



A-570-831
Changed Circumstances Review
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June 23, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary 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

Jining Yongjia Trade Co., Ltd. (Yongjia), an exporter of fresh garlic from the People's Republic of China (PRC), requested that the Department of Commerce (Department) initiate a changed circumstances review (CCR) to determine that Jinxiang County Shanfu Frozen Co., Ltd. (Shanfu II), Yongjia's producer of garlic, is the successor-in-interest to Yongjia's garlic producer (Shanfu I) during its new shipper review (NSR).¹ We will also designate the name, Shanfu, when we speak about Shanfu I and Shanfu II collectively.

On December 16, 2014, the Department initiated a CCR with respect to the antidumping duty (AD) order on fresh garlic from the PRC, pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216.² As indicated in the *Yongjia CCR Initiation Notice*, we did not combine the preliminary results with the initiation on the basis that additional information was required to reach a preliminary finding.³

The Department received submissions from Yongjia and the petitioners. In its submission, the petitioners contend that Shanfu II is not the successor-in-interest to Shanfu I based on Shanfu I's

¹ 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); 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 *Fresh Garlic from the People's Republic of China: Initiation of Changed Circumstances Review of Jining Yongjia Trade Co., Ltd. and Jinxiang County Shanfu Frozen Co., Ltd.*, 79 FR 76304 (December 16, 2014) (Yongjia CCR Initiation Notice).

³ *Id.* at 76305.



dissolution in June 2012 and request that the Department issue negative preliminary results.⁴ Now that we have solicited, received, and analyzed this information, we preliminarily determine that Shanfu II is not the successor-in-interest to Shanfu I for purposes of the AD order on fresh garlic from the PRC.

If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of fresh garlic from the PRC exported by Shanfu II, effective on the publication date of the final results in the *Federal Register*, at the cash deposit rate equal to the current cash deposit rate assigned to the PRC-wide entity.

II. BACKGROUND

On November 16, 1994, the Department published the AD order on fresh garlic from the PRC in the *Federal Register*.⁵ On October 8, 2014, Yongjia requested a CCR of its supplier, Shanfu II, pursuant to section 751(b)(1) of the Act 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.⁶ Yongjia also requested that the Department combine the notice of initiation of the review and the preliminary results. In its CCR Request, Yongjia explained that the Chinese government directed that Shanfu I move its production facility.⁷ Mr. Zhai Fushan, one of Shanfu I's owners, did not have an interest in relocating the business, so he transferred his shares to a Yongjia shareholder and deregistered Shanfu I.⁸ Then, when Shanfu II's management and shareholders re-registered the company the ownership structure changed again.⁹

The petitioners opposed the initiation of this review of Shanfu II, and in the alternative, requested that the Department not expedite this review by combining the initiation and the preliminary results.

In response to Yongjia's request, we initiated this CCR on December 16, 2014 and issued a questionnaire to Yongjia on February 6, 2015.¹⁰ Yongjia submitted its response to our questionnaire on February 27, 2015.¹¹ The petitioners timely rebutted Yongjia's response and

⁴ Letter from the Petitioners, "Changed Circumstances Review Involving Status of Jinxiang County Shanfu Frozen Co., Ltd. Under Antidumping Order on Fresh Garlic from the People's Republic of China - Petitioners' Comments on Initial Re: Questionnaire Response," (March 23, 2015) (Petitioners' Questionnaire Rebuttal).

⁵ See *Antidumping Duty Order: Fresh Garlic from the People's Republic of China*, 59 FR 59209 (November 16, 1994) (*Order*).

⁶ See Yongjia CCR Request.

⁷ *Id.* at 1; see also Yongjia CCR Questionnaire Response Exhibit 12 (relocation directive).

⁸ *Id.* at 2-3.

⁹ *Id.* at 4.

¹⁰ See Yongjia CCR Initiation Notice and Letter to Yongjia f from Mark Hoadley, Program Manager, AD/CVD Operations, Office VII Enforcement and Compliance, "Changed Circumstances Review of Fresh Garlic from the People's Republic of China Initial Questionnaire of Jining Yongjia Trade Co., Ltd. and Jinxiang County Shanfu Frozen Co., Ltd.," (February 6, 2015) (Initial Questionnaire).

¹¹ See Letter from Yongjia, "Response to Initial Questionnaire in Changed Circumstances Review filed on behalf of Jining Yongjia Trade Co., Ltd. and Jinxiang County Shanfu Frozen Co., Ltd.," (February 27, 2015) (Yongjia Questionnaire Response).

requested that the Department issue a negative determination regarding Shanfu II's status as a successor-in-interest.¹²

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. PRELIMINARY RESULTS OF THE CHANGED CIRCUMSTANCES REVIEW

Pursuant to section 751(b)(1) of the Act, the Department will conduct a CCR upon receipt of a request from an interested party or receipt of information concerning an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. As explained above, we initiated a CCR upon finding that Yongjia submitted evidence sufficient to warrant a review. Since that time, Yongjia submitted additional information in support of its claim that Shanfu II is the successor-in-interest to Shanfu I. A discussion of the Department's methodology and preliminary findings regarding Yongjia's request follows.

Discussion of Methodology

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 relationships; and (4) customer base.¹³ While no single factor or combination of these factors will necessarily provide a dispositive indication of a successor-in-interest relationship, the

¹² See Petitioners' Questionnaire Rebuttal.

¹³ 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).

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.¹⁴ 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.¹⁵

Analysis

In its CCR Request, Yongjia provided a description and numerous exhibits in support of its claim that Shanfu II is the successor-in-interest to Shanfu I. In response to our questionnaire, Yongjia provided additional information regarding the transactions that dissolved Shanfu I and created Shanfu II and how the four criteria enumerated above apply to Shanfu I and II. The petitioners responded that Shanfu II is not the successor-in-interest based primarily on Shanfu I's termination of operations for two years, and that therefore the Department should issue a negative preliminary determination. Below, we analyze the information Yongjia submitted in the context of the four enumerated criteria as well as additional factors considered in a successor-in-interest proceeding.

SUCCESSOR-IN-INTEREST ANALYSIS

1. Changes in Ownership And Management

In its request for this CCR, Yongjia stated that Shanfu's ownership changed twice, both times using the same company name: 1) in March 2012 with a "friendship agreement" during the time of Shanfu I's deregistration; and 2) in June 2014 becoming Shanfu II.¹⁶ Yongjia explained that Shanfu I was established in 2005 by two shareholders, Zhai Fushan and Zhai Hongyu, but in 2012, 50 percent of Shanfu's ownership transferred to an individual who was a shareholder and manager of Yongjia.¹⁷ Then, in June 2014, one of Shanfu's owners transferred his shares to his wife.¹⁸ Further details with regard to the 2012 and 2014 transfer of ownership are discussed in below.

In our questionnaire to Yongjia, we asked Yongjia to provide a detailed explanation for these changes.¹⁹ Yongjia responded that Shanfu I's ownership changed in March 2012 when Zhai Fushan's shares were transferred.²⁰ Upon execution of the share transfer agreement in March 2012, Zhai Fushan ceased to be a shareholder and an owner.²¹ Upon his removal, the shares

¹⁴ 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).

¹⁵ See *Fresh and Chilled Atlantic Salmon from Norway: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979, 9980 (*Norwegian Salmon*).

¹⁶ See Yongjia CCR Request at 4 and Exhibit 6 (business license and registration documents).

¹⁷ *Id.* at 3 and 5; see also Yongjia Questionnaire Response at 4.

¹⁸ See Yongjia Questionnaire Response at 3.

¹⁹ See Initial Questionnaire at 3.

²⁰ See Yongjia CCR Questionnaire Response at 3.

²¹ *Id.* at 4.

transferred to one of Yongjia's existing shareholders.²² Although Yongjia stated that Zhai Fushan "no longer had any involvement in Shanfu's business operations or management" after March 2012, Mr. Zhai Fushan "remained a Shanfu shareholder on the records during that interim period" and led Shanfu I's "liquidation group," responsible for leading the company through the liquidation proceedings of Shanfu I.²³

In June 2014, the wife of Shanfu I's former owner, who was also a financial manager at Yongjia, acquired her husband's shares of Shanfu.²⁴ Thus, at this point in time, 100 percent of Shanfu's ownership has changed.²⁵

Yongjia also stated that Shanfu's management remained almost the same and provided a list of the management's names before deregistration and after re-registration. Regarding management changes, Yongjia stated that Shanfu has had three management changes since its NSR.²⁶ Both Shanfu I and II had five managers. Only two managers from Shanfu I remained as managers of Shanfu II.²⁷ Thus, there have been significant management changes since the NSR period of review (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 most of Shanfu's management has changed, we preliminarily find that there were material ownership and management changes from Shanfu I to Shanfu II. Consequently, we preliminarily find that the changes in ownership and management weigh in favor of finding that Shanfu II is not the successor-in-interest to Shanfu I.

2. Production Facilities and Equipment

Yongjia stated in its CCR request that the Chinese government ordered businesses to move to a new industrial zone.²⁸ Therefore, Shanfu I deregistered and moved all of its machines and equipment to the new facilities, as supported in Shanfu's asset evaluation report.²⁹ Because Yongjia stated that Shanfu I deregistered and moved facilities, we asked Yongjia to provide the government documentation that ordered Shanfu I to move from Zhaizhuang Village to Xiaochenglou Village in 2012, and the names of individuals who coordinated the construction of the new facility.³⁰ We also asked Yongjia to clarify whether Shanfu I disposed of its machines and equipment at the time of deregistration and to list any asset purchased in 2014 for the expanded scope of operations.³¹

²² *Id.*

²³ See Yongjia CCR Questionnaire Response at 4 and 7.

²⁴ *Id.*

²⁵ See Petitioners' Questionnaire Rebuttal at 3.

²⁶ *Id.*

²⁷ *Id.*

²⁸ See Yongjia CCR Request at 1, 4.

²⁹ See generally Yongjia CCR Request

³⁰ See Initial Questionnaire at 5.

³¹ *Id.* at 5-6.

Yongjia provided the government documentation ordering the relocation of Shanfu I's facility and replied that Shanfu I's factory equipment was not liquidated as part of the deregistration.³² However, in response to a different question in the questionnaire, Yongjia explained that Shanfu I's machines and equipment were disposed of and that Shanfu rented equipment for "production purposes" in 2014.³³ Additionally, in a subsequent submission, Yongjia stated that Shanfu stored its equipment while the new factory was being built and rented some equipment in 2014 for production purposes.³⁴

There are some discrepancies with regard to Yongjia's statements regarding Shanfu's equipment. For example, as noted above, Yongjia said that Shanfu's machines and equipment remained the same before and after deregistration, but also stated that its equipment was disposed of, and that Shanfu rented equipment in 2014.³⁵ Based on these inconsistent statements, we cannot adequately determine any changes in Shanfu's equipment. Therefore, we preliminarily find that Yongjia's statements regarding Shanfu's deregistration and distribution of its machines and equipment do not support finding that Shanfu II is the successor-in-interest to Shanfu I.

3. Supplier Relationships

In Yongjia's CCR Request, Yongjia stated that Shanfu I was its supplier of fresh garlic to Yongjia during the NSR POR.³⁶ Shanfu I rented farmland and grew the garlic Yongjia exported.³⁷ However, according to Yongjia, after the NSR in 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.³⁸ Yongjia provided sample purchase invoices from the farmers in an attempt to demonstrate that the supplier relationship has remained the same since 2008.³⁹

After reviewing Yongjia's NSR and confirmation of Shanfu's supplier relationships with supporting documentation, we find that Shanfu I did, indeed, stop growing its own garlic and started buying all garlic inputs from local farmers.⁴⁰ Because this change in supplier relationship occurred after Yongjia's NSR, we preliminarily find that there was a complete change in suppliers, which indicates that operations are materially dissimilar between Shanfu I and Shanfu II. This weighs in favor of finding that Shanfu II is not the successor-in-interest to Shanfu I.

4. Customer Base

Yongjia reported that Shanfu II kept the same group of major customers as Shanfu I.⁴¹ To support its claim, Yongjia provided a copy of the customer list⁴² and sample invoices of Shanfu I

³² See Yongjia CCR Questionnaire Response at 8 and Exhibit 12.

³³ See Yongjia CCR Questionnaire Response at 8 and 15.

³⁴ *Id.* at 15.

³⁵ *Id.* at 8 and 15.

³⁶ See Yongjia CCR Request at 1-2 citing NSR.

³⁷ *Id.* at 6.

³⁸ *Id.*; see also Yongjia Questionnaire Response at 16 (garlic input invoices and supporting documentation).

³⁹ *Id.* and Exhibit 11.

⁴⁰ See Yongjia Questionnaire Response at 16-17.

⁴¹ See Yongjia CCR Request at 6.

and Shanfu II's customers in its questionnaire response.⁴³ According to this list, only one customer changed in the top customers of Shanfu I and Shanfu II. No other evidence on the record suggests otherwise. Therefore, we preliminarily determine that the slight change in the customer base is not indicative that Shanfu I is not the successor in interest to Shanfu II.

5. Other Material Considerations

a. Dissolution

Yongjia states throughout its CCR request and questionnaire response that Shanfu I deregistered in June 2012.⁴⁴ Petitioners state that Yongjia's questionnaire response confirms that Shanfu I dissolved and ceased to be a legal entity upon Shanfu I's deregistration in June 2012.⁴⁵

We asked Yongjia to provide supporting documentation showing the minutes surrounding the decision to dissolve Shanfu I at the shareholders' meeting. Yongjia replied with an explanation of why its shareholders determined to dissolve the company, but did not provide the shareholders' meeting minutes.⁴⁶ Yongjia explained that Shanfu I could no longer operate at its current location, so the shareholders decided to dissolve Shanfu I.⁴⁷ Yongjia stated that "deregistration is a way for a company to terminate its legal existence."⁴⁸ Shanfu I's books and records have been destroyed, supporting the conclusion that Shanfu II is both legally and operationally a new entity that started its operations in June 2014.⁴⁹

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. Yongjia stated that dissolution "is required to conduct the procedure of cancellation of registration."⁵⁰ According to record evidence, Shanfu I deregistered in 2012; Shanfu I created a "liquidation group" responsible for the liquidation of Shanfu (*i.e.*, disposing and liquidation company assets, informing creditors of the liquidation, and clearing credits and debits), deregistered the company, and destroyed all records.⁵¹ The deregistration of Shanfu I and the actions leading up to it indicate that Shanfu I ceased to exist thereafter. When we asked Yongjia to define "deregistration" and other business terms according to Chinese regulations, Yongjia responded that deregistration means that a company terminates its legal existence.⁵² Additionally, Shanfu 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. Based on Shanfu I's deregistration and destruction of all records, the record demonstrates that Shanfu I was legally terminated and ceased to exist. Therefore, in accordance with Chinese

⁴² See Yongjia Questionnaire Response at 18 and Exhibit 12.

⁴³ *Id.* and Exhibit 14.

⁴⁴ See, e.g., Yongjia CCR Request and Yongjia Questionnaire Response.

⁴⁵ See Petitioners' Questionnaire Rebuttal at 4.

⁴⁶ See Yongjia CCR Questionnaire Response at 7.

⁴⁷ *Id.* at 7-8.

⁴⁸ *Id.* at 9 referring to Exhibit 4 (Article 3 of the Company Law of the PRC).

⁴⁹ *Id.* at 5.

⁵⁰ *Id.* at 9 referring to Exhibit 4 (Article 3 of the Company Law of the PRC).

⁵¹ *Id.* at 7.

⁵² *Id.* at 9.

regulations, Shanfu II is a new firm with no legal or operational ties to Shanfu I. Moreover, no evidence suggests there was any intent to continue the operations of Shanfu I. As a result, we preliminarily find that this weighs in favor of finding that Shanfu II is not the successor-in-interest to Shanfu I.

b. Change in Corporate Form

In our initial questionnaire, 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.⁵³ In its response, Yongjia explained that Shanfu, throughout its ownership changes, has always been a "Limited Liability Company," and the additional characters in Shanfu II's corporate name do not change the name or the corporate structure.⁵⁴ Yongjia further claimed that the "Chinese government inputs the business registration records" and "can, at its discretion, add or omit insignificant characters in a company's name."⁵⁵ Yongjia reaffirmed its explanation that the English translation remains the same regardless of the additional characters.⁵⁶

Although Yongjia's explanation with regard to the additional Chinese characters included in Shanfu II's name has not been corroborated and thus there are outstanding questions as to why the characters were added, the evidence suggests that the names remain similar and thus the additional characters are not indicative that Shanfu II is not the successor-in-interest to Shanfu I.

V. SUMMARY OF PRELIMINARY FINDINGS

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. 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 relationships; and (4) customer base. The facts listed above indicate several significant changes under three of the four factors. With regard to management, 60 percent of the managers, including the new owners, are different since the NSR POR.⁵⁷ Moreover, Shanfu II retains none of the same owners as Shanfu I. As for production facilities, all of the production facilities are new and in a new location. However, it is unclear whether any of the assets were liquidated or disposed of based on Yongjia's questionnaire response. Finally, Shanfu II operates as a preliminary processor of garlic, which alters the relationship between the supplier and Yongjia. Shanfu I produced its own garlic; now it supplies Yongjia with garlic from other producers and processes it, acting now as a middleman between producer and exporter. Thus, Shanfu II has new suppliers.

Given the totality of the circumstances, we preliminarily find that Shanfu II operates in most material respects as a different business entity than Shanfu I regarding the production and sale of

⁵³ See Yongjia Questionnaire at 1.

⁵⁴ See Yongjia Questionnaire Response at 2.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* at 3.

subject merchandise. Accordingly, we preliminarily determine that Shanfu II is not the successor-in-interest to Shanfu I.

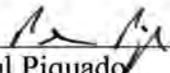
VI. RECOMMENDATION

We recommend applying the above methodology for these preliminary results. If these preliminary results are adopted in our final results, we will instruct CBP to suspend liquidation of entries of fresh garlic made by Shanfu II effective on the publication date of the final results in the *Federal Register* at the cash deposit rate equal to the cash deposit rate assigned to the PRC-wide entity.



Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

23 JUNE 2015

Date