meant that the industry was selling more fresh garlic at lower prices.⁹⁴ The Commission found that the significant volumes of low-priced Chinese imports took sales away from the U.S. producers and forced the U.S. producers to lower prices of the fresh garlic they did sell, to a point where they were selling at a loss.⁹⁵

In the first review, the Commission found the domestic industry to be vulnerable to material injury within a reasonably foreseeable future if the order were revoked, based in part on a finding that operating income per pound declined from 1998 to 1999 and declined further in 2000.⁹⁶ The Commission found that the highly substitutable nature of the subject and domestic products and the significant volume of low-priced subject imports, combined with the expected negative price effects of those imports, would likely have a significant adverse impact on the production, shipments, sales, and revenues of the domestic industry.⁹⁷

⁸⁹ 19 U.S.C. § 1675a(a)(4).

⁹⁰ 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the 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. In the final results of its expedited five-year review of the antidumping duty order on China, Commerce published a likely dumping margin of 376.67 percent. 71 Fed. Reg. 33279 (June 8, 2006).

⁹¹ The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission “considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” SAA at 885.

⁹² USITC Pub. 2825 at I-42.

⁹³ Id.

⁹⁴ Id.

⁹⁵ Id. at I-43.

⁹⁶ USITC Pub. 3393 at 17.

⁹⁷ Id.

Given the domestic industry's contraction, and considering the decreases in domestic production and U.S. producers' U.S. shipments during this review, we find the domestic industry to be vulnerable.⁹⁸ Eight domestic producers, collectively accounting for about *** percent of domestic crop production during the periods of the original investigation and the first five-year review, ceased production between 2000 and 2003.⁹⁹ Domestic production declined by *** percent from 2001 to 2005.¹⁰⁰ U.S. producers' U.S. shipments declined by *** percent between 2000 and 2005.¹⁰¹

We find that subject import volumes are likely to be significant if the order were revoked, resulting in significant price effects, which would lead to a significant adverse impact on the domestic industry. We find that, if the order were revoked, subject imports would likely enter in large and growing 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 volume and price effects of the subject imports likely would cause the domestic industry to lose market share, with a significant adverse impact on the domestic industry's production, shipments, sales, and revenue levels. This reduction in the industry's production, shipments, sales, and revenue levels would have a direct adverse impact on the industry's 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 commensurate employment declines for the domestic industry.

Accordingly, we conclude that, if the antidumping duty order were revoked, subject imports from China would likely have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

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.

⁹⁸ Chairman Pearson and Commissioner Okun do not make a finding with regard to whether the domestic industry is currently vulnerable to the continuation or recurrence of material injury in the event of revocation of the order on fresh garlic from China. Chairman Pearson and Commissioner Okun note that the record in this expedited review is not sufficiently developed with respect to the financial condition of the industry to make such a determination.

⁹⁹ CR at I-21; PR at I-16.

¹⁰⁰ CR/PR at Table I-5.

¹⁰¹ CR/PR at Table I-8.

INFORMATION OBTAINED IN THE REVIEW

INTRODUCTION

Background

On February 1, 2006, in accordance with section 751(c) of the Tariff Act of 1930 (the Act),¹ as amended, the U.S. International Trade Commission (“Commission”) 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 a continuation or recurrence of material injury within a reasonably foreseeable time.^{2 3} On May 8, 2006, the Commission determined that the domestic interested party group response to its notice of institution was adequate;⁴ the Commission also determined that the respondent interested party group response was inadequate (in fact, nonexistent). The Commission found no other circumstances that would warrant conducting a full review.⁵ Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.⁶ Information relating to the background of the review is presented in the tabulation below.

¹ 19 U.S.C. §1675(c).

² All interested parties were requested to respond to the notice by submitting information requested by the Commission. Copies of the Commission’s and Commerce’s *Federal Register* notices are presented in app. A.

³ 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. 71 FR 5243, February 1, 2006.

⁴ The Commission received one substantive response to its notice of institution for the subject review from domestic producers of fresh garlic. It was filed on behalf of the Fresh Garlic Producers Association (“FGPA”) and its four individual members: A&D Christopher Ranch L.L.C. (“Christopher Ranch”), The Garlic Co. (“The Garlic Co.”), Valley Garlic, Inc. (“Valley Garlic”), and Vessey and Co., Inc. (“Vessey”). These four participating producers are believed to have accounted for approximately *** percent of U.S. fresh garlic production in 2005. Domestic interested parties’ March 23, 2006 response to the notice of institution (“domestic interested parties’ response”), pp. 1 and 15. See also Commission’s memorandum of April 26, 2006, INV-DD-037, *Fresh Garlic from China: Inv. No. 731-TA-683 (Second Review)- - Recommendation on Adequacy of Responses to Notice of Institution*.

⁵ A copy of the *Explanation of Commission Determination on Adequacy* is presented in app. A.

⁶ 19 U.S.C. § 1675(c)(3). See the Commission’s web site (<http://www.usitc.gov>) for Commissioner votes on whether to conduct an expedited or full review.

Effective date	Action	Federal Register citation
November 16, 1994	Commerce's antidumping duty order	59 FR 59209
March 13, 2001	Commerce's continuation of antidumping duty order after first five-year review	66 FR 14544
February 1, 2006	Commerce's initiation and Commission's institution of second five-year review	71 FR 5243 71 FR 5374
May 8, 2006	Commission's determination to conduct expedited second five-year review	71 FR 29352
May 22, 2006	Commission's scheduling of expedited five-year review	71 FR 29352
June 8, 2006	Commerce's final results of expedited review	71 FR 33279
September 12, 2006	Commission's vote	Not applicable
September 28, 2006	Commission's determination to Commerce	Not applicable
Source: Cited <i>Federal Register</i> notices.		

The Original Investigation and First Five-Year Review

The Commission completed its original investigation⁷ 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”).⁸ The Commission found three domestic like products and associated domestic industries in the original investigation, consisting of fresh, dehydrated (“dehy”), and seed garlic.⁹ However, the Commission found no material injury or threat of material injury to the industry in the United States producing dehy and seed garlic.¹⁰ 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.¹¹

On December 1, 1999, the Commission instituted a five-year review pursuant to section 751(c) of the Act, to determine whether revocation of the antidumping duty order on imports of fresh garlic from

⁷ 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, alleging that an industry in the United States was materially injured by reason of imports from China of fresh garlic.

⁸ *Fresh Garlic from the People’s Republic of China, Determination*, 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.

⁹ *Fresh Garlic from the People’s Republic of China, Inv. No. 731-TA-683 (Final)*, USITC Publication 2825, November 1994, p. I-12.

¹⁰ *Ibid.* p. I-3.

¹¹ *Antidumping Duty Order: Fresh Garlic from the People’s Republic of China*, 59 FR 59209, November 16, 1994.

China would likely lead to a continuation or recurrence of material injury.¹² 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.¹³ Effective March 13, 2001, Commerce issued a continuation of the antidumping duty order on imports of fresh garlic from China.¹⁴

Commerce's Administrative Reviews and Five-Year Review

Between 1994, when the antidumping duty order on China was imposed, and June 2006, Commerce has conducted nine administrative reviews with respect to imports of fresh garlic from China; a tenth review was rescinded. Since 2002, Commerce has completed six new shipper reviews, and has rescinded five.¹⁵ Antidumping duty margins promulgated in Commerce's antidumping duty order are presented in table I-1, as are the results of the administrative, five-year, and new shipper reviews.

Table I-1
Fresh garlic: Commerce's antidumping duty margins from the original order, administrative, five-year, and new shipper reviews for China

Action	Date of action	Federal Register citation	Period of review	Antidumping duty margin	
				Firm specific	PRC-wide
				<i>Percent ad valorem</i>	
Final determination	09/26/94	59 FR 49058	08/1/93-01/31/94		367.67
Order (A-570-831)	11/16/94	59 FR 59209	(¹)		376.67
Administrative review	05/01/97	62 FR 23758	07/11/94-10/31/95		376.67 ⁽²⁾
Administrative review	09/30/97	62 FR 51082	11/01/95-10/31/96		376.67
Administrative review	07/13/98	63 FR 37520	11/01/96-10/31/97		(³)
Administrative review	05/23/00	65 FR 33295	11/01/97-10/31/98		376.67
Five-year review	07/05/00	65 FR 41432	(¹)		376.67
Administrative review	12/07/00	65 FR 76608	11/01/98-10/31/99		376.67 ⁽⁴⁾
Continuation of order	03/13/01	66 FR 14544	(¹)	Rizhao Hanxi Fisheries 376.67 Zhejiang Materials Industry . . 376.67 Wo Hing (H.K.) Trading Co. . . 376.67	376.67

Table continued on next page.

¹² *Fresh Garlic from China*, 64 FR 67315, December 1, 1999.

¹³ *Fresh Garlic from China*, 66 FR 12810, February 28, 2001.

¹⁴ *Continuation of Antidumping Duty Order on Fresh Garlic From the People's Republic of China*, 66 FR 14544, March 13, 2001.

¹⁵ See the section entitled "U.S. Importers and Imports" of this report for a discussion of alleged abuse of the new shipper provisions.

Table I-1--Continued

Fresh garlic: Commerce's antidumping duty margins from the original order, administrative, five-year, and new shipper reviews for China

Action	Date of action	Federal Register citation	Period of review	Antidumping duty margin	
				Firm specific	PRC-wide
				<i>Percent ad valorem</i>	
Administrative review	03/13/02	67 FR 11283	11/01/99-10/31/00	FHTK 376.67 Rizhao Hanxi Fisheries 376.67 Zhejiang Materials Industry . . . 376.67 Wo Hing (H.K.) Trading Co. . . 376.67	367.67 ⁽⁵⁾
New shipper review	03/13/02	67 FR 11283	06/01/00-11/30/00	(⁶)	
New shipper review	07/03/02	67 FR 44594	11/01/00-10/31/01	(⁷)	
New shipper review	12/04/02	67 FR 72139	11/01/00-10/31/01	Jinan Yipin 0.00 ⁽⁸⁾	(¹)
Administrative review	01/30/03	68 FR 4758	11/01/00-10/31/01	Phil-Sino Int'l Trading. 376.67 Wo Hing (H.K.) Trading Co. . . 376.67	367.67 (⁹)
New shipper review	12/30/03	68 FR 75210	11/01/01-10/31/02	Yisheng. 367.67	(¹)
New shipper review	04/28/04	69 FR 23171	11/01/02-04/30/03	(¹⁰)	
Administrative review	06/16/04	69 FR 33626	11/01/01-10/31/02	Jinan Yipin. 115.81 Shandong Heze. 43.30	367.67 ⁽¹¹⁾
New shipper review	06/28/04	69 FR 36059	11/01/02-04/30/03	Linyi Sanshan 376.67	(¹)
New shipper review	08/03/04	69 FR 46498	11/01/02-04/30/03	Shanghai Ever Rich Trade 0.00 Linshu Dading 0.00 Sunny Import and Export . . . 13.81 ⁽¹²⁾ Taian Ziyang Food Co. 0.00 Jinxiang Dong Yun 19.18	(¹)
New shipper review	09/21/04	69 FR 56405	11/01/03-04/30/04	(¹³)	(¹)
New shipper review	09/30/04	69 FR 58392	11/01/02-10/31/03	Jinxiang Shanyang 29.04	
New shipper review	05/25/05	70 FR 30081	11/01/03-10/31/04	(¹⁴)	
Administrative review	06/13/05	70 FR 34086	11/01/02-10/31/03	Jinan Yipin 15.92 Jinxiang Dongyun Freezing Storage Co., Ltd. 31.26 FHTK 19.68 Huaiyang Hongda Dehydrated Vegetable Co., 3.05 Linshu Dading 10.78 Sunny Import & Export Limited 10.86 Ziyang. 15.09 Jining Trans-High Trading. . . . 0.00	367.67 ⁽¹⁵⁾

Table continued on next page.

Table I-1--Continued

Fresh garlic: Commerce's antidumping duty margins from the original order, administrative, five-year, and new shipper reviews for China

Action	Date of action	Federal Register citation	Period of review	Antidumping duty margin	
				Firm specific	PRC-wide
				<i>Percent ad valorem</i>	
Administrative review	05/04/06	71 FR 26329	11/01/03-10/31/04	Harmoni. 14.20 Fook Huat Tong Kee Pte 5.56 Huaiyang Hongda Dehydrated Vegetable Co., 0.00 Jinan Yipin 29.52 Jining Trans-High Trading 0.00 Jinxiang Dongyun Freezing Storage Co., Ltd. 0.29 (<i>de minimis</i>) Jinxiang Shanyang Freezing and Storage Co., Ltd. 14.79 Linshu Dading 22.47	376.67 ⁽¹⁶⁾
Administrative review	05/04/06	71 FR 26329	11/01/03-10/31/04	Sunny Import & Export Limited 10.52 Taian Ziyang Food Co., Ltd. . . . 0.95 Weifang Shennog 0.00 Zhengzhou Harmoni Spice Co. 0.27 (<i>de minimis</i>) Shanghai LJ Int'l Trading 0.00 Zhangqiu Qingyuan Vegetable 15.36	376.67 ⁽¹⁶⁾
Second five-year review	06/02/06	71 FR 33279	(¹)		376.67

¹ Not applicable.

² This review was partially terminated with respect to the firm Top Pearl, which was determined not to be the appropriate respondent, 61 FR 68229, December 27, 1996.

³ This review was rescinded as a result of the absence of reviewable entries and sales into the United States of subject merchandise during the period of review.

⁴ This review was partially rescinded with respect to the exporter Wo Hing, which was found to have made no shipments during the period of review, 65 FR 48465, August 8, 2000.

⁵ This review was partially rescinded with respect to two respondent companies because the requests for review were withdrawn for those two companies, 66 FR 44596, August 24, 2001.

⁶ This new shipper review was rescinded because Commerce determined that there was no *bona fide* sale upon which to base a margin calculation for Clipper Manufacturing Ltd., 67 FR 11283, March 13, 2002.

⁷ This new shipper review was rescinded because Commerce determined that the date of sale and entry of Huaiyang Hongda Dehydrated Vegetable Co.'s U.S. sale fell outside the period of review, 67 FR 44594, July 3, 2002.

⁸ This review was rescinded for Shandong Heze based on a lack of evidence supporting the company's entitlement to a separate rate from the PRC-wide entity, 67 FR 65782, October 28, 2002.

⁹ This review was partially rescinded with respect to five companies that had no exports or sales of the subject merchandise during the period of review and was also rescinded with respect to two companies which are not located within the People's Republic of China, 67 FR 51822, August 9, 2002. Commerce published amended final results of this administrative review following the correction of two ministerial errors. The two corrections did not result in a change to the margin calculations, 68 FR 11368, March 10, 2003.

¹⁰ This new shipper review was rescinded because the "new shipper," Tancheng Dexing, withdrew its request for review, 69 FR 23172, April 28, 2004.

Footnotes continued on next page.

Table I-1--Continued

Fresh garlic: Commerce's antidumping duty margins from the original order, administrative, five-year, and new shipper reviews for China

¹¹ This review was partially rescinded as a result of the absence of reviewable entries and sales into the United States of subject merchandise during the period of review by Fook Huat Tong Kee Pte., Ltd., and review requests for six companies were withdrawn, 68 FR 46580, August 6, 2003.

¹² The margin for Sunny Import and Export was originally 33.66, 69 FR 26500, August 3, 2004, but was amended due to a ministerial error to 13.81, 69 FR 54117, September 7, 2004.

¹³ This new shipper review of Jining Jinshan was rescinded because the company withdrew its request for review, 69 FR 56405, September 21, 2004.

¹⁴ This new shipper review of Huaiyang Huamei Foodstuff Co. was rescinded because the company failed to respond to Commerce's new shipper questionnaire, 70 FR 30081, May 25, 2005.

¹⁵ This review was partially rescinded with respect to three companies that made no exports or sales of the subject merchandise during the period of review, with respect to a fourth company because the petitioners withdrew their request for a review of that company, and with respect to a fifth company because its sale to the United States was not eligible for review, 69 FR 70638, December 7, 2004. Commerce published amended final results of this administrative review following correction of ministerial errors, 70 FR 56639, September 28, 2005.

¹⁶ This review was partially rescinded with respect to one company that made no exports or sales of the subject merchandise during the period of review, and with respect to four companies because the requesting party withdrew its request for reviews of those companies, 70 FR 69942, November 18, 2005.

Source: Cited *Federal Register* notices.

Commerce's Changed Circumstances Review

In response to a letter from Shandong Heze International Trade and Developing Co. ("Shandong Heze") notifying Commerce that its corporate name had changed to Heze Ever-Best International Trade Co., Ltd. ("Heze Ever-Best"), Commerce initiated a changed circumstances administrative review of the antidumping duty order on fresh garlic from China.¹⁶ Commerce determined that Heze Ever-Best is the successor-in-interest to Shandong Heze, and as such, entries of its merchandise are entitled to Shandong Heze's cash-deposit rate.¹⁷

Commerce's Final Results of Expedited Second Five-Year Review

Commerce conducted an expedited review with respect to fresh garlic from China and issued the final results of its review based on facts available on June 8, 2006. Commerce determined 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 percentage margin of 376.67. This is the PRC-wide rate. Commerce did not publish any individual firm rates in its notice of final results.¹⁸ Commerce has not issued duty absorption determinations with respect to this order.

¹⁶ *Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Fresh Garlic From the People's Republic of China*, 69 FR 52229, August 25, 2004.

¹⁷ *Notice of Final Results of Antidumping Duty Changed Circumstances Review: Fresh Garlic From the People's Republic of China*, 69 FR 58892, October 1, 2004.

¹⁸ *Fresh Garlic from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 71 FR 2006, June 8, 2006.

**Distribution of Continued Dumping and Subsidy Offset Act Funds
to Affected Domestic Producers**

Since 2001, qualified U.S. producers of fresh garlic have been eligible to receive disbursements from the U.S. Customs and Border Protection (“Customs”) under the Continued Dumping and Subsidy Offset Act of 2000 (“CDSOA”), also known as the Byrd Amendment.¹⁹ Table I-2 presents CDSOA claims and disbursements for Federal fiscal years 2001-05.

**Table I-2
Fresh garlic: Distribution of Continued Dumping and Subsidy Offset Act funds¹ to affected domestic producers, Federal fiscal years 2001-05**

Firm	U.S. dollars (<i>actual</i>)				
	2001	2002	2003	2004	2005 ²
ABK Cherry	0	0	0	0	25,945
Christopher Ranch	10,366	216,190	131,911	69,885	215,177
Denice & Filice Packing	0	0	20,635	0	0
Garlic Co.	11,806	232,426	139,407	71,478	203,418
Vessey and Co.	3,079	87,069	49,807	24,744	71,610
Willow Glen Packing	0	0	0	9,650	0
Total	25,251	535,685	341,760	175,757	516,150

¹ Qualifying expenditures incurred by domestic producers since the issuance of an order, as presented in Section 1 of the *CDSOA Annual Reports*.
² Uncollected duties on subject fresh garlic imports from China, in Federal fiscal year 2005, as of May 23, 2006 totaled \$153,609.

Source: Compiled from Customs' *CDSOA Annual Reports*, found at http://www.cbp.gov/xp/cgov/import/add_cvd/cont_dump, retrieved May 23, 2006.

THE PRODUCT

Scope and Tariff Treatment

Commerce has defined the imports covered by the antidumping duty order as follows:²⁰

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

¹⁹ 19 CFR 159.64(g).

²⁰ *Fresh Garlic From the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 71 FR 33279, June 8, 2006.

*processing. The differences between grades are based on color, size, sheathing, and level of decay.*²¹

Subject fresh garlic is covered by the following statistical reporting numbers, subheading 0703.20.00 of the Harmonized Tariff Schedule of the United States (“HTS”):²² 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),²³ or at a column-2 rate of 3.3¢ per kilogram.²⁴ The remaining HTS provisions cited in Commerce’s scope language 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 duty rate of 14.9 percent, and 2005.90.9700, with garlic dutiable at a column 1-general rate of 11.2 percent. The first two cover frozen vegetables and the latter covers 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.²⁵ 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.²⁶ In the first five-year review, the Commission defined the domestic like product again as all fresh garlic because it found no information in

²¹ 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. In order to be excluded from the antidumping duty order, garlic meeting these descriptions must be accompanied by declarations to Customs to that effect. *Ibid.*

²² The written description provided above is dispositive as to the scope of the product coverage. The HTS classification is provided for convenience and for Customs purposes only.

²³ 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, Canada, Chile, Israel, Jordan, Morocco, and Mexico. Duty-free entry also applies to imports from countries eligible for preferential treatment pursuant to the Andean Trade Preference Act, and the Caribbean Basin Economic Recovery Act, and the African Growth and Opportunity Act (available under 0710.80.97 only). Eligible imports under the United States-Singapore Free Trade Agreement enter under a rate of 1.4 percent *ad valorem*; the rate will be reduced in stages to free.

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

²⁵ *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.

²⁶ *Fresh Garlic From China, Inv. No. 731-TA-683 (Review)*, USITC Publication 3393, February 2001, pp. 5-6.

the record of the review to suggest that a different like product definition was appropriate, and noted that, as in the original determination, there was only limited, if any, overlap among fresh garlic, dehy garlic, and seed garlic.²⁷

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. In the first five-year review, the Commission, consistent with its definition of the like product, defined a single domestic industry as all producers of fresh garlic.²⁸ In its response to the Commission's notice of institution in this second five-year review, the FGPA stated that it agrees with the Commission's definitions of the domestic like product and the domestic industry.²⁹

Description and Uses³⁰

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.³¹

U.S. standards treat fresh garlic as either USDA Grade No. 1 or unclassified.³² Fresh garlic that is not USDA Grade No. 1 is designated as unclassified, which is not a grade within the meaning of these standards. In recent years, an estimated 80 to 85 percent of fresh garlic was USDA Grade No.1; the remainder was believed to have been sold for processing. In normal industry practice, 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. Large-diameter garlic, known as elephant garlic, is not recognized as a separate grade and, indeed, is a separate species.³³ 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 taste similar. Chinese cloves are the same size and firmness as the "California White" that is

²⁷ Ibid. p. 6.

²⁸ Ibid.

²⁹ Domestic interested parties' response, p. 32.

³⁰ 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.

³¹ Cantwell, Maria, Department of Vegetable Crops, University of California, Davis, *Garlic*, found at <http://www.ba.arss.usda.gov/hb666/0666garlic.pdf>, retrieved May 24, 2006.

³² 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.

³³ 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. "Garlic: Flavor of the Ages," USDA Economic Research Service Commodity Spotlight, June-July 2000, found at <http://www.ers.usda.gov/publications/agaoutlook/jun2000/ao272e.pdf> as attached to the domestic interested parties' response, exh. 9.

widely available in grocery stores, but Chinese garlic often has a tough, inedible stem shooting up from the center.³⁴

Production Process

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 has been available from one source or another in the Western Hemisphere throughout the entire year, and no two countries have 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.

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.³⁵

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

³⁴ 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.

³⁵ “Garlic: Flavor of the Ages,” USDA Economic Research Service Commodity Spotlight, June-July 2000, found at <http://www.ers.usda.gov/publications/agaoutlook/jun2000/ao272e.pdf> as attached to the domestic interested parties’ response, exh. 9.

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 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.³⁶ 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.³⁷ The FGPA reports that since the first five-year review, the use of special storage to prolong the shelf life of fresh garlic has expanded both in China and in the United States. “As a result, although sales of garlic remain seasonal, with most garlic sold by both U.S. and Chinese producers following the summer harvest, garlic is also sold in increasing volumes in other months by both Chinese and U.S. producers.”³⁸

THE INDUSTRY IN THE UNITED STATES

U.S. Producers

The petitioner in the original 1994 investigation, the FGPA, then consisted of Christopher Ranch, Belridge Packing Co. (“Belridge”), Colusa Produce Corp. (“Colusa”), Denice & Felice Packing Co. (“Denice & Felice”), El Camino Packing (“El Camino”), The Garlic Co., and Vessey. At the time of the original investigation the combined fresh garlic production of these seven firms represented *** percent of U.S. production in crop year 2004.³⁹ According to the petition filed in the original investigation there were 10 producers of fresh garlic in the United States, including the seven petitioning companies. Overall, eight companies reported production of fresh garlic, the seven petitioning firms and one additional firm, *** that accounted for *** percent of crop year⁴⁰ 2004 fresh garlic production in the

³⁶ 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.

³⁷ 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.

³⁸ Domestic interested parties’ response, p. 31.

³⁹ *Fresh Garlic from the People’s Republic of China, Inv. No. 731-TA-683 (Final)*- confidential Staff Report, INV-R-157, p. I-24; and *Fresh Garlic from The People’s Republic of China, Inv. No. 731-TA-683 (Final)*, USITC Publication 2825, November 1994, p. II-3.

⁴⁰ The U.S. fresh garlic industry tracks its production and shipment information on the basis of the crop year. Crop year 2004 ran from June 2003-May 2004. The use of the crop year as the basic unit of time by which to measure trade indicators was followed by the Commission in both the original investigation and the first sunset review. Domestic interested parties’ response, p. 14.

United States.⁴¹ All eight companies were located in California. The U.S. garlic industry is concentrated in California's central valley: Fresno, Kern, and Monterey counties.⁴² 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.⁴³

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.⁴⁴ New members of the FGPA that participated in the first five-year review, in addition to 1994 members, were: Crinklaw Farms ("Crinklaw"); Dalena Farms ("Dalena"); Frank Pitts Farms ("Frank Pitts"); Spice World ("Jenard Fresh"); and Thomson International, Inc. ("Thomson"). According to the petitioner, these combined 10 firms accounted for "the vast majority of all U.S. production of fresh garlic."⁴⁵ At the time of the first five-year review, Christopher Ranch remained the largest producer of fresh garlic in the United States, accounting for *** percent of reported U.S. production in crop year 2000.

In response to the Commission's notice of institution in this second five-year review, the FGPA filed a substantive response on behalf of its members: Christopher Ranch; The Garlic Co.; Valley Garlic;⁴⁶ and Vessey. The FGPA identified two additional domestic fresh garlic producers that are not participating in this review: George Chiala Farms, Inc., and Harris Fresh.⁴⁷ These companies are all located in California and that State alone accounts for 84 percent of the domestic fresh and dehydrated garlic market. Only four other States harvest more than 100 acres of garlic per year: Nevada, Oregon, Washington, and New York.⁴⁸ The FGPA identified eight domestic fresh garlic producers that ceased production of garlic following the conclusion of the first five-year review. These firms and their shares of production are presented in table I-3.

⁴¹ Firms that did not respond to the Commission's questionnaire in the final phase of the original investigation but that participated in the preliminary phase included two non-petitioning domestic producers of fresh garlic, ***. Based on data from the preliminary phase of the investigation, these firms accounted for approximately *** percent of reported domestic garlic production. *Fresh Garlic from the People's Republic of China, Inv. No. 731-TA-683 (Final)*, confidential staff report, INV-R-157, October 20, 1994, p. I-24.

⁴² National Food and Agricultural Policy Project, Arizona State University, Import Competition in the Garlic Industry, NFAPP#00-4, March 2000, Revised October 14, 2003, found at <http://www.nfapp.poly.asu.edu/policy/2000/04/Pb00-4.htm>, retrieved May 24, 2006.

⁴³ *Fresh Garlic from the People's Republic of China, Inv. No. 731-TA-683 (Final)*, confidential staff report, INV-R-157, October 20, 1994, p. I-23.

⁴⁴ *Fresh Garlic from China, Inv. No. 731-TA-683 (Review)*, confidential staff report, INV-Y-011, January 23, 2001, p. I-14-I-15.

⁴⁵ Ibid.

⁴⁶ Valley Garlic is affiliated with Spice World which participated in the first five-year review. Domestic interested parties' response, p. 3.

⁴⁷ Ibid. p. 13.

⁴⁸ U.S. Customs TODAY, *Garlic-tracing its country-of-origin*, found at http://www.cbp.gov/xp/CustomsToday/2002/August/garlic_origin.xml, retrieved May 24, 2006.

Table I-3
Fresh garlic: Closure of domestic producers, 2000-03

Firm	Year production ceased	Share of U.S. production (percent)
		Crop year 1994
Frank Pitts Farms	2000	(¹)
Belridge Packing Co.	2001	***
Colusa Produce Corp.	2001	***
Crinklaw Farms	2001	(¹)
El Camino Packing Co.	2002	***
		Crop year 2000
Thompson International, Inc.	2002	***
Denice & Filice Packing Co.	2003	***
Dalena Farms	2003	***
¹ Not available. Source: Domestic interested parties' response, p. 4, Fresh Garlic from the People's Republic of China, Inv. No. 731-TA-683 (Final), confidential staff report, INV-R-157, October 20, 1994, p. I-24; and <i>Fresh Garlic from China, Inv. No. 731-TA-683 (Review)</i> , confidential staff report, INV-Y-011, January 23, 2001, p. I-15.		

U.S. Producers' Trade, Employment, and Financial Data⁴⁹

Data reported by U.S. producers in the Commission's original investigation, first five-year review, and in response to the notice of institution of this review, are presented in table I-4. For the period of the original investigation, 1991-94, the data represent the responses of eight U.S. producers of fresh garlic: Belridge, Christopher Ranch, Colusa, Denice & Filice, El Camino, ***, The Garlic Co., and Vessey. For the period of the first five-year review, 1998-2000, the data represent the responses of seven U.S. producers of fresh garlic: Christopher Ranch, Dalena, Denice & Filice, The Garlic Co., Jenard Fresh, Thompson, and Vessey, with the exception of employment data and financial data which

⁴⁹ The historical discussion is generally taken from the confidential staff reports in the original investigation and first five-year review, *Fresh Garlic from the People's Republic of China, Inv. No. 731-TA-683 (Final)*, confidential staff report, INV-R-157, October 20, 1994, p. 1; and *Fresh Garlic from China, Inv. No. 731-TA-683 (Review)*, confidential staff report, INV-Y-011, January 23, 2001, p. I-14-I-15.

Table I-4

Fresh garlic: U.S. producers' trade, employment, and financial data, 1991-94, 1998-2000, and 2005

Item	1991	1992	1993	1994	1998	1999	2000	2005
Capacity (1,000 pounds)	97,932	104,456	141,274	141,274	183,684	192,302	198,995	(¹)
Production (1,000 pounds)	49,102	70,087	93,416	100,307	122,722	100,622 ⁽²⁾	152,571	***
Capacity utilization (percent)	50.1	66.3	62.5	66.7	66.8	52.0	76.7	(¹)
Shipments:								
U.S. shipments:								
Quantity (1,000 pounds)	42,286	58,137	74,520	82,102	109,437	83,511	128,415	***
Value (1,000 dollars)	32,538	39,766	53,191	52,966	95,432	89,196	89,616	***
Unit value (per lb)	\$0.77	\$0.68	\$0.71	\$0.65	\$0.87	\$1.07	\$0.70	\$***
Exports:								
Quantity (1,000 pounds)	3,482	5,885	7,883	12,042	3,884	2,401	5,364	(¹)
Value (\$1,000)	3,078	4,329	***	7,588	3,338	2,242	2,911	(¹)
Unit value (per lb)	\$0.88	\$0.74	\$***	\$0.63	\$0.86	\$0.93	\$0.54	(¹)
PRWs ³ (number)	599	710	1,021	1,087	931	875	988	(¹)
Hours worked (1,000 hours)	1,007	1,247	1,475	1,584	1,503	1,409	1,673	(¹)
Total compensation paid (\$1,000)	7,175	9,633	11,165	12,024	10,262	10,192	12,195	(¹)
Hourly wages	\$6.34	\$6.83	\$6.79	\$6.61	\$6.83	\$7.23	\$7.29	(¹)
Productivity (pounds per hour)	55.7	55.6	59.9	59.5	71.6	67.7	82.1	(¹)
Unit labor costs (per 1,000 pounds)	\$138.79	\$139.03	\$126.45	\$127.63	\$100.00	\$110.00	\$90.00	(¹)
Net sales (\$1,000)	35,615	44,093	59,046	60,554	102,011	94,905	94,902	(¹)
Cost of goods sold (COGS) (\$1,000)	27,890	37,464	51,426	54,757	68,573	72,616	75,595	(¹)
Gross profit (\$1,000)	7,725	6,629	7,620	5,797	33,438	22,289	19,307	(¹)
Operating income or (loss) (\$1,000)	3,994	2,091	1,600	(960)	15,732	7,207	3,278	(¹)
COGS/sales (percent)	78.3	85.0	87.1	90.4	67.2	76.5	79.7	(¹)
Operating income or (loss)/sales (percent)	11.2	4.7	2.7	(1.6)	15.4	7.6	3.5	(¹)

Table continued on next page.

Table I-4--Continued

Fresh garlic: U.S. producers' trade, employment, and financial data, 1991-94, 1998-2000, and 2005

¹ Data not available.

² Production fell in crop year 1999 due to a fungus that appeared on garlic plants in the spring of 1998. Unusually wet weather conditions during the winter and spring of that year, attributed to the El Niño phenomenon, triggered a severe outbreak of garlic rust disease, which had not been seen in the United States since the 1940s.

³ Production and related workers.

Source: *Fresh Garlic from the People's Republic of China, Inv. No. 731-TA-683 (Final)*, confidential staff report, INV-R-157, October 20, 1994, table 11 for 1991-94 confidential data, and *Fresh Garlic from The People's Republic of China, Inv. No. 731-TA-683 (Final)*, USITC Publication 2825, November 1994, tables 4 and 10 for 1991-94 public data; *Fresh Garlic from China, Inv. No. 731-TA-683 (Review)*, USITC Publication 3393, February 2001, p. III-1, tables, I-1, III-1 and III-2 III-4, III-5; and the domestic interested parties' response, exh. 2.

reflect the operations of five and six producers, respectively. For 2005, the data are entirely those of Christopher Ranch, The Garlic Co., Valley Garlic, and Vessey.

Trade Data

U.S. production of fresh garlic increased steadily between 1991 and 1994, by 104.3 percent. Domestic capacity to produce fresh garlic also increased between 1991 and 1994, rising by 44.3 percent overall. The trend in production noted above caused capacity utilization to rise from 50.1 percent in 1991 to 66.7 percent in 1994. U.S. producers' U.S. shipments nearly doubled in quantity between 1991 and 1994 while experiencing fluctuating unit values.

During the period of the first five-year review, 1998-2000, these rising trends in capacity and production continued. Specifically, capacity to produce fresh garlic increased by 8.3 percent and production increased by 24.3 percent. Capacity utilization rose erratically to its highest period level of 76.7 percent in 2000. During this period, U.S. producers' U.S. shipments also increased irregularly overall by 17.3 percent while unit values again fluctuated and reached their period high of \$1.07 in 1999.

Export quantities varied widely between the original investigation and the first five-year review. During the period of the original investigation, export quantities more than tripled between 1991 and 1994 reaching a high of 12.0 million pounds in 1994. By 1998 export quantities had declined to a third of their 1994 high, and decreased further in the following year. In 2000 exports enjoyed a resurgence totaling nearly 5.4 million pounds. Export data for the most recent period are not available.

Employment Data

During the period of the original investigation, the average number of production and related workers ("PRWs") producing fresh garlic nearly doubled, increasing by 81.5 percent between 1991 and 1994, rising from 599 to 1,087 workers. Hours worked increased regularly throughout 1991-94, with a net increase of 57.3 percent. Total compensation paid also increased steadily over this period. Hourly wages fluctuated within a narrow range from a period low of \$6.34 to a period high of \$6.83. Productivity rose irregularly throughout the four years for which data were collected in the original investigation, increasing by 6.8 percent during the period. Unit labor costs fell during 1991-94, declining by an overall 8.0 percent. During the period of the first five-year review, the number of PRWs and their hours worked increased irregularly by 6.1 percent but never reached the highest level of employment demonstrated in the original period of investigation. Productivity also increased irregularly by 14.7 percent during 1998-2000 while unit labor costs decreased by 10.0 percent. Detailed employment data for the most recent period are not available.

The production of garlic is labor intensive. The necessary steps to yield a fresh garlic crop are time-consuming and include: cracking seed garlic, planting carefully to ensure 100 percent germination, popping false flowers, cleaning, grading, and trimming garlic.⁵⁰ The outer cloves of garlic are easily damaged during mechanical harvest and these damaged areas discolor and decay during storage. Therefore, high quality garlic for the fresh market is usually harvested manually (pulled and trimmed) to avoid damage.⁵¹

Financial Data

During the period of the original investigation, net sales values of fresh garlic increased by 70.0 percent from \$35.6 million in 1991 to \$60.6 million in 1994. During the period of the first five-year review, net sales values increased overall by 17.0 percent between 1998 and 2000 from \$102.0 million in 1998 to \$94.9 million in 2000. Detailed financial data for the most recent period are not available.

Current Trade Data

The data presented in table I-5, represent the trade data of the four participants in this review: Christopher Ranch, The Garlic Co., Valley Garlic, and Vessey. Between 2000 and 2003, according to the FGPA, eight garlic producers ceased production in the United States (see table I-3). These eight producers represented roughly *** percent of the domestic crop production during the periods of the original investigation and first five-year review. Companies exiting the industry in 2001 represented more than *** percent of the 1994 crop year production. Their departure from domestic garlic production is reflected in the decrease from reported 2000 production of 152.6 million pounds to *** in 2001. Between 2002-03 three firms representing *** percent of crop year 2000 production exited the industry, and domestic production accordingly decreased to ***. The trend in declining production continued in 2004 and 2005. Overall, domestic production of fresh garlic declined by *** percent between 2001-05. Since 2001, Christopher Ranch, the country’s largest garlic grower, has taken 40 percent of its garlic fields out of production.⁵²

**Table 1-5
Fresh garlic: U.S. producers’ trade data, 2001-05**

* * * * *

Fresh garlic producers in California filed a petition for trade adjustment assistance (“TAA”) with the Foreign Agricultural Service (“FAS”) on October 28, 2003. The petition was denied because the FAS determined that domestic producer prices did not decline by more than 20 percent during October

⁵⁰ Farm and Country News, *500-million-pound garlic market beckons*, found at http://www.agpub.on.ca/text/ap9_crp2.htm, retrieved May 24, 2006.

⁵¹ Cantwell, Maria, Department of Vegetable Crops, University of California, Davis, *Garlic*, found at <http://www.ba.arss.usda.gov/hb666/0666garlic.pdf>, retrieved May 24, 2006.

⁵² *U.S. garlic under siege*, March 2, 2005, *Gilroy Dispatch*, found at <http://www.gilroydispatch.com>, retrieved May 24, 2006.

2002 through September 2003 when compared with the previous five-year average, a condition required for certifying a petition for TAA.⁵³

Table I-6 below presents data on the area planted and harvested for U.S. fresh garlic production from 2000-05 and was compiled by the U.S. Department of Agriculture (“USDA”). The data show a staggered decline in the area planted since 2000, with a period low in 2005.

**Table I-6
Garlic for fresh market and processing: Area planted and harvested in the United States, 2000-05**

Item	2000	2001	2002	2003	2004	2005
Area planted (<i>acres</i>)	37,900	37,200	34,800	37,000	33,600	29,900
Area harvested (<i>acres</i>)	34,800	35,200	32,800	35,000	31,600	29,400

Source: *USDA Vegetable Summaries* for January 2003 and January 2006, attached to the domestic interested parties' response, exh. 1.

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

U.S. Importers and Imports

During the original investigation, the Commission identified 52 importers that were believed to account for 100 percent of total garlic imports from China.⁵⁴ The Commission received responses from 30 firms and usable data from 17 firms.⁵⁵ 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.⁵⁶ In response to the Commission's request in its notice of institution in this review for a list of all known and currently operating U.S. importers of the subject merchandise and producers of the subject merchandise in China that currently export or have exported subject merchandise to the United States or other countries since May 2000, the FGPA listed 81 importers.⁵⁷

Import data for fresh garlic are presented in table I-7. Prior to the imposition of the antidumping duty order under review, the total level of imports into the United States of fresh garlic from China grew rapidly in terms of volume and value between 1991 and 1994 while the level of imports from other sources declined overall. Data show that after the imposition of the antidumping duty order on China in November 1994, the quantity of imports from China declined to 497,000 pounds by 1998, a decrease of 99.3 percent from pre-order 1994 levels. Imports from China then increased by 107.2 percent between 1998 and 2000, while the quantity of nonsubject imports increased irregularly by 12.0 percent. Between 2001 and 2005, the quantity of fresh garlic imports from China increased each year for an overall increase of 1,311.9 percent in quantity, and 1,020.6 percent in value. From 2001 through 2005, fresh garlic imports from nonsubject sources decreased by 42.8 percent in quantity and by 34.2 percent in

⁵³ *Trade Adjustment Assistance for Farmers*, FAS Online, U.S. Department of Agriculture, November 26, 2003, found at <http://www.fas.usda.gov/info/fr/2003/120803CAgarlic.html>, retrieved May 17, 2006.

⁵⁴ *Fresh Garlic from The People's Republic of China, Inv. No. 731-TA-683 (Final)*, USITC Publication 2825, November 1994, p. II-17, fn. 59.

⁵⁵ *Ibid.*

⁵⁶ *Fresh Garlic From China, Inv. No. 731-TA-683 (Review)*, USITC Publication 3393, February 2001, p. I-12.

⁵⁷ Domestic interested parties' response, exh. 7.

Table I-7

Fresh garlic: U.S. imports, by sources, 1991-94, 1998-2005, January-March 2005, and January-March 2006

Source	Calendar year												January-March	
	1991	1992	1993	1994	1998	1999	2000	2001	2002	2003	2004	2005	2005	2006
Quantity (1,000 pounds)														
China	6,055	3,540	9,395	65,532	497	876	1,030	7,932	42,441	55,388	85,968	111,988	30,312	30,721
Other sources		34,474	33,527	34,677	50,888	106,137	56,972	72,647	63,392	45,551	37,710	41,540	15,087	12,601
Total	43,334	38,014	42,922	100,209	51,385	107,013	58,002	80,579	105,833	100,939	123,678	153,528	45,399	43,322
Value¹ (\$1,000)														
China	2,474	1,446	3,719	20,014	92	261	182	5,309	23,309	28,328	45,292	59,494	16,302	16,495
Other sources	20,778	20,227	17,915	17,697	29,285	60,445	28,848	39,232	36,609	21,780	19,440	25,796	9,368	7,874
Total	23,252	21,673	21,634	37,711	29,377	60,706	29,031	44,541	59,918	50,108	64,732	85,290	25,670	24,369
Unit value (per pound)														
China	\$0.41	\$0.41	\$0.40	\$0.32	\$0.18	\$0.30	\$0.18	\$0.54	\$0.58	\$0.48	\$0.52	\$0.62	\$0.62	\$0.62
Other sources	\$0.56	\$0.59	\$0.53	\$0.51	\$0.58	\$0.57	\$0.51	\$0.46	\$0.45	\$0.47	\$0.68	\$0.70	\$0.73	\$0.62
Average	\$0.54	\$0.57	\$0.50	\$0.38	\$0.57	\$0.57	\$0.50	\$0.55	\$0.57	\$0.50	\$0.52	\$0.56	\$0.57	\$0.56
Share of quantity (percent)														
China	14.0	9.3	21.9	65.4	1.0	0.8	1.8	9.8	40.1	54.9	69.5	72.9	66.8	70.9
Other sources	86.0	90.7	78.1	34.6	99.0	99.2	98.2	90.2	59.9	45.1	30.5	27.1	33.2	29.1
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
¹ Landed, duty-paid. Note. - - Because of rounding, figures may not add to the totals shown; unit values and shares are calculated from the unrounded figures. Source: Compiled from official Commerce statistics.														

value. The import data presented in table I-7 and throughout this report are from official Commerce statistics. However, Customs has encountered a problem with country-of-origin information for garlic from China. According to Customs, some companies try to evade the high tariff on Chinese garlic entering the United States by altering the country-of-origin.⁵⁸ Therefore, the import data presented here for China may be understated to the extent that false country-of-origin labeling has occurred.

The FGPA asserts that virtually all of the increase in subject imports since 2001 is attributable to shipments from purported “new shippers” of fresh garlic from China who have exploited a loophole in the new shipper review administrative procedure (“NSR”).⁵⁹ Under the new shipper process, shippers or importers can import without posting a high cash antidumping duty deposit at the PRC-wide rate for garlic while Commerce reviews their status, a process that can last approximately 9-12 months. According to testimony by the Customs Bond Committee of the American Surety Association (“ASA”) before the House Committee on Ways and Means and statements by Customs spokeswoman Erlinda Byrd, garlic imports from China have been fraudulently entered into the United States to avoid antidumping duties by abuse of the new shipper process. One scheme involves the creation of a “new” shell company in China to act as a new shipper. When the new shipper review is complete the shipper disappears, never having had any intention of paying the antidumping duty increases. The other related scheme involves the misappropriation of the name and identity of a legitimate Chinese exporter, which has a low or zero antidumping duty margin. According to the ASA these fraudulent schemes have been so extensive that the major U.S. surety companies have chosen not to knowingly underwrite antidumping duties for garlic.⁶⁰ Congress is currently considering legislation that would essentially close the new shipper loophole by requiring importers to post cash deposits on all shipments, even those of “new shippers.” This legislation is expected to become law by the end of this legislative term, in October 2006.⁶¹

The unit value for fresh garlic from China was lowest in 1998 and 2000 (after the imposition of the antidumping duty order), and highest in 2005. From 2001 to 2005, the unit value for fresh garlic imported from China increased by 14.8 percent. The unit value for fresh garlic from other sources had been consistently higher than for China, in some years more than triple until 2001-03 when unit values for nonsubject sources were lower than those for China.

Figure I-1 depicts the separate contributions of imports from China and all other sources to total fresh garlic imports for the periods of the original investigation, first five-year review, 2000-05, and the interim periods of January-March 2005 and 2006. As illustrated below, while imports from China increased during the original investigation, they were comparatively small during the first five-year review period. Beginning in 2001, subject imports began to displace nonsubject imports from the market and continued to increase each year thereafter through 2005.

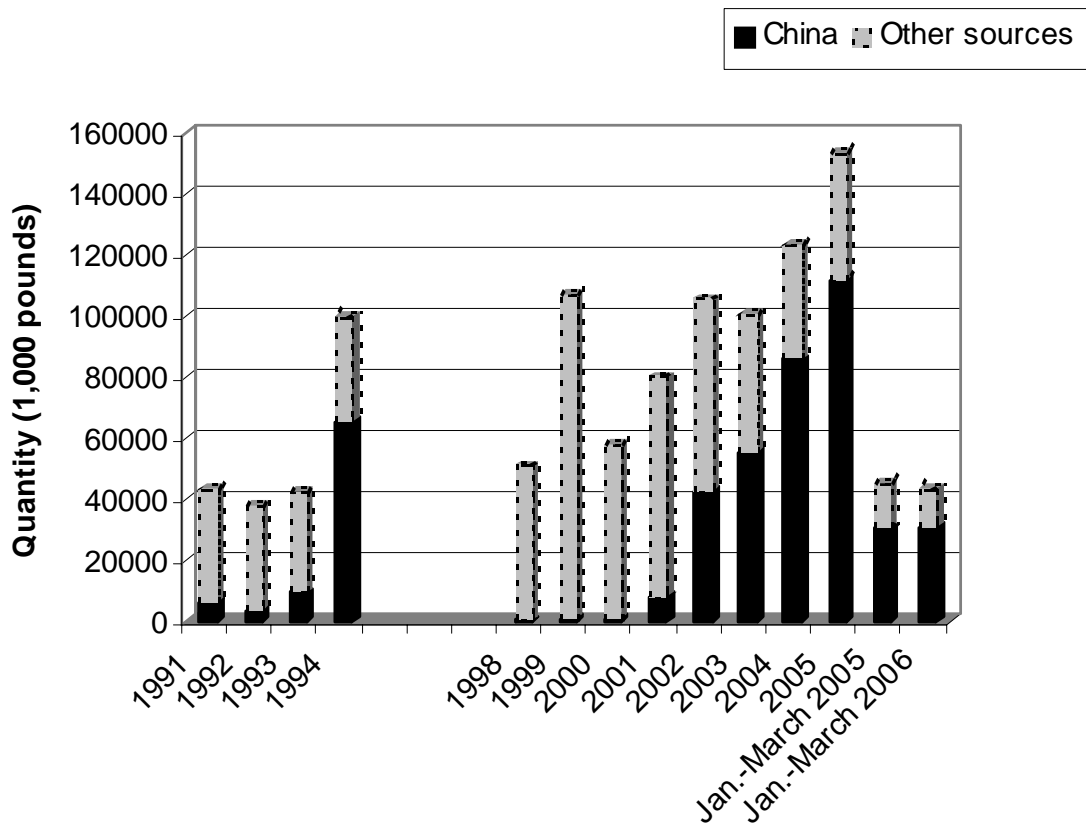
⁵⁸ U.S. Customs Today, *Garlic-tracing its country-of-origin*, found at http://www.cbp.gov/xp/CustomsToday/2002/August/garlic_origin.xml, retrieved May 24, 2006.

⁵⁹ Domestic interested parties’ response, p. 20-23.

⁶⁰ House Committee on Ways and Means, Statement of the Customs Bond Committee of the American Surety Association, October 30, 2003, found at <http://www.waysandmeans.house.gov/hearings.asp>, retrieved May 31, 2006, and domestic interested parties’ response, exh. 3.

⁶¹ Domestic interested parties’ response, p. 22.

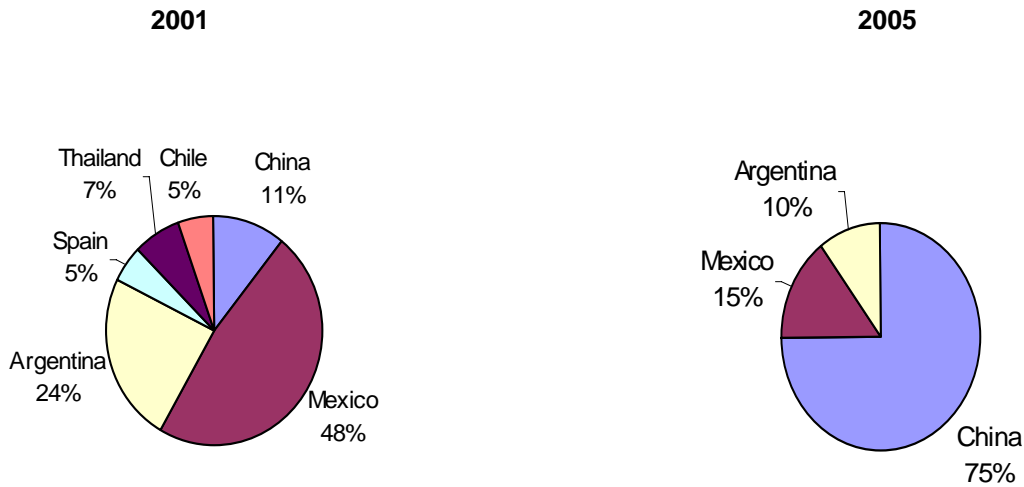
Figure I-1
Fresh garlic: U.S. imports from China and other sources, 1991-94, 1998-2005, January-March 2005,
and January-March 2006



Source: Table I-7.

Figure I-2 depicts the relative size of fresh garlic imports from China and the largest nonsubject import sources in 2001 following the first five-year review and in 2005, the most recent full year for which data are available.

Figure I-2
Fresh garlic: The largest import sources of fresh garlic, 2001 and 2005



Source: Official Commerce statistics.

In 2001 Mexico was the major source of fresh garlic imports into the United States while China represented 11 percent of total fresh garlic imports. Four years later, in 2005, imports of fresh garlic from China accounted for 75 percent of total imports while those from Mexico accounted for just 15 percent. In 2001 there were five major sources of nonsubject imports but by 2005 that number had been winnowed to just two. As depicted in figure 1-2, the share of total imports accounted for by China increased substantially between 2001 and 2005 and displaced nonsubject imports to a large extent. However, Argentina and Mexico remained among the largest nonsubject sources of imported fresh garlic in 2005.

Apparent U.S. Consumption and Market Shares

Data on apparent U.S. consumption of fresh garlic in 1991-94, 1998-2000, and 2005 are presented in table I-8. During the original investigation period, 1991-94, the quantity of apparent U.S. consumption of fresh garlic increased by 112.9 percent while the value of that consumption increased by 62.5 percent.

Table I-8
Fresh garlic: U.S. producers' U.S. shipments, U.S. imports, and apparent U.S. consumption, 1991-94,
1998-2000, and 2005

Item	1991	1992	1993	1994	1998	1999	2000	2005
	<i>Quantity (1,000 pounds)</i>							
U.S. producers' U.S. shipments	42,286	58,137	74,520	82,102	109,437	83,511	128,415	***
U.S. imports from-China:	6,055	3,540	9,395	63,532	497	876	1,030	111,988
Other sources	37,279	34,474	33,527	34,677	50,888	106,137	56,972	41,540
All sources	43,334	38,014	42,922	98,209	51,385	107,013	58,002	153,528
Apparent U.S. consumption	85,620	96,151	117,442	180,311	160,822	190,524	186,417	***
	<i>Value (\$1,000)</i>							
U.S. producers' U.S. shipments	32,538	39,766	53,191	52,966	95,432	89,196	89,616	***
U.S. imports from-China:	2,474	1,446	3,719	20,014	92	261	182	59,494
Other sources	20,778	20,227	17,915	17,697	29,285	60,445	28,848	25,796
All sources	23,252	21,673	21,634	37,711	29,377	60,706	29,301	85,290
Apparent U.S. consumption	55,790	61,439	74,825	90,677	124,809	149,902	118,647	***
	<i>Share of apparent U.S. consumption based on quantity (percent)</i>							
U.S. producers' U.S. shipments	49.4	60.5	63.5	45.5	68.0	43.8	68.9	***
U.S. imports from-China:	7.1	3.7	8.0	35.2	0.3	0.5	0.6	***
Other sources	43.5	35.8	28.5	19.3	31.6	55.7	30.6	***
Total imports	50.6	39.5	36.5	54.5	32.0	56.2	31.1	***
	<i>Share of apparent U.S. consumption based on value (percent)</i>							
U.S. producers' U.S. shipments	58.3	64.7	71.1	58.4	76.5	59.5	75.5	***
U.S. imports from-China:	4.4	2.4	5.0	22.1	0.1	0.2	0.2	***
Other sources	37.3	32.9	23.9	19.5	23.5	40.3	24.3	***
Total imports	41.7	35.3	28.9	41.6	23.5	40.5	24.5	***
Source: Data for 1991-94 are from <i>Fresh Garlic from The People's Republic of China, Inv. No. 731-TA-683 (Final)</i> , USITC Publication 2825, November 1994, table 2. Data for 1998-2000 are from <i>Fresh Garlic from China, Inv. No. 731-TA-683 (Review)</i> , USITC Publication 3393, February 2001, table I-5. Import data for 2005 are compiled from official Commerce statistics. U.S. producers' U.S. shipment data for 2005 are from the domestic interested parties' response, exh. 2.								

Over the same period, the U.S. industry's share of apparent U.S. consumption decreased by 3.9 percentage points from 49.4 percent in 1991 to 45.5 percent in 1994. During 1991-94 the share of apparent U.S. consumption of subject imports from China climbed from 7.1 percent to 35.2 percent. At the same time the share of apparent consumption accounted for by imports of fresh garlic from countries other than China decreased, by 24.2 percentage points.

The quantity of apparent U.S. consumption of fresh garlic increased irregularly by 15.9 percent from 1998 to 2000 while the value of that consumption decreased by 4.9 percent. Over the same period, the U.S. industry's share of apparent U.S. consumption declined from 68.0 percent in 1998 to 43.8 percent in 1999 before rebounding to 68.9 percent in 2000. At the same time the share of apparent U.S. consumption of subject imports from China climbed from 0.3 percent in 1998 to 0.6 percent in 2000 and the share of apparent consumption accounted for by imports of fresh garlic from countries other than China initially increased between 1998 and 1999 by 24.1 percentage points before decreasing in 2000 by 25.1 percentage points.

The trend in increased fresh garlic demand and consumption in the United States is unique among vegetables and has been attributed to several factors. The USDA credits the increase in U.S. garlic consumption to rising popularity of ethnic foods and restaurants; persistent health messages circulating in the press about garlic; demand from the health supplements industry; and the never-ending quest by consumers for new taste experiences.⁶²

THE 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.⁶³ 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.⁶⁴ 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 1995.⁶⁵

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

⁶² *Garlic: Flavor of the Ages*, USDA Economic Research Service, Commodity Spotlight, found at <http://www.ers.usda.gov/publications/agaoutlook/jun2000>, retrieved May 31, 2006.

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

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

States since 1994.⁶⁶ 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 after May 2000, the FGPA identified 106 foreign producers/exporters in China.⁶⁷ 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 one of the world's top producers of fresh garlic. The Shandong Province, a prime agricultural area located southeast of Beijing, leads in production.⁶⁸ In its 2006 expiry review of an antidumping duty order on fresh garlic from China, the government of Canada found that China is the largest producer of garlic in the world, representing approximately 75 percent of world production in 2004. Further, in 2003, the last year for which export statistics were available at the time of review, China represented approximately 80 percent of the world garlic export market. According to findings in that expiry review, China's capacity to produce garlic continues to increase each year and the 2004 production level represented a 60-percent increase over the 2000 production level.⁶⁹

The Food and Agriculture Organization ("FAO"), which compiles information on worldwide food production for the United Nations, publishes data on the country-level production of all types of garlic (including garlic destined for dehydration). Table 1-9 shows the United Nations' figures on the quantity of garlic produced in China and in several other of the largest garlic-producing countries. The FAO data show annual increases in China's total garlic production in each year from 1995-2005. Even with increased production in 2005 it was reported that China "ran out of garlic in the early summer" of 2005. This shortage reportedly drove up the price of garlic from China to \$13.00 per box when garlic produced by Christopher Ranch was selling for \$20.00 per box.⁷⁰

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. Phytosanitary measures such as pest risk-analysis requirements on imports and strict food-labeling requirements have hindered Chinese exports in some markets. For example, in 1993 Mexico banned imports of garlic from China on phytosanitary grounds.⁷¹ Phytosanitary measures such as

⁶⁶ *Fresh Garlic from China, Inv. No. 731-TA-683 (Review)*, USITC Publication 3393, February 2001, p. IV-3-IV-4.

⁶⁷ Domestic interested parties' response, exh. 8.

⁶⁸ U.S. Customs Today, *Garlic-tracing its country-of-origin*, found at http://www.cbp.gov/xp/CustomsToday/2002/August/garlic_origin.xml, retrieved May 24, 2006.

⁶⁹ Canada Border Services Agency, Statement of Reasons in *Garlic, Fresh or Frozen, Originating in or Exported From The People's Republic of China and Vietnam*, January 6, 2006, as attached to the domestic interested parties' response, exh. 11.

⁷⁰ *Garlic tariff back in force, Gilroy Dispatch*, July 29, 2005, found at <http://www.gilroydispatch.com/news/contentview.asp>, retrieved May 31, 2006.

⁷¹ *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.

these have also been imposed by Brazil, Chile, Thailand, and Venezuela.⁷² Responding foreign producers/exporters in the first five-year review reported that their exports to Brazil were subject to an antidumping duty imposed in 1996.⁷³ In 1997, the government of Canada began levying antidumping duties on imports of garlic from China, and later issued an order in 2002 continuing its original antidumping finding as a result of its first expiry review. In January 2006, Canada conducted a sunset review of its 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, is rescinding the finding and order, effective March 2007.⁷⁴ 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.⁷⁵ Antidumping duties were also imposed by the government of South Africa on garlic imports from China in September 2000. The government of South Africa initiated a sunset review of this antidumping duty order in September 2005 but has not published its final results of review.⁷⁶

China has an agreement with the European Union (“EU”) that allows it to export 29.1 million pounds of garlic dutyfree to the EU each year. Volume in excess of this quota is subject to a customs duty of 9.6 percent *ad valorem* and a specific duty amount of about \$0.65 per pound. Thailand recently established an import quota of approximately 143.3 million pounds on both garlic and onion imports from China.⁷⁷

⁷² Canada Border Services Agency, Statement of Reasons in *Garlic, Fresh or Frozen, Originating in or Exported From The People’s Republic of China and Vietnam*, January 6, 2006, as attached to the domestic interested parties’ response, exh. 11.

⁷³ *Fresh Garlic from China, Inv. No. 731-TA-683 (Review)*, USITC Publication 3393, February 2001, p. IV-3.

⁷⁴ Domestic interested parties’ response, p. 18, and exh. 11.

⁷⁵ *Fresh Garlic from China, Inv. No. 731-TA-683 (Review)*, USITC Publication 3393, February 2001, p. IV-4.

⁷⁶ Trade Law Center for Southern Africa, TRALAC, *ITAC notice of institution of sunset review of the antidumping duties on garlic*, September 27, 2005, found at <http://www.tralac.org/scripts/content.php>, retrieved May 31, 2006.

⁷⁷ Domestic interested parties’ response, pp. 27-28.

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
Quantity (million pounds)											
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 ¹	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

¹ 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.

APPENDIX A

***FEDERAL REGISTER* NOTICES AND THE
COMMISSION'S STATEMENT ON ADEQUACY**

INTERNATIONAL TRADE COMMISSION

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

Fresh Garlic From China

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on fresh garlic from China.

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;¹ to be assured of consideration, the deadline for responses is March 23, 2006. Comments on the adequacy of responses may be filed with the Commission by April 17, 2006. 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).

EFFECTIVE DATE: February 1, 2006.

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

¹ 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. 06-5-146, expiration date June 30, 2008. Public reporting burden for the request is estimated to average 10 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.

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 issued an antidumping duty order on imports of fresh garlic from China (59 FR 59209). Following 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). The Commission is now conducting a second 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 five-year review determination, the Commission defined the Domestic Like Product as all fresh garlic.

(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 five-year review determination, the Commission defined the Domestic Industry as all 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 reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the "same particular matter" as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was "personal and substantial." However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, 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 March 23, 2006. 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 April 17, 2006. 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 if available) 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 2000.

(7) 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 2005 (June 2004–May 2005) (report quantity data in pounds and value data in U.S. dollars, f.o.b. U.S. producing establishment(s)). 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) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

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

(8) 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 2005 (June 2004–May 2005) (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. point of shipment, 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. point of shipment, including

antidumping duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) 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 calendar year 2005 (June 2004–May 2005) (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; and

(b) 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.

(10) 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 2000, 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.

(11) *(Optional)* A statement of whether you agree with the definitions of the Domestic Like Product as all fresh garlic and Domestic Industry as all producers of fresh garlic; 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: January 24, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 06-807 Filed 1-31-06; 8:45 am]

BILLING CODE 7020-02-P

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: May 8, 2006.

FOR FURTHER INFORMATION CONTACT: Dana Lofgren (202-205-3185), 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 May 8, 2006, the Commission determined that the domestic interested party group responses to its notice of institution (71 FR 5374, February 1, 2006) of the subject five-year review were adequate and that the respondent interested party group responses were inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.¹ Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.²

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on June 29, 2006, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter,

¹ 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.

² Commissioner Daniel R. Pearson concluded that the domestic group response was adequate and the respondent group response was inadequate, but that circumstances warranted a full review.

**INTERNATIONAL TRADE
COMMISSION**

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

Fresh Garlic From China

AGENCY: International Trade Commission.

ACTION: Scheduling of an expedited five-year review concerning the antidumping duty order on fresh garlic from China.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of

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 this review and that have provided individually adequate responses to the notice of institution, 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 July 7, 2006 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 July 7, 2006. 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. 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 Fed. Reg. 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 Fed. Reg. 68168, 68173 (November 8, 2002).

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: May 15, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6-7689 Filed 5-19-06; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF COMMERCE**International Trade Administration**

A-570-831

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

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

SUMMARY: On February 1, 2006, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on fresh garlic ("garlic") from the People's Republic of China ("PRC") pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of domestic interested parties and inadequate response from respondent interested parties, the Department conducted an expedited (120-day) sunset review. As a result of this sunset review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. The dumping margins are identified in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: June 8, 2006.

FOR FURTHER INFORMATION CONTACT: Hilary E. Sadler, Esq. or Jim Nunno, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4340, or (202) 482-0783, respectively.

SUPPLEMENTARY INFORMATION:**Background:**

On February 1, 2006, the Department published the notice of initiation of the second sunset review of the antidumping duty order on garlic from the PRC pursuant to section 751(c) of the Act. *See Initiation of Five-year ("Sunset") Reviews*, 71 FR 5243 (February 1, 2006). The Department received the Notice of Intent to Participate from the Fresh Garlic Producers Association and its individual members: Christopher Ranch LLC; The Garlic Company; Valley Garlic; and Vessey and Company, Inc. (collectively "the domestic interested parties"), within the deadline specified in section 351.218(d)(1)(i) of the Department's Regulations ("Sunset Regulations"). The domestic interested parties claimed interested party status

under sections 771(9)(C) and (F) 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. We received complete substantive responses only from the domestic interested parties within the 30-day deadline specified in section 351.218(d)(3)(i) of the Department's regulations. We received no responses from the respondent interested parties. As a result, pursuant to section 751(c)(5)(A) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations, the Department conducted an expedited (120-day) sunset review of this 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 this order does not include the following: (a) garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive. In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to Customs and Border Protection to that effect.

Analysis of Comments Received

All issues raised in these reviews are addressed in the "Issues and Decision

Memorandum" ("Decision Memo") from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated June 1, 2006, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order were to be revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in room B-099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at <http://ia.ita.doc.gov/frn>, under the heading "June 2006." The paper copy and electronic versions of the Decision Memorandum are identical in content.

Final Results of Review

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

Manufacturers/Exporters/Producers	Weighted Average Margin (percent)
PRC-wide	376.67

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: June 1, 2006.

David M. Spooner,
Assistant Secretary for Import Administration.
 [FR Doc. E6-8940 Filed 6-7-06; 8:45 am]

BILLING CODE 3510-DS-S

EXPLANATION OF COMMISSION DETERMINATION ON ADEQUACY

in

Fresh Garlic From China

Inv. No. 731-TA-683 (Second Review)

On May 8, 2006, the Commission determined that it should proceed to 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).¹

The Commission determined that the domestic interested party group response to the notice of institution was adequate. The Commission received responses to the notice of institution from the Fresh Garlic Producers Association (“FGPA”) and its four individual members: Christopher Ranch L.L.C. (“Christopher Ranch”), The Garlic Co. (“Garlic Co.”), Valley Garlic, Inc. (“Valley Garlic”), and Vessey and Co., Inc. (“Vessey”). Because the Commission received adequate responses from FGPA’s members, who represent the overwhelming majority of domestic production, the Commission determined that the domestic interested party group response was adequate.

The Commission did not receive a response from any respondent interested party, and therefore determined that the respondent interested party group response to the notice of institution was inadequate. In the absence of an adequate respondent interested party group response, or any other circumstances that warranted a full review, the Commission determined to conduct an expedited review.² A record of the Commissioners’ votes is available from the Office of the Secretary and the Commission’s web site (<http://www.usitc.gov>).

¹Commissioner Daniel R. Pearson voted to conduct a full review.

²Commissioner Daniel R. Pearson determined that circumstances warranted conducting a full review of the order.