



A-570-831
Changed Circumstances Review
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September 14, 2015

MEMORANDUM TO: Ronald K. Lorentzen
Acting 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 of the Antidumping
Duty Changed Circumstances Review of Fresh Garlic from the
People's Republic of China: Jining Yongjia Trade Co., Ltd. and
Jinxiang County Shanfu Frozen Co., Ltd.

I. SUMMARY

We analyzed comments in this changed circumstances review (CCR) and continue to determine that Jinxiang County Shanfu Frozen Co., Ltd. (Shanfu II), Jining Yongjia Trade Co., Ltd.'s (Yongjia) supplier of garlic, is not the successor-in-interest to Yongjia's garlic supplier (Shanfu I) during its new shipper review (NSR) period of review (POR).¹ We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

II. BACKGROUND

On November 16, 1994, the Department published the antidumping duty (AD) order on fresh garlic from the PRC in the *Federal Register*.² On September 29, 2008, the Department calculated a cash deposit rate of 18.88 percent for the exporter-supplier combination of Yongjia and Shanfu I.³ On October 8, 2014, Yongjia requested a CCR of its supplier, Shanfu II, pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.216(b) to determine that Shanfu II is the successor-in-interest to the entity of the same name in its NSR, Shanfu I.⁴

¹ See *Fresh Garlic from the People's Republic of China: Preliminary Results of the Changed Circumstances Review of Jining Yongjia Co., Ltd. and Jinxiang County Shanfu Frozen Co., Ltd.*, 80 FR 37222 (June 30, 2015) (*Preliminary Results*) with the accompanying Issues and Decision Memorandum (Preliminary Decision Memorandum) (dated June 24, 2015); see also *Fresh Garlic from the People's Republic of China: Final Results and Rescission, In Part, of Twelfth New Shipper Reviews*, 73 FR 56550 (September 29, 2008) (*NSR*).

² See *Antidumping Duty Order: Fresh Garlic from the People's Republic of China*, 59 FR 59209 (November 16, 1994) (*Order*).

³ See *NSR*.

⁴ See Letter from Yongjia, "Request for Changed Circumstances Review pursuant to 19 CFR § 251.216 on behalf of Jining Yongjia Trade Co., Ltd.," (October 8, 2014) (Yongjia CCR Request).



In response to Yongjia's request, we initiated this CCR and issued preliminary results on June 24, 2015.⁵ In the preliminary results, we determined that Shanfu II was not the successor-in-interest of Shanfu I.⁶ Both Yongjia and the petitioners⁷ timely submitted case briefs following the preliminary results.⁸ We analyzed the case and rebuttal briefs of interested parties in this CCR. As a result of our analysis, we have not made changes to the preliminary results. Accordingly, we will publish the final results of this review in the *Federal Register* and instruct U.S. Customs and Border Protection (CBP) to continue suspension of liquidation of entries of fresh garlic from the PRC exported by Yongjia and produced by Shanfu II at the cash deposit rate of the PRC-wide entity. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

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).

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

In making a successor-in-interest determination, the Department examines several factors, including but not limited to, changes in: (1) management; (2) production facilities; (3) supplier

⁵ See *Preliminary Results* and Preliminary Decision Memorandum.

⁶ See *Preliminary Results*.

⁷ The petitioners in this case are Fresh Garlic Producers Association and its individual members (Christopher Ranch L.L.C., The Garlic Company, Valley Garlic, Inc., and Vessey and Company, Inc.).

⁸ See Case Brief from Yongjia, "Filed on Behalf of Jining Yongjia Co., Ltd. and Jinxiang County Shanfu Frozen Co., Ltd. in a Changed Circumstances Review on Fresh Garlic from the People's Republic of China," (August 5, 2015) (Yongjia Case Brief) and Rebuttal from the Petitioners, "Changed Circumstances Review on Fresh Garlic from the People's Republic of China - Petitioners' Rebuttal Brief," (August 14, 2015) (Petitioners' Rebuttal).

relationships; and (4) customer base.⁹ While no single factor or combination of these factors will necessarily provide a dispositive indication of a successor-in-interest relationship, the Department will generally consider the new company to be the successor to the predecessor if the resulting operations of the successor are not materially dissimilar to that of its predecessor.¹⁰ Thus, if the record demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates in all material respects as the same business entity as the predecessor company, the Department will treat the successor company the same as the predecessor and assign the new company the cash deposit rate of its predecessor.¹¹

Issue 1: Changes in Ownership and Management

Yongjia

- Shanfu I's two owners remained the same until April 2012. In April 2012, Mr. Zhai Fushan held 50 percent of shares in Shanfu I and transferred his shares to Ms. Wang Hua.
- Currently, 40 percent of Shanfu II remains in the family of a former Shanfu owner.
- Shanfu II is affiliated with Shanfu I due to the change in ownership between family members, husband and wife.
- The composition of the management team from Shanfu I to Shanfu II remained almost the same, except with the change of Zhai Fushan. Three of the five members are the same.

Petitioners

- Yongjia does not challenge the Department's preliminary finding that Shanfu II's ownership is completely different than Shanfu I's.
- Even if the Department treats the ownership change between husband and wife as between affiliated parties, Yongjia does not identify any statutory or regulatory authority or agency precedent to support that Shanfu II should be found to be the successor-in-interest to Shanfu I based on this relationship.
- Regarding management changes, Yongjia seeks merely to re-characterize the record by stating the "management team remained almost the same."

Department's Position: As we stated in the *Preliminary Results*, 100 percent of Shanfu's ownership has changed since the NSR POR,¹² which is an indicator of the dissimilarity between the two Shanfu entities. Although Yongjia states that the ownership change between husband and wife creates an affiliation between the two Shanfu entities, Yongjia does not argue that affiliation is equivalent to succession or otherwise explain how such an affiliation is relevant to the successor-in-interest analysis. Moreover, Shanfu I's termination of its legal existence, discussed in further detail below, is indicative of a break in ownership.

⁹ See, e.g., *Pressure Sensitive Plastic Tape from Italy: Preliminary Results of Antidumping Duty Changed Circumstances Review*, 75 FR 8925, 8925 (February 26, 2010), unchanged in *Pressure Sensitive Plastic Tape From Italy: Final Results of Antidumping Duty Changed Circumstances Review*, 75 FR 27706 (May 18, 2010).

¹⁰ See, e.g., *Brake Rotors From the People's Republic of China: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 70 FR 69941, 69941 (November 18, 2005).

¹¹ See *Fresh and Chilled Atlantic Salmon from Norway: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979, 9980 (*Norwegian Salmon*).

¹² See Preliminary Decision Memorandum at 5.

Yongjia also stated that Shanfu's management remained almost the same. Record evidence shows that Shanfu has had three management changes since Yongjia's NSR, and only two of its five most senior managers are the same from the NSR POR.¹³ Thus, there have been significant management changes since the NSR POR, with three out of the five managers being different between Shanfu I and Shanfu II.

Because 100 percent of Shanfu's ownership has changed and the majority of Shanfu's management has changed, we find that there were material ownership and management changes from Shanfu I to Shanfu II. Consequently, we find that the changes in ownership and management favor a finding that Shanfu II is not the successor-in-interest to Shanfu I.

Issue 2: Production Facilities and Equipment

Yongjia

- Production facilities are new due to a Chinese government mandate.
- Shanfu I's machines and equipment in use during the NSR were moved to the new location.
- Shanfu's asset evaluation report reflects the machines, equipment, and tables that moved to the new facility.
- "Rented" equipment reflects that Shanfu did not purchase any equipment.

Petitioners

- Yongjia does not explain how Shanfu II's new facilities were constructed when Shanfu I was de-registered in June 2012.
- Yongjia has identified no corporate entity during the entirety of the construction which had ability to enter agreements with contractors to construct the facility, make payments as construction proceeded, or to oversee the construction process.
- The contents of the asset report do not support Yongjia's argument that the machines and equipment of Shanfu II were the same ones that Shanfu I used during the POR of the NSR.

Department's Position: The Department agrees with the petitioners that there are inconsistencies between the asset evaluation report and Yongjia's arguments.¹⁴ We also note Shanfu I was dissolved, and it ceased operations. All of Shanfu's business licenses state that "If the 'Enterprise Legal Person Business License' is revoked, no business activity is allowed except liquidation."¹⁵ Also, Shanfu I submitted a Credit and Debt Liquidation Report on June 4, 2012, as part of the deregistration process.¹⁶ Approximately two years later, Shanfu II applied for a business license and held a shareholders' meeting to establish Shanfu II on June 30, 2014.¹⁷ According to the Pre-approval Notice to Enterprise Name on June 30, 2014, "{d}uring the application period, the enterprise name is not deemed to perform any business activities and

¹³ *Id.*

¹⁴ *See* Yongjia Case Brief at App. 4.

¹⁵ *See* Yongjia CCR Request at Exhibits 1.1 and 2.

¹⁶ *Id.* at Exhibit 5.

¹⁷ *Id.* at Exhibit 6.

transferred to other use.” Thus, Shanfu I legally could not have constructed a new facility or held any assets, including machines and equipment, during that period between deregistration and registration. Therefore, we find that the information on the record regarding the equipment does not support finding that Shanfu II is the successor-in-interest to Shanfu I.

Issue 3: Supplier Relationships

Yongjia

- In September 2008, Shanfu stopped leasing farmland and directly bought garlic from local farmers. The farmers are still the same major suppliers to Shanfu II.
- It is moot from a margin calculation perspective whether Shanfu grows its own garlic bulbs on rented land or buys those inputs from farmers. The Department did not use final ratios from an integrated supplier during its normal value calculations for Yongjia in Yongjia’s NSR.
- The difficulties in verifying factors of production confirm that the Department intended to treat Shanfu as a non-integrated supplier.

Petitioners

- Shanfu II’s suppliers differ significantly from Shanfu I’s.
- Yongjia mischaracterizes Shanfu I’s sourcing practices when Yongjia states that Shanfu II buys garlic from “the same farmers as those in the Yongjia NSR POR {sic}.” As stated above, Shanfu I grew garlic on rented farmland during the NSR POR. While Shanfu I may have bought garlic input from suppliers after the NSR POR, and those farmers are the same, Shanfu II’s sourcing practices are different those of Shanfu I during the NSR POR.
- Yongjia cites to no authority or precedent to establish that the Department’s methodology for calculating normal values has any relevance to the Department’s successor-in-interest analysis.

Department’s Position: According to Yongjia, after the *NSR* was published in September 2008, Shanfu I stopped leasing the farmland and producing garlic, and thereafter purchased raw garlic from farmers who now supply the garlic Shanfu II sells to Yongjia.¹⁸ Consistent with our preliminary results, because this change in supplier relationship occurred after Yongjia’s NSR, we find that there was a complete change in suppliers indicating that operations are materially dissimilar between Shanfu I and Shanfu II. We also agree with the petitioners that the Department does not consider the methodology of calculating normal value as a factor in determining whether there has been a change in the supplier relationships. Whether there has been a change in the supplier relationships is an independent factual matter. Although this would not be determinative on its own, this weighs in favor of finding that Shanfu II is not the successor-in-interest to Shanfu I.

Issue 4: Customer Base

Yongjia

¹⁸ *Id.* at 11 and 20.

The petitioners did not comment on the customer base.

Department's Position: Yongjia reported that Shanfu II kept the same group of major customers as Shanfu I.¹⁹ According to this list, only one customer changed in the top customers of Shanfu I and Shanfu II.²⁰ No other evidence on the record suggests otherwise. Therefore, we continue to determine that the largely similar customer base tends to show that Shanfu I is the successor-in-interest to Shanfu II.

Issue 5: Dissolution

Yongjia

- Shanfu's owners clearly intended to continue as a corporate entity as demonstrated through its Cooperation Agreement, which is enforceable as a contract under Chinese contract law.
- The Cooperation Agreement was signed in April 2012 by then owners, Mr. Zhai Hongyu and Ms. Wang Hua, to relocate the business.
- The deregistration and re-registration facilitated the transition but did not alter the contractual obligations.
- Terms of the Cooperation Agreement included: agreement that the machines and equipment will move to the new location of which Zhai Hongyu and Wang Hua each held 50 percent ownership; plant construction and other capital will be based on a 4:6 ratio; Ms. Zhang Man will handle the operations; and the company operations will not change.
- These terms reflect a clear intention to move the machines and equipment to a new location, construct a new facility with 80 percent of Zhai Hongyu's shares transferred to his wife, Ms. Zhang Man, and with operations not changing.
- The March 2012 Ownership Disposition Agreement confirms that Zhai Fushan acknowledged "great changes will occur to the company" and that Ms. Wang Hua would compensate Zhai Fushan regarding profits. Both agreed to conduct audit formalities and alter the business registration reflecting the ownership change. Fixed assets were included in the "evaluation breakdown."
- After Shanfu II registered, Shanfu II paid taxes on land usage in 2012. The fact that Shanfu II paid taxes on land usage confirms that the tax authority considered Shanfu I and II as the same company.

¹⁹ See Yongjia CCR Request at 6.

²⁰ See Preliminary Decision Memorandum at 7.

Petitioners

- It is clear that the efforts to establish Shanfu II were to provide Yongjia with a favorable cash deposit rate for its garlic shipments to the United States. Shanfu II ordered an asset evaluation report and received it the following day. Two days after receiving the asset evaluation report, Shanfu II's owners applied for and received a business license on the same day. This progression of events makes it evident that an effort was made to "resuscitate" Shanfu I, an entity that was deregistered and completely liquidated in June 2012 in a transparent attempt to reform a dormant entity to exploit a cash deposit rate issued in 2008.
- Yongjia never exported garlic to the United States subsequent to its NSR in September 2008.
- Shanfu I did not decide to dissolve until four years after the NSR.
- Shanfu I ceased to be a legal entity when it terminated operations in June 2012.
- Shanfu I's application on June 4, 2012, states that Shanfu I is being "dissolved" by the shareholders' meeting; the status of liquidation of the credit and debt is "Done;" and all creditors should file claims within 45 days of the notice (April 19, 2012).
- Nearly two years passed after deregistration before Shanfu II received a business license.
- The Cooperation Agreement reflects an agreement to relocate Shanfu I to a new facility only. It includes no language indicating that Shanfu I would be deregistered or establishing a new legal entity.
- Shanfu I's operations did change just two months after the owners stipulated in the Cooperation Agreement that operations "will not change."
- Shanfu I's Ownership Disposition Agreement does not disclose deregistration and continuation of operations as Shanfu II but reflects an agreement relating to the final disposition of Shanfu I upon its deregistration.
- Yongjia invites the Department to apply an incorrect standard by suggesting that the Department's successor-in-interest analysis "does not refer to company temporarily ceases operations." The record unambiguously establishes that Shanfu I terminated, and two years later Shanfu II was established.
- Shanfu I never expressed an intention to continue operations as a new entity through a formal pronouncement.

Department's Position: No party disputes that Shanfu I deregistered in June 2012. Yongjia explained that Shanfu I could no longer operate at its current location, so the shareholders decided to dissolve Shanfu I.²¹ As we mentioned in our preliminary results, Yongjia stated that "deregistration is a way for a company to terminate its legal existence."²² During this CCR, we also found out that Shanfu I's books and records were destroyed, supporting the conclusion that Shanfu II is both legally and operationally a new entity that started its operations in June 2014.²³

Regarding the tax liability, even if Shanfu II was liable for unpaid land use taxes, this determination does not bind the Department. In addition, nothing in Yongjia's documentation

²¹ See Yongjia Case Brief at 15.

²² See Preliminary Decision Memorandum at 7 referring to Yongjia QR at Exhibit 4 (Article 3 of the Company Law of the PRC).

²³ *Id.* at 5.

suggests that the Chinese government conducted any successor-in-interest analysis regarding Shanfu.

For purposes of the Department's successor-in-interest analysis, the dissolution of Shanfu indicates that Shanfu II is not the successor to Shanfu I. Additionally, Shanfu II could not provide us with any documentation showing the intent of Shanfu I to continue as a corporate entity during or after dissolution, or government regulations authorizing a company to deregister and re-register. Yongjia attempts to use the April 2012 Cooperation Agreement and the March 2012 Ownership Disposition Agreement signed by Mr. Zhai Fushan and Ms. Wang to show Shanfu I's intent to continue operations.²⁴ Based on Shanfu I's subsequent deregistration and destruction of all records, the record demonstrates that Shanfu I was legally terminated and ceased to exist in June 2012. No evidence in the resolution of the shareholders' meeting on June 4, 2012,²⁵ shows that Shanfu II and its corporate structure and plans would be established at a date certain, similar to a merger or acquisition. Therefore, it is reasonable to conclude that the Cooperation Agreement and Ownership Disposition Agreement also terminated in June 2012. The Department's analysis of this factor indicates that Shanfu II is a new firm and should not be considered the successor-in-interest to Shanfu I.

Issue 6: Change in Corporate Form

Yongjia

- The Chinese characters in the name are discretionary with the Chinese government. The critical characters that designate the business and the geographical identity of the business are the same.

Petitioners did not offer a rebuttal.

Department's Position: As explained in our Preliminary Decision Memorandum, we noted that Shanfu's name had changed when Shanfu II was created, with additional Chinese characters incorporated into the company name that described the corporate structure of Shanfu II, as indicated on Shanfu II's business license. We further mentioned that Yongjia's explanation has not been corroborated; however, evidence suggests that the names remain similar. Thus, we continue to find the additional characters do not indicate that Shanfu II is not the successor-in-interest to Shanfu I.

Issue 7: Expansion of Business Scope

Yongjia

- Shanfu I's business license states: "Purchase, sales and refrigeration of garlic and vegetables (Business scopes where a permit is required, related license and approval document shall be obtained.)" Shanfu I's business scope specifically allows for processing garlic where a permit is obtained. Shanfu I did such processing in compliance with the law and consistent with findings in Yongjia's NSR.

²⁴ See Yongjia Case Brief at 14-16; see also Yongjia CCR Request at Exhibits 4 and 3, respectively.

²⁵ See Yongjia CCR Request at Exhibit 5.

- In September 2008, Shanfu I started buying garlic input from local farmers and processing in the old facility. Shanfu II still processes garlic in the new facility.

Petitioners

- The mere fact that Shanfu I and II's business licenses have similar scope language does not make one the successor-in-interest of the other. Two entirely different entities could be organized and have similar scope language in their business licenses.

Department's Position: The Department agrees with petitioners that the similarity in business license scope is not worthy of substantial weight and does not in itself indicate that Shanfu II is the successor-in-interest to Shanfu I. As petitioners note, two entirely different companies could have identical or nearly identical business operations, and therefore, two entirely different businesses could also have identical or nearly identical business scopes.

V. SUMMARY OF FINDINGS

We have analyzed the comments since the preliminary results and have adopted our decision from the preliminary results. In a CCR, we generally consider a company to be the successor to a predecessor company if the resulting operations of the successor are not materially dissimilar to that of its predecessor. Given the totality of the circumstances, we find that Shanfu II operates in most material respects as a different business entity than Shanfu I regarding the production of subject merchandise. Accordingly, we determine that Shanfu II is not the successor-in-interest to Shanfu I.

VI. RECOMMENDATION

We recommend applying the above methodology for these final results. We adopt the preliminary results in these final results. Thus, we will instruct CBP to continue to suspend liquidation of entries of fresh garlic exported by Yongjia and produced by Shanfu II at the cash deposit rate assigned to the PRC-wide entity.

✓

Agree

Disagree

Ronald K Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

September 14, 2015

Date