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Sunset Review
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MEMORANDUM TO: Susan Kuhbach
Acting Assistant Secretary
for Import Administration

FROM: Gary Taverman
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of Expedited Sunset Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China

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Summary

We have analyzed the substantive response of the domestic interested parties in the third sunset review of the antidumping duty order covering fresh garlic from the People's Republic of China ("PRC"). We recommend that you approve the positions we developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this sunset review for which the Department of Commerce ("the Department") received a substantive response:

1. Likelihood of continuation or recurrence of dumping
2. Magnitude of the margin likely to prevail

History of the Order

On November 16, 1994, the Department published an antidumping duty order on imports of fresh garlic from the PRC, applying a country-wide rate of 376.67 percent. *See Antidumping Duty Order: Fresh Garlic From the People's Republic of China*, 59 FR 59209 (November 16, 1994)("*Order*"). The Department published its notice of initiation of the first sunset review on December 1, 1999, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). *See Notice of Initiation of Five-Year ("Sunset") Reviews*, 64 FR 67247 (December 1, 1999). In this first sunset review the Department found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping by the PRC-wide entity at a rate of 376.67 percent, the same rate as in the investigation. *See Fresh Garlic From the People's Republic of China; Final Results of Expedited Sunset Review of Antidumping Duty Order*, 65 FR 41432 (July 5, 2000) ("*First Sunset Review*").

On February 28, 2001, the International Trade Commission ("ITC") determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Fresh Garlic From China*, 66 FR 12810 (February 28, 2001) and USITC Pub. 3393, Inv. No. 731-TA-683 (Review) (February 2001). On March 13, 2001, the Department published the notice of continuation of the antidumping duty order. *See Continuation of Antidumping Duty Order on Fresh Garlic From the People's Republic of China*, 66 FR 14544 (March 13, 2001).

The Department published its notice of initiation of the second sunset review on February 1, 2006, pursuant to section 751(c) of the Act. *See Initiation of Five-Year ("Sunset") Reviews*, 71 FR 5243 (February 1, 2006). In this second sunset review the Department found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping by the PRC-wide entity at a rate of 376.67 percent, the same rate as found in the investigation. *See Fresh Garlic from the People's Republic of China; Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 71 FR 33279 (June 8, 2006) ("*Second Sunset Review*").

On September 28, 2006, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Fresh Garlic From China*, 71 FR 58630 (October 4, 2006) and USITC Pub. 3886, Inv. No. 731-TA-683 (Second Review) (September 2006). On October 19, 2006, the Department published the notice of continuation of the antidumping duty order. *See Continuation of Antidumping Duty Order: Fresh Garlic from the People's Republic of China*, 71 FR 61708 (October 19, 2006).

The Department has conducted several administrative reviews and new shipper reviews since the continuation of the order in the *Second Sunset Review*. *See* Procedural History chart at Attachment 1; *see also Second Sunset Review* for procedural history prior to this review. The Department also conducted a scope ruling since the continuation of the order in which the Department ruled that minced garlic for use in non-fresh applications are excluded from the scope of the order. *See* Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Final Scope Ruling – General Mills memorandum, dated July 12, 2011. The Department has not conducted any duty absorption reviews. Thus, the order remains in effect for all manufacturers and exporters of the subject merchandise from the PRC.

<u>Background</u>

On September 1, 2011, the Department published the notice of initiation of the third sunset review of the antidumping duty order on fresh garlic from the PRC pursuant to section 751(c) of the Act. *See Initiation of Five-Year ("Sunset") Review*, 76 FR 54430 (September 1, 2011). The Department received a timely notice of intent to participate from the Fresh Garlic Producers Association and its individual members: Christopher Ranch LLC; The Garlic Company; Valley

Garlic; and Vessey and Company, Inc. (collectively "the domestic interested parties"), in accordance with section 351.218(d)(1)(i) of the Department's regulations. The domestic interested parties claimed interested party status under sections 771(9)(C) and (F) of the Act, as domestic producers and processors of fresh garlic and a trade association whose members produce and process fresh garlic. On October 3, 2011, the Department also received a complete substantive response from the domestic interested parties within the 30-day deadline specified in section 351.218(d)(3)(i) of the Department's regulations. The Department received no response from any respondent interested party. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations, the Department conducted an expedited (120-day) sunset review of this order.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department conducted this sunset review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making this determination, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order. In addition, section 752(c)(3) of the Act provides that the Department shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Below we address the comments of the interested party.

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments: The domestic interested parties argue that revocation of the order would likely lead to continuation or recurrence of dumping because of the PRC entity's high dumping margin and the dramatic decline in imports through 2000. Specifically, they argue that this high margin has had a direct effect on the respondents' behavior by dramatically reducing the volume of imports of subject merchandise after the imposition of antidumping duties. See submission from domestic interested parties (October 3, 2011) ("Domestic Response") at 49-51. Additionally, they argue that an import surge is occurring: (1) due to the change in the new shipper administrative procedure of the Uruguay Round Agreements Act of 1995, that allows for the use of a single transaction customs bond; (2) by allowing "single-sale" new shipper and administrative reviews that the interested parties contend are not *bona fide* commercial transactions; and (3) by allowing *ad valorem* deposit rates that importers have advantageously used to avoid antidumping duties by undervaluing entries from PRC garlic exporters. *See* Domestic Response at 50-59. Finally, the domestic interested parties state that dumping margins have continued to exist since the Department issued the order, as evidenced by several completed administrative and new shipper reviews. *See* Domestic Response at 60 and Exhibit 2.

Accordingly, the domestic interested parties claim that the Department should conclude that dumping has continued and will continue if the order were revoked.

Department's Position: Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the Statement of Administrative Action ("SAA"), H. Doc. No. 103-316, vol. 1 (1994), the House Report, H. Rep. No. 103-826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103-412 (1994), the Department normally determines that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.

During the original investigation, the Department determined rates above *de minimis* for all PRC manufacturers and exporters. *See Order*, 59 FR at 25692. During subsequent reviews since the *Second Sunset Review*, the Department found that some companies warranted separate rates and were found to be dumping at a level below *de minimis*. With respect to the PRC entity and most PRC manufacturers and exporters, however, the Department has continued to find dumping margins above *de minimis* in several administrative and new shipper reviews, including reviews during the last five years. *See* Procedural History chart at Attachment 1. Because dumping has continued at levels above *de minimis* during the period of this sunset review, the Department has determined that revocation of this order is likely to lead to continuation or recurrence of dumping.

Pursuant to section 752(c)(1)(B) of the Act, the Department considered the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping duty order. The Department has determined that imports of fresh garlic from the PRC have increased in volume during the period of this sunset review and that imports are significantly higher in volume than before the order was put in place. *See First Sunset Review* and accompanying Issues and Decision Memorandum at section "Likelihood of Continuation or Recurrence of Dumping;" *see also Second Sunset Review* and accompanying Issues and Decision Memorandum at Attachment 2. In 1993, the year before the imposition of the *Order*, the import volume of fresh garlic was 26.2 million kilograms. *See First Sunset Review*. Using statistics provided by the ITC Dataweb, the Department finds that imports of fresh garlic from the PRC have dramatically increased since the continuation of the order in 2001. *See* import statistics at Attachment 2. During the period of this sunset review, imports of fresh garlic from the PRC increased from 67.2 million kilograms in 2005 to 79.6 million kilograms in 2010. *See id*.

The Department normally will determine that revocation of an order is not likely to lead to continuation of dumping where dumping has declined accompanied by steady or increasing imports. *See* SAA at 889-90. However, if companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the order were removed. *See* SAA at 890. During the period of this sunset review, the Department has continued to find dumping of imports of subject merchandise as a result of its findings in several administrative and new shipper reviews. *See* Attachment 1. Therefore, the Department determines that dumping would likely continue to recur if the order were revoked. Given these facts, it is not necessary that the Department address the domestic interested parties' other arguments.

2. Magnitude of the Margin Likely to Prevail

Interested Parties' Comments: The domestic interested parties note the Department's normal policy is to provide the ITC the margin that was calculated in the investigation. *See* Domestic Response at 62. In addition, the domestic interested parties reiterate the Department's policy to provide a rate from the investigation for companies that did not begin to ship until after the *Order* was put in place. *Id*. Therefore, the domestic interested parties contend that the Department should report to the ITC the dumping margin of 376.67 percent for fresh garlic. *Id.*

Department's Position: The Department will normally provide to the ITC the company-specific margins from the investigation for each company. In a non-market economy case where companies that were not investigated specifically or did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "country-wide" rate from the investigation. The Department's preference for selecting a margin from the investigation is based on the fact that it is the only calculated rate that reflects the behavior of exporters without the discipline of an order or suspension agreement in place. Under certain circumstances, however, the Department may select a more recently calculated margin to report to the ITC. *See Potassium Permanganate from The People's Republic of China; Five-year ("Sunset") Review of Antidumping Duty Order; Final Results*, 70 FR 24520 (May 10, 2005); *see also Final Results of Expedited Sunset Review: Potassium Permanganate from the People's Republic of China*, 64 FR 16907 (April 7, 1999).[1]

In this case, the domestic interested parties request that the Department report to the ITC the margin of 376.67 percent (the PRC-wide rate) found in the investigation. *See* Domestic Response at 62. The Department finds no basis for it to consider a more recently calculated margin. Accordingly, the Department determines that it is appropriate to report to the ITC the margin from the investigation, also reported to the ITC in the first sunset review, because this rate is probative of the behavior of most of the PRC producers and exporters if the order were revoked as it is the only margin that reflects their actions absent the discipline of the order.

[1] In that sunset review, evidence showed that the 39.63% margin established in the original investigation was insufficient to prevent an influx of Chinese potassium permanganate, and insufficient to prevent Chinese producers/exporters' attempts at increasing market share in the United States through dumping. The Department found that the increase in import volumes and market share between the imposition of the order following the original investigation and the final results in the 1989 administrative review reflected the willingness and ability of Chinese producers/exporters to dump this product despite the margin established by the Department in the original investigation. Therefore, the Department reported a more current country-wide rate of 128.94% from the administrative review for the period January 1 through December 31, 1990.

Final Results of Review

We determine that revocation of the antidumping duty order on fresh garlic from the PRC would be likely to lead to continuation or recurrence of dumping at the PRC-wide rate for all PRC manufacturers and producers/exporters of subject merchandise.

Recommendation

Based on our analysis of the substantive response received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the final results of this sunset review in the *Federal Register*.

__________Agree   __________Disagree

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Susan Kuhbach
Acting Assistant Secretary
  for Import Administration

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Date

Attachment 1

Procedural History Since the Continuation of the Order on October 19, 2006 (Second Sunset Review)

	Sunset Final	04-05	04-05	05-06	05-06	06-07	06-07	07-08	07-08	08-09	08-09	08-09	09-10
	6/8/2006	New Shipper	Admin /	New Shippers	Admin Rev	New Shippers	Admin /	New Shippers	Admin Rev	New Shippers	New Shippers	Admin Rev	New Shippers
	71 FR 33279		New Shippers				New Shippers						
	Cont 10/19/06	7/18/2006	6/22/2007	9/27/2007	6/17/2008	9/29/2008	6/19/2009	10/2/2009	6/21/2010	10/4/2010	4/7/2011	6/27/2011	8/22/2011
	71 FR 61708	71 FR 40692	72 FR 34438	72 FR 54896	73 FR 34251	73 FR 56550	74 FR 29174	74 FR 50952	75 FR 34976	75 FR 61130	76 FR 19322	76 FR 37321	76 FR 52315
Anqiu Friend Food Co., Ltd .		0%			25.56%		64.78%		$4.71/kg				
Anqiu Haoshun Trade Co., Ltd.							RESCINDED						
Chengwu County Yuanxiang Industry & Commerce, Ltd.								115.29%					
Exported by Hebei Golden Bird Trading Co., Ltd.						13.83%							
Fook Huat Tong Kee Foodstuffs Co., Ltd.			18.85%										
Henan Weite Industrial Co., Ltd.					25.56%				$1.03/kg				
Heze Ever–Best International Trade Co., Ltd.			18.85%		25.56%								
Huaiyang Hongda Dehydrated Vegetable Company			18.85%										
Jinan Farmlady Trading Co., Ltd.					25.56%							$0.06/kg	
Jining Trans–High Trading Co., Ltd.			1.73%		25.56%								
Jining Yifa Garlic Produce Co., Ltd.													RESCINDED
Jining Yongjia Trade Co., Ltd.						18.88%							
Jinxiang Chengda Imp & Exp Co., Ltd.											RESCINDED		
Jinxiang Dong Yun Freezing Storage Co., Ltd.			14.72%		19.97%		72.74%						
Jinxiang Hejia Co., Ltd.								15.37%					
Jinxiang Shanyang Freezing Storage Co., Ltd.			62.25%		25.56%								
Jinxiang Shanyang Freezing Storage Co., Ltd.													
Jinxiang Tianheng Trade Co., Ltd.								RESCINDED					
Jinxiang Tianma Freezing Storage Co., Ltd.				21.79%					$4.71/kg				
Jinxiang Yuanxin Imp & Exp Co., Ltd.											RESCINDED		
Jinxiang Zhengyang Import & Export Co., Ltd.								RESCINDED					
Juye Homestead Fruits and Vegetables Co., Ltd.								RESCINDED					
Linshu Dading Private Agricultural Products Co., Ltd.			18.85%										
Ningjin Ruifeng Foodstuff Co., Ltd.							RESCINDED						
Qingdao Camel Trading Co., Ltd.			70.47%										
Qingdao Saturn International Trade Co., Ltd.			de minimis		25.56%		72.74%						
Qingdao Sea-line Trade Co., Ltd.										$1.28/kg			
Qingdao Tiantaixing Foods Co., Ltd.						32.78%							
Qingdao Xintianfeng Foods Co., Ltd.			376.67%		25.56%				$1.03/kg			$0.06/kg	
Qufu Dongbao Import & Export Trade Co., Ltd.		0%			25.56%		72.74%						
Shandong Chengshun Farm Produce Trading Co., Ltd.		0%											
Shandong Chenhe International Trading Co., Ltd.						RESCINDED							
Shandong Longtai Fruits and Vegetables Co., Ltd.			46.80%		25.56%							$0.06/kg	
Shandong Wonderland Organic Food Co., Ltd.				17.31%									
Shanghai Ever Rich Trade Company					25.56%								
Shanghai LJ International Trading Co., Ltd.					31.15%		72.74%		$1.03/kg				
Shenzhen Bainong Co., Ltd.													RESCINDED
Shenzhen Fanhui Import & Export Co., Ltd.		0%			25.56%								
Shenzhen Greening Trading Co., Ltd.						2.12%							
Shenzhen Xinboda Industrial Co., Ltd.				0.00%								$0.06/kg	
Sunny Import & Export Co., Ltd.			1.45%		25.56%								
Taiyan Ziyang Food Co., Ltd.			18.85%		25.56%								
Weifang Chenglong Import & Export Co., Ltd.								RESCINDED					
Weifang Hongqiao International Logistic Co., Ltd.				18.56%					$1.03/kg			$0.06/kg	
Weifang Shennong Foodstuff Co., Ltd.					25.56%		80.69%		$4.71/kg				
XuZhou Simple Garlic Industry Co., Ltd.			68.58%										
Yantai Jinyan Trading Inc.													RESCINDED
Zhengzhou huachao Industrial Co., Ltd.											RESCINDED		
Zhengzhou Yuanli Trading Co., Ltd.							120.18%						
PRC–Wide Rate			376.67%		376.67%		376.67%		$4.71/kg			$4.71/kg	

Attachment 2

U.S. Imports of Fresh Garlic

First Unit of Quantity by HTS Number and First Unit of Quantity for China

U.S. Imports for Consumption

Annual Data

HTS Number	Quantity Description	2006	2007	2008	2009	2010
		In Actual Units of Quantity				
0703200010	kilograms	37,535,377	41,180,902	41,058,063	36,185,758	30,654,337
0703200020	kilograms	21,301,494	31,537,973	31,028,468	29,606,822	31,522,174
0703200090	kilograms	3,823,952	215,203	255,378	84,452	198,519
0710807060	kilograms	5,695,301	8,702,242	7,153,260	4,720,957	4,665,829
0710809750	kilograms	7,545,823	13,906,229	12,382,395	11,179,670	12,594,767
0711906000	kilograms	0	0	0	0	0
2005909700	kilograms	11,688,858	0	0	0	0
Yearly Totals	kilograms	87,590,805	95,542,549	91,877,564	81,777,659	79,635,626

Annual Avg. Sunset Period	kilograms	87,284,841

Customs Value by Customs Value for China

U.S. Imports for Consumption

Annual Data

HTS Number	2006	2007	2008	2009	2010
	In Actual Dollars				
0703200010	39,056,442	50,027,472	37,749,878	24,865,504	45,591,837
0703200020	26,867,575	43,490,274	30,924,625	28,859,831	64,158,646
0703200090	3,694,935	265,349	278,537	129,715	619,772
0710807060	5,813,120	7,863,633	6,830,633	5,279,317	4,079,323
0710809750	4,261,558	7,744,592	7,234,444	6,512,933	7,208,768
0711906000	0	0	0	0	0
2005909700	10,227,691	0	0	0	0
Yearly Totals	89,921,321	109,391,320	83,018,117	65,647,300	121,658,346

Sources: Data on this site have been compiled from tariff and trade data from the U.S. Department of Commerce and the U.S. International Trade Commission.