



A-570-831
New Shipper Review
11/01/2014-4/30/2015
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May 17, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for Preliminary Results of Antidumping
Duty New Shipper Review of Fresh Garlic from the People's
Republic of China: Jinxiang Huameng Imp & Exp Co., Ltd.

SUMMARY

The Department of Commerce (Department) is conducting a new shipper review (NSR) of Jinxiang Huameng Imp & Exp Co., Ltd. (Huameng) with respect to the antidumping duty (AD) order on fresh garlic from the People's Republic of China (PRC).¹ The period of review (POR) is November 1, 2014, through April 30, 2015. As explained below, the Department recommends preliminarily finding Huameng's sale not *bona fide* and, therefore, preliminarily rescinding the NSR of Huameng.

If these preliminary results are adopted in our final results, we will rescind the review and instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 90 days from the date of publication of this notice, pursuant to section 751(a)(2)(B)(iii) of the Tariff Act of 1930, as amended (the Act), unless extended.

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

BACKGROUND

On July 21, 2015, the Department published notice of the initiation of the NSR after receiving a timely request for a NSR from Huameng on May 11, 2015.² On January 7, 2016, the Department extended the deadline for the preliminary results to May 10, 2016.³ The Department tolled the deadline for these preliminary results by an additional four business days as a result of the Government closure due to Snowstorm “Jonas,” which extended the deadline to May 16, 2016.⁴

Between July 28, 2015, and April 25, 2016, the Department issued its initial AD questionnaire and supplemental questionnaires to Huameng. Huameng timely responded to all of the Department’s questionnaires. Between November 17, 2015 and May 6, 2016, the Department received comments and rebuttal comments from interested parties. On April 20, 2016, Zhengzhou Harmoni Spice Co., Ltd., a respondent in the November 1, 2014 – October 31, 2015 administrative review that overlaps with this new shipper review, simultaneously filed a notice of appearance, application for administrative protective order, and new factual information timely submitted as rebuttal of Huameng’s supplemental questionnaire responses.⁵ Harmoni’s factual information consisted of voluminous information supporting certain fraud claims against Huameng, among other entities and individuals, and had been previously placed on the record of the administrative review. We will examine the relevance of these allegations and address any timely submitted comments regarding them in our final results.

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

² See *Fresh Garlic from the People’s Republic of China: Initiation of Antidumping Duty New Shipper Review; 2014-2015*, 80 FR 43062 (July 21, 2015).

³ See the Department Memorandum “Fresh Garlic from the People’s Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty New Shipper Review,” dated January 7, 2016.

⁴ See the Department Memorandum “Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm ‘Jonas’,” dated January 27, 2016.

⁵ Harmoni’s notice of appearance identified the company as a Chinese exporter and producer of subject merchandise. Accordingly, Harmoni is an interested party within the meaning of the Act. See Section 771(9)(A) of the Act (“The term ‘interested party’ means . . . a foreign manufacturer, producer, or exporter . . . of subject merchandise”); Section 771(25) of the Act (defining “subject merchandise” as “the class or kind of merchandise that is within the scope”). There can be no dispute regarding whether Harmoni was an exporter during the period of review of this NSR, as Harmoni has been selected as a mandatory respondent in the overlapping administrative review. In addition, by submitting factual information to the record, Harmoni is a party to the proceeding as defined in 19 CFR 351.102(b)(36).

subject garlic is currently classifiable under subheadings: 0703.20.0000, 0703.20.0005, 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, and 2005.99.9700 of the Harmonized Tariff Schedule of the United States (HTSUS).

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

DISCUSSION OF THE METHODOLOGY

Section 751(a)(2)(B)(iv) of the Act was recently amended⁶ to set forth the criteria the Department will examine to determine if sales, such as the sale by Huameng under review in this NSR, are bona fide. Any weighted average dumping margin or individual countervailing duty rate determined in a new shipper review shall be solely based on bona fide sales during the period of review.⁷ In evaluating whether the sales in a NSR are commercially reasonable or typical of normal business practices, and therefore *bona fide*, the Department considers, “depending on the circumstances surrounding such sales”:

(I) the prices of such sales; (II) whether such sales were made in commercial quantities; (III) the timing of such sales; (IV) the expenses arising from such sales; (V) whether the subject merchandise involved in such sales was resold in the United States at a profit; (VI) whether such sales were made on an arms-length basis; and (VII) any other factor {it} determines to be relevant as to whether such sales are, or are not, likely to be typical of those the exporter or producer will make after completion of the review.⁸

Accordingly, the Department considers a number of factors in its *bona fides* analysis, “all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise.”⁹ In *TTPC*, the Court of International Trade (CIT) also affirmed the Department’s decision that any factor which indicated that the sale under consideration is not likely to be typical of those which the producer will make in the future is relevant,¹⁰ and found that the weight given to each factor investigated will depend on the circumstances surrounding the sale.¹¹ Finally, in *New Donghua*, the CIT affirmed the Department’s practice of evaluating the

⁶ See Section 433 of the Trade Facilitation and Trade Enforcement Act of 2015, Pub. Law 114-125 (Feb. 24, 2016) (adding a new section 751(a)(2)(B)(iv) entitled, “Determinations based on bona fide sales”).

⁷ Section 751(a)(2)(B)(iv) of the Act.

⁸ *Id.*

⁹ See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1342 (CIT 2005) (*New Donghua*) (citing *Fresh Garlic from the People’s Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002)).

¹⁰ See *Tianjin Tiancheng Pharmaceutical Co. v. United States*, 366 F. Supp. 2d 1246, 1250 (CIT 2005) (*TTPC*).

¹¹ *Id.* at 1263.

circumstances surrounding a NSR sale, so that a respondent does not unfairly benefit from an atypical sale and obtain a lower dumping margin than the producer's usual commercial practice would dictate.¹² Where the Department finds that a sale is not *bona fide*, the Department will exclude the sale from its export price calculations.¹³ When the respondent under review makes only one sale and the Department finds the transaction atypical, "exclusion of that sale as non-*bona fide* necessarily must end the review, as no data will remain on the export price side of (the Department's) antidumping duty calculation."¹⁴

Based on the totality of the circumstances, we preliminarily find that the sale made by Huameng during the POR was not a *bona fide* commercial transaction. The Department finds that Huameng's U.S. sale of single-clove garlic is not likely to be typical of sales Huameng will make after the completion of the review, and therefore, it does not provide a reasonable or reliable basis for calculating a dumping margin. The Department also preliminarily finds that Huameng's U.S. customer failed to provide evidence to show that it met all of its obligatory expenses per the sales contract and for its subsequent purchase of non-subject merchandise. Finally, other circumstances indicate that Huameng's business operations were not profitable. Because 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.¹⁵ On this basis, the Department is preliminary rescinding the NSR of Huameng.

RECOMMENDATION

We recommend applying the above methodology for these preliminary results.



Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

17 MAY 2016
(Date)

¹² See *New Donghua*, 341 F. Supp. 2d at 1344.

¹³ See *TTPC*, 366 F. Supp. 2d at 1249.

¹⁴ *Id.*

¹⁵ See Memorandum to Edward Yang, Office Director, AD/CVD Operations Office VII, "Bona Fide Nature of the Sales in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China (PRC): Jinxiang Huameng Imp & Exp Co., Ltd." dated May 16, 2016.