



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

A-570-831  
New Shipper Review  
11/01/2013-4/30/2014  
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May 29, 2015

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Import Administration

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 Kaihua Imp & Exp Co., Ltd.

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## SUMMARY

The Department of Commerce (Department) is conducting a new shipper review (NSR) of Jinxiang Kaihua Imp & Exp Co., Ltd. (Kaihua) with respect to the antidumping duty (AD) order on fresh garlic from the People's Republic of China (PRC).<sup>1</sup> The period of review (POR) is November 1, 2013, through April 30, 2014. As explained below, the Department recommends preliminarily finding Kaihua's sale not *bona fide* and therefore preliminarily rescinding the NSR of Kaihua.

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)(iv) of the Tariff Act of 1930, as amended (the Act).

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

## BACKGROUND

On May 21, 2014, Kaihua requested a NSR.<sup>2</sup> On August 7, 2014, the Department published notice of the initiation of the NSR.<sup>3</sup> Between August 28, 2014, and February 27, 2015, the Department issued its initial AD questionnaire and supplemental questionnaires to Kaihua. Kaihua timely responded to all of the Department's questionnaires. Between November 17, 2014 and March 26, 2015, the Department received comments and rebuttal comments from interested parties. On December 15, 2014, the Department extended the deadline for the preliminary results to June 3, 2015.<sup>4</sup>

## 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, 0703.20.0005, 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

Consistent with the Department's practice, we examined the *bona fides* of the sale by Kaihua under review in this NSR.<sup>5</sup> In evaluating whether a sale in a NSR is commercially reasonable or typical of normal business practices, and therefore *bona fide*, the Department considers, inter alia,

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<sup>2</sup> See Letter from Kaihua to the Secretary of Commerce, "Fresh Garlic from the People's Republic of China- Re-filing of Request for New Shipper Review," May 21, 2014.

<sup>3</sup> See *Fresh Garlic from the People's Republic of China: Initiation of Antidumping Duty New Shipper Review; 2013-2014*, 79 FR 46250 (August 7, 2014).

<sup>4</sup> 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 December 12, 2014.

<sup>5</sup> See, e.g., *Honey from the People's Republic of China: Rescission and Final Results of Antidumping Duty New Shipper Reviews*, 71 FR 58579 (Oct. 4, 2006) and accompanying Issues and Decision Memorandum at Comment 1b.

such factors as (a) the timing of the sale, (b) the price and quantity, (c) the expenses arising from the transaction, (d) whether the goods were resold at a profit, (e) whether the transaction was made at an arm's length basis,<sup>6</sup> and (f) any other circumstances associated with the sale.<sup>7</sup> 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."<sup>8</sup> 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,<sup>9</sup> and found that the weight given to each factor investigated will depend on the circumstances surrounding the sale.<sup>10</sup> Finally, in *New Donghua*, the CIT affirmed the Department's practice of evaluating the 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.<sup>11</sup> Where the Department finds that a sale is not *bona fide*, the Department will exclude the sale from its export price calculations.<sup>12</sup> 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."<sup>13</sup>

Based on the totality of the circumstances, we preliminarily find that the sale made by Kaihua during the POR was not a *bona fide* commercial transaction. The Department finds that the sales price for the entry was very high in comparison to the sales price of other entries during the POR, even after adjusting for differences between single and multi-clove whole garlic. The Department also preliminarily finds that Kaihua has not produced any evidence that it actually received payment for the sale of garlic under consideration. 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.<sup>14</sup>

On this basis, the Department is preliminary rescinding the NSR of Kaihua.

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<sup>6</sup> See *Tianjin Tiancheng Pharmaceutical Co. v. United States*, 366 F. Supp. 2d 1246, 1249-50 (CIT 2005) (*TTPC*).

<sup>7</sup> See *Garlic from the People's Republic of China: Rescission of Antidumping Duty New Shipper Reviews*, 76 Fed. Reg. 19322, 19323 (April 7, 2011) (upheld in *Jinxiang Yuanxin Import & Export Co. v. United States*, Ct. No. 11-00145, Slip Op. 15-22 (CIT Mar. 23, 2015)).

<sup>8</sup> 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)).

<sup>9</sup> See *TTPC*, 366 F. Supp. 2d at 1250.

<sup>10</sup> *Id.* at 1263.

<sup>11</sup> See *New Donghua*, 341 F. Supp. 2d at 1344.

<sup>12</sup> See *TTPC*, 366 F. Supp. 2d at 1249.

<sup>13</sup> *Id.*

<sup>14</sup> 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 Kaihua Imp & Exp Co., Ltd." dated June 3, 2015.

**RECOMMENDATION**

We recommend applying the above methodology for these preliminary results.

✓  
Agree

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Disagree

Paul Piquado  
Paul Piquado  
Assistant Secretary  
for Import Administration

29 MAY 2015  
(Date)