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

A-570-831
New Shipper Review
11/01/2016-4/30/2017
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May 2, 2018

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Rescission of the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China: Qingdao Doo Won Foods Co., Ltd.

SUMMARY

The Department of Commerce (Commerce) is conducting a new shipper review (NSR) of Qingdao Doo Won Foods Co., Ltd. (Doo Won) with respect to the antidumping duty (AD) order on fresh garlic from the People's Republic of China (China).[1] The period of review (POR) is November 1, 2016, through April 30, 2017. As explained below, while we preliminarily determined that Doo Won's sale of subject merchandise was *bona fide*, we also preliminarily determined that Doo Won was not the producer of the merchandise sold. Therefore, we are preliminarily rescinding the NSR of Doo Won.

If these preliminary results are adopted in our final results of this NSR, we intend to rescind the review and 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 these preliminary results. We intend to issue the final results no later than 90 days from the date of publication of the accompanying *Federal Register* notice, pursuant to section 751(a)(2)(B)(iii) of the Tariff Act of 1930, as amended (the Act), unless extended.

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

BACKGROUND

On July 10, 2017, we published notice of the initiation of the NSR after receiving a timely request for a NSR from Doo Won on May 19, 2017.[2] On December 4, 2017, we extended the deadline for the preliminary results to April 30, 2018.[3] Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through 22, 2018.[4] The revised deadline for the preliminary results is May 2, 2018.

Between July 21, 2017, and March 22, 2018, we issued our initial AD questionnaire and supplemental questionnaires to Doo Won. Doo Won timely responded to all of our questionnaires. Between September 29, 2017, and March 16, 2018, we received comments and rebuttal factual information from the petitioners.[5] On April 24, 2018, the petitioners timely filed pre-preliminary comments.

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, 0703.20.0005, 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, 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 U.S. Customs and Border Protection to that effect.

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[2] *See Fresh Garlic from the People's Republic of China: Initiation of Antidumping Duty New Shipper Review; 2016-2017*, 82 FR 31756 (July 10, 2017).
[3] *See* Memorandum "Fresh Garlic from the People's Republic of China – Semiannual Antidumping Duty New Shipper Review (2016-2017): Extension of Deadline for the Preliminary Results of the Review," dated December 4, 2017. If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day.
[4] *See* Memorandum, "Deadlines Affected by the Shutdown of the Federal Government" (Tolling Memorandum)," dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.
[5] The petitioners are the Fresh Garlic Producers Association and its individual members: Christopher Ranch, L.L.C., The Garlic Company, and Valley Garlic.

BONA FIDES ANALYSIS

Any weighted-average dumping margin or individual countervailing duty rate determined in a new shipper review shall be solely based on *bona fide* sales during the period of review.[6] Section 751(a)(2)(B)(iv) of the Act sets forth the criteria Commerce shall examine to determine if sales, such as the sale by Doo Won under review in this NSR, are *bona fide*.[7] In evaluating whether the sales in a NSR are commercially reasonable or typical of normal business practices and, therefore, *bona fide*, Commerce considers, "depending on the circumstances surrounding such sales":

> (I) the prices of such sales; (II) whether such sales were made in commercial quantities; (III) the timing of such sales; (IV) the expenses arising from such sales; (V) whether the subject merchandise involved in such sales was resold in the United States at a profit; (VI) whether such sales were made on an arms-length basis; and (VII) any other factor {it} determines to be relevant as to whether such sales are, or are not, likely to be typical of those the exporter or producer will make after completion of the review.[8]

Accordingly, Commerce considers a number of factors in its *bona fides* analysis, "all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise."[9] In *TTPC*, the U.S. Court of International Trade (CIT) also affirmed Commerce's decision that any factor which indicated that the sale under consideration is not likely to be typical of those which the producer will make in the future is relevant,[10] and found that the weight given to each factor investigated will depend on the circumstances surrounding the sale.[11] Finally, in *New Donghua*, the CIT affirmed Commerce's practice of evaluating the circumstances surrounding a NSR sale, so that a respondent does not unfairly benefit from an atypical sale and obtain a lower dumping margin than the producer's usual commercial practice would dictate.[12] Where Commerce finds that a sale is not *bona fide*, Commerce will exclude the sale from its export price calculations.[13] When the respondent under review makes only one sale and Commerce finds the transaction atypical, "exclusion of that sale as non-*bona fide* necessarily must end the review, as no data will remain on the export price side of (Commerce's) antidumping duty calculation."[14]

Based on the totality of the circumstances, we preliminarily find that the sale made by Doo Won during the POR was a *bona fide* commercial transaction. For a full discussion of our findings related to the *bona fide* nature of the sale in question, *see* the accompanying memorandum entitled "*Bona Fide* Nature of the Sale and Production Analysis in the Antidumping Duty New

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[6] Section 751(a)(2)(B)(iv) of the Act.
[7] *See* section 433 of the Trade Facilitation and Trade Enforcement Act of 2015, Pub. Law 114-125 (Feb. 24, 2016) (adding a new section 751(a)(2)(B)(iv) entitled, "Determinations based on *bona fide* sales").
[8] *Id.*
[9] *See Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1342 (CIT 2005) (*New Donghua*) (citing *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002)).
[10] *See Tianjin Tiancheng Pharmaceutical Co. v. United States*, 366 F. Supp. 2d 1246, 1250 (CIT 2005) (*TTPC*).
[11] *Id*. at 1263.
[12] *See New Donghua*, 341 F. Supp. 2d at 1344.
[13] *See TTPC*, 366 F. Supp. 2d at 1249.
[14] *Id*.

Shipper Review of Fresh Garlic from the People's Republic of China: Qingdao Doo Won Foods Co., Ltd." dated concurrently with this memorandum (*Bona Fides* Memo).

PRELIMINARY FINDING THAT DOO WON IS NOT THE PRODUCER OF THE SUBJECT MERCHANDISE

We preliminarily find that Doo Won is not the producer of the shipment in question. Because much of the factual information used in our analysis involves business proprietary information, a full discussion of the basis for our preliminary decision to rescind is set forth in the *Bona Fides* Memo. We will issue a supplemental questionnaire for further information regarding the producer of the shipped garlic.

In its NSR request, Doo Won certified that it was the producer and exporter of the garlic at issue in this this review.[15] In accordance with 19 CFR 351.214(b)(2)(i), Doo Won certified that did not export subject merchandise to the United States prior to or following the period of review.[16] As noted above and in the *Bona Fides* memo, information on the record of this NSR indicates that Doo Won is not the producer of the garlic covered by this NSR. On this basis, we preliminarily determine that Doo Won's NSR request was deficient, pursuant to 19 CFR 351.214(b)(2)(ii)(B), which requires a certification from the person that produced or supplied the subject merchandise to the person requesting the review that that producer or supplier did not export the subject merchandise to the United States. Given that Doo Won's NSR request is deficient, pursuant to 19 CFR 351.214(b)(2)(ii)(B), we are preliminarily rescinding the NSR of Doo Won.

VERIFICATION

In accordance with 19 CFR 351.307(b)(1)(iv), we intend to verify Doo Won's information relied upon in making our final decision.

[15] *See* Doo Won's Letter, "Fresh Garlic from the People's Republic of China" dated May 19, 2017.
[16] *Id*.

RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

☒	☐
Agree	Disagree

5/2/2018

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Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance