



A-570-831  
New Shipper Review  
11/01/2010-10/31/2011  
**Public Document**  
O6: LW

October 18, 2012

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Import Administration

FROM: Susan H. Kuhbach *SKH*  
Director, Office 1  
Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Results of Antidumping  
Duty New Shipper Review: Fresh Garlic from the People's  
Republic of China

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## SUMMARY

The Department of Commerce (Department) is conducting new shipper reviews (NSR) of the antidumping duty order on fresh garlic from the People's Republic of China (PRC), covering the period November 1, 2010, through October 31, 2011. As explained below, the Department recommends preliminarily rescinding these NSRs.

## BACKGROUND

On November 16, 1994, the Department published in the Federal Register the antidumping duty order on fresh garlic from the PRC.<sup>1</sup> On November 16, 2011, and November 30, 2011, the Department received timely NSR requests from Foshan Fuyi Food Co., Ltd. (Fuyi) and Qingdao May Carrier Import & Export Co., Ltd. (Maycarrier) in accordance with section 751 (a)(2)(B)(i) of the Tariff Act, as amended and 19 CFR 351.214(c). The Department determined that the requests submitted by both Fuyi and Maycarrier met the threshold requirements for initiation of an NSR and, therefore, on January 4, 2012, initiated NSRs for these two companies.<sup>2</sup>

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<sup>1</sup> See Antidumping Duty Order: Fresh Garlic From the People's Republic of China, 59 FR 59209 (November 16, 1994).

<sup>2</sup> See Fresh Garlic From the People's Republic of China: Initiation of New Shipper Reviews, 77 FR 266 (January 4, 2012).

On January 12, 2012, the Department issued antidumping duty questionnaires to both Fuyi and Maycarrier. Maycarrier timely submitted section A, C and D responses on February 13, 23 and 24, 2012, respectively. Fuyi timely submitted section A responses on February 16, 2012, and section C and D responses on March 1, 2012. On April 16, 2012, Petitioners<sup>3</sup> commented on Maycarrier's and Fuyi's responses.

On April 4, 2012, the Department released a list of potential surrogate countries to all interested parties, and invited these parties to comment on surrogate country selection and to submit surrogate value information.<sup>4</sup> On May 3, 2012, Maycarrier filed comments on the surrogate country selection and information pertaining to valuing factors of production. On July 17, 2012, Petitioners and Fuyi submitted comments regarding the surrogate country selection and surrogate values for this NSR. On August 10, 2012, Fuyi, Maycarrier and Petitioners filed rebuttal comments regarding surrogate country selection and surrogate values.

On June 7, 2012, the Department extended the deadline for the preliminary results of these NSRs to no later than October 18, 2012.<sup>5</sup> On June 25, 2012, the Department issued supplemental questionnaires to Fuyi and Maycarrier. Also, on June 25, 2012, the Department also placed public information related to Maycarrier on the record. After an extension, Maycarrier and Fuyi each filed their supplemental responses on July 20, 2012, and July 23, 2012, respectively. On August 31, 2012, the Department issued a second supplemental questionnaire to Fuyi. On September 14, 2012, Fuyi filed its second supplemental questionnaire response.

## **SCOPE OF THE ORDER**

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

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<sup>3</sup> Petitioners are the Fresh Garlic Producers Association and its individual members. The members of the Fresh Garlic Producers Association are Christopher Ranch L.L.C., The Garlic Company, Valley Garlic, and Vessey and Company, Inc.

<sup>4</sup> See Letter from the Department to All Interested Parties, "Fresh Garlic from the People's Republic of China: Surrogate Countries Selection and Surrogate Value Information", dated April 4, 2012.

<sup>5</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Fresh Garlic from the People's Republic of China: Extension of Deadline for Preliminary Results of New Shipper Reviews", dated June 7, 2012.

listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to U.S. Customs and Border Protection to that effect.

## DISCUSSION OF THE METHODOLOGY

We preliminarily find that the sales made by Fuyi during the period of review (POR) were not bona fide commercial transactions. Fuyi made two entries of subject merchandise during the POR. The Department finds that the quantity of both these entries was very low in comparison to the quantity of other entries during the POR. Additionally, the Department finds that the sales price for one of these entries was very high in comparison to the sales price of other entries during the POR. The Department has also found numerous discrepancies and inconsistencies in the information provided in Fuyi's questionnaire responses, calling into question the reliability of the information the company provided. Since much of the factual information used in our analysis involves business proprietary information, a full discussion of the basis for our decision to rescind is set forth in an accompanying memorandum, dated concurrently with this memorandum.<sup>6</sup>

We preliminarily find that Maycarrier does not meet the Department's requirements for conducting an NSR. The NSR provisions of the Department's regulations require that the entity making a request for an NSR must document and certify, among other things: (1) the date on which subject merchandise of the exporter or producer making the request was first entered or withdrawn from warehouse, for consumption, or, if it cannot establish the date of first entry, the date on which the exporter or producer first shipped the merchandise for export to the United States; (2) the volume of that and subsequent shipments; and (3) the date of the first sale to an unaffiliated customer in the United States.<sup>7</sup> If these provisions, among others, are met, the Department will initiate an NSR to establish an individual weighted-average dumping margin for the new shipper.<sup>8</sup> Further, an exporter or producer must request an NSR within one year of the date of entry (or if appropriate, first shipment for export to the United States).<sup>9</sup> The Department has determined that Maycarrier had prior shipments of subject merchandise to the United States. Based on information discovered during the course of this review, the Department preliminarily finds that Maycarrier is the same entity as another exporter that had entries of subject merchandise more than one year prior to the NSR, operating under a different name. Because record evidence shows that Maycarrier did not report its first shipment of subject merchandise in its request for an NSR, and did not meet the deadline requirements of 19 CFR 351.214(c), the Department has preliminarily found that Maycarrier's request does not satisfy the regulatory requirements for an NSR. Thus, the Department preliminarily determines that it is appropriate to

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<sup>6</sup> See Memorandum to Barbara E. Tillman, Director, AD/CVD Operations, Office 6, Import Administration "Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China: Analysis of Foshan Fuyi Food Co., Ltd.'s New Shipper Sales", dated October 18, 2012.

<sup>7</sup> See 19 CFR 351.214(b)(2)(iv).

<sup>8</sup> See generally 19 CFR 351.214(b)(2).

<sup>9</sup> See 19 CFR 351.214(c) referring to the date in 19 CFR 351.214(b)(iv)(A).

rescind the NSR for Maycarrier on this basis.<sup>10</sup> Additionally, even if Maycarrier satisfied the requirements for an NSR, record evidence concerning the quantity, prices and discrepancies in the reported information raises questions concerning the bona fides of Maycarrier's sales. Since much of the factual information used in our analysis involves business proprietary information, a full discussion of the basis for our decision to rescind is set forth in an accompanying memorandum, dated concurrently with this memorandum.<sup>11</sup>

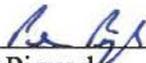
On this basis, the Department is preliminary rescinding the NSRs of both companies. Following these preliminary results, the Department will give both companies an opportunity to provide information and explanation in response to this preliminary decision.

## RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

✓  
\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

  
\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Import Administration

18 OCTOBER 2012  
\_\_\_\_\_  
(Date)

<sup>10</sup> See, e.g., Wooden Bedroom Furniture from the People's Republic of China: Final Rescission of Antidumping Duty New Shipper Review, 77 FR 21536 (April 10, 2012); see also Honey From Argentina: Preliminary Rescission of Antidumping Duty New Shipper Review, 77 FR 45334 (July 31, 2012).

<sup>11</sup> See Memorandum to Barbara E. Tillman, Director, AD/CVD Operations, Office 6, Import Administration regarding "Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China: Analysis of Qingdao May Carrier Import & Export Co., Ltd.'s New Shipper Sales," dated October 18, 2012.