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

A-570-831
Changed Circumstances Review: Qingshui
Public Document
E&C/Office VII: HES

March 17, 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: Lanling Qingshui Vegetable Foods Co., Ltd.

I. SUMMARY

Lanling Qingshui Vegetable Foods Co., Ltd. (Qingshui) requested that the Department initiate a changed circumstances review (CCR) to determine that Qingshui is the successor-in-interest of Cangshan Qingshui Vegetable Foods Co., Ltd. (Cangshan Qingshui). On October 23, 2014, the Department of Commerce (Department) initiated a CCR with respect to the antidumping duty (AD) order on fresh garlic from the People's Republic of China (PRC), pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216.[1] As indicated in the 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.[2] Now that we have solicited, received, and analyzed this information, we preliminarily determine that Qingshui is the successor-in-interest to Cangshan Qingshui 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 Qingshui, 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 Cangshan Qingshui.

II. BACKGROUND

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[1] *See Fresh Garlic from the People's Republic of China: Initiation of Changed Circumstances Review*, 79 FR 63381 (October 23, 2014) (CCR Initiation Notice).
[2] *See id.* at 63382.

On November 16, 1994, the Department published the AD order on fresh garlic from the PRC in the *Federal Register*.[3] On September 4, 2014, Qingshui requested a CCR pursuant to section 751(b)(1) of the Act and 19 CFR 351.216(b) to determine that it is the successor-in-interest to Cangshan Qingshui for purposes of the order.[4] In its CCR request, Qingshui explained that on January 8, 2014, Cangshan County changed its name to Lanling County pursuant to a decree by the ministry of civil affairs of the PRC.[5] Therefore, Lanling County required all companies with the name "Cangshan" to obtain new business licenses to reflect the new name, Lanling, because Cangshan County no longer exists.[6] Qingshui requested further that the Department combine the notice of initiation of the review and the preliminary results of review in a single notice as this review essentially involves a corporate name change.[7] Based on this information, the Department initiated this CCR on October 16, 2014, without combining the initiation notice and preliminary results due to the need for additional information from Qingshui.[8] On October 29, 2014, the Department issued its initial CCR questionnaire to Qingshui.[9] Qingshui timely responded to the Department's questionnaire. The petitioners in this garlic AD proceeding have not commented on this CCR.

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).[10]

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

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[3] *See Antidumping Duty Order: Fresh Garlic from the People's Republic of China*, 59 FR 59209 (November 16, 1994) (*Order*).
[4] *See* Letter from Qingshui to the Secretary of Commerce, "Request for Request for Expedited Changed Circumstances Determination - Fresh Garlic from the People's Republic of China (Case No. A-570-831)," September 4, 2014 (Qingshui CCR Request).
[5] *See* CCR Request at 2 and Exhibit 10.
[6] *See id.*
[7] *See* CCR Request at 2.
[8] *See CCR Initiation Notice.*
[9] *See* Letter to Qingshui from Mark E. Hoadley, AD/CVD Operations, Program Manager, Office VII, Enforcement and Compliance, "Fresh Garlic from the People's Republic of China: Changed Circumstances Review – Lanling Qingshui/Cangshan Qingshui," October 29, 2014 (Qingshui CCR Questionnaire).
[10] *See Order*.

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 Qingshui submitted evidence sufficient to warrant a review. Since that time, Qingshui has submitted additional information in support of its claim that it is the successor-in-interest to Cangshan Qingshui. A discussion of the Department's methodology and preliminary findings regarding Qingshui'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.[11] While no single factor or combination of these factors will necessarily provide a dispositive indication of a successor-in-interest relationship, the 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.[12] 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.[13]

Analysis

In its CCR Request, Qingshui provided a description and numerous exhibits in support of its claim that it is the successor-in-interest to Cangshan Qingshui. In its CCR request, Qingshui represented that the only changes from Cangshan Qingshui to Qingshui are: "(1) in the name to reflect the new name of the county, (2) an increase in capital, and (3) a transfer of shares among members of one family," and insisted that "{t}hese last two changes have nothing to do with the name change, but were decided upon independently."[14] We required further clarification and issued a questionnaire to Qingshui. In our questionnaire, we asked Qingshui to provide detailed explanation for these changes, why they occurred, and the impact that these changes had on the daily operations concerning the production and sale of subject merchandise. In response to our questionnaire, Qingshui provided additional information, further supporting its assertion that it is the successor-in-interest to Cangshan Qingshui. Below, we analyze the information Qingshui

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[11] *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).
[12] *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).
[13] *See Fresh and Chilled Atlantic Salmon from Norway; Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979, 9980 (*Norwegian Salmon*).
[14] *See* Qingshui CCR Request at 3.

submitted in the context of the four main criteria considered in a successor-in-interest proceeding.

1) Ownership and Management

No Management Change

In its CCR Request, Qingshui states that Cangshan Qingshui formally dissolved on May 23, 2014, based on Cangshan County changing its name to Lanling County.[15]

Qingshui indicates that its management did not change before and after the business name change.[16] To support its claim, Qingshui provides an organization chart prior and subsequent to the name change.[17]

In our questionnaire to Qingshui, we requested that Qingshui revise the organization charts to include the names of the department heads for each of the units shown on the chart.[18] We also asked Qingshui to confirm any changes in personnel before and after the name change and provide the reasons for the personnel change as well as beginning dates of any personnel changes.[19] We also requested whether any employee had been previously employed by other garlic producers.[20]

In its questionnaire response, Qingshui provided the requested organization charts showing the department heads and confirmed no personnel changes from Cangshan Qingshui to Qingshui.[21] Qingshui also affirmed that none of the personnel had worked for other garlic-related businesses before their employment at Qingshui.[22]

Based on the supporting documentation and the questionnaire response, we preliminarily find that Qingshui's management did not change to the point where the company operations are materially dissimilar to the operations of Cangshan Qingshui.

Transfer of Ownership Shares

Qingshui states in its CCR Request that two changes in ownership occurred between family members after the formation of Cangshan Qingshui and "the same two founding families still own the new company and in the same proportion as the old company."[23]

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[15] *See* Qingshui CCR Request at 3 and at Exhibit 10.
[16] *See* Qingshui CCR Request at 3.
[17] *See* Qingshui CCR Request at 4.
[18] *See* Qingshui CCR Questionnaire at 3.
[19] *Id*.
[20] *Id*.
[21] *See* Letter from Qingshui to Secretary Penny Pritzker, "Changed Circumstances Determination - Fresh Garlic from the People's Republic of China: (Case No. A-570-831) – Response to Questionnaire," November 18, 2014 (Qingshui CCR Questionnaire Response) at Question 1 (no page numbers).
[22] *Id*.
[23] *See* Qingshui CCR Request at 3-4.

We requested information from Qingshui regarding the reason for these share transfers.[24] Qingshui responded that an owner wanted the daughter to join the business and transferred the shares to the daughter.[25] Qingshui further explained that the daughter had no interest in the business and transferred her shares to her father.[26] Thus, we find that the transfer of shares had an insignificant impact on the production, marketing, or sale of subject merchandise.

2) New Business Name and Scope

New Business Name

According to Qingshui, on January 8, 2014, Cangshan County changed its name to Lanling County, pursuant to a decree by the ministry of civil affairs of PRC.[27] Qingshui explains that the company changed its name to reflect a change in the name of the county where it operates.[28]

In its CCR Request, Qingshui stated that it did not change its street address.[29] We noticed, however, that Qingshui has different addresses in the sales documentation and in the business license.[30] Qingshui explained that Cangshan Qingshui established itself at one address while the factory was established at another address. Specifically, Qingshui explained that the factory address was used on invoices—a practice which Qingshui continues—and the company address appears on the business licenses.[31] Record evidence demonstrates that these addresses have remained the same following the dissolution of Cangshan Qingshui.

In its CCR Request, Qingshui asserts that it continues to be incorporated as a limited liability company and provides its business license to support its assertion. In its new shipper review (NSR), we found that Cangshan Qingshui is incorporated as a limited liability company.[32] We also compared the business licenses between Cangshan Qingshui and Qingshui and found that the information corresponded between the two business licenses, including no time gaps in operations.

Thus, we preliminarily find that the business name change and the type of business entity, *i.e.*, "limited liability company," remained essentially unchanged from that of its predecessor.

New Business Scope

In its CCR Request, Qingshui claims that there were no changes in the operations of the companies operating "as a processor and exporter of garlic."[33] Qingshui stated that its methods

[24] *See* Qingshui CCR Questionnaire at 3.
[25] *See* Qingshui CCR Questionnaire Response at Question 2.
[26] *Id*.
[27] *See* Qingshui CCR Request at 2 and Exhibit 10 (decree).
[28] *See* Qingshui CCR Request at 4.
[29] *Id*.
[30] *See* Qingshui CCR Questionnaire at 3.
[31] *See* Qingshui CCR Questionnaire Response at question 3.
[32] *See Fresh Garlic From the People's Republic of China: Final Results of the Semiannual Antidumping Duty New Shipper Review of Jinxiang Merry Vegetable Co., Ltd. and Cangshan Qingshui Vegetable Foods Co., Ltd.; 2012–2013,* 79 FR 62103 (October 16, 2014) with accompanying unpublished issues and decision memorandum (NSR).
[33] See Qingshui CCR Request at 4.

of ordering products, price negotiations with customers, shipping and paying for products, and accounting methods remain unchanged.[34] Qingshui supported its statements by providing a sample set of sales documents for the top three customers of each company as well as the accounting methodology of each company.[35]

We reviewed Qingshui's financial and sales documents to confirm that essentially no changes have occurred from the business name change. However, we found that Qingshui has expanded its business scope to include "Boiler (not including installation and maintenance), electrical equipment, machinery and equipment wholesale, retail."[36] We asked Qingshui to explain how and when it expanded into the boiler business and the impact that its new boiler business has had on the company in terms of production facilities, personnel, and changes in suppliers and or customers.[37] We also asked Qingshui to provide marketing brochures, including barcode brochures, and other documentation showing that the production facilities remained the same before and after the name change.[38]

In response, Qingshui explained that it expanded its business scope because one of its customers "promised to buy the products."[39] Qingshui further explained that the boiler business has no impact on the production facilities because Qingshui does not make boilers but subcontracts the production of boilers to another factory, so it did not add a new facility.[40] Next, Qingshui replied because it does not make boiler equipment, Qingshui did not print new brochures and still uses the same brochures of Cangshan Qingshui with the same barcode as Cangshan Qingshui.[41] Finally, Qingshui responded that it has not yet sold any boiler equipment, which we confirmed by reviewing Qingshui's list of products sold in its CCR Request.[42] Qingshui did not provide any marketing information as requested because it did not have any new brochures.

Although Qingshui expanded the business scope, we preliminarily find that the production and sale of subject merchandise are identical based on our review of the CCR Request, sales and financial documents, and Qingshui's questionnaire response. Therefore, we preliminarily find that the expanded business scope has an insignificant impact and thus the business scope remains essentially unchanged from that of its predecessor with respect to the production or sale of subject merchandise.

3) Increase in Capital

Qingshui states that it increased its capital for reasons unrelated to the business name change, assuring that the percentage share in ownership did not change.[43] We requested that Qingshui

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[34] *Id*.
[35] *See* Qingshui CCR Request at 4-5.
[36] *See* Qingshui CCR Request at Exhibit 2.
[37] *See* Qingshui CCR Questionnaire at 3.
[38] *Id*.
[39] *See* Qingshui CCR Questionnaire Response at question 5.
[40] *See* Qingshui CCR Questionnaire Response at questions 5-7.
[41] *See* Qingshui CCR Questionnaire Response at question 8.
[42] *See* Qingshui CCR Questionnaire Response at question 15.
[43] *See* Qingshui CCR Request at 3.

explain the reasons for the increase in capital of the company.[44] Qingshui responded that it wanted to increase the volume of the business.[45] Thus, we preliminarily find that the increase in capital does not essentially change the operations from the predecessor, Cangshan Qingshui.

4) Production Facilities

Qingshui states that there has been no change in the physical location of the company and it is "indistinguishable" from Cangshan Qingshui from a production perspective.[46] We also determined in Cangshan Qingshui's NSR that it is a producer and exporter, and Qingshui confirmed that it is also a producer and exporter in its CCR Request.[47] As discussed above in the New Business Scope section, Qingshui confirms no new facility or new customers based on its expansion of its business scope. As we discussed above in the New Business Scope section, Qingshui still uses Cangshan Qingshui's bar code and brochures, supporting its claim that the production facilities remained the same before and after the name change. We also verified that the addresses on the business licenses and sales invoices in its CCR Request are the same between Qingshui and Cangshan Qingshui.[48] Therefore, based on the business license and sales documents, we preliminarily find that the production facilities remained essentially the same during the production of the subject merchandise.

5) Supplier Relationships

In its CCR Request, Qingshui indicates that its supplier base remained essentially the same before and after the name change.[49] To support its claim, Qingshui provides a list of the suppliers used prior and subsequent to the name change, which are essentially the same.[50]

In our questionnaire to Qingshui, we requested that Qingshui confirm the complete list of suppliers, the percentage of supplies received from those suppliers for two years leading up to the name change and after the name change, and how Qingshui compiled this information.[51] We also asked Qingshui to provide supporting documentation from company records showing that the supplier lists are accurate and that Qingshui's suppliers are the same as the suppliers to Cangshan Qingshui.[52] Last, we asked Qingshui to identify the account codes for the suppliers in its accounting system.[53]

Qingshui provided the requested information in its questionnaire response and replied that the suppliers of raw materials, electricity, carton, and bag suppliers are identical.[54] Regarding the

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[44] *See* Qingshui CCR Questionnaire at 3.
[45] *See* Qingshui CCR Questionnaire Response at question 3. Nothing on the record suggests that Qingshui has, in fact, increased its business volume as a result of its change to Qingshui.
[46] *See* Qingshui CCR Request at 3.
[47] *See NSR* and Qingshui CCR Request at 5.
[48] *See* Qingshui CCR Request at Exhibits 6a-f.
[49] *See* Qingshui CCR Request at 5 and Exhibits 8a-b.
[50] *Id*. and Exhibits 8a and 8b.
[51] *See* Qingshui CCR Questionnaire at 4.
[52] *Id*.
[53] *Id*.
[54] *See* Qingshui CCR Questionnaire Response at questions 9-10 and Exhibit 3.

accounting codes, Qingshui also provided the requested information and stated that it pays the garlic suppliers with cash and does not keep accounting codes for its garlic suppliers.[55]

Based on the supplier list of major raw materials and invoices that Qingshui provided in its questionnaire response, we compared and found all suppliers were the same before and after the name change. Regarding the accounting codes, we reviewed the chart of accounts with the requested list of suppliers and found that they matched for Cangshan Qingshui and Qingshui.[56] Thus, we preliminarily find that the same base of suppliers was used for all major inputs used in the production of subject merchandise.

6) Customer Base

Qingshui reported that its customers remain substantially the same as they were for Cangshan Qingshui, stating that Cangshan Qingshui had numerous customers and Qingshui sells to the bulk of Cangshan Qingshui's customers.[57] To support its claim, Qingshui provided a list of the top five customers, sales documents for three top three customers, and a chart of accounts for both companies.[58]

In our questionnaire, we asked Qingshui to explain if the top five customers that Qingshui provided were the top five customers based on annual or monthly sales and the percentage that the top five customers represent in total sales of subject merchandise.[59] We also requested that Qingshui revise its customer lists to show the customers for the three years leading up to the name change and after the name change, the corresponding accounting codes, and the percentage of sales to the customers noting if the list of names was too numerous, then it should truncate the list to the top ten customers of both companies.[60]

Qingshui provided all requested information noting that the top five customers are based on annual sales.[61] We determined that the top ten customers were almost the same customers and comprised a significant amount of sales for both companies. Also, we were able to analyze any changes in the company's customer base over the time periods and to correlate the accounting codes with the chart of accounts in the CCR request.

Based on this information, we preliminarily find that the customer base of the subject merchandise was essentially similar and corresponded with the chart of accounts for both companies.

7) Summary of Preliminary Findings

[55] *See* Qingshui CCR Questionnaire Response at question 11.
[56] *See* Qingshui CCR Questionnaire Response at question 11 and Qingshui CCR Request at Exhibits 7a-b.
[57] *See* Qingshui CCR Request at 5 and Exhibits 8a-b.
[58] *See* Qingshui CCR Request at 5 and Exhibits 5 (sales documents), 7a-b (chart of accounts), and 8a-b (top five customer list).
[59] *See* Qingshui CCR Questionnaire at 4 .
[60] *Id*.
[61] *See* Qingshui CCR Questionnaire Response at question 12-14.

Based on the evidence reviewed, we preliminarily determine that Qingshui is the successor-in-interest to Cangshan Qingshui. Specifically, we find that the change of the company's name as a result the county name change, as well as the shareholder/ownership change, resulted in no material changes to management, production facilities, supplier relationships, and/or customer base with respect to the production and sale of the subject merchandise. Thus, given the totality of the circumstances, we preliminarily find that Qingshui operates in all material respects as the same business entity as Cangshan Qingshui regarding the production and sale of subject merchandise.

V. 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 Qingshui 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 Cangshan Qingshui.

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Agree Disagree

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Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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Date