



A-570-831

New Shipper Review

POR: 11/01/2013- 4/30/2014

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October 1, 2015

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Rescission of
Antidumping Duty Semiannual New Shipper Review on Fresh
Garlic from the People's Republic of China: Jinxiang Kaihua Imp
& Exp Co., Ltd.

SUMMARY

The Department of Commerce (Department) analyzed the case brief and rebuttal brief submitted by interested parties in the new shipper review (NSR) of Jinxiang Kaihua Imp & Exp Co., Ltd. (Kaihua) with respect to the antidumping duty order on fresh garlic from the People's Republic of China (PRC). As a result of this analysis, we have made no changes to our *Preliminary Results*,¹ and continue to recommend finding Kaihua's sale to be not *bona fide*, and to rescind the NSR of Kaihua. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

BACKGROUND

On June 5, 2015, the Department published the preliminary results of this new shipper review.² The review covers the new shipper Kaihua. The period of review (POR) is November 1, 2013, through April 30, 2014. On June 10, 2015, Kaihua requested a hearing. On July 7, 2015, Kaihua filed its case brief. The petitioners³ did not file a case brief but submitted rebuttal comments on July 14, 2015. On July 21, 2015, Kaihua withdrew its request for a hearing. On July 22, 2015, the Department extended these final results to October 1, 2015, in accordance with section

¹ See *Fresh Garlic From the People's Republic of China: Preliminary Intent To Rescind the New Shipper Review of Jinxiang Kaihua Imp & Exp Co., Ltd.*, 80 FR 32092 (June 5, 2015) (*Preliminary Results*) and accompanying Issues and Decision Memorandum (PDM).

² *Id.*

³ The petitioners in this new shipper review are the Fresh Garlic Producers Association and its individual members: Christopher Ranch L.L.C., The Garlic Company, Valley Garlic, and Vessey and Company, Inc.



751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.214(i)(2).⁴ On July 28, 2015, the Department met with Kaihua and petitioners to discuss their case and rebuttal briefs, respectively.

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).⁵

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 (CBP) to that effect.

DISCUSSION OF THE ISSUES

This memorandum discusses the following six comments that the parties raised during this administrative review. Below is the list of comments.

Comment 1: Whether The Price Of Kaihua's Garlic Was *Bona Fide*

Comment 2: Whether The Comparison Of Single-Clove Garlic With Multi-Clove Garlic Comports With Recent Decisions

Comment 3: Whether CBP Data Contains Errors

Comment 4: Whether Kaihua Reported Accurate And Actual Expense And Accounting Data

Comment 5: Whether Kaihua Provided Proof Of Payment

Comment 6: Whether There Is A Pattern Of Inconsistencies With Kaihua's Submissions

⁴ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations from Milton Koch, Senior International Trade Compliance Analyst, Office VII, Antidumping and Countervailing Duty Operations, "Fresh Garlic from the People's Republic of China: Extension of Deadline for the Final Results of New Shipper Review: Jinxiang Kaihua Imp & Exp Co., Ltd.," dated July 21, 2015.

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

Comment 1: Whether The Price Of Kaihua's Garlic Was *Bona Fide*

Kaihua

- The Department's comparison of multi-clove and single clove garlic is inappropriate and does not contain an analysis of price variability, uses one price premium as its benchmark, and bases its analysis on one price of single clove garlic.
- The Department did not include in its analysis prices of single clove garlic from China and India. The price of single clove garlic in these countries supports Kaihua's high price in the U.S. and monopoly market position.

Petitioners

- The Department's price analysis is not a direct comparison as Kaihua contends, but rather compares the price premium difference between the average unit values (AUV) of single-clove and multi-clove garlic. The Department noted in its analysis that "a direct comparison may not be meaningful."
- The Department does identify a single valid price premium, comparing Kaihua's premium relative to the premium of Hejia's *bona fide* transaction. Kaihua contends that Hejia's price premium is not comparable to Kaihua, but does not identify any record information to support its claim. Consequently, Kaihua's premium is not reflective of a *bona fide* transaction because it is significantly more than the Hejia benchmark.
- Kaihua argues that the Department should conduct a price variability analysis but does not identify any information on the record to support an analysis or include an analysis in its case brief.
- Similarly, Kaihua argues that its price differs from Hejia's due to changes in market conditions but does not identify any information on the record to support its conclusion.

Department's Position: Kaihua's contention that the Department's analysis is an apples-to-oranges comparison of single-clove garlic to multi-clove garlic is misplaced. The Department's analysis is not a direct comparison of the price of single-clove to the price of multi-clove garlic. Rather, the Department's analysis accepts that there may be a price premium for single-clove garlic versus multi-clove garlic and compares the price premium in this review to the premium in an earlier review of a *bona fide* sale. Specifically, we have compared the price premium between Kaihua's sale of single-clove and the contemporaneous average unit value (AUV) of entries of fresh, whole garlic (HTSUS 0703.20.0015) to the price premium between the price of Hejia's *bona fide* sale of single clove garlic and the corresponding AUV for contemporaneous fresh, whole garlic entries.⁶ The Department notes that using price premiums instead of prices adjusts for inflation, allowing the use of POR-specific data. As Kaihua's price premium is substantially greater than the premium of Hejia's *bona fide* sale, the Department finds Kaihua's price is abnormally high and indicative of a non *bona fide* transaction.

⁶ The exact amount of the price premium in this review and the details of its comparison to the Hejia price premium are proprietary information. For the analysis, see the Memorandum to Edward Yang, Office Director, AD/CVD Operations Office VII, "Bona Fide Nature of the Sales in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China (PRC): Jinxiang Kaihua Imp & Exp Co., Ltd." dated June 3, 2015 (Bona Fides Memorandum).

Kaihua also contends that market conditions change regularly and that the Department does not incorporate price variability or the impact of market conditions on valid prices into its analysis. However, Kaihua does not explain further what price variability test the Department should include in its analysis, instead merely stating that garlic prices can and do fluctuate daily. The Department's analysis uses the weighted AUV of all entries of whole garlic for the POR. As these entries occur on different days and have different prices due to fluctuating market conditions, the Department's analysis already includes an element of price variability.

Similarly, Kaihua argues that the Department's analysis is flawed for using only Hejia's *bona fide* sale as the benchmark, but Kaihua does not propose any alternatives or identify additional *bona fide* sales of single clove garlic in the United States to use as a benchmark. Further, Kaihua claims that as a monopolist with respect to single clove garlic, it can charge monopoly prices and that the prices for single clove garlic in China and India are equal to its U.S. price. We note that the Department's analysis of the *bona fides* of an NSR sale does not address an industry's structure, and in any event, the large number of price offers placed on the record of this review by Kaihua seems to indicate that Kaihua is not a monopolist with respect to single clove garlic. For these Final Results, the Department is making no changes to its price analysis. For further discussion of the details regarding the price offers submitted by Kaihua, see Comment 2.

Comment 2: Whether The Comparison Of Single-Clove Garlic With Multi-Clove Garlic Comports With Recent Decisions

Kaihua

- The Department must make its decisions based on a fair and balanced comparison of the data. It may not exert its authority in an arbitrary or capricious manner and must base its decision on substantial evidence.
- In new shipper reviews involving *Fish Fillets*⁷ and *Wooden Bedroom Furniture*,⁸ and an administrative review relating to *Stainless Sheet*,⁹ the Department analyzed whether the respondents' sales prices for subject merchandise fell "within the range" of other record sales of subject merchandise during the period of review, after giving due consideration to distinctions among items of subject merchandise that could affect price. The Department did not apply that methodology to Kaihua.
- In the new shipper review of Hejia, the Department found that single-clove garlic is commercially unique and that it could not conclude Hejia's price was aberrationally high where there were no other U.S. prices of single-clove garlic on the record.
- In *Yuanxin*, the Department relied on actual overseas prices as well as price offers to compare to Yuanxin's single clove garlic price. In the instant review, the Department did not address the price offers of single clove garlic in China and India provided by Kaihua.
- The Department instead used CBP data and the Hejia price premium from several years prior in its *bona fide* analysis. The prices in China and India are contemporaneous with

⁷ See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews*, 74 FR 11349 (March 17, 2009).

⁸ See *Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 75 FR 44674 (July 29, 2010).

⁹ See *Stainless Steel Sheet and Strip in Coils from Japan: Final Results of Antidumping Duty Administrative Review*, 75 FR 6631 (February 10, 2010).

the POR and represent the best available information for evaluating Kaihua's single clove garlic price.

Petitioners

- Kaihua does not explain specifically how the Department's preliminary findings constitute a change in agency practice or identify any specific record information. The Department did apply its standard totality of the circumstances analysis.
- The cases cited by Kaihua do not apply to the instant review. In Hejia, the Department had no single clove garlic prices in the U.S. for comparison. In the instant review, the record does contain information on other U.S. prices of single-clove garlic, namely Hejia's.
- Kaihua cited three other cases where the Department found an exporter completed a *bona fide* sale at prices that fall "within the range" of other pricing information on the record. These cases involved fundamentally different circumstances than the present proceeding and are not comparable.
- A study by an agricultural expert in Shandong establishes that single clove garlic is grown only in Yunnan province of China. Indian multi-clove garlic grown in the regions identified by Kaihua is smaller, and the Indian regions do not match the geographical or climate conditions of Yunnan. As there is no evidence of single-clove garlic production in India, it is more likely that the Indian prices reflect efforts to re-sell Chinese-origin single-clove garlic.
- The price offers made by Chinese entities for single clove garlic do not reflect actual prices paid and thus are an inferior source of information compared to the actual prices paid in the U.S. by Kaihua and Hejia's customers.

Department's Position: The Department's price-premium analysis comports with its prior determinations in new shipper reviews. The Department has given appropriate consideration to the characteristics of Kaihua's subject merchandise by recognizing that single clove garlic may trade at a premium over multi-clove garlic. As analyzed above, Kaihua's price premium is substantially higher than that obtained by the only other record sale of single clove garlic in the United States.¹⁰ Thus, based on the only relevant benchmark, Kaihua's price was not reasonable and cannot be analogized to other cases where the Department found the new shipper's price "fell within the range" of other record prices.

In *Yuanxin*,¹¹ the Department's price-premium analysis was upheld by the Court of International Trade (CIT). Specifically, the CIT found that "because the Department used this alternative methodology to determine the commercial reasonableness of Yuanxin's sales price, Commerce correctly reasoned that it no longer needed 'to determine whether single-clove garlic {was} a unique product with a distinct market'.... In addition, having abandoned its reliance on a direct comparison of plaintiff's single-clove garlic sale price to the AUV of the Customs data, the Department's analysis is no longer incompatible with its determinations in the three reviews of *Fish Fillets*, *Stainless Steel*, and *Wooden Bedroom Furniture*."¹² The Department notes that *Yuanxin* is the most recent of the cases cited by Kaihua and that the CIT upheld the use of the

¹⁰ See Bona Fides Memorandum.

¹¹ *Jinxiang Yuanxin Imp. & Exp. Co. v. United States*, 71 F. Supp. 3d 1338, 1352-53 (Ct. Int'l Trade 2015).

¹² *Id.* at 1346.

price premium analysis in that review, which presented substantially similar circumstances to the instant review.

Kaihua in its surrogate value submission provided price offers of single clove garlic in India, Romania, Bulgaria, and the PRC, price offers of multi-clove garlic in Romania and Bulgaria, India Spice Board prices of garlic, and retail prices of single-clove garlic in the PRC. Kaihua also provided transcripts of inquiries with two companies, Jinan Gogo and Jining Golden Longyuan, offering to sell single-clove garlic.

In *Yuanxin*, the Department used “price quotes from the PRC to assess whether Yuanxin’s sales price was *bona fide*, not as a source of surrogate values.”¹³ The CIT expressed skepticism regarding comparisons of prices for the same merchandise between U.S. and foreign markets “because the market forces and conditions of supply and demand present in the United States differ from those abroad.”¹⁴ The CIT further explained: “Here other, more reliable information was available on the record including sales prices and price quotes from Jinxiang Hejia and offers from a Chinese exporter for sales into the United States. Thus, Commerce did not need to rely on sales from the PRC into countries other than the United States. That is, single-clove garlic sales prices and sales price offers to the United States are more representative of the price that the U.S. market commands than sales into third countries.”¹⁵ The Department agrees that third-country data is of limited probative value. That is particularly true where, as here, the data represents price offers, which are a starting point for negotiation rather than an actual sale.¹⁶ Furthermore, there is no information on the record regarding the price of multi-clove garlic in the PRC, and thus the Department is unable to conduct a price premium analysis for the PRC. Accordingly, the Department will rely on record information on single clove garlic exported from the PRC to the United States.

The Department notes that the price offers provided by Kaihua also suffer from multiple flaws. Kaihua provided the inquiry for one company it contacted, Jinan Gogo. In an online chat, Jinan Gogo noted that its listed price was posted six years ago and that “single clove garlic is very expensive now.” The inquirer requested a new price for export to Germany and stated “Our client asked that Chinese garlic should not be so cheap.”¹⁷ The Department does not consider Jinan Gogo’s offer to be valid as it is seemingly predicated on a request by the customer for a higher price, contrary to normal business practices. Kaihua also included an email response from Jining Golden Longyuan, which stated that the price of single clove garlic was “based on the multi-clove garlic cost in 2014” and that “now the single clove garlic raw material price is very high.”¹⁸

¹³ *Id.* at 1350.

¹⁴ *Id.*

¹⁵ *Id.* at 1350-51.

¹⁶ In addition, the Indian single-clove garlic price offers and data for the Indian Spice Board Market are of limited probative value because 1) the Indian Spice Board Market prices represents a monthly average price, likely of both multi-clove and single-clove garlic sales and 2) the Spice Board prices are available only through September 2014 and not contemporaneous with 2015 Indian price offers on the record.

¹⁷ See Kaihua’s May 4, 2015 submission at SV-6.

¹⁸ *Id.*

The exporters' statements that the price of single clove garlic in April 2015 is "very high" and "very expensive" indicate prices may have changed significantly from March 2014, when Kaihua purchased garlic, and make a comparison between non-contemporaneous price offers inappropriate. Given that Kaihua's price is similar to the April 2015 PRC price offers, it is likely that Kaihua's price would have been considered "very high" and "very expensive" in March 2014 when prices were lower. That would be indicative that Kaihua's sale was not *bona fide*.

Kaihua submitted a list of monthly PRC retail prices which are contemporaneous with the POR. However, the PRC is a non-market economy and the presence of government controls distorts domestic prices and renders price comparisons invalid for the Department's analysis. The Department concludes that none of the PRC information on the record is viable for its analysis and continues to rely on its price premium analysis of the U.S. market for these final results.

Comment 3: Whether CBP Data Contains Errors

Kaihua

- The Department does not release CBP data until after the POR, but expects Kaihua to price sales at the AUV during the POR in its *bona fide* analysis.
- CBP data contains several entries extremely below the AUV. Given that the AD order has been in place for 19 years, those unrealistically low-price sales are likely wrong and unreliable.
- The Department has previously recognized the data contains irregularities in the 13th administrative review of the antidumping duty order on fresh garlic from the PRC.
- There are many sales in the CBP data run of multi-clove garlic with prices per kilogram at or higher than Kaihua's price for single-clove garlic.

Petitioners

- Kaihua's claim that the CBP data contains multiple sales of multi-clove garlic at AUVs higher or equal to Kaihua's sales price is false. The entries at issue are for a HTSUS category which does not cover fresh, whole garlic.
- The Department did not compare Kaihua's price to the AUV from CBP data, but rather the price premium of Kaihua's price to that of Hejia's *bona fide* sale. Any errors that result in an understatement of the AUV of multi-clove garlic imports during the POR is irrelevant. Further, the Department does not suggest or require that a *bona fide* transaction must have a sales price that matches entries of multi-clove garlic during the POR.

Department's Position: The Department's analysis does not require respondents to price sales at the AUV for the POR as Kaihua contends, but instead analyzes whether they are within the range of U.S. prices. In the instant review, Kaihua's sale was of single-clove garlic. In order to adjust for differences between single-clove and multi-clove garlic, the Department conducted a price premium analysis and compared this to the premium of the last *bona fide* sale of single-clove garlic, by Hejia. The Department notes this methodology was upheld in *Yuanxin* and discussed further at Comment 2.

Kaihua argues that the Department should not rely on CBP data which contains several entries with unrealistically low AUVs and that the Department has previously recognized that CBP data may contain errors. While the Department does not rule out the possibility of errors in CBP data, Kaihua does not identify the specific entries in question, does not provide any evidence to support its claim that the prices are abnormally low, and has not proposed alternative solutions. Furthermore, to the extent that Kaihua argues that the presence of certain low-priced data has been a consistent feature of CBP data for fresh garlic for several years, such data would also have been reflected in Hejia's price premium that the Department used as a benchmark in this review.

Kaihua also contends that the CBP data for this POR contains multiple sales of multi-clove garlic at AUVs that are the same or higher than Kaihua's sales price, but did not provide the Department with an analysis of those entries or even indicate to which entries it is referring. The CBP data contains all entries for HTSUS categories that have contained entries of garlic in the past: whole garlic, peeled garlic, other prepared vegetables, and other frozen vegetables. The Department's analysis however used a subset of the data, Type 3 entries (suspended for AD/CVD purposes) of HTSUS 0703.20.0015 (garlic, fresh whole bulbs). Kaihua's HTSUS correctly entered under HTSUS 0703.20.0015. The shipments with AUVs equal to or higher than Kaihua's sales price did not enter under HTSUS 0703.20.0015, which indicates that these entries are not for whole garlic and therefore should not be included in the Department's analysis. Kaihua did not explain why it would be appropriate to include these additional entries in the analysis. Thus, for these Final Results, the Department continues to use CBP data without any changes from the *Preliminary Results* for its price premium analysis.

Comment 4: Whether Kaihua Reported Accurate And Actual Expense And Accounting Data

Kaihua

- The Department should not have criticized Kaihua for having huge expenses, including the antidumping duty cash deposit. The cash deposit is not included in the dumping margin calculations because it is a contingent cost and not actual.
- Even assuming that some expenses were contrary to the sales contract, this does not make the expenses invalid. Sales contracts can be amended at any time.
- The Department contends Kaihua's FOP accounting data does not reconcile because it does not include costs associated with processing of shallots and ginger. Kaihua purchased finished shallots and ginger and resold them, and thus there are no production costs for these products.

Petitioners

- Kaihua has misinterpreted the Department's findings. The Department found that Kaihua inconsistently reported the expenses arising with the sale. Kaihua's case brief contradicts Kaihua's submissions, which stated that its U.S. customer, and not Kaihua, was responsible for the cash deposit.
- Kaihua states "{s}ales contracts can be amended at any time," but did not submit an amended sales contract to the Department or previously suggest in its submissions that it

was amended. Rather, Kaihua's submissions stated that a typographical error was made on the contract and initial submission.

Department's Position: In the Bona Fides Memorandum,¹⁹ the Department pointed out that there was a discrepancy on the record with respect to why the U.S. customer paid the antidumping duty cash deposit, customs brokerage, and inspection charges at time of entry, when it was contrary to the terms of the sales contract. While sales contracts can be amended if both parties agree, it is unusual for a buyer to volunteer to pay significant additional expenses when they are not required to by the sales contract. Rather than provide evidence that the contract was amended, Kaihua's responses to the Department indicated that it considered the discrepancy in the contract to be a typo. However, that does not explain why the purchase order from the customer also contains the same mistake. We continue to find the lack of clarity regarding the sales contract and related movement and U.S. customs expenses to be indicative of a non *bona fide* transaction.

Regarding Kaihua's FOP accounting, Kaihua stated in its case brief:²⁰ "The accounting data does reconcile because Kaihua did not produce shallots and ginger. Rather it purchased finished shallots and ginger and simply re-sold them. Thus, there are no production costs for these products. Accordingly, Kaihua's FOP accounting data is correct."

As an initial matter, we note Kaihua did not cite to any record evidence to support its contention that it purchased and sold finished shallots and ginger and did not provide any further processing. However, assuming that Kaihua bought and sold shallots and ginger, then it has not used its production facility since it produced garlic during the POR on March 12, 2014. It appears that Kaihua invested a significant amount of capital constructing a production facility, only to use it once before switching to buying and selling finished shallots and ginger. We find the low utilization of Kaihua's main asset not representative of normal business practices and indicative that the sale is not a *bona fide* transaction.

Comment 5: Whether Kaihua Provided Proof Of Payment

Kaihua

- Late payments are valid and not unusual. The record does not show when the customer picked up cargo from the U.S. port, but it may have taken two weeks, resulting in a late payment of only one to two weeks, not the three to four weeks suggested by the Department.
- Because the receipt was not fully translated and did not contain the name of the U.S. customer, this contributed to the Department's preliminary decision the sale was not *bona fide*. Kaihua's bank provided a payment receipt for a transfer of U.S. dollars that does not state the payor's name. Kaihua also had only one U.S. customer. Thus the payment in U.S. dollars was made by that customer.
- As payment was proven to be made, the transaction was made at arm's length.

¹⁹ See Bona Fides Memorandum.

²⁰ See Kaihua's submission of July 7, 2015, at 26-27 (Kaihua's brief).

Petitioners

- Kaihua had a single transaction for which it needed to submit proof of payment, but did not do so. Kaihua was asked twice to submit legible, translated documentation that it received payment from the U.S. customer, but did not. Kaihua offers no explanation why it could not have requested additional detailed documentation from its bank.
- As payment was not proven to be made, the transaction was not made at arm's length.

Department's Position: Kaihua was asked twice to provide a legible and translated proof of payment and failed to do so. Kaihua concedes in its brief that the documents submitted were untranslated despite the Department's requests, indicating that it did not cooperate to the best of its ability. We also note that Kaihua was able to provide proof of payment by its customer for movement expenses.²¹ Despite Kaihua's claims to the contrary, the documents provided do not demonstrate proof of payment for the sale of garlic, only the conversion of USD to RMB. The onus is on the interested parties to develop the record. In the instant proceeding, Kaihua chose not to comply fully with the Department's requests for information by not translating the document or providing additional documents that would demonstrate payment from the customer. Consequently, the Department cannot conclude that payment for Kaihua's single clove garlic sale was made or that the transaction was at arm's length. We find these two factors indicative that the sale was not a *bona fide* transaction.

Comment 6: Whether There Is A Pattern Of Inconsistencies With Kaihua's Submissions

Kaihua

- Kaihua was issued a valid CIQ number by the Chinese government in the POR. This is confirmed in the official Chinese government data.
- Kaihua provided proof of purchase from the farmer. While Petitioners allege the supplier is actually the legal representative of another garlic company, this is speculation as there are many people with the same name in the PRC.
- The Department highlighted three minor inconsistencies. It is common for respondents to amend their questionnaire responses in supplemental questionnaires to correct errors. Also the shareholders in Kaihua still have time to fulfill their obligations to contribute capital.

Petitioners

- Kaihua's representations regarding the CIQ code conflict with information provided by both Petitioners and CBP. Kaihua does not address the concerns raised by CBP.
- Kaihua does not deny that the farmer from whom it purchased single clove garlic is also the legal representative of another garlic company.
- Regarding the three minor inconsistencies, the Department did not criticize Kaihua for correcting the information but rather noted that the pattern raises questions about the veracity of Kaihua's submitted information. Kaihua identifies no basis for the Department to reach a different conclusion in the final results.

²¹ See Kaihua's submission of January 13, 2015 at Exhibit SQ-9.

- While Kaihua states its shareholders have until November 13, 2015 to make contributions, this does not detract from the Department's finding that one of Kaihua's owners has not contributed any capital or loans to Kaihua.

Department's Position: Kaihua is correct that it is common for respondents to amend their questionnaire responses. However, there are several aspects of Kaihua's responses and corrections that are abnormal and demonstrate a pattern of inconsistencies and unusual transactions. This pattern causes the Department to question whether the submitted information is accurate and whether Kaihua is following typical business practices.

Kaihua's CIQ registration certificate shows that Kaihua received its CIQ code in June 2013, but the Jining CIQ Bureau registration list shows the CIQ code belonging to another company as of December 25, 2013. It was not until the updated December 24, 2014 list – *i.e.*, after the POR – that the CIQ code was registered as Kaihua's. As noted in the Bona Fides Memorandum, we find it peculiar that it would take 18 months to register a license valid for only 36 months.²² There are also several other issues with Kaihua's CIQ code which are business proprietary and are discussed in the Bona Fides Memorandum. Kaihua states that it was issued a valid CIQ code during the POR,²³ which conflicts with other record evidence and does not address any of the Department's concerns regarding these discrepancies. The Department continues to find the uncertainty with respect to Kaihua's CIQ code to be part of a pattern of inconsistencies with regard to Kaihua's submissions on the record of this proceeding.

Additionally, there are two issues with Kaihua's supplier of single-clove garlic, the Kangqiao Village Garlic Growing Cooperation Union. First is whether Kaihua's supplier is also the legal representative of another garlic exporter with its own CIQ code. This issue is business proprietary in nature and was addressed in the Bona Fides Memorandum. Kaihua argues that there are many people with this same name in the PRC, but provides no record evidence to this effect. Second, Kaihua mistakenly overpaid its supplier, which later returned the money. Kaihua reiterates that it has provided proof of payment to its supplier, but does not directly address the Department's concerns regarding either of these issues with its supplier. The Department continues to find the uncertainty with respect to Kaihua's supplier part of a pattern of inconsistencies with regard to Kaihua's submissions on the record of this proceeding.

Finally, one of Kaihua's owners has not contributed any capital or loans to Kaihua, yet owns a significant portion of the company. Kaihua states that shareholders have until November 13, 2015 to contribute, but it is highly unusual business practice to deem an individual an owner where the individual has not made any investment to date.

This pattern of inconsistencies raises questions about the veracity of all of Kaihua's submitted information in this new shipper review. Moreover, for its sale to be considered *bona fide*, Kaihua must show that its sale is indicative of typical business practices and future commercial behavior. Kaihua's inability to provide clear information regarding its CIQ code and supplier, among other things, causes us to question whether Kaihua is following typical business practices.

²² See Bona Fides Memorandum at 7

²³ See Kaihua brief at 27

RECOMMENDATION

We recommend adopting the above positions, and rescinding Kaihua's NSR. If these recommendations are accepted, we will publish the final rescission of this NSR in the *Federal Register* and instruct CBP to assess antidumping duties on entries covered by this NSR at the PRC-wide rate and discontinue the option of posting a bond or security in lieu of a cash deposit for entries of subject merchandise by Kaihua.

✓

Agree

Disagree

Ronald K. Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

October 1, 2015

(Date)