

**Coalition for Fair Trade in Garlic v. United States**  
**U.S. Court of International Trade Consol. Ct. No. 18-00137, Slip Op. 20-48 (April 14, 2020)**

FINAL RESULTS OF REDETERMINATION  
PURSUANT TO REMAND

**I. SUMMARY**

These final results of redetermination (Final Remand Results) were prepared by the Department of Commerce (Commerce) pursuant to the decision and remand order issued by the U.S. Court of International Trade (the Court) on April 14, 2020.<sup>1</sup> This action arises from the final results of the 22nd administrative review of the antidumping duty order on fresh garlic (garlic) from the People’s Republic of China (China).<sup>2</sup> Pursuant to the Court’s opinion, Commerce has reviewed the review request submitted on behalf of the Coalition for Fair Trade in Garlic (CFTG) and determined that the CFTG’s review request, filed on behalf of an association, is invalid, *ab initio*, because a majority of the members of the association, at the time of the review request, did not credibly establish that they are interested parties within the

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<sup>1</sup> See *Coalition for Fair Trade in Garlic v. United States*, Consol. Ct. No. 18-00137, CIT Slip Op. 20-48 (April 14, 2020) (*Remand Opinion*).

<sup>2</sup> See *Fresh Garlic from the People’s Republic of China: Final Results and Partial Rescission of the 22nd Antidumping Duty Administrative Review and Final Result and Rescission, in Part, of the New Shipper Reviews; 2015-2016*, 83 FR 27949 (June 15, 2018) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

meaning of section 771(9)(C) of the Tariff Act of 1930, as amended (the Act), and thus the CFTG does not have standing as an association under section 771(9)(E) of the Act.

On May 27, 2020, Commerce released a draft version of these Final Remand Results.<sup>3</sup> On June 12, 2020, the CFTG,<sup>4</sup> the Fresh Garlic Producers Association and its individual members: Christopher Ranch L.L.C., The Garlic Company, and Valley Garlic (the petitioners),<sup>5</sup> and Zhengzhou Harmoni Spice Co., Ltd. (Harmoni)<sup>6</sup> submitted briefs regarding the Draft Remand Results.

## II. BACKGROUND

### *Commerce's Final Results*

On November 28, 2016, the CFTG requested an administrative review of “all” Chinese garlic producers and exporters.<sup>7</sup> Although filed on behalf of “the {CFTG}, an alliance of domestic garlic producers,” the CFTG’s review request invoked language referring to both sections 771(9)(C) and 771(9)(E) of the Act, which respectively define individual and association domestic interested parties.<sup>8</sup> On December 7, 2017, Commerce published its

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<sup>3</sup> See Memorandum, “Coalition for Fair Trade in Garlic v. United States U.S. Court of International Trade Consol. Ct. No. 18-00137, Slip Op. 20-48 (April 14, 2020), Draft Results of Redetermination Pursuant to Remand,” dated May 27, 2020 (Draft Remand Results).

<sup>4</sup> See CFTG’s Letter, “Plaintiff’s Comments on the Department’s Draft Results of Redetermination Pursuant to the Remand Order of the U.S. Court of International Trade,” dated June 12, 2020 (CFTG’s Brief).

<sup>5</sup> See Petitioners’ Letter, “22nd Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China – Petitioners’ Comments on the Department’s Draft Results of Redetermination Pursuant to Remand,” dated June 12, 2020 (Petitioners’ Brief).

<sup>6</sup> See Harmoni’s Letter, “Harmoni Comments on Draft Results of Redetermination Pursuant to Court Remand, Coalition for Fair Trade in Garlic v. United States, Consol. Ct. No 18-00137, Slip Op. 20-48 (April 14, 2020), 22<sup>nd</sup> Administrative Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China (A-570-831),” dated June 12, 2020 (Harmoni’s Brief).

<sup>7</sup> The CFTG was comprised of Stanley Crawford, Suzanne Sanford, Avrum Katz, and Alex Pino at the time of the CFTG’s review request. See CFTG’s Letter, “Fresh Garlic from the People’s Republic of China – CFTG’s Request for 22nd Antidumping Administrative Review of Fresh Garlic from the People’s Republic of China,” dated November 28, 2016 (CFTG’s Review Request).

<sup>8</sup> See CFTG’s Review Request at 2-3.

preliminary results, preliminarily determining that “the CFTG’s review request was invalid” because of “material misrepresentations and inconsistencies in the statements made by the CFTG” that rendered “all of {its} submissions ... unreliable,” and that the CFTG therefore failed to credibly demonstrate that it was a domestic interested party.<sup>9</sup> Commerce found that two of the members of the CFTG were not credible and did not have standing as individuals, and the other two members did not respond to questionnaires, and therefore none of the members of the CFTG had standing under section 771(9)(C) of the Act.<sup>10</sup> Commerce also found that the association itself did not have standing under section 771(9)(E) of the Act.<sup>11</sup> Commerce did not explicitly determine whether the CFTG’s review request was filed on behalf of an association only or also on behalf of the individual members.<sup>12</sup>

On June 15, 2018, Commerce published its final results and continued to find that each of the members of the CFTG was not credible, and that the CFTG’s review request was invalid *ab initio*.<sup>13</sup>

#### *The Court’s Remand Opinion*

In its April 14, 2020 opinion, the Court held that Commerce’s credibility determination with respect to Suzanne Sanford, one of the members of the CFTG at the time of the review request, was supported by substantial evidence.<sup>14</sup> The Court further held that “Commerce’s determination that at least three of the four members of the CFTG, at the time of the review

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<sup>9</sup> See *Fresh Garlic from the People’s Republic of China: Preliminary Results, Preliminary Rescission, and Final Rescission, in Part, of the 22nd Antidumping Duty Administrative Review and Preliminary Results of the New Shipper Reviews; 2015-2016*, 82 FR 57718 (December 7, 2017) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM) at 10 and 13.

<sup>10</sup> See *Preliminary Results* PDM at 12-13.

<sup>11</sup> *Id.* at 13.

<sup>12</sup> See *Preliminary Results* PDM at 11 and 13.

<sup>13</sup> See *Final Results*.

<sup>14</sup> See *Remand Opinion* at 18-20.

request, did not credibly establish that they qualified as domestic producers is supported by substantial evidence.”<sup>15</sup>

However, the Court remanded the *Final Results* to Commerce with instructions to reconsider or further explain its credibility determination regarding Stanley Crawford, another member of the CFTG at the time of the review request.<sup>16</sup> Regarding Commerce’s credibility determination of Mr. Crawford, the Court held that Commerce’s “reliance on evidence submitted in {the previous review} and a single contradiction regarding a payment that is not directly related to whether Mr. Crawford is a domestic garlic producer is insufficient to support Commerce’s disregard of Mr. Crawford’s evidence of garlic production.”<sup>17</sup>

Finally, the Court held that, on remand, Commerce may decide to “make an express finding as to whether the CFTG submitted the review request as an association only or also on behalf of its individual members.”<sup>18</sup> The Court held that Commerce could reach this issue “in addition to, or in lieu of, its reconsideration of Mr. Crawford’s credibility and status.”<sup>19</sup>

### **III. ANALYSIS**

In the Draft Remand Results, Commerce found that the CFTG’s review request, filed on behalf of an association, was invalid, *ab initio*, because a majority of the members of the CFTG association, at the time of the request, did not credibly establish that they are interested parties within the meaning of section 771(9)(C) of the Act.<sup>20</sup> We affirm this finding in these Final Remand Results.

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<sup>15</sup> *Id.* at 25.

<sup>16</sup> *Id.* at 14-18.

<sup>17</sup> *Id.* at 18.

<sup>18</sup> *Id.* at 25-26.

<sup>19</sup> *Id.* at 26.

<sup>20</sup> *See* Draft Remand Results at 4.

A. *The CFTG's Review Request Was Filed on Behalf of CFTG As an Association*

We find that the CFTG's review request was filed on behalf of the CFTG, as an association only, because: (1) the review request expressly stated that it was filed on behalf of the CFTG, "an alliance of domestic garlic producers," and did not state that it was also filed on behalf of the individual members of the association; (2) the review request was certified by one member, Mr. Crawford, "on behalf of the CFTG" as a whole, rather than each member of the CFTG; and (3) the review request's reference to the individual standing subsection of the statute is used to support the CFTG's claim that it is "a trade or business association a majority of whose members manufacture, produce, or wholesale a domestic like product in the United States."<sup>21</sup>

The review request, titled, in part, "*CFTG's Request for 22nd Antidumping Administrative Review*," expressly stated that it was filed on behalf of the association: "the {CFTG}, an alliance of domestic garlic producers, hereby respectfully requests an administrative review of the exporters of fresh garlic exported from the People's Republic of China and imported into the United States . . ." <sup>22</sup> As noted above, the CFTG's review request did not state that it was filed on behalf of its individual members. Instead, the request referenced the CFTG as a whole, including the "major mission" of the CFTG, and the specific objective of the CFTG in filing the review request.<sup>23</sup> Accordingly, the CFTG's review request, filed to pursue the goals of the CFTG as a whole, was filed only on behalf of the CFTG.

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<sup>21</sup> See sections 771(9)(C) and (E) of the Act.

<sup>22</sup> See CFTG's Review Request at 1 (emphasis added).

<sup>23</sup> *Id.* at 2 ("{t}he major mission of the CFTG is to address the unfair trade practices by Chinese garlic producers and exporters," and "{t}he CFTG requests this review to ensure that {Commerce} determines the amount of antidumping duties owed and estimated duties to be deposited for all subject garlic from China").

The CFTG’s review request included a company certification, in accordance with 19 CFR 351.303(g)(1), which indicated that the submission was filed “on behalf of” the CFTG, but did not mention the individual members.<sup>24</sup> In addition, the CFTG’s narrative, “one COMPANY CERTIFICATION will be attached to *each CFTG filing* signed by Stanley Crawford *on behalf of the CFTG.*”<sup>25</sup> The company certification, as well as the accompanying narrative description, indicated that the review request was filed “on behalf of” the CFTG as an association, not on behalf of the individual members of the CFTG. The mere fact that Mr. Crawford was the only certifier of the CFTG’s review request is not evidence of the CFTG’s associational standing.<sup>26</sup> Rather, the language in the certification and narrative concerning the certification procedures consistently note Mr. Crawford’s intent to certify “on behalf of” the CFTG as an entity, and consistently omit any intent to certify on behalf of the individual members of the CFTG.

Lastly, although the CFTG’s review request invoked language which referenced both individual and associational standing provisions of the statute, the CFTG’s reference to section 771(9)(C) of the Act was used to support its claim of associational standing.<sup>27</sup> Specifically, the review request stated, “[t]he members of the CFTG are producers and/or wholesalers within the United States of a domestic like product as set forth in {section 771}(9)(C) of the Act) and section 351.102(b)(29)(vii) *{sic}* of {Commerce’}’s regulations.”<sup>28</sup> Section 771(9)(C) of the Act defines “interested party” as “a manufacturer, producer, or wholesaler in the United States of a

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<sup>24</sup> *Id.* at Company Certification.

<sup>25</sup> *Id.* at 3 (capitalization emphasis in original) (italicization emphasis added).

<sup>26</sup> We note that: (1) a review request does not require a company certification, unless accompanied by new factual information, and (2) a “lead” certifier is permitted to file one company certification on behalf of an association, if a company certification is necessitated. *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678, 42686, 42690 (July 17, 2013).

<sup>27</sup> *See* CFTG’s Review Request.

<sup>28</sup> *Id.* at 2.

domestic like product;” 19 CFR 351.102(b)(29)(vii) parallels section 771(9)(E) of the Act and pertains to “a trade or business association a majority of whose members manufacture, produce, or wholesale a domestic like product in the United States.”<sup>29</sup> Because section 771(9)(E) of the Act defines a trade or business association as requiring that “a majority of {its} members manufacture, produce, or wholesale a domestic like product,” we find that the CFTG’s claim that each of its members is a domestic manufacturer, producer, or wholesaler, in accordance with section 771(9)(C) of the Act, serves as support for its claim to have associational standing, rather than an indication that the review request was filed on behalf of each of those individuals.

Based on these factors, we find that the CFTG’s review request was filed on behalf of an association, in accordance with section 771(9)(E) of the Act.

*B. The CFTG Does Not Have Standing As an Association*

Mr. Crawford, Ms. Sanford, Avrum Katz, and Alex Pino were the four members of the CFTG at the time of the review request.<sup>30</sup> Avrum Katz and Alex Pino withdrew from the CFTG and, thus, Commerce had no reason or basis on which to evaluate their credibility in the underlying review; moreover, neither individual responded to Commerce’s questionnaire regarding their domestic production.<sup>31</sup> Commerce determined that Ms. Sanford was not credible.<sup>32</sup> As this Court held, “at least three of the four members of the CFTG, at the time of the review request, did not credibly establish that they qualified as domestic producers.”<sup>33</sup> Standing

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<sup>29</sup> See sections 771(9)(C) and (E) of the Act.

<sup>30</sup> See CFTG’s Review Request at 1 n.1.

<sup>31</sup> See *Preliminary Results* PDM at 13; see also CFTG’s Letter, “22nd Administrative Review of Fresh Garlic from the People’s Republic of China - Withdrawal of Avrum Katz from the Coalition for Fair Trade in Garlic (CFTG),” dated December 14, 2016; and CFTG’s Letter, “22nd Administrative Review of Fresh Garlic from the People’s Republic of China – Withdrawal of Alex Pino from the Coalition for Fair Trade in Garlic (CFTG),” dated February 15, 2017.

<sup>32</sup> See *Preliminary Results*, and the accompanying PDM, unchanged in *Final Results* IDM at 18-20.

<sup>33</sup> See *Remand Opinion* at 25.

as an association pursuant to section 771(9)(E) of the Act requires a majority of the CFTG’s members to have standing as individuals under section 771(9)(C) of the Act.<sup>34</sup> No such majority exists here.<sup>35</sup> Accordingly, because a majority of its members, at the time of the review request, did not credibly establish that they have standing as individuals and did not credibly establish that they qualified as domestic producers, we continue to find that the CFTG’s review request was invalid, *ab initio*.

#### **IV. COMMENTS ON DRAFT REMAND RESULTS**

##### **Comment 1: Whether Commerce Correctly Determined that the CFTG’s Review Request Was Filed on Behalf of an Association**

###### *Petitioners’ Brief*

- Commerce correctly determined that the CFTG’s review request was filed on behalf of an association, not the individual members of the CFTG.<sup>36</sup>
- Commerce should not rely on the fact that the CFTG’s review request was certified by one member of the CFTG, rather than each of the four individual members, as support that the CFTG’s review request was filed on behalf of an association because:
  - (1) a review request does not require the submission of a company certification unless it contains new factual information; and
  - (2) Commerce’s final rule concerning certification of factual information permits a single certification from a “lead” certifier.<sup>37</sup>

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<sup>34</sup> See section 771(9)(E) of the Act (“a trade or business association a majority of whose members manufacture, produce, or wholesale a domestic like product in the United States”); see also section 771(9)(C) of the Act (defining “interested party” as “a manufacturer, producer, or wholesaler in the United States of a domestic like product”).

<sup>35</sup> See *Remand Opinion* at 25, sustaining Commerce’s determination that Sanford, Katz, and Pino did not credibly demonstrate that they had standing under section 771(9)(C) of the Act.

<sup>36</sup> See Petitioners’ Brief at 3-4 (citing Draft Remand Results).

<sup>37</sup> See Petitioners’ Brief at 4 (citing *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013)).

- In addition to those mentioned in the Draft Remand Results, Commerce’s decision is supported by the following points:
  - (1) Robert Hume, counsel to the CFTG, signed the review request as “counsel for the CFTG,” and thereby identified the CFTG, and not its individual members, as the party he represents;<sup>38</sup>
  - (2) Mr. Hume’s attorney certification identifies Mr. Hume as the “counsel to the Coalition for Fair Trade in Garlic,” and does not identify him as counsel to any of the CFTG’s individual members;<sup>39</sup> and
  - (3) the public certificate of service signed by Mr. Hume also states that the review request was “filed on behalf of the Coalition for Fair Trade in Garlic,” not its individual members.<sup>40</sup>

*Harmoni’s Brief*

- Commerce correctly determined that the CFTG’s review request was filed on behalf of an association only, and not on behalf of its individual members.<sup>41</sup>
- In addition to the factors upon which Commerce relied in deciding that it was an “association only” request, the following facts also support this conclusion:
  - (1) In the CFTG’s November 30, 2016 letter, the CFTG advised Commerce that “the request filed by the {CFTG} contained an error.”<sup>42</sup>

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<sup>38</sup> See Petitioner’s Brief at 4 (citing CFTG’s Review Request).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> See Harmoni’s Brief at 8.

<sup>42</sup> See Harmoni’s Brief at 8 (citing CFTG’s Letter, “Fresh Garlic from the People’s Republic of China – CFTG Request for 22nd Antidumping Administrative Review of Fresh Garlic from the People’s Republic of China – Correction of FR Citation,” dated November 30, 2016).

- (2) When Avrum Katz and Alex Pino withdrew from the CFTG, although the CFTG notified Commerce of their withdrawal from the association, neither member withdrew his individual request for review, as neither had filed one.<sup>43</sup>
- (3) In its request that Commerce verify Harmoni, the CFTG stated that it has the authority to request verification since “the CFTG qualifies as a domestic interested party,” and did not state that its authority rested on the fact that each of the members of the CFTG qualify as a domestic interested party.<sup>44</sup>
- (4) The CFTG filed its April 14, 2017 letter “on behalf of the {CFTG} and its individual members,” demonstrating that the CFTG recognized that its previous submissions, including its review request, had been filed solely on behalf of the CFTG, and not also on behalf of its individual members.<sup>45</sup>
- (5) The CFTG filed its case brief “on behalf of the {CFTG},” and never claimed that it was filed on behalf of the CFTG’s individual members.<sup>46</sup>
- In analogous situations, the CIT has supported Commerce’s construction of section 771(9) of the Act and 19 CFR 351.102(b)(29); that is, when a review request is filed as

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<sup>43</sup> See Harmoni’s Brief at 8-9 (citing CFTG’s Letter, “22nd Administrative Review of Fresh Garlic from the People’s Republic of China – Withdrawal of Avrum Katz from the Coalition for Fair Trade in Garlic (CFTG),” dated December 14, 2016; and CFTG’s Letter, “22nd Administrative Review of Fresh Garlic from the People’s Republic of China – Withdrawal of Alex Pino from the Coalition for Fair Trade in Garlic (CFTG),” dated February 15, 2017).

<sup>44</sup> See Harmoni’s Brief at 9 (citing CFTG’s Letter, “22nd Administrative Review of Fresh Garlic from the People’s Republic of China – CFTG Request the Department Conduct a Verification of Zhengzhou Harmoni Spice Co., Ltd. and Harmoni International Spice, Inc. – filed on Behalf of the CFTG,” dated April 4, 2017).

<sup>45</sup> See Harmoni’s Brief at 9 (citing CFTG’s Letter, “22nd Administrative Review of Fresh Garlic from the People’s Republic of China – Responding to Two (2) Submissions of Zhengzhou Harmoni Spice Co., Ltd. – Filed on Behalf of the CFTG,” dated April 12, 2017).

<sup>46</sup> See Harmoni’s Letter at 9 (citing CFTG’s Letter, “Case Brief Filed on Behalf of the Coalition for Fair Trade in Garlic in the 22nd Administrative Review of Fresh Garlic from China,” dated April 25, 2018 (CFTG’s April 25, 2018 Case Brief)).

an association only, and when the association does not itself have the requisite standing to request a review as an “interested party,” standing is not conferred on that association merely because one of its members arguably had the requisite standing if it had filed in its own name.<sup>47</sup>

- Commerce’s decision to analyze the members of the CFTG at the time of the review request is supported by precedent.<sup>48</sup>

### *CFTG’s Brief*

- Counsel to the CFTG accepts responsibility for the errors in the CFTG’s review request that caused Commerce to consider the CFTG as an association within the meaning of section 771(9)(E) of the Act.<sup>49</sup>
- It is clear that the CFTG never intended for the CFTG to be an “association” within the meaning of section 771(9)(E) of the Act because: (1) the CFTG never registered as an association under New Mexico law; (2) there were no dues; (3) any garlic farmer was free to withdraw or join at any time; (4) there was no CFTG office; (5) there was no CFTG website; (6) there was no CFTG bank account; and (7) Mr. Hume worked *pro bono*.<sup>50</sup>

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<sup>47</sup> See Harmoni’s Brief at 12-14 (citing *Zenith Radio Corp. v. United States*, 5 CIT 155, 156 (1983); and *AD HOC Utilities Grp. V United States*, 33 CIT 1284, 1295-96 (2009)).

<sup>48</sup> See Harmoni’s Brief at 14-15 (citing *Minneapolis & S.L.R. Co. v. Peoria & P.U.R. Co.*, 270 U.S. 580, 586 (1926); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 571 (1992); *Paradise Creations, Inc. v. U V Sales, Inc.*, 315 F.3d 1304, 1310 (Fed. Cir. 2003); *Armor Screen Corp. v. Storm Catcher, Inc.*, 2008 U.S. Dist. LEXIS 112172, 28-29 (S.D. Fla. 2008); *Floral Trade Council v. United States*, 888 F.2d 1366 (Fed Cir. 1989); *Melco Clothing Co. v. United States*, 16 C.I.T. 889, 891 (1992); *Disability Advocates, Inc. v. New York Coalition for Quality Assisted Living, Inc.*, 675 F.3d 149, 160-61 (2d Cir. 2012); *P&G v. Paragon Trade Brands, Inc.*, 917 F. Supp. 305, 310 (D. Del. 1995; and *Consumer Fin. Prot. Bureau v. Gordon*, 819 F.3d 1179, 1203-04 (9th Cir. 2016)).

<sup>49</sup> See CFTG’s Brief at 2.

<sup>50</sup> See CFTG’s Brief at 2 and 6

- The CFTG's request was filed on behalf of its individual members, as clearly indicated by later filings, including the CFTG's Notice of Appearance, Application for Administration Protective Order (APO), and case brief.<sup>51</sup>
- The CFTG's reference to 19 CFR 351.102(b)(29)(vii) is a *non sequitur* after the sentence previously referenced section 771(9)(C) of the Act.<sup>52</sup>
- The CFTG's filing of one company certification by Mr. Crawford, on behalf of the CFTG, did not indicate that the request was not filed on behalf of each of the individual members, and Commerce never objected or raised any questions regarding this single certification procedure.<sup>53</sup>
- Commerce did not make a determination during the proceeding that the CFTG's review request was filed on behalf of an association or also on behalf of its individual members,<sup>54</sup> never asked the CFTG to clarify whether it was an association, and if it deemed the CFTG's membership incomplete after the withdrawal of two members, Commerce never notified the CFTG, as required under section 782(d) of the Act.<sup>55</sup>
- In its brief to the CIT, Commerce referred to the statute relating to the individual, not associational, standing.<sup>56</sup>
- The CFTG concurs with Commerce's decision not to contest Crawford's standing as an individual member of the CFTG under section 771(9)(C) of the Act.<sup>57</sup>

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<sup>51</sup> See CFTG's Brief at 2-3, 5 (citing CFTG's April 25, 2018 Case Brief at 16; and *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures*, 73 FR 3634, 3635 (January 22, 2008) (*APO Procedures*)).

<sup>52</sup> See CFTG's Brief at 7.

<sup>53</sup> See CFTG's Brief at 7-10.

<sup>54</sup> See CFTG's Brief at 5 (citing Draft Remand Results at 2-3; and *Preliminary Results*, PDM at 12).

<sup>55</sup> See CFTG's Brief at 4-5.

<sup>56</sup> See CFTG's Brief at 6 (citing Case 1:18-cv-00137-MAB Document 46 Filed 03/15/19 at 2).

<sup>57</sup> See CFTG's Brief at 3.

**Commerce’s Position:** We continue to find that the CFTG’s review request was filed on behalf of an association only, and not on behalf of its individual members.

As noted in the “Analysis” section, various factors support Commerce’s determination that the CFTG’s review request was filed on behalf of an association only: (1) the CFTG’s review request explicitly states that it is being made on behalf of the association, not its individual members; (2) the CFTG referenced section 771(9)(C) of the Act in support of its claim that the association is comprised of individuals who are domestic interested parties, not in support of a claim that the review request was filed on behalf of its individual members; (3) the CFTG’s review request is titled, “CFTG’s Request” and does not reference the individual members; (4) Mr. Crawford’s company certification accompanying the CFTG’s review request stated that the request was submitted “on behalf of” the CFTG; and (5) the CFTG also stated in the narrative of the review request that it would be filing one company certification signed “on behalf of the CFTG.”<sup>58</sup>

The petitioners and Harmoni rightly note further evidence supporting Commerce’s finding that the CFTG’s review request was filed on behalf of an association only: (1) Mr. Hume signed the review request as “counsel for the CFTG,” and thereby identified the CFTG, and not its individual members, as the party he represents;<sup>59</sup> (2) Mr. Hume’s attorney certification identifies Mr. Hume as the “counsel to the {CFTG},” and does not identify him as counsel to any of the CFTG’s individual members at the time of the review request;<sup>60</sup> (3) the public certificate of service signed by Mr. Hume also states that the review request was “filed on behalf of the

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<sup>58</sup> See Draft Remand Results.

<sup>59</sup> See Petitioner’s Brief at 4 (citing CFTG’s Review Request).

<sup>60</sup> *Id.*

{CFTG},” not its individual members;<sup>61</sup> (4) the CFTG’s November 30, 2016 letter referenced its review request, stating that “the request filed by *the {CFTG}* contained an error;”<sup>62</sup> and (5) when Mr. Katz and Mr. Pino withdrew from the CFTG, the CFTG notified Commerce of each member’s withdrawal, but did not withdraw each member’s request for review, as neither had filed one.<sup>63</sup> Each of these instances evidence the CFTG’s intent to request the review on behalf of the association only, and not its individual members.

The CFTG’s claim that Commerce was misguided by “errors” made by Mr. Hume, counsel to the CFTG, is inaccurate. First, Mr. Hume’s *mea culpa* refers to information not on the record of this review, namely, the New Mexico Garlic Growers Coalition (NMGGC)’s 2014-2015 review request.<sup>64</sup> Further, Commerce never received arguments, nor made a determination, regarding whether the NMGGC’s review request was filed on behalf of an association and/or its individual members.<sup>65</sup> Moreover, counsel to CFTG’s use of the NMGGC’s 2014-2015 review request as a “template” and the effect of any errors resulting from misuse of that “template” are not of Commerce’s concern; the CFTG’s review request as filed is the document we are

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<sup>61</sup> *Id.*

<sup>62</sup> See Harmoni’s Brief at 8 (citing CFTG’s Letter, “Fresh Garlic from the People’s Republic of China – CFTG Request for 22nd Antidumping Administrative Review of Fresh Garlic from the People’s Republic of China – Correction of FR Citation,” dated November 30, 2016).

<sup>63</sup> See Harmoni’s Brief at 8-9 (citing CFTG’s Letter, “22nd Administrative Review of Fresh Garlic from the People’s Republic of China – Withdrawal of Avrum Katz from the Coalition for Fair Trade in Garlic (CFTG),” dated December 14, 2016; and CFTG’s Letter, “22nd Administrative Review of Fresh Garlic from the People’s Republic of China – Withdrawal of Alex Pino from the Coalition for Fair Trade in Garlic (CFTG),” dated February 15, 2017).

<sup>64</sup> Mr. Hume claims that the CFTG’s review request is based on the NMGGC’s review request in the 2014-2015 review. The NMGGC’s 2014-2015 review request was filed by Joey Montoya, employee of Hume & Associates, LLC. At the time of the review request, Mr. Hume purported to have no involvement in the matters of the NMGGC. The fact that Mr. Hume claimed to have re-used this document as a template for the CFTG’s 2015-2016 review request further demonstrates the penetrability of any purported “Chinese wall,” between Mr. Montoya and Mr. Hume. More notably, the NMGGC’s 2014-2015 review request is not on the record of this review, and thus, any comparison with the CFTG’s request in the instant review is inappropriate. See, e.g., Harmoni’s Letter, “Harmoni Placing POR 21 Case and Rebuttal Brief on the Administrative Record in POR 22; Antidumping Duty Order on Fresh Garlic from the People’s Republic of China,” dated April 6, 2017 (Harmoni’s April 6, 2017 Submission) at 14, 18, 36.

<sup>65</sup> See *Fresh Garlic from the People’s Republic of China: Final Results and Partial Rescission of the Antidumping Duty Administrative Review; 2014-2015*, 82 FR 27230 (June 14, 2017), and accompanying IDM.

analyzing here, and there is no need for any comparison to a review request filed in another review, error-filled or otherwise. Accordingly, any comparison to the NMGGC's 2014-2015 review request is inappropriate for these Final Remand Results.

Even assuming, *arguendo*, that Mr. Hume based the CFTG's review request on a template (*i.e.*, the NMGGC's 2014-2015 review request) and that it is appropriate to compare the two documents, in order to update the document for the 2015-2016 review, the information contained within the CFTG's review request continues to demonstrate that it was filed on behalf of the association. Mr. Hume intentionally had to replace each instance of the NMGGC's information in the 2014-2015 review request with the CFTG's information for the instant review. In doing so, on at least ten occasions, Mr. Hume chose to include only the name of the association, and to omit any mention of its individual members:<sup>66</sup>

- (1) "...*CFTG's Request for 22nd Antidumping Administrative Review...*"<sup>67</sup>
- (2) "...the {*CFTG*}, an alliance of domestic garlic producers, hereby *respectfully request* an administrative review..."<sup>68</sup>
- (3) "... the *major mission of the CFTG* is to address the unfair trade practices by Chinese garlic producers and exporters."<sup>69</sup>
- (4) "... we are providing a list of the exporters *known to the CFTG* in the Exhibit hereto."<sup>70</sup>
- (5) "The *CFTG wants...*"<sup>71</sup>

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<sup>66</sup> See CFTG's Review Request at 2

<sup>67</sup> See CFTG's Review Request at 1.

<sup>68</sup> See CFTG's Review Request a 1.

<sup>69</sup> See CFTG's Review Request at 2.

<sup>70</sup> See CFTG's Review Request at 2.

<sup>71</sup> See CFTG's Review Request at 2.

- (6) “The *CFTG* requests this review...”<sup>72</sup>
- (7) “...one COMPANY CERTIFICATION will be attached to *each CFTG filing* signed by Stanley Crawford *on behalf of the CFTG.*”<sup>73</sup>
- (8) “Robert T. Hume, Counsel *for the CFTG*,”<sup>74</sup>
- (9) “I, Stanley Crawford, *on behalf of the {CFTG}*, certify...”<sup>75</sup>
- (10) “I, Robert T. Hume, hereby certify that a copy of the foregoing submission *filed on behalf of the {CFTG}*...”<sup>76</sup>

Further, as discussed in “Analysis” above, the only mention in the review request of the individual members of the CFTG is in support for the CFTG’s claim of associational standing.<sup>77</sup>

The relevant documents indicate that the CFTG is the entity of import; Mr. Hume represented the CFTG, Mr. Crawford made certified statements on behalf of the CFTG, and the CFTG, not its individual members, is referenced throughout the relevant documents. The consistent and repetitive nature of Mr. Hume’s purported mistake calls into question the veracity of his claim.

The CFTG’s reliance on its APO application as support that its review request was filed on behalf of the individual members of the CFTG is inapposite because these submissions serve different functions in the administrative process.<sup>78</sup> As quoted by the CFTG, “one purpose of the APO application is to permit the representative of a party to the proceeding to see the business proprietary information on the record of that segment of the proceeding to advocate for that

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<sup>72</sup> See CFTG’s Review Request at 2.

<sup>73</sup> See CFTG’s Review Request at 2-3.

<sup>74</sup> See CFTG’s Review Request at 3.

<sup>75</sup> See CFTG’s Review Request at Company Certification.

<sup>76</sup> See CFTG’s Review Request at Certificate of Service.

<sup>77</sup> See CFTG’s Review Request.

<sup>78</sup> See CFTG’s Letter, “22nd Administrative Review of Fresh Garlic from the People’s Republic of China – Notice of Appearance and Application for Administrative Protective Order (APO) filed by counsel on behalf of the CFTG,” dated January 18, 2017.

party's interests. Another purpose of the application is to allow the parties submitting business proprietary information to {Commerce} to know who is applying for access to that information, and what parties they represent."<sup>79</sup> A request for review, by contrast, is a request that Commerce review specified individual exporters or producers covered by an order, filed by a domestic interested party or foreign government, or a request for review of a particular exporter or producer covered by a given order filed by that exporter or producer on its own behalf.<sup>80</sup> An APO application is wholly separate from a review request, and accordingly, does not serve to clarify an earlier submission of a review request, as the CFTG claims. Rather, an APO application can be filed before, during, or after a review request has been submitted in an administrative review. An interested party is not required to have APO access, or an application for that access, in order to request a review, nor are parties required to have submitted review requests in order to apply for APO. Accordingly, because these submissions serve wholly different roles, and are not contingent upon each other, the CFTG's APO application does not support its claim that the CFTG's review request was filed on behalf of its individual members.

The CFTG's argument that Commerce never notified the CFTG of any deficiencies, pursuant to section 782(d) of the Act, is similarly inapposite. Section 782(d) of the Act relates to deficient responses to requests for information solicited by Commerce, including, but not limited to, questionnaire responses.<sup>81</sup> Although interested parties had the opportunity to request a review, the CFTG did not file its review request in response to a solicitation from Commerce, and thus, this subsection of the statute is not applicable to the CFTG's review request. In addition, the CFTG's argument that it never intended to be an association within the meaning of

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<sup>79</sup> See *APO Procedures*.

<sup>80</sup> See 19 CFR 351.213(b) and section 751(a)(1) of the Act.

<sup>81</sup> See section 782(d) of the Act.

section 771(9)(E) of the Act because it purportedly never registered as an association in New Mexico, had lenient membership requirements, did not pay Mr. Hume, and had no dues, office, website, or bank account is unconvincing. Section 771(9)(E) of the Act refers to a trade or business association a majority of whose members manufacture, produce, or wholesale a domestic like product in the United States. Section 771(9)(E) of the Act does not require that an association have completed any registration requirements, have strict membership requirements, pay its counsel, or have dues, an office, website, or bank account. Accordingly, the fact that the CFTG does not have these qualities does not support its argument that it did not file its review request on behalf of an association.

Lastly, the CFTG's argument that Commerce cannot determine that the CFTG's review request was submitted on behalf of an association only, because it did not make this determination during the administrative review, is contrary to the *Remand Opinion*. The Court held that, on remand, Commerce may decide to "make an express finding as to whether the CFTG submitted the review request as an association only or also on behalf of its individual members."<sup>82</sup> The Court held that Commerce could reach this issue "in addition to, or in lieu of, its reconsideration of Mr. Crawford's credibility and status."<sup>83</sup> Accordingly, based on the abovementioned evidence, we continue to find that the CFTG submitted its review request on behalf of an association, and not on behalf of its individual members.

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<sup>82</sup> *Id.* at 25-26.

<sup>83</sup> *Id.* at 26.

## Comment 2: Whether Stanley Crawford Lacked Credibility During the 2015-2016

### Administrative Review.

#### *Harmoni's Brief*

- The Court did not find that Commerce relied on an improper analysis or inaccurate evidence in determining whether Mr. Crawford was not credible, and thus, Commerce should expand its Draft Remand Results to include the following substantial evidence of Mr. Crawford's lack of credibility:
  - (1) the November 3, 2016 email exchange in which Mr. Crawford asks Mr. Hume to “shake the China tree” in exchange for “support{ } {for} our Garlic 22 case;”<sup>84</sup>
  - (2) Mr. Crawford's false claim that “{he} received no remuneration or equipment gratis during 2015 and 2016” amid record evidence that he was paid \$50,000 by Mr. Hume in 2015 and received a partially paid trip to China from the QTF Entity;<sup>85</sup>
  - (3) Mr. Crawford's email exchange to Mr. Hume's wife, Renate Hume: “The Yu Gardens Cookie Fortune last night: keep up the good work and you will soon be rewarded,” to which Mrs. Hume responded, “Oh, may it come true;”<sup>86</sup>

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<sup>84</sup> See Harmoni's Brief at 23 (citing Harmoni's Letter, “Harmoni's Response to Factual Information Submitted by the CFTG on July 12, 2017 and Resubmitted on August 3, 2017; 22nd Administrative Review of Antidumping Duty Order on Fresh Garlic from the People's Republic of China,” dated August 17, 2017 (Harmoni's August 17, 2017 Submission) at Exhibit 32).

<sup>85</sup> The QTF Entity includes Qingdao Tiantaixing Foods Co., Ltd.; Qingdao Xintianfeng Foods Co., Ltd.; Qingdao Lianghe International Trade Co., Ltd.; Qingdao Tianhefeng Foods Co., Ltd.; Qingdao Beixing Trading Co., Ltd.; Hebei Golden Bird Trading Co., Ltd.; and Huamei Consulting. See Harmoni's Brief at 24-25 (citing CFTG's Letter, “22nd Administrative Review of Fresh Garlic from the People's Republic of China – CFTG Resubmission of Response to the June 27, 2017, Thomas Gilgunn letter Confirming the CFTG Members Are Domestic Interested Parties Since They are Producers or Wholesalers Within the United States of the Domestic Like Product – Filed on Behalf of the CFTG,” dated August 3, 2017 at Exhibit 9; and Harmoni's August 17, 2017 Submission at Exhibit 37).

<sup>86</sup> See Harmoni's Brief at 25 (citing Harmoni's April 6, 2017 Submission at Doc. 35).

- (4) Mr. Crawford’s misrepresentation of the \$50,000 payment from Mr. Hume in statements between February and April 2017;<sup>87</sup>
- (5) Mr. Crawford’s admission that the \$50,000 payment was linked to the 2015-2016 review.<sup>88</sup>
- Commerce’s determination that Mr. Crawford’s submissions in the 2015-2016 review of garlic were not credible is supported by litigation in the preceding administrative review and substantial record evidence of Mr. Crawford’s attempts to mislead Commerce.<sup>89</sup>
- Beginning in 2010, Mr. Hume futilely attempted to have Harmoni reviewed on behalf of his Chinese clients, the QTF Entity, by:
  - (1) arguing that Commerce is required by law to continue a review of Chinese companies for which a review has been requested, regardless of whether the review request has been withdrawn.<sup>90</sup>
  - (2) arguing that Chinese exporters have the right to request a review of Harmoni.<sup>91</sup>
  - (3) “attempting to find some growers in California that would be willing to file a review request.”<sup>92</sup>
  - (4) contacting several garlic producers not associated with the petitioners.<sup>93</sup>

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<sup>87</sup> See Harmoni’s Brief at 25-26 (citing Harmoni’s April 6, 2017 Submission at Doc. 32 and Doc. 28).

<sup>88</sup> See Harmoni’s Brief at 26 (citing Harmoni’s April 6, 2017 Submission at Doc. 34).

<sup>89</sup> See Harmoni’s Brief at 26

<sup>90</sup> See Harmoni’s Brief at 27-30 (citing Harmoni’s April 6, 2017 Submission).

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

- As acknowledged by Mr. Hume, he created the NMGGC, and later, the CFTG, as the final chapter in his attempts to get Commerce to review Harmoni, since “[his] having found other routes to include Harmoni in previous reviews were unsuccessful.”<sup>94</sup>
- As the sole member that participated in all NMGGC/CFTG review requests, Mr. Crawford repeatedly misrepresented and omitted information in his statements to Commerce in an attempt to convince Commerce that the NMGGC/CFTG were not merely strawmen for Mr. Hume’s Chinese clients.<sup>95</sup>
- The record in the 2015-2016 review reveals that Mr. Crawford acted no differently in the underlying proceeding than he had acted in the past: he omitted and/or misrepresented material facts as to compensation he had received from Mr. Hume and the QTF Entity; he acted in this manner at the direction of Mr. Hume – whose submissions on Mr. Crawford’s behalf Mr. Crawford has certified are accurate; and his misleading statements were intended to convince Commerce that the reason “why” he was requesting a review of Harmoni had nothing to do with his ties to the QTF Entity and the compensation he was receiving for his efforts. Thus, the record contains substantial evidence that Mr. Crawford’s submissions in AR22 as to why he requested that Commerce review Harmoni are not credible.<sup>96</sup>

**Commerce’s Position:** Commerce maintains that there is substantial record evidence to support its final determination that Mr. Crawford was not credible during the 2015-2016 administrative review. However, we have determined that the CFTG’s review request, filed on behalf of an association, is invalid *ab initio*, because a majority of the members of the CFTG, at the time of

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<sup>94</sup> *Id.* (citing Harmoni’s April 6, 2017 Submission at Doc. 62).

<sup>95</sup> See Harmoni’s Brief at 27-28 (citing Harmoni’s April 6, 2017 Submission in its entirety).

<sup>96</sup> See Harmoni’s Brief at 26-34 (citing Harmoni’s April 6, 2017 Submission in its entirety).

the review request, did not credibly establish that they had standing as domestic producers.

Therefore, further discussion of Mr. Crawford's credibility is not germane to these Final Remand Results.

## V. FINAL RESULTS

Based on an analysis of the CFTG's review request, we have determined that the CFTG's review request, filed on behalf of an association, is invalid, *ab initio*, because a majority of the members of the CFTG, at the time of the review request, did not credibly establish that they qualified as domestic producers. We therefore make no change to our *Final Results* with respect to our findings regarding the CFTG.

7/11/2020

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Signed by: JEFFREY KESSLER