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New Shipper Review
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October 14, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Rescission of
Antidumping Duty Semiannual New Shipper Review on Fresh
Garlic from the People's Republic of China: Jinxiang Huameng
Imp & Exp Co., Ltd.

SUMMARY

The Department of Commerce (Department) analyzed the case and rebuttal briefs submitted by interested parties in the new shipper review (NSR) of Jinxiang Huameng Imp & Exp Co., Ltd. (Huameng) with respect to the antidumping duty order on fresh garlic from the People's Republic of China (PRC). As a result of this analysis, we have made no changes to our *Preliminary Results*,¹ and continue to recommend finding Huameng's sale to be not *bona fide* and to rescind the NSR of Huameng. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

BACKGROUND

On May 25, 2016, the Department published the preliminary results of the NSR of Huameng.² The period of review (POR) is November 1, 2014, through April 30, 2015. The deadline for the final results was partially extended on July 20, 2016,³ and fully extended on August 29, 2016, to

¹ See *Fresh Garlic From the People's Republic of China: Preliminary Intent To Rescind the New Shipper Review of Jinxiang Huameng Imp & Exp Co., Ltd.*, 81 FR 33209 (May 25, 2016) (*Preliminary Results*), and accompanying Issues and Decision Memorandum (PDM).

² *Id.*

³ See Memorandum to the Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Fresh Garlic from the People's Republic of China: Extension of Deadline for Final Results of New Shipper Review – Jinxiang Huameng Imp & Exp Co., Ltd.," dated July 20, 2016.

October 14, 2016.⁴ On July 6, 2016, Huameng and Harmoni Spice Co. Ltd. and its U.S. parent company, Harmoni International Spice Inc. (collectively, Harmoni) filed case briefs. Harmoni filed its rebuttal brief on July 13, 2016, and Huameng timely re-filed its rebuttal brief on August 9, 2016. The petitioners⁵ did not file a case brief but submitted rebuttal comments on July 14, 2016.

The Department stated in the *Preliminary Results* that given the timing and volume of Harmoni's factual information supporting certain fraud claims against Huameng, we would examine the relevance of these allegations and address any timely submitted comments regarding them in our final results.⁶ Based upon our review of these allegations, we determined that it was necessary to verify the accuracy and authenticity of Huameng's information on the record in order to properly address these allegations. Therefore, the Department conducted its verification from September 19 to September 23, 2016. We issued a verification report on September 28, 2016. Petitioners and Harmoni timely filed verification comments on October 3, 2016, and Huameng timely filed rebuttal comments on October 4 and 5, 2016.

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).⁷

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 (CBP) to that effect.

⁴ See Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Fresh Garlic from the People's Republic of China: Extension of Deadline for Final Results of New Shipper Review – Jinxiang Huameng Imp & Exp Co., Ltd.," dated August 29, 2016.

⁵ The petitioners in this new shipper review are the Fresh Garlic Producers Association and its individual members: Christopher Ranch L.L.C., The Garlic Company, Valley Garlic, and Vessey and Company, Inc.

⁶ See *Preliminary Results* PDM, at 2.

⁷ See *Antidumping Duty Order: Fresh Garlic From the People's Republic of China*, 59 FR 59209 (November 16, 1994).

BONA FIDE SALE ANALYSIS

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act) provides that any weighted-average dumping margin determined for an exporter or producer in a new shipper review must be based solely on *bona fide* sales of that exporter or producer during the period of review. In determining whether sales covered by a new shipper review were *bona fide*, the Department shall consider, depending in the circumstances:

(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.

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.”⁸ In *TTPC*, the Court of International Trade (CIT) also affirmed the Department’s decision that any factor indicating that the sale under consideration is not likely to be typical of those the exporter/producer will make in the future is relevant, and found that the weight given to each factor investigated will depend on the circumstances surrounding the sale.⁹ Furthermore, in *New Donghua*, the CIT affirmed the Department’s practice of evaluating the circumstances surrounding a new shipper 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.¹⁰ 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.”¹¹

Based on the totality of the circumstances, we continue to find in these final results that the sale made by Huameng during the POR was not a *bona fide* commercial transaction. Our full analysis was set forth in the *Bona Fide* Memorandum, issued on May 17, 2016.¹² We have analyzed each of the factors in section 751(a)(2)(B)(iv) of the Act and find that several of them indicate that Huameng’s sale was not *bona fide*. Pursuant to section 751(a)(2)(B)(iv)(IV) of the Act, we find that the lack of proof of payment of expenses arising from the U.S. sale (i.e., international freight, marine insurance and U.S. customs duties) indicates a non-*bona fide*

⁸ See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1342 (CIT 2005) (*New Donghua*).

⁹ See *Tianjin Tiancheng Pharmaceutical Co. v. United States*, 366 F. Supp. 2d 1246, 1250, 1263 (CIT 2005) (*TTPC*).

¹⁰ See *New Donghua*, 341 F. Supp. 2d at 1344.

¹¹ See *TTPC*, 366 F. Supp. 2d at 1249.

¹² See Memorandum to Edward Yang, Office Director, AD/CVD Operations, Office VII, “*Bona Fide* Nature of the Sale 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 17, 2016 (*Bona Fide* Memorandum).

transaction.¹³ Further, pursuant to section 751(a)(2)(B)(iv)(VI) of the Act, there is evidence that the parties to the U.S. sale were not dealing on an arm's length basis. Specifically, the record shows that Huameng's U.S. customer did not pay Huameng for a later purchase of non-subject merchandise.¹⁴ Parties dealing with one another on an arm's length basis normally will meet their payment obligations. The lack of payment for a subsequent sale suggests that the sale of subject garlic was part of a "package deal" together with the sale of non-subject merchandise, and this calls into question the reported price for the U.S. sale of garlic. Finally, pursuant to section 751(a)(2)(B)(iv)(VII) of the Act, we find that there are other factors demonstrating that Huameng's sale of single-clove garlic is not typical of sales it will make after completion of this NSR. Huameng has indicated that it has not exported or sold single-clove garlic to the United States since April 30, 2015, and does not intend to do so until the Department determines a rate for single-clove garlic.¹⁵ Huameng has conceded that there is no market for single-clove garlic in the United States.¹⁶ Our verification revealed that Huameng has a stockpile of multi-clove garlic at its facility, which calls into question whether the sale of single-glove garlic in this NSR is typical of future intentions.¹⁷

For all these reasons, described more fully in the *Bona Fide* Memorandum and in our responses to comments below, we continue to find that Huameng's single sale of garlic during the period of review was not *bona fide*.

DISCUSSION OF THE ISSUES

The following comments were raised during this administrative review.

- Comment 1a: Whether The Price of Huameng's Garlic Was Indicative of a *Bona Fide* Sale
- Comment 1b: Evidence of Payment of Expenses Arising from the Transaction by Huameng's U.S. Customer
- Comment 1c: Whether the Transaction Was Made on an Arm's Length Basis
- Comment 1d: Whether Huameng's Business Operations Are Profitable
- Comment 1e: Whether the Sale of Single-Clove Garlic is Typical
- Comment 2: Whether Harmoni Qualifies as an Interested Party
- Comment 3: Whether Huameng is Entitled to a Separate Rate
- Comment 4: Whether Huameng Should Receive the PRC-Wide Cash Deposit Rate
- Comment 5: Whether Huameng is Eligible to Be a New Shipper

Comment 1a: Whether The Price of Huameng's Garlic Was Indicative of a *Bona Fide* Sale

Huameng's Comment

- The Department calculated the price premium difference between the average unit values (AUV) of single-clove and multi-clove garlic using the AUV of all entries in the CBP

¹³ See comment 1b below. See also *Bona Fide* Memorandum at 5.

¹⁴ See comment 1c below. See also *Bona Fide* Memorandum at 6.

¹⁵ See comment 1d below. See also *Bona Fide* Memorandum at 7-8.

¹⁶ See comment 1e below. See also *Bona Fide* Memorandum at 7-8.

¹⁷ See comment 1e below. See also *Bona Fide* Memorandum at 7-8.

data instead of using only the entries for multi-clove whole garlic entered under HTSUS subheading 0703.20.0015.

Petitioners' Rebuttal

- The Department stated that its price analysis followed its past practice¹⁸ of using the AUV for entries classified under HTSUS subheading 0703.20.0015 when, in fact, the Department compared Huameng's per kilogram sales price to the AUV for all of the HTSUS subheadings listed in the CBP database.
- The Department should follow this past practice even though this adjustment to the comparison should have no effect on the Department's final determination that Huameng's sale is not *bona fide*.

Department's Position: Petitioners and Huameng are correct that the Department's analysis should have compared the price premium between Huameng's sale of single-clove garlic and the contemporaneous average AUV of entries of fresh, whole garlic (HTSUS 0703.20.0015) to the price premium between the price of Hejia's *bona fide* sale¹⁹ of single clove garlic and the corresponding AUV for contemporaneous fresh, whole garlic entries. Using the POR-specific data,²⁰ we find that the price premium is actually lower than the premium of Hejia's *bona fide* sale.²¹ This correction does not change our finding that Huameng's price does not indicate that Huameng's sale was made on a non-*bona fide* basis.

Comment 1b: Evidence of Payment of Expenses Arising from the Transaction by Huameng's U.S. Customer

Huameng's Comment

- The expenses that appear on the CBP Form 7501 are not the responsibility of Huameng but its U.S. customer.
- The invoices from the Customs broker on the record of this review confirm that Huameng's customer was the importer of record and responsible for paying the charges such as antidumping duties and ocean freight.

Petitioners' Rebuttal

- The Department requested, and Huameng failed to provide, documentation showing that its U.S. customer paid all of its transaction expenses related to its purchase of single-clove garlic from Huameng, including international freight, antidumping duties, customs duties, and U.S. brokerage and handling fees.

¹⁸ See *Fresh Garlic from the People's Republic of China: Final Results and Final Rescission, In Part, of New Shipper Reviews*, 74 FR 50952 (October 2, 2009) (NSR 2007-2008), and accompanying Issues and Decision Memorandum, at 4-5.

¹⁹ See *Fresh Garlic from the People's Republic of China: Final Results and Final Rescission, In Part, of New Shipper Reviews*, 74 FR 50952, (October 2, 2009) (NSR 2007-2008), and accompanying Issues and Decision Memorandum at Comment 1, where the Department found a sale of single-clove garlic *bona fide* and established a price premium ratio between single-clove garlic and multi-clove garlic, to represent a reasonable benchmark.

²⁰ See Memorandum to the File "New Shipper Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Customs Entries from November 1, 2014, to April 30, 2015," dated July 9, 2015.

²¹ See *Bona Fide* Memorandum.

- Any failure to pay these expenses would result in a substantial increase in the price of the garlic beyond the reported price and would affect the Department’s analysis regarding the premium paid based on the difference between Huameng’s per kilogram sales price and the AUV for entries made pursuant to HTSUS subheading 0703.20.0015.
- Huameng’s claim that it was not responsible for paying these expenses fails to address the salient point of providing the Department evidence that identifies the party that paid them.

Department’s Position: Huameng was specifically asked to provide “{...} documentation showing that the U.S. customer made payments for international freight, marine insurance, and U.S. Customs duties,” and Huameng failed to do so.²² The burden was on Huameng to develop the record in the instant proceeding, and Huameng chose not to comply fully with the Department’s request for this information. Because Huameng did not provide evidence that identifies the party that actually paid for these contractual expenses, the Department cannot definitively determine that the terms of the sales contract and commercial invoice were reported accurately. As a result, the Department continues to find that the lack of proof of payment for these expenses is indicative that the sale was not a *bona fide* transaction. As with the unpaid sale of non-subject merchandise to the same U.S. customer, discussed below, the unsupported sales terms raise the possibility that Huameng reached unreported agreements with its U.S. customer in order to orchestrate the minimum price necessary to achieve a zero dumping margin (*e.g.*, Huameng offered to pay the expenses at issue in order to induce a higher price from the U.S. customer).

Comment 1c: Whether the Transaction Was Made on an Arm’s Length Basis

Huameng’s Comment

- Huameng concedes it did not provide proof of payment for the subsequent sale of non-subject merchandise during the POR.
- Huameng states that the record confirms Huameng did receive the payment based on its pre-paid tax declaration sheet, balance sheet, and profit and loss statement.
- Alternatively, Huameng suggests adjusting Huameng’s price for subject merchandise by deducting from it the price for the non-subject merchandise, to calculate an adjusted per unit price for its single-clove garlic sale.

Petitioners’ Rebuttal

- There are no documents on the record that confirm Huameng received payment for its sale of non-subject merchandise, noting that the Department found this outstanding balance in Huameng’s accounts receivable subledger and tied it to Huameng’s end of year Balance Sheet for 2015.
- Huameng’s suggestion to adjust the sales price for its sale of single-clove garlic by the price of the sale for non-subject merchandise, only demonstrates that Huameng’s responses are unreliable.

²² See Huameng’s Section A Supplemental Questionnaire Response, dated March 28, 2016, at 3 and Exhibits 4-1 and 4-3.

Department's Position: Huameng concedes in its case brief that it did not provide proof of payment for the subsequent sale of non-subject merchandise. As noted in the *Bona Fide* Memorandum, we tied the outstanding balance for this unpaid sale as reflected in Huameng's accounts receivable ledger to its end of year Balance Sheet for 2015.²³ This amount then carries over to the Profit and Loss Statement and the Pre-Paid Tax Declaration as a negative profit value. Huameng provides no explanation as to why our preliminary finding that ties the balance sheet to the accounts receivable ledger demonstrating nonpayment was inaccurate, and offers no specifics as to how the information on the record confirms payment was made for this sale. Huameng's suggestion to adjust the price for subject merchandise by deducting from it the price for non-subject merchandise cannot be used as a remedy for not reporting information specifically requested by the Department. Therefore, we continue to find that the record evidence shows no payment was received for the subsequent sale of non-subject merchandise. As explained above, this indicates a lack of arm's length dealing between the parties to the sale, and provides further evidence of a non-*bona fide* transaction.

Comment 1d: Whether Huameng's Business Operations Are Profitable

Huameng's Comments

- Huameng planned to lose money at the beginning of its operations but expects to be profitable in the mid- to long-term given the market opportunities that are presented by the sale of single-clove garlic both domestically and in the U.S. market.
- Huameng contends it has limited competition and numerous contacts about future sales of single-clove garlic.

Petitioners' Rebuttal

- The Department was correct in noting that Huameng has been unable to generate a profit over an extended period of time.
- Huameng's assertion that it has limited competition does not comport with the fact that single-clove garlic is grown in a region remote from Shandong Province, where Huameng is located and where multi-clove garlic is typically grown and processed for export. Therefore, any future sales by Huameng will be for multi-clove garlic grown since its processing facility is located in the region where multi-clove garlic is grown.

Department's Position: As noted in the *Bona Fide* Memorandum, we have serious concerns regarding Huameng's ability to operate as a going concern given the very limited number of total sales over a lengthy period of time, and the lack of profitability and opportunities to generate future sales. These factors are not indicative of a typical business startup that may be unprofitable in its initial years but can generate multiple sales and prospective sources of future revenue to carry it toward profitability in the near future. This is not case for Huameng, where it has a very small number of total sales since its inception.²⁴

Moreover, we find that Huameng is not following typical business practices based on its statement that it has not exported or sold single-clove garlic to the United States since April 30, 2015, and has no intention to do so until "{...} the Department determines a cash deposit rate for

²³ See *Bona Fides* Memorandum at 6.

²⁴ *Id.* at 7.

future shipments of single clove garlic, or determines single clove garlic is not subject to the AD order.”²⁵ This statement implicitly suggests that Huameng’s pricing policies and other POR-specific circumstances might not be a reliable indicator of its future behavior given that Huameng is unable to generate any additional orders sales under the current market conditions.

Comment 1e: Whether the Sale of Single-Clove Garlic is Typical

Huameng’s Comments

- Huameng states that the atypical nature of single-clove garlic by itself does not disqualify it from being considered as viable for a new shipper review.
- Huameng argues that there is no reason it would replicate Hejia’s behavior where a single sale of single-clove garlic was not predictive of its future sales.
- Huameng questions why single-clove garlic is included in the scope of the order given that single-clove is not produced in the United States and as such, does not compete with the multi-clove garlic grown in the United States.

Petitioners’ Rebuttal

- Petitioners argue that single-clove is clearly subject merchandise, having been examined in three new shipper reviews. If Huameng questions why it is included in the scope of the order, it should have filed a scope request.
- Because there is no market for single-clove garlic in the United States, it is all the more likely that Huameng’s sale during the POR is not predictive of its future sales.

Petitioners’ Verification Comments

- The Department’s discovery at verification that Huameng is holding in inventory a vast quantity of recently purchased multi-clove garlic, provides further corroboration that its single reported sale of single-clove garlic is not reflective of its future business activities.
- Huameng’s actions resemble those of Hejia where it obtained a very low cash deposit rate based on the sale of single-clove garlic, in order to export large quantities of multi-clove garlic to the United States.

Huameng’s Verification Rebuttal Comments

- The fact that Huameng had multi-clove garlic in storage did not reflect its intention to sell it to the United States since it can be sold domestically or to third countries.
- Huameng states that it has no intention of selling multi-clove garlic to the United States even if the cash deposit rate is not tied to single-clove garlic.

Department’s Position: Based on the past and current market information for single-clove garlic noted in the *Bona Fides* Memorandum,²⁶ we continue to find little evidence of a U.S. market for this type of garlic. The record evidence shows that Huameng made no export sales of single-clove garlic to a third country and only one shipment to the United States since its establishment in November 2014.²⁷ In addition, the Department noted at verification that Huameng has no

²⁵ See Huameng’s Second Supplemental Questionnaire Response, dated May 6, 2016, at 3.

²⁶ See *Bona Fides* Memorandum at 7-8.

²⁷ See Huameng’s Second Supplemental Section C response of May 6, 2016, at 1-2; also Huameng’s Section A Supplemental response of March 28, 2016 at Exhibit 10-1 and Exhibit 10-2.

pending sales transactions for single-clove garlic with any U.S or domestic customer, and that Huameng has not identified any future buyers.²⁸ Indeed, Huameng concedes there is currently no market for single clove garlic in the United States, but argues that, based on its undocumented expressions of interest, it will make such sales in the future.²⁹

As Huameng indicates, single clove garlic is subject merchandise, and a sale of single clove garlic can provide the basis for a new shipper review. However, in order for Huameng's sale to be *bona fide*, it must be typical of those Huameng will make after the completion of the review.³⁰ Although Huameng stated that it intends to sell single-clove garlic exclusively to the United States only after the Department's determination in this NSR,³¹ the evidence found during verification shows that Huameng recently purchased and has in storage a large quantity of exclusively multi-clove garlic that is more than 26 times the reported volume of its single-clove garlic sale under review.³² This finding contradicts Huameng's stated intention of selling single-clove garlic in the future. Huameng's claim that it intends to sell the multi-clove garlic to third countries or within China is unsubstantiated and is contradicted by the absence of such sales since its inception. Moreover, Huameng's claim that it will single-handedly develop a U.S. market for single clove garlic is similarly unsubstantiated. The totality of evidence demonstrates an absence of a U.S. market for this product, and indicates a reasonable likelihood that Huameng would follow the same sales pattern as Hejia of never again exporting single-clove garlic to the United States after obtaining a low cash deposit rate. Although Huameng states that it does not intend to sell multi-clove garlic to the United States, such assurances cannot be enforced and do not provide the basis for determining the existence of a market for single-clove garlic in the United States. In sum, the record evidence overwhelmingly indicates that Huameng's sale of single clove garlic will not be typical of those it would make after completion of the review. Therefore, we continue to find for these final results that Huameng's single new shipper sale of single-clove garlic is not likely to be typical of those it will make after completion of the review.

Comment 2: Whether Harmoni Qualifies as an Interested Party

Huameng's Comments

- Harmoni does not qualify to participate in this new shipper review because it is not a producer or exporter of subject merchandise, and is not the importer of the subject merchandise under review in this new shipper proceeding.
- Harmoni did not attach a company certification to its APO application to support its claim of being a producer and exporter of subject merchandise.
- Huameng opposes Harmoni's standing because it is a producer and wholesaler of Chinese garlic and not U.S. garlic.
- Harmoni failed to file timely responses to the Department's questionnaire in the administrative review.

²⁸ See Memorandum to the File, "Verification of the Sales and Factors Response of Jinxiang Huameng Import & Export Co., Ltd. in the New Shipper Review of Garlic from the People's Republic of China," dated September 28, 2016 (Huameng Verification Report), at 6-7.

²⁹ Huameng Case Brief at 8 & n.25.

³⁰ See section 751(a)(2)(B)(iv) of the Act.

³¹ See Huameng's Second Supplemental Section C response of May 6, 2016, at 1-2.

³² See Huameng Verification Report at 7.

Harmoni's Rebuttal

- The Department properly found Harmoni to be an interested party to the proceeding.
- Huameng misinterpreted the term “subject merchandise” in section 771(9)(A) of the Act, contrary to its plain meaning and the Department’s regulations.
- Huameng misinterpreted the Department’s company certification requirement.
- The Department should reject Huameng’s argument regarding Harmoni’s review request and participation in the annual administrative review proceeding, which are not on the record of this new shipper review.

Petitioners' Rebuttal

- Under section 771(9)(A) of the Act, any foreign manufacturer, producer, or exporter of subject merchandise is an interested party, but only the U.S. importer of subject merchandise is an interested party.
- The Department’s regulations in accordance with 19 CFR 351.102(b)(29)(i)-(ii) contain the same distinction with respect to its definition of interested party for purposes of submitting an APO application.
- Harmoni met the requirements as demonstrated in its notice of appearance and APO application.

Department's Position: Section 771(9)(A) of the Act defines “interested party” to include “a foreign manufacturer, producer, or exporter, or the United States importer of subject merchandise.” Section 771(25) of the Act defines subject merchandise as “the class or kind of merchandise that is within the scope of an investigation, a review, a suspension agreement, an order” in an antidumping or countervailing duty proceeding. Contrary to Huameng’s argument that interested party status in a new shipper review is conferred only if the entries of an exporter/producer are subject to the new shipper review, the Department defines “subject merchandise” as the class or kind of merchandise in the scope of the proceeding, not by the entries that are implicated in the particular segment at hand, or whether the exporter/producer is subject to review.³³ For example, the Department normally considers as interested parties in an administrative review those exporters that submit separate rate applications and no shipment certifications. Even though such parties’ entries are not reviewed by the Department in an administrative review, the Department treats those companies as interested parties and grants APO applications submitted by their counsel, provided that they participate in the administrative review.

Section 351.102 of the Department’s regulations defines “party to the proceeding” as “any interested party that actively participates through written submissions of factual information or written argument, in a segment of the proceeding. Participation in a prior segment of a proceeding will not confer on any interested party ‘party to the proceeding’ status in a subsequent segment.” The Department has explained that “an interested party may not apply for access under APO if that party only intends to ‘monitor’ the proceeding. Rather, only a representative of a party to the proceeding can apply for APO access.”³⁴ Access under the APO

³³ See section 771(25) of the Act.

³⁴ See *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures*, 73 FR 3634, 3637 (January 22, 2008).

requires a party to establish that it is a party to the proceeding, *i.e.*, that it actively participates in the segment through written submissions of factual information or written argument. The Department has properly granted Harmoni interested party status and access under APO based on its qualification as a foreign exporter of subject merchandise during the POR. In addition, Harmoni has actively participated in the instant proceeding by timely filing submissions and case briefs.

Contrary to Huameng's claim, there is no requirement that APO applications of counsel be accompanied by a client certification. Pursuant to section 351.303(g) of the Department's regulations, the certification requirement is not applicable to procedural submissions because the application itself contains a certification and thus does not require an additional representative certification.³⁵

Finally, Huameng's arguments concerning the motives behind Harmoni's failure to participate in the administrative review are not material as they cover issues that are outside of this new shipper review. We agree with Harmoni that these general comments have no bearing on its standing to participate in this proceeding segment.

Comment 3: Whether Huameng is Entitled to a Separate Rate

Huameng's Comments

- If the Department determines that Huameng is not entitled to a new shipper review, Huameng is still entitled to a separate rate because there is no record evidence that it is part of the PRC-wide entity.
- Huameng requests that the Department transfer the record of the new shipper review to the administrative review.

Petitioners' Rebuttal

- The Court of International Trade (CIT) has upheld the Department for rescinding an administrative review and not granting a separate rate in cases when there are "no sales that are not unrepresentative or distortive," and thus the result is "no reviewable entries."³⁶
- Even if the Department were to consider Huameng's separate rate status, it should conclude that Huameng is not eligible for a separate rate because it has failed to disclose its affiliations with other exporters/producers of the subject merchandise.

Department's Position: The Department has determined that Huameng's only sale during the period of review was not *bona fide*. Thus, there are no entries for the Department to review and we are rescinding Huameng's new shipper review pursuant to 19 CFR 351.214(f). As the CIT recently explained in a decision upholding the Department's decision not to review an exporter's eligibility for a separate rate under similar circumstances, the Department "cannot evaluate a

³⁵ See *Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013), at Comment 10 and Comment 22.

³⁶ See *Fresh Garlic Producers Association v. United States*, 121 F. Supp. 3d 1313, 1334-36 (CIT 2015)(FGPA).

company for application of a separate rate to its sales when there are no sales that are not unrepresentative or distortive.”³⁷

Huameng is not under review in the ongoing administrative review of the antidumping duty order on fresh garlic from the PRC, which the Department initiated on January 7, 2016.³⁸ The time for Huameng to request that it be reviewed in that separate segment of the garlic proceeding has long passed, and there is no basis for Huameng’s request that the Department “transfer its file” to that segment. In the absence of a review, Huameng’s merchandise must liquidate as entered.³⁹ This result is not a “penalty,” as Huameng contends, but rather reflects the default legal outcome in the absence of the completion of the new shipper review and the absence of a request for an administrative review.

Comment 4: Whether Huameng Should Be Assessed the PRC-Wide Cash Deposit Rate

Huameng’s Comment

- The Department cannot assess duties using the PRC-wide cash deposit rate because it is based on a rate established prior to the current law and therefore, is no longer applicable.

Petitioners’ Rebuttal

- Huameng should be assessed at the rate entered.
- Since there are no sales that are not unrepresentative or distortive for the Department to review, that same PRC-wide cash deposit will apply to Huameng’s future shipments.
- The \$4.71/kilogram cash deposit rate has been applied to the PRC-wide entity in every administrative review under the antidumping duty order on fresh garlic.

Department’s Position: The Department is rescinding this NSR because there is no bona fide sale to examine. As a result, Huameng’s entries during this POR will liquidate as entered. Because its entries entered under the PRC-wide cash deposit rate, this is the rate at which they will be liquidated. Further, Huameng’s cash deposit rate will remain the PRC-wide rate, unless and until it demonstrates its eligibility for a separate rate.

Comment 5: Whether Huameng is Eligible to Be a New Shipper

Harmoni’s Comments

- Huameng is not entitled to a new shipper review because it is affiliated with Hejia and Sunny Import and Export Limited, both of which have shipped garlic to the United States and are also owned and/or controlled by Ye Jicheng. Harmoni alleges that Ye Jicheng owns and/or controls Huameng based on the statements made by two informants who have personal knowledge of Ye Jicheng’s business dealings.⁴⁰
- Harmoni argues that Huameng neither identified any individual who actually invested in its business, nor provided any documentation.

³⁷ *FGPA*, 121 F. Supp. 3d at 1335.

³⁸ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 736, 738-39 (Jan. 7, 2016).

³⁹ See 19 CFR 351.212(c).

⁴⁰ See Harmoni’s “New Factual Information to Rebut, Clarify, and Correct Huameng’s Supplemental Section C&D Questionnaire Responses,” (Fraud Allegations), dated April 20, 2016, at Appendix A, Exhibit 5.

- The two reported owners of Huameng live in close proximity to Ye Jicheng, suggesting that they may have been acquainted with him.
- Harmoni investigators stated that they did not find any office or processing facility at Huameng's purported location.
- Huameng neither produced nor sold any garlic to the U.S. market during the POR. Huameng's tax and accounting documents are fabrications, as indicated in the declaration by Harmoni's local counsel in China who obtained copies of Huameng's tax reports that contradict those submitted in Huameng's responses.

Huameng's Rebuttal

- Harmoni's case brief should be rejected because it did not include a company certification.
- Huameng states that it is not affiliated with any producer or exporter, noting that its business license and establishment documents on the record show that it was a real existing company.
- Huameng notes that it is ready for any on-site verification.
- Harmoni's fraud allegations should be disregarded because they are unsupported and unverifiable.

Harmoni's Verification Comments

- Harmoni alleges that Huameng's 2015 Financial Statement submitted on the record is a false and fraudulent document. According to Harmoni, Huameng has not challenged the genuineness of the tax returns submitted by Harmoni that establish that Huameng did not produce or sell garlic during the POR. Rather, Huameng has merely asserted that those it submitted on the record are correct.
- The Department did not conclusively establish at verification which of the two 2015 Financial Statements (*i.e.*, the one reported by Huameng or the one submitted by Harmoni) are the real and actual ones. The Department was not able to verify the 2015 tax return using the Tax Bureau of Jinxiang's files and therefore cannot determine the accuracy of Huameng's reported 2015 Balance Sheet and Profit and Loss Statement.
- The change of Huameng's tax identification number used to access its 2016 tax records during verification strongly suggests that the earlier tax records may be maintained separately under different identification numbers in the tax system. Harmoni argues that the regulatory procedures allow the local PRC tax bureau to query the central office tax database by simply using the tax identification number and password.
- Huameng's failure at verification to contradict the evidence included in Harmoni's Fraud Allegations should result in the Department rescinding the review.
- Alternatively, the Department should postpone its final determination given the credible allegations of fraudulent conduct, in order to reopen the record and allow sufficient time to conduct a further investigation.⁴¹
- Huameng's changed its email address filed under the PRC National Enterprise Credit Information Disclosure System shortly before verification. This change replaced the

⁴¹ Harmoni cites to a Department Memorandum, "Xantham Gum from the People's Republic of China: Deferral of the Final Results of the First Antidumping Duty Administrative Review," dated February 9, 2016, regarding the reopening of the record and deferring the final results when faced with serious unresolved issues.

original one that had used a Hejia email address, with a Huameng one. This new factual information, along with the PRC government finding of “abnormal business operations” was submitted in Harmoni’s pre-verification comments, and provides additional evidence that Huameng is controlled by Ye Jicheng, an owner of Hejia.

- Harmoni argues that section 351.302(b) of the Department’s regulations allows the Department to waive time limits for “good cause” since Harmoni has only recently become aware of this information and Huameng has failed to disclose material information regarding its ownership and affiliation.

Petitioners’ Verification Comments

- Huameng’s nine minor corrections for its one reported sale demonstrate a failure to provide accurate and reliable information to the Department, and a lack of cooperation.

Huameng’s Verification Rebuttal

- The verification findings show that Harmoni’s fraud allegations are unfounded.
- Harmoni directly contradicts the statements of the government tax official at verification who explained that only tax reports for the most recent three months are maintained on the system at the local tax bureau.
- The verification report fully supports Huameng’s claims regarding the ownership and control of Huameng.
- Harmoni is providing new factual information on the record concerning the veracity of Huameng’s 2015 financial report and Huameng’s change of email address. This information should be rejected because it is untimely filed and does not address the verification findings.
- The corrections noted in the verification report were found during preparations for verification and were in most cases extremely minor and not favorable to Huameng.

Department’s Position: As an initial matter, the Department completed its verification of Huameng’s questionnaire responses within a month of the deadline for these final results and was able to verify the accuracy of the ownership and sales information submitted by Huameng, the two central topics discussed in Harmoni’s fraud allegations. Specifically, the Department examined Huameng’s original capitalization bank statement and deposit slips from the Bank of China that reflected the reported shareholder contribution.⁴² The Department confirmed and toured the reported location of Huameng’s production facility and matched this address to the one on Huameng’s lease.⁴³ In addition, the Department reconciled Huameng’s reported quantity and value for subject and non-subject merchandise, and viewed its accounting vouchers, invoices, various sub-ledgers and general ledgers to demonstrate the reported quantity and value of the garlic sold during the POR.⁴⁴ Although the Department was told by the official at the Tax Bureau of Jinxiang that the VAT and corporate tax documents are only maintained for the most recent quarter, the Department was able to view and match the beginning-year balances of total assets, total liabilities, and shareholder equity taken from the 2016 balance sheets, to those same figures reported by Huameng’s end-of-year balances in its December 2015 balance sheet.⁴⁵

⁴² See Huameng Verification Report at 3.

⁴³ *Id.* at 4.

⁴⁴ *Id.* at 7-8.

⁴⁵ *Id.* at 5 and VE II.B.2-5.

The Department exercised due diligence during verification to ascertain the reliability and accuracy of the information submitted by Huameng, and specifically addressed the two major issues that were raised in Harmoni's Fraud Allegations concerning the ownership and control of Huameng,⁴⁶ and whether Huameng actually produced and sold garlic during the POR.⁴⁷ As described in the verification report⁴⁸, the Department reviewed and reconciled many source documents and did not find any of Huameng's tax reports and supporting accounting documents to be "fabricated," and discovered no information that would support finding Huameng as neither the producer nor exporter of the garlic under review.

The Department has reviewed the new factual information filed by Harmoni in its pre-verification and verification comments, which concerns the veracity of Huameng's reported 2015 Financial Statement and its inclusion on the list of enterprises with abnormal business operations by the PRC National Enterprise Credit Information Disclosure System and the recent change in Huameng's email address on file.⁴⁹ The Department will permit the filing of this information pursuant to 19 CFR 351.302(b). The Department agrees with Harmoni that good cause exists in light of the serious nature of Harmoni's fraud allegations and the unavailability of this information prior to the Department's deadline for submission of new factual information. However, this new factual information by itself does not undermine the Department's verification findings noted above concerning Huameng's ownership and capitalization. Huameng's accounting and financial information was extensively examined and reconciled with numerous source documents during verification, as described above.

The Department agrees with Harmoni that this new factual information appears to demonstrate some inconsistencies. We cannot explain why Huameng initially registered an email address that was filed with the PRC government that included the name Hejia, and shortly before verification changed the address on file to one including the name "Huameng." Similarly, we cannot explain why Huameng was included in a government "list of enterprises with abnormal operations" for disclosing false information and for failure to be contacted at its registered address, although Huameng resolved these issues and the company was removed from the government list in the weeks prior to verification.⁵⁰ While these inconsistencies lend some support to Harmoni's fraud allegations, they are insufficient to establish Huameng's affiliation with Hejia or any other prior exporter of garlic, particularly in light of the Department's verification findings that directly addressed the major concerns noted in Harmoni's fraud allegations concerning ownership and control of Huameng. Moreover, the Department was able to find Huameng listed in the PRC National Enterprise Credit Information Disclosure System during verification. In addition, we were able to access Huameng's 2016 tax reports and tie this information to the reported balances of total assets, total liabilities, and shareholder equity in its December 2015 balance sheet. The Department's findings made during verification at the local tax bureau postdate the PRC findings noted above and at a minimum, establish that Huameng was a registered legal entity in the eyes

⁴⁶ See Harmoni's Fraud Allegations, at Appendix A, Exhibit 5.

⁴⁷ *Id.* at Appendix B, Exhibit 3.

⁴⁸ Huameng Verification Report at 7-8.

⁴⁹ See Harmoni's Pre-Verification Comments, dated September 14, 2016, at Exhibits 1 and 2; and, Harmoni's Verification Comments, dated October 3, 2016, at 14-16 and Exhibit B.

⁵⁰ See Harmoni's Pre-Verification Comments, at Exhibit 2.

of the PRC government. Therefore, the Department does not find it necessary to toll the statutory deadline and reopen the record in order to further examine this new factual information, especially given its decision to rescind Huameng's new shipper review on other grounds, as explained above.

RECOMMENDATION

We recommend adopting the above positions, and rescinding Huameng's new shipper review. If these recommendations are accepted, we will publish the final rescission of this new shipper review in the *Federal Register*. We will instruct CBP to assess antidumping duties on Huameng's entries covered by this new shipper review at the PRC-wide rate, and to discontinue the option of posting a bond or security in lieu of a cash deposit for entries of subject merchandise by Huameng.



Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

14 OCTOBER 2016
(Date)