



A-570-831  
Administrative Review  
11/01/2018 – 10/31/2019  
**Public Document**  
E&C/Office VII: LA/AC

March 18, 2021

**MEMORANDUM TO:** Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance

**FROM:** James Maeder  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Decision Memorandum for the Preliminary Results, Preliminary Rescission, and Final Rescission, In Part, of the 2018-2019 Antidumping Duty Administrative Review: Fresh Garlic from the People's Republic of China

---

## I. SUMMARY

In response to requests from interested parties, the Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on fresh garlic from the People's Republic of China (China)<sup>1</sup> covering the period of review (POR) of November 1, 2018, through October 31, 2019. The mandatory respondents in the abovementioned administrative review are Zhengzhou Harmoni Spice Co., Ltd. (Harmoni) and Shijiazhuang Goodman Trading Co., Ltd. (Goodman).

Commerce preliminarily finds that Goodman failed to respond to Commerce's initial questionnaire, thereby failing to demonstrate its eligibility for a separate rate. Therefore, we preliminarily find that Goodman is part of the China-wide entity and will receive the China-wide rate. We are also preliminarily granting a separate rate to two companies which demonstrated their eligibility for separate rate status but were not selected for individual examination. The rates assigned to each of these companies can be found in the "Preliminary Results of Review" section of the accompanying preliminary results *Federal Register* notice. Furthermore, we preliminarily find that the review request made by The Roots Farm Inc. (Roots Farm) was not valid, and accordingly have preliminarily rescinded the review request with respect to Harmoni.<sup>2</sup>

If these preliminary results are adopted in our final results of review, Commerce will 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

---

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

<sup>2</sup> Roots Farm requested that Commerce review Harmoni.

these preliminary results. We intend to issue final results no later than 120 days from the date of publication of this notice pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended, (the Act) and 19 CFR 351.221.

## II. BACKGROUND

On November 1, 2019, Commerce published a notice of opportunity to request an administrative review of the AD order on garlic from China.<sup>3</sup> Between November 25, 2019, and December 2, 2019, interested parties submitted requests for review.<sup>4</sup> On January 17, 2020, Commerce initiated the twenty-fifth administrative review of fresh garlic from China with respect to eleven companies.<sup>5</sup>

Two companies each timely submitted a separate rate status certification or application. Those companies include: (1) Shandong Happy Foods Co., Ltd., (Happy Foods);<sup>6</sup> and (2) Jining Alpha Food Co., Ltd. (Alpha).<sup>7</sup> Harmoni requested a waiver to submit its separate rate application because it was already selected as a mandatory respondent. On February 27, 2020, Commerce granted Harmoni's request for a waiver.<sup>8</sup>

On January 29, 2020, Commerce placed CBP entry data on the record and gave interested parties an opportunity to comment.<sup>9</sup> On February 5, 2020, the petitioners<sup>10</sup> submitted comments on the CBP data.<sup>11</sup> The petitioners argued that Commerce should select the two largest exporters of

---

<sup>3</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 84 FR 58690 (November 1, 2019).

<sup>4</sup> See Goodman's Letter, "25th Administrative Review of Antidumping Duty Order on Fresh Garlic from the People's Republic of China; Request of Shijiazhuang Goodman Trading Co., Ltd. for Review," dated November 25, 2019; see also Roots Farm's Letter, "Fresh Garlic from the People's Republic of China Antidumping Administrative Review: Request for Review," dated November 30, 2019 (Roots Farm's Request for Review); Petitioners' Letter, "25th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Request for Administrative Review," dated December 2, 2019; Jining Alpha Food Co., Ltd.'s Letter, "Fresh Garlic from the People's Republic of China – Request for Review," dated December 2, 2019; Shandong Happy Foods Co. Ltd.'s Letter, "Fresh Garlic from the People's Republic of China – Request for Review," dated December 2, 2019; and Harmoni's Letter, "Request for Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China," dated December 2, 2019.

<sup>5</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 3014 (January 17, 2020) (*Initiation Notice*).

<sup>6</sup> See Happy Foods' Letter, "Fresh Garlic from the People's Republic of China – Sep. Rate Certification – Shandong Happy Food Co., Ltd.," dated February 18, 2020 (Happy Foods' SRC).

<sup>7</sup> See Alpha's Letter, "Fresh Garlic from the People's Republic of China – Sep. Rate Certification – Jining Alpha Food Co., Ltd.," dated February 18, 2020 (Alpha SRC).

<sup>8</sup> See Commerce's Letter, "25th Administrative Review of Fresh Garlic from the People's Republic of China: Harmoni's Request to Waive SRA Filing," dated February 27, 2020.

<sup>9</sup> See Memorandum, "Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China: 2018-2019 – U.S. Import Data," dated January 29, 2020.

<sup>10</sup> The petitioners are the Fresh Garlic Producers Association (FGPA) and its individual members: Christopher Ranch L.L.C., The Garlic Company, and Valley Garlic.

<sup>11</sup> See Petitioners' Letter, "25th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Comments on CBP Data and Respondent Selection," dated February 5, 2020.

subject merchandise.<sup>12</sup> On February 20, 2020, Commerce issued a memorandum indicating that we would examine the two largest exporters of subject merchandise, Goodman and Harmoni.<sup>13</sup>

On February 24, 2020, Commerce issued the initial questionnaire to Goodman and Harmoni.<sup>14</sup> Section A of the Initial AD Questionnaire was originally due on March 16, 2020.<sup>15</sup> Goodman failed to submit its section A response, or request an extension of time to submit its response, by the established deadline. Additionally, sections C and D of the initial questionnaire were due on April 1, 2020. Goodman again failed to submit its sections C and D response, or request an extension of time to submit its response, by the established deadline. Between June 16, 2020, and June 19, 2020, Harmoni submitted timely responses to the questionnaire.<sup>16</sup> On November 13, 2020, and January 26, 2021, Commerce issued supplemental questionnaires to Harmoni.<sup>17</sup> Harmoni submitted timely responses to the first supplemental questionnaire on December 14, 2020 and the second supplemental questionnaire on February 10, 2021.<sup>18</sup> Due to the issues discussed in the “Partial Rescission of Administrative Review” section below, Commerce did not analyze Harmoni’s questionnaire responses.

On April 6, 2020, Commerce requested information and comments relating to the selection of a surrogate country and surrogate values for this administrative review.<sup>19</sup> Commerce received timely filed comments and/or rebuttals from Harmoni and the petitioners.<sup>20</sup> Due to the issues

---

<sup>12</sup> *Id.*

<sup>13</sup> See Memorandum, “2018-19 Antidumping Duty Administrative Review of Fresh Garlic from the People’s Republic of China: Selection of Respondents for Individual Examination,” dated February 20, 2020 (Respondent Selection Memorandum).

<sup>14</sup> See Commerce’s Letters, “Antidumping Duty Questionnaire,” dated February 24, 2020 (Initial AD Questionnaire).

<sup>15</sup> *Id.* at 5.

<sup>16</sup> See Harmoni’s Letter, “Zhengzhou Harmoni Section A Response in the Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China,” dated June 16, 2020 ; see also Harmoni’s Letter, “Zhengzhou Harmoni Section C Response in the Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China,” dated June 19, 2020; and Harmoni’s Letter, “Zhengzhou Harmoni Section D Response in the Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China,” dated June 19, 2020.

<sup>17</sup> See Commerce’s Letters, “25th Administrative Review of Fresh Garlic from the People’s Republic of China – First Supplemental Questionnaire for Harmoni,” dated November 13, 2020; and “25th Administrative Review of Fresh Garlic from the People’s Republic of China – Second Supplemental Questionnaire for Harmoni,” dated January 26, 2021.

<sup>18</sup> See Harmoni’s Letter, “Harmoni Sections A, C, and D Supplemental Questionnaire Response in the Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China,” dated December 14, 2020; see also Harmoni’s Letter, “Harmoni Sections A, C, and D Second Supplemental Questionnaire Response in the Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China,” dated February 10, 2021.

<sup>19</sup> See Commerce’s Letter, “25th Antidumping Duty Administrative Review of Garlic from the People’s Republic of China: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information,” dated April 6, 2020.

<sup>20</sup> See Harmoni’s Letter, “Harmoni’s Comments on the List of Economically Comparable Countries: Twenty-Fifth Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China (A-570-831),” dated April 22, 2020; see also Petitioners’ Letter, “25th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China – Petitioners’ OP List Comments,” dated April 22, 2020; Petitioners’ Letter, “25th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China – Petitioners’ Surrogate Country Comments,” dated June 25, 2020; and Petitioners’ Letter, “25th

discussed in the “Partial Rescission of Administrative Review” section below, Commerce did not analyze the surrogate country and surrogate value submissions.

Between February 7, 2020, and February 10, 2021, Harmoni, the petitioners, and Roots Farm each submitted letters regarding the credibility and standing of Roots Farm.<sup>21</sup> On January 21, 2021, Commerce issued a questionnaire to Roots Farm.<sup>22</sup> On February 8, 2021, Roots Farm notified Commerce that it would not respond to the standing questionnaire.<sup>23</sup>

On April 24, 2020, and July 21, 2020, Commerce tolled all deadlines in administrative reviews by 50 days and 60 days, respectively, thereby extending the deadline for these preliminary results to November 19, 2020.<sup>24</sup> On October 20, 2020, Commerce extended the deadline for the preliminary results of this review.<sup>25</sup> The revised deadline for the preliminary results is now March 19, 2021.

### III. SCOPE OF THE ORDER

The products subject to the AD order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in 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

---

Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China – Petitioners’ Preliminary Surrogate Value Submission,” dated August 10, 2020.

<sup>21</sup> See Harmoni’s Letter, “Harmoni Placing AR24 Documents on the Administrative Record in AR25: Antidumping Duty Order on Fresh Garlic from the People’s Republic of China,” dated February 7, 2020 (Harmoni’s Placement of AR24 Documents on AR25’s Record); see also Harmoni’s Letter, “Request to Reject Roots Farm Inc. POR 25 Administrative Review Request of Harmoni; 25th Administrative Review of Antidumping Duty Order on Fresh Garlic from the People’s Republic of China,” dated February 13, 2020; Roots Farm’s Letter, “Fresh Garlic from the People’s Republic of China Antidumping Administrative Review: Response to Request to Reject Review Request,” dated February 24, 2020; Harmoni’s Letter, “Renewal of Request to Reject Roots Farm Inc. POR 25 Administrative Review Request; 25th Administrative Review of Antidumping Duty Order on Fresh Garlic from the People’s Republic of China,” dated March 27, 2020; Petitioners’ Letter, “25th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China – Petitioners’ Request to Deem Roots Farm’s Review Request Illegitimate and Void *Ab Initio*,” dated May 7, 2020; Harmoni’s Letter, “Harmoni Placing AR24 Administrative Rebuttal Briefs on the Administrative Record in AR25: Antidumping Duty Order on Fresh Garlic from the People’s Republic of China,” dated May 11, 2020; Roots Farm’s Letter, “Fresh Garlic from the People’s Republic of China Antidumping Administrative Review: New Factual Information,” dated May 12, 2020; Roots Farm’s Letter, “Fresh Garlic from the People’s Republic of China Antidumping Administrative Review: Response to Petitioner’s Request to Reject Review Request,” dated May 12, 2020; Harmoni’s Letter, “Renewal of Request to Reject Roots Farm Inc. POR 25 Administrative Review Request; 25th Administrative Review of Antidumping Duty Order on Fresh Garlic from the People’s Republic of China,” dated September 22, 2020; and Harmoni’s Letter, “Request that the Department Rescind AR25 as to Harmoni; 25th Administrative Review of Antidumping Duty Order on Fresh Garlic from the People’s Republic of China,” dated February 10, 2021.

<sup>22</sup> See Commerce’s Letter, “Domestic Interested Party Questionnaire for Roots Farm,” dated January 21, 2021 (Roots Farm Standing Questionnaire).

<sup>23</sup> See Roots Farm’s Letter, “Fresh Garlic from the People’s Republic of China Antidumping Administrative Review: Notice of Inability to Respond,” dated February 8, 2021 (Roots Farm Inability to Respond Letter).

<sup>24</sup> See Memoranda, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19,” dated April 24, 2020; and “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,” dated July 21, 2020.

<sup>25</sup> See Memorandum, “Fresh Garlic from the People’s Republic of China – 25th Administrative Review (2018-2019): Extension of Deadline for the Preliminary Results of the Review,” dated October 20, 2020.

decay. The scope of this 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, 0703.20.0050, 0703.20.0015, 0703.20.0010, 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 CBP to that effect.

#### **IV. PARTIAL RESCISSION OF ADMINISTRATIVE REVIEW**

##### *Final Rescission of Administrative Review*

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. On April 15, 2020, all review requests were timely withdrawn for five companies, not including Harmoni.<sup>26</sup> Therefore, we are rescinding this administrative review with respect to those five companies.

##### *Preliminary Rescission of Administrative Review*

Commerce has preliminarily determined that Roots Farm's review request was invalid *ab initio* and is preliminarily rescinding the review with respect to Harmoni.<sup>27</sup>

In the instant review, Roots Farm requested that Commerce review one garlic exporter, Harmoni.<sup>28</sup> Roots Farm indicated that its review request was filed in accordance with 19 CFR 351.213(b)(1), the subsection of Commerce's regulations which outlines the rules regarding administrative reviews from domestic interested parties and foreign governments.<sup>29</sup> Specifically, 19 CFR 351.213(b)(1) states that "a domestic interested party or an interested party described in section 771(9)(B) of the Act (foreign government) may request in writing that {Commerce} conduct an administrative review . . . of specified individual exporters or producers covered by

---

<sup>26</sup> See Petitioners' Letter, "25th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China – Petitioners' Partial Withdrawal of Review Request," dated April 15, 2020. The five companies are: (1) China Jiangsu International Economic Technical Cooperation Corporation; (2) Hebei Holy Flame International; (3) Jinxiang Qingtian Garlic Industries; (4) Qingdao Ritai Food Co., Ltd.; and (5) Yingxin (Wuqiang) International Trade.

<sup>27</sup> The only company for which Roots Farm made the review request is Harmoni.

<sup>28</sup> See Roots Farm's Request for Review.

<sup>29</sup> *Id.*

an order.” Section 771(9)(C) of the Act explains that domestic interested parties include “a manufacturer, producer, or wholesaler in the United States of a domestic like product.”

As noted above, interested parties have submitted extensive information challenging the credibility and standing of Roots Farm.<sup>30</sup> Based on this challenge and the information placed on the record of this review, we issued a standing questionnaire to Roots Farm to determine whether it has standing to request an administrative review as a domestic interested party.<sup>31</sup> Roots Farm did not respond to our standing questionnaire.<sup>32</sup>

During the course of an administrative review, Commerce issues questionnaires and solicits information from interested parties. These responses become the basis of the administrative record, solely upon which Commerce relies for its preliminary and final results. In other words, Commerce’s rationale underlying its determinations and results is based exclusively on record evidence submitted by, and certified by, interested parties. Commerce acts within its expertise and discretion when it considers directly conflicting evidence and decides which evidence to credit.

All of the information that we relied upon to find that Roots Farm made material misrepresentations and inconsistent statements on the record of the prior 2017-2018 review, which we determined undermined the credibility of its submissions, including its review request, is on the instant record.<sup>33</sup> Given that Roots Farm did not respond to our standing questionnaire or provide any evidence or new factual information with respect to its domestic producer status on the instant record, there is no evidence to support Roots Farm’s claim to be a domestic

---

<sup>30</sup> See Harmoni’s Placement of AR24 Documents on AR25’s Record; *see also* Harmoni’s Letter, “Request to Reject Roots Farm Inc. POR 25 Administrative Review Request of Harmoni: 25th Administrative Review of Antidumping Duty Order on Fresh Garlic from the People’s Republic of China,” dated February 13, 2020; Harmoni’s Letter, “Renewal of Request to Reject Roots Farm Inc. POR 25 Administrative Review Request: 25th Administrative Review of Antidumping Duty Order on Fresh Garlic from the People’s Republic of China,” dated March 27, 2020; Petitioners’ Letter, “25th Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China – Petitioners’ Request to Deem Roots Farm’s Review Request Illegitimate and Void *Ab Initio*,” dated May 7, 2020; Harmoni’s Letter, “Harmoni Placing AR24 Administrative Rebuttal Briefs on the Administrative Record in AR25: Antidumping Duty Order on Fresh Garlic from the People’s Republic of China,” dated May 11, 2020; Harmoni’s Letter, “Renewal of Request to Reject Roots Farm Inc. POR 25 Administrative Review Request: 25th Administrative Review of Antidumping Duty Order on Fresh Garlic from the People’s Republic of China,” dated September 22, 2020; and Harmoni’s Letter, “Request that the Department Rescind AR25 as to Harmoni; 25th Administrative Review of Antidumping Duty Order on Fresh Garlic from the People’s Republic of China,” dated February 10, 2021.

<sup>31</sup> See Roots Farm Standing Questionnaire. Commerce has issued similar questions in other proceedings where a party challenges the standing of a domestic interested party. *See, e.g., Fresh Garlic from the People’s Republic of China: Preliminary Results, Preliminary Rescission, and Final Rescission, in Part, of the 24th Antidumping Duty Administrative Review; 2017-2018*, 85 FR 2400 (January 15, 2020), and accompanying Preliminary Decision Memorandum (PDM) at 5-6, 8-21, unchanged in *Fresh Garlic from the People’s Republic of China: Final Results and Partial Rescission, of the 24th Antidumping Duty Administrative Review; 2017-2018*, 85 FR 71049 (November 6, 2020) (*Garlic from China AR24*), and accompanying Issues and Decision Memorandum (IDM) at Comments 1 and 10.

<sup>32</sup> See Roots Farm Inability to Respond Letter.

<sup>33</sup> See Harmoni’s Placement of AR24 Documents on AR25’s Record at Document 3 (containing Memorandum, “24th Administrative Review of Fresh Garlic from the People’s Republic of China: Roots Farm’s Credibility Analysis,” dated January 8, 2020); *see also Garlic from China AR24 IDM* at Comment 10.

producer. Accordingly, we are preliminary rescinding the review of Harmoni because the only remaining review request, the request submitted by Roots Farm, is invalid *ab initio*.

## V. DISCUSSION OF METHODOLOGY

### *Non-Market Economy Status*

Commerce considers China to be an NME country.<sup>34</sup> In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore, we continue to treat China as an NME country for purposes of these preliminary results.

### *Separate Rate Determination*

In the *Initiation Notice*, Commerce notified parties of the application process by which exporters and producers may apply for separate rate status in NME reviews.<sup>35</sup> In proceedings involving NME countries, Commerce has a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed at a single AD rate.<sup>36</sup> It is Commerce's policy to assign all exporters of subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.<sup>37</sup> Exporters can demonstrate this independence through the absence of both *de jure* (in law) and *de facto* (in fact) governmental control over export activities.<sup>38</sup> Commerce analyzes each entity's export independence under a test first articulated in *Sparklers* and as further developed in *Silicon Carbide*.<sup>39</sup>

In order to demonstrate separate-rate status eligibility, Commerce normally requires an entity, for which a review was requested, and which was assigned a separate rate in a previous segment, to submit a separate-rate certification stating that it continues to meet the criteria for obtaining a separate rate.<sup>40</sup> For entities that were not assigned a separate rate in the previous segment, however, Commerce requires a separate rate application.<sup>41</sup>

---

<sup>34</sup> See *Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination*, 82 FR 50858, 50861 (November 2, 2017), unchanged in *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018).

<sup>35</sup> See *Initiation Notice*.

<sup>36</sup> See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, dated April 5, 2005 available at <https://enforcement.trade.gov/policy/bull05-1.pdf>.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> See *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*); see also *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

<sup>40</sup> See *Initiation Notice*.

<sup>41</sup> *Id.*

### *Separate Rate Applications and Certifications*

As noted under the “Background” section of this memorandum, two companies timely submitted separate rate status certifications or applications. As discussed above, Harmoni and Goodman were selected as mandatory respondents. The remaining timely-filed separate rate applications or certifications came from Happy Foods and Alpha.

Alpha and Happy Foods certified that each had suspended entries during the POR.<sup>42</sup>

#### 1. Absence of *De Jure* Control

Commerce considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter’s business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.<sup>43</sup>

The evidence placed on the record of the instant administrative review by Happy Foods and Alpha demonstrates an absence of *de jure* government control under the criteria identified in *Silicon Carbide* and *Sparklers*.

#### 2. Absence of *De Facto* Control

Typically, Commerce considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.<sup>44</sup> Commerce determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude Commerce from granting a separate rate.

The evidence placed on the record of the instant administrative review by Happy Foods and Alpha demonstrates an absence of *de facto* government control under the criteria identified in *Silicon Carbide* and *Sparklers*. Accordingly, Commerce has preliminarily determined that these two companies have demonstrated that they are eligible for a separate rate.

### *Separate Rate for Non-Selected Companies*

The statute and Commerce’s regulations do not directly address the establishment of a rate to be applied to companies not selected for individual examination where Commerce limits its

---

<sup>42</sup> See Alpha SRC at 5; see also Happy Foods’ SRC at 7.

<sup>43</sup> See *Sparklers*, 56 FR at 20589.

<sup>44</sup> See *Silicon Carbide*, 59 FR at 22586-87; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People’s Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

examination in an administrative review pursuant to section 777A(c)(2) of the Act. Here, because of the large number of exporters/producers and lack of resources required to examine all companies, Commerce determined that it was not practicable to individually examine all companies subject to this review and, thus, employed a limited examination methodology. Pursuant to section 777A(c)(2)(B) of the Act, we selected Goodman and Harmoni, the exporters accounting for the largest volume of imports of the subject merchandise, as the respondents in this review.<sup>45</sup>

As discussed above, Happy Foods and Alpha have demonstrated eligibility for a separate rate, but were not selected for individual examination in this review. The statute and Commerce's regulations do not directly address the establishment of a rate to be applied to companies not selected for individual examination where Commerce limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Commerce's practice in cases involving limited selection based on exporters accounting for the largest volume of imports has been to look to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in a market economy investigation. Section 735(c)(5)(A) of the Act instructs Commerce to calculate an all-others rate using margins established for individually investigated producers and exporters, excluding any zero or *de minimis* margins or any margins based entirely on facts available.<sup>46</sup>

Where the rates for the individually examined companies are all zero, *de minimis*, or based entirely on facts available, section 735(c)(5)(B) of the Act also provides that Commerce may use "any reasonable method" to establish the all-others rate, which may include averaging the dumping margins for individually examined respondents. The Statement of Administrative Action states that the "expected method under 'any reasonable method' is that we will weight-average the rates that are zero, *de minimis*, and based entirely on facts available."<sup>47</sup>

In this review, neither Goodman nor Harmoni received a calculated weighted-average margin. As explained above, Commerce is preliminarily rescinding its review of Harmoni, and, as explained below, Commerce is considering Goodman part of the China-wide entity. Thus, there is no margin information available during the instant POR for Commerce to consider in assigning a margin for eligible, non-individually examined separate rate companies. In the absence of any calculated or assigned rates in this segment, including zero or *de minimis* rates or rates based on facts available, to determine an all-others rate for the separate rate respondents, we have reached back to the previously completed review to obtain a non-punitive separate rate margin.<sup>48</sup> Commerce preliminarily determines that the margin assigned to the separate rate recipients is \$4.37 per kilogram, which is the rate for the separate rate companies in the previous administrative review of this order, which was based on the rate calculated for Goodman.<sup>49</sup>

---

<sup>45</sup> See Respondent Selection Memorandum.

<sup>46</sup> See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Preliminary Results and Partial Rescission of the Antidumping Duty Administrative Review and Preliminary Results of the New Shipper Review; 2012-2013*, 79 FR 42758 (July 23, 2014).

<sup>47</sup> See SAA at 873.

<sup>48</sup> See *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission, of the 24th Antidumping Duty Administrative Review; 2017-2018*, 85 FR 71049, 71050-51 (November 6, 2020).

<sup>49</sup> See *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission, of the 24th Antidumping Duty Administrative Review; 2017-2018*, 85 FR 71049, 71050-51 (November 6, 2020).

Commerce finds that retaining the separate rate from the prior review is non-punitive, consistent with our practice,<sup>50</sup> and represents a reliable rate which Commerce can assign to eligible, non-individually examined exporters.

#### *Margin for Companies Not Receiving a Separate Rate*

As noted above, we initiated administrative reviews for 11 producers/exporters of garlic, rescinded the reviews of five producers/exporters, preliminarily rescinded the review of one producer/exporter, and granted separate rates to two non-selected producers/exporters. Therefore, three Chinese producers/exporters remain under review, including the mandatory respondent Goodman. For these remaining three companies that did not demonstrate their eligibility for separate rate status, Commerce finds that they have not rebutted the presumption of government control and, therefore, are considered to be part of the China-wide entity. These three companies are Goodman, Qingdao Maycarrier Import & Export Co., Ltd. (Maycarrier), and Weifang Hongqiao International Logistics Co., Ltd. (Weifang Hongqiao).

#### *The China-Wide Entity*

Upon initiation of the administrative review, we provided the opportunity for all companies upon which the review was initiated to complete either the separate-rate application or certification.<sup>51</sup> In NME proceedings, “‘rates’ may consist of a single dumping margin applicable to all exporters and producers.”<sup>52</sup> As explained above in the “Separate Rates” section, Commerce has a rebuttable presumption that all companies within the NME country are subject to government control and, thus, should be assessed at a single AD rate. Such companies are assigned a single AD rate distinct from the separate rate(s) determined for companies that are found to be independent of government control with respect to their export activities. We consider the influence that the government has been found to have over the economy to warrant determining a rate for the entity that is distinct from the rates found for companies that provided sufficient evidence to establish that they operate freely with respect to their export activities.<sup>53</sup> In this regard, no record evidence indicates that such government influence is no longer present or that our treatment of the China-wide entity is otherwise incorrect.

---

<sup>50</sup> See *Drawn Stainless Steel Sinks from the People’s Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016-2017*, 83 FR 658 (January 5, 2018), and accompanying PDM at 11-12, unchanged in *Drawn Stainless Steel Sinks from the People’s Republic of China: Final Results of the Antidumping Duty Administrative Review; 2016-2017*, 83 FR 23424 (May 21, 2018); see also *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review; 2015-2016*, 81 FR 78789 (November 9, 2016), and accompanying PDM at 10-11, unchanged in *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2015-2016*, 82 FR 11431 (February 23, 2017).

<sup>51</sup> The separate-rate application and certification are available at: <https://enforcement.trade.gov/nme/nme-sep-rate.html>.

<sup>52</sup> See 19 CFR 351.107(d).

<sup>53</sup> See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People’s Republic of China: Final Results of 2005-2006 Administrative Review and Partial Rescission of Review*, 72 FR 56724 (October 4, 2007) and accompanying IDM at Comment 2.

Commerce's policy regarding conditional review of the China-wide entity applies to this review.<sup>54</sup> Under this policy, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the China-wide entity in this review, the entity is not under review, and the entity's rate is not subject to change. As such, the China-wide rate from the previous review remains unchanged, and the China-wide entity is receiving a margin of \$4.71 per kilogram.<sup>55</sup>

### 1. Goodman

On February 24, 2020, Commerce issued its initial questionnaire to Goodman.<sup>56</sup> As mentioned above, Section A of the Initial antidumping questionnaire was originally due on March 16, 2020.<sup>57</sup> Goodman failed to submit its section A response, or a request for an extension of time to submit its response, by the established deadline. Among other information, Section A sought detailed information regarding the company's eligibility for a separate rate, including its organization, accounting practices, markets, and merchandise. Additionally, sections C and D of the initial questionnaire were due on April 1, 2020.<sup>58</sup> Goodman again failed to submit responses to sections C and D, or request an extension of time to submit its responses, by the established deadline. Therefore, we find that Goodman has not established that it is independent from the China-wide entity. Given the lack of a Section A questionnaire response (or any questionnaire response) from Goodman, Commerce considers Goodman to be part of the China-wide entity.

### 2. Maycarrier and Weifang Hongqiao

In the *Initiation Notice*, Commerce notified all parties to the proceeding that the deadline to submit a separate rate application or separate rate certification was 30 calendar days after the publication of the *Initiation Notice*.<sup>59</sup> Neither Maycarrier nor Weifang Hongqiao submitted a separate rate application or certification. Therefore, we find that both Maycarrier and Weifang Hongqiao have failed to establish that they are independent from the China-wide entity. As such, Commerce considers both Maycarrier and Weifang Hongqiao to be part of the China-wide entity.

---

<sup>54</sup> See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963, 65970 (November 4, 2013).

<sup>55</sup> *Id.*; see also *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 19th Antidumping Duty Administrative Review; 2012-2013*, 80 FR 34141, 34142 (June 15, 2015).

<sup>56</sup> See Commerce's Letter, "Antidumping Duty Questionnaire," dated February 24, 2020.

<sup>57</sup> *Id.* at 5.

<sup>58</sup> *Id.*

<sup>59</sup> See *Initiation Notice*, 85 FR at 3015.

**VI. RECOMMENDATION**

We recommend applying the above methodology for these preliminary results.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

3/18/2021

X



Signed by: CHRISTIAN MARSH  
Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance