



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-570-831
New Shipper Review
11/1/2011 – 10/31/2012
Public Document
E&C Office VII: NC/GC

DATE: April 3, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh *CM*
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Final Results in the Antidumping
Duty New Shipper Review of Fresh Garlic from the People's
Republic of China: Shijiazhuang Goodman Trading Co., Ltd.

I. SUMMARY

The Department of Commerce (the Department) has analyzed the case and rebuttal briefs submitted by interested parties in the antidumping duty new shipper review (NSR) of fresh garlic from the People's Republic of China (PRC) for Shijiazhuang Goodman Trading Co., Ltd. (Goodman). Based on our analysis of the comments, we recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

II. BACKGROUND

The Department published its Preliminary Results in this NSR on November 8, 2013.¹ On December 23, 2013, Petitioners (*i.e.*, the Fresh Garlic Producers Association and its individual members: Christopher Ranch L.L.C., The Garlic Company, Valley Garlic, and Vessey and

¹ See Fresh Garlic from the People's Republic of China: Preliminary Results of New Shipper Review of Shijiazhuang Goodman Trading Co., Ltd., 78 FR 67112 (November 8, 2013) (Preliminary Results). Also adopted as part of the Preliminary Results was the Memorandum to Paul Piquado, "Decision Memorandum for the Preliminary Results of Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China: Shijiazhuang Goodman Trading Co. Ltd." (November 4, 2013).

Company, Inc.) and Goodman each submitted surrogate value (SV) information.² On January 3, 2014, Petitioners submitted their rebuttal brief regarding Goodman’s SV information.³ On January 13, 2014, Goodman and Petitioners each submitted case briefs. On January 23, 2014, both Petitioners and Goodman submitted rebuttal briefs. On January 29, 2014, the Department held a public hearing on this NSR.

III. 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: 0703.20.0000, 0703.20.0010, 0703.20.0015, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, 0711.90.6500, 2005.90.9500, 2005.90.9700, 2005.99.9700, and of the Harmonized Tariff Schedule of the United States (HTSUS).⁴

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive. In order to be excluded from the order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to U.S. Customs and Border Protection to that effect.

IV. DISCUSSION OF THE ISSUES

Comment 1: Whether Goodman Qualifies for a New Shipper Rate

Petitioners’ Arguments

- The Department should rescind its review of Goodman based on its affiliation with Hebei Golden Bird Trading Co., Ltd. (Golden Bird).
- The statute’s new shipper provision precludes assigning a company-specific deposit rate to an entity that already holds such a rate.
- Goodman and Golden Bird are affiliated through Ms. Gao, their common sales person.

² See “Fresh Garlic from the People’s Republic of China – Comments and Factual Information Regarding the Selection of the Surrogate Country and Factors of Production in the Antidumping New Shipper Review (11/01/2011 – 10/31/2012) on behalf of Shijiazhuang Goodman Import & Export {sic}Co., Ltd.; see also “20th New Shipper Review of Fresh Garlic from the People’s Republic of China – Petitioners’ Additional Surrogate Information for the Final Results” (December 23, 2013).

³ See “20th New Shipper Review of the Antidumping Order on Fresh Garlic from the People’s Republic of China – Petitioners’ Post-Preliminary Surrogate Value Rebuttal Comments,” (January 3, 2014).

⁴ See Antidumping Duty Order: Fresh Garlic From the People’s Republic of China, 59 FR 59209 (November 16, 1994).

- Goodman and Golden Bird’s affiliation is also demonstrated by each company’s website having the same Internet Content Provider (ICP) license number.

Goodman’s Rebuttal Arguments

- Goodman qualifies for an NSR rate. The company was an unaffiliated, first time seller and there is no basis to rescind its NSR.
- The fact that Ms. Gao used to work for Golden Bird does not demonstrate that the two companies are affiliated, nor does the overlapping ICP number show that Golden Bird and Goodman are affiliated.

Department’s Position:

While there are areas of concern for the Department regarding Ms. Gao’s role at both Goodman and Golden Bird, we find that there is insufficient information on the record to conclude that Goodman and Golden Bird are affiliated. As an initial matter, we find no conclusive evidence indicating that Ms. Gao was still employed by Golden Bird during the POR. The fact that Ms. Gao is still listed as a contact on Golden Bird’s website without other supporting evidence is insufficient to conclusively support a finding that she is still an employee there. Additionally, even if we were to find that Ms. Gao was still employed by Golden Bird during this time, there is insufficient information to find that she exercised control over both companies within the meaning of section 771(33)(F) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.102(b)(3).

Further, although the fact that both companies have identical ICP numbers appears unusual, this overlap on its own does not demonstrate that the two companies are affiliated under any of the provisions of section 771(33) of the Act. Therefore, for purposes of these final results, we have determined that Goodman qualifies as a new shipper.

For a full discussion of the Department’s analysis regarding Goodman’s eligibility as a new shipper, including a discussion of the business proprietary information, see Goodman Final Analysis Memorandum.⁵

Comment 2: Whether Goodman’s Sales Are Bona Fide

Petitioners’ Arguments

- The Department should find that all, or at a minimum some, of Goodman’s reported sales are not bona fide transactions.
- The price, volume and circumstances of Goodman’s NSR sales are not indicative of bona fide transactions.

Goodman’s Rebuttal Arguments

- Contrary to Petitioners’ contentions, all of Goodman’s sales were bona fide.
- Each sale represented a commercial quantity and was fully consistent with Goodman being a new shipper.

⁵ See Memorandum to Edward C. Yang, Director, AD/CVD Operations, Office VII, “New Shipper Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China: Analysis of Shijiazhuang Goodman Trading Co. Ltd.” (April 3, 2014) (Goodman Final Analysis Memorandum).

- Regarding the prices, Goodman and its US importer negotiated prices based on the prevailing garlic prices in the PRC, as each sale under review reflected different garlic prices as market prices in the PRC changed.

Department's Position:

To determine whether sales in an NSR are not bona fide, the Department employs a totality of the circumstances test.⁶ In examining the totality of circumstances, the Department looks to whether the transaction is “commercially unreasonable” or “atypical of normal business practices.”⁷ Based on the totality of the circumstances in this review, the Department finds that none of Goodman’s NSR sales are bona fide, and thus we are rescinding this NSR.

Our examination of Goodman’s sales leads us to conclude that they are not reflective of normal business practices, nor are they indicative of future selling practices. Specifically, we find the average unit value and the quantity of Goodman’s sales to be atypical and, thus, commercially unreasonable. In particular, we find that Goodman’s entry prices to be exceptionally high in comparison to other entries of garlic during the POR. Also, we find that its entry quantities to be lower than the most other POR entries of garlic during the POR.

Finally, the Department has concerns with regards to the reliability of the responses provide by Goodman with regards to Ms. Gao’s employment at Golden Bird. Thus for these reasons, we find that Goodman’s sales are not bona fide and we are rescinding this NSR.

Because much of the information relied upon in this totality of circumstances analysis is business proprietary, a more detailed explanation of the Department’s entire analysis for the final results is included in the Goodman Final Analysis Memorandum.

Comment 3: Whether the Department Should Change the Surrogate Country from the Philippines to Thailand

Goodman’s Arguments

- The Department should select Thailand as the surrogate country for these final results.
- The Philippines production of garlic is de minimis. Specifically, the country ranked 44th overall in the world in terms of garlic (with 9,056 MTs in 2011), while Thailand ranked 18th in the world (with 75,589 MTs).
- The Philippines quantity figures are questionable due to the large quantity of official and unofficial imports of Chinese garlic.
- The Department should rely on Garlic prices from the Thai Ministry of Agriculture & Cooperatives (MOAC) to value input garlic bulbs.

⁶ See, e.g., Glycine From The People’s Republic of China: Rescission of Antidumping Duty New Shipper Review of Hebei New Donghua Amino Acid Co., Ltd., 69 FR 47405, 47406 (August 5, 2004).

⁷ See Hebei New Donghua Amino Acid Co. v. United States, 374 F. Supp. 2d 1333, 1339 (CIT 2005) (Hebei) (citing Windmill Int’l Pte., Ltd. v. United States, 193 F. Supp. 2d 1303, 1313 (CIT 2002)).

Petitioners' Rebuttal Arguments

- The Department should not value input garlic bulbs using Goodman's Thai pricing information.
- The garlic grown in Thailand is small in comparison to the larger sized bulbs grown in the PRC. Additionally, the pricing data for Thai garlic are inappropriate as the market for garlic has been distorted by mass volumes of smuggled Chinese garlic.
- Pricing data for Philippine garlic bulbs are a superior source for surrogate valuation.
- Goodman has not clearly demonstrated that the garlic pricing data it submitted for Thailand were published by the Thai MOAC.

Department's Position:

As explained in Comment 2, the Department finds that Goodman's sales are not bona fide. Because Goodman was the only respondent in this proceeding, we are rescinding this NSR. Since we are rescinding this review, this issue is moot.

Comment 4: Whether the Department Should Use the Month Corresponding to Goodman's Sales to Calculate Surrogate Values for Garlic

Goodman's Arguments

- The Department should use the month corresponding to Goodman's export price sales to calculate the SV for garlic.
- The Department's policy of using a 12-month period to determine the garlic SV for Goodman conflicts directly section 773(a)(1) of the Act.

Petitioners' Rebuttal Arguments

- The Department should not limit the SV for input bulbs to prices for sales made during the months of Goodman's U.S. sales transactions.
- Goodman has cited no precedent that would support this argument. Additionally, Goodman's reliance on section 773(a)(1) of the Act is misplaced as this section of the statute is inapplicable to a non-market economy (NME) such as the PRC.

Department's Position:

As explained in Comment 2, the Department finds that Goodman's sales are not bona fide. Because Goodman was the only respondent in this proceeding, we are rescinding this NSR. Since we are rescinding this review, this issue is moot.

Comment 5: Whether the Department Should Rely on the Import Data Used in the Preliminary Results

Goodman's Arguments

- When the Department uses import data to approximate the in-country value of a factor input, the Department can only exclude the aberrational data.
- The Department cannot exclude NME import sales to determine an SV.
- The Department cannot exclude import data from subsidizing countries.
- The Department must exclude aberrational or "outlier" data from its SV analysis.

Petitioners' Rebuttal Arguments

- Per the practice in previous garlic reviews, the Department should not modify the import statistics relied on in the Preliminary Results to value certain factors.

Department's Position:

As explained in Comment 2, the Department finds that Goodman's sales are not bona fide. Because Goodman was the only respondent in this proceeding, we are rescinding this NSR. Since we are rescinding this review, this issue is moot.

Comment 6: Whether the Department Should Use Farm Gate Prices or Wholesale Prices

Petitioners' Arguments

- The Department should rely on wholesale prices in the Philippines to value input garlic bulbs in the final results.
- The Department's precedent provides for the use of surrogate pricing data at the wholesale level of trade where a processor obtains highly processed input garlic bulbs.

Goodman's Rebuttal Arguments

- The Department should continue to use farm gate garlic prices rather than wholesale garlic prices when the two are available.

Department's Position:

As explained in Comment 2, the Department finds that Goodman's sales are not bona fide. Because Goodman was the only respondent in this proceeding, we are rescinding this NSR. Since we are rescinding this review, this issue is moot.

Comment 7: Whether the Department Should Continue to Rely on the Financial Statements Used in the Preliminary Results.

Petitioners' Arguments

- The Department should rely on the financial statements of: LM Arenas Agri-Products Corporation; RAM Food Products; and Ginga AgriFood Manufacturing Enterprises.
- All three of these companies are Philippine food producers that are contemporaneous, profitable and comparable to the garlic producers in the PRC.

Goodman's Arguments

- The Department should rely on the unconsolidated financial statements of Patum Rice Mill and Granary Public Company Limited, a Thai rice producer.

Department's Position:

As explained in Comment 2, the Department finds that Goodman's sales are not bona fide. Because Goodman was the only respondent in this proceeding, we are rescinding this NSR. Since we are rescinding this review, this issue is moot.

Comment 8: Whether the Department Should Use MERALCO's Tariff to Value Electricity

Petitioners' Arguments

- The Department should rely on the contemporaneous, above-cost, MERALCO-specific tariff to value electricity in the final results.

Goodman's Rebuttal Arguments

- The MERALCO electricity rates are no better than those the Department used for the Preliminary Results.

Department's Position:

As explained in Comment 2, the Department finds that Goodman's sales are not bona fide. Because Goodman was the only respondent in this proceeding, we are rescinding this NSR. Since we are rescinding this review, this issue is moot.

Comment 9: Whether the Department Should Include the Transportation Expense in the Overhead Ratio

Goodman's Arguments

- If the Department continues to use AgriPure's financial statements in the final results, it should exclude transportation expenses to avoid double counting when calculating the financial ratios.

Petitioners' Rebuttal Arguments

- The Department should continue to include transportation costs in its financial ratio calculations if it uses AgriPure's financial statements in the final results.
- The "transportation" line item in AgriPure's financial statements would not include freight costs, as the value of raw materials consumed (which includes delivery) is stated separately. Thus, the company transportation costs in AgriPure's statements are not freight costs that would double-count freight costs reported by Goodman.

Department's Position: As explained in Comment 2, the Department finds that Goodman's sales are not bona fide and, therefore, we are rescinding the NSR. Since we are rescinding this review, this issue is moot.

Comment 10: Whether Goodman is entitled to a Separate Rate in this Proceeding

Goodman's Arguments

- If the Department determines that Goodman does not qualify for a new shipper rate, Goodman requests that the Department transfer the case to the concurrent 18th annual administrative review for garlic.
- Under 19 CFR 351.214(f), the Department is only permitted to rescind an NSR if: (1) the exporter/producer did not export subject merchandise to the United States; or (2) the respondent timely withdraws its request for an NSR.

- Goodman has filed a separate rate application in the concurrent administrative review indicating that Goodman is independent of Chinese government control.

Petitioners' Rebuttal Arguments

- The Department may rescind an NSR on the absence of a bona fide transaction.⁸
- Goodman's request is beyond the scope of this proceeding. Specifically, it has not cited any segment in which the Department has rescinded an NSR and assigned a respondent a separate rate in the same (NSR) determination.
- Goodman's request for a separate rate is pending on the record of the concurrent administrative review, and the Department will make a determination on that request at the appropriate time.

Department's Position:

The Department is not making any findings with regards to Goodman's separate rate eligibility in this NSR. The Department disagrees with Goodman's assertion that we may only rescind a review when the respondent did not export subject merchandise to the United States or when a respondent withdraws its NSR request. The Department has an established practice of rescinding NSRs for companies that have exported subject merchandise to the United States during the review period when the transactions were not bona fide.⁹

As explained in Comment 2, the Department finds that Goodman's sales are not bona fide and, therefore, we are rescinding this NSR. Because we are rescinding this NSR, we are not further considering whether Goodman is entitled to a separate rate, and this issue is moot. Indeed, Goodman has cited to no case in which we rescinded an NSR and then granted a separate rate to the company covered by the rescission. The Department will evaluate the information placed on the record of the 18th administrative review to determine whether Goodman is eligible for separate rate status in that segment of the proceeding.

Comment 11: Whether the PRC-Wide Entity Rate is Reliable and Relevant

Goodman's Arguments

- In the final results, the Department cannot use the \$4.71 per kilogram rate that was used for Goodman's cash deposit, as it does not represent "commercial reality".
- The Department never calculated a rate that converts to \$4.71 per kilogram. The \$4.71 rate is based on the highest margin in the petition, a calculation that included non-comparable surrogate country value data.
- The Department conducted numerous reviews since the 1994 antidumping duty order, and calculated numerous rates that reflect actual experience and commercial reality.
- The Department can select a rate as the AFA rate, even the highest calculated rate, from an NSR or an administrative review.

⁸ See, e.g., Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States, 366 F. Supp. 2d 1246 (CIT 2005).

⁹ See, e.g., Fresh Garlic From the People's Republic of China: Final Rescission of Antidumping Duty New Shipper Reviews: 2010-2011, 78 FR 18316 (March 26, 2013).

Petitioner's Rebuttal Arguments

- The Department analyzed and rejected a similar argument in the 16th annual administrative review, and should reject Goodman's arguments in this segment.

Department's Position:

As described above, we are rescinding this NSR because Goodman's sales were not bona fide transactions. Accordingly, we are not considering Goodman's application for a separate rate in this segment of this proceeding, nor are we reviewing the PRC entity. Goodman remains part of the PRC-wide entity, and the PRC-wide entity cash deposit rate is the appropriate cash deposit rate for Goodman. We note that Goodman's entries are under review in the concurrent administrative review, as noted above, and that we are considering Goodman's entitlement to a separate rate in that review.

V. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of this NSR in the Federal Register.

Agree Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

3 APRIL 2014
Date