

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-570-831]

Fresh Garlic From the People's Republic of China: Preliminary Intent To Rescind New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) is conducting three new shipper reviews (NSRs) under the antidumping duty order on fresh garlic from the People's Republic of China (PRC). The NSRs cover Shenzhen Bainong Co., Ltd. (Shenzhen Bainong) and Jining Yifa Garlic Produce Co., Ltd. (Jining Yifa) for the period of review (POR) November 1, 2009, through April 30, 2010, and Yantai Jinyan Trading Inc. (Yantai Jinyan) for the POR November 1, 2009, through May 31, 2010. As discussed below, we preliminarily determine that Shenzhen Bainong's and Jining Yifa's sales are not *bona fide*. As such, we are preliminarily rescinding the NSR for Shenzhen Bainong and Jining Yifa. In addition, with respect to Yantai Jinyan, we preliminarily determine that there was no sale or entry during the original, unextended POR, and therefore we are preliminarily rescinding the new shipper review for Yantai Jinyan. We invite interested parties to comment on these preliminary results. *See* "comments" section below.

DATES: *Effective Date:* May 3, 2011.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith (Yantai Jinyan), Milton Koch (Jining Yifa), and Justin Neuman (Shenzhen Bainong), AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482-5255, (202) 482-2584, and (202) 482-0486, respectively.

SUPPLEMENTARY INFORMATION:**Background**

On May 28, 2010, the Department received timely requests for an NSR from Jining Yifa, Shenzhen Bainong, and Yantai Jinyan in accordance with 19 CFR 351.214(c). On July 7, 2010, the Department determined that the requests submitted by Shenzhen Bainong, Jining Yifa, and Yantai Jinyan met the threshold requirements for initiation of an NSR and initiated the NSRs. *See Fresh Garlic From the People's Republic of China: Initiation of New Shipper Reviews*, 75 FR 38986 (July 7, 2010) (*Initiation Notice*). Since the

initiation of these reviews, the Department has issued original and supplemental questionnaires to Shenzhen Bainong, Jining Yifa, and Yantai Jinyan, to which each has responded in a timely manner.

On July 20, 2010, the Department sent interested parties a letter requesting comments on the surrogate country selection and information pertaining to valuing factors of production. *See* Letter to All Interested Parties, from the Department, Re: New Shipper Review of Fresh Garlic from the People's Republic of China ("PRC") (July 20, 2010). On October 26, 2010, the respondents submitted comments on the surrogate country selection and information pertaining to valuing factors of production. *See* Letter to the Department, from Shenzhen Bainong, Yantai Jinyan, and Jining Yifa, Re: Fresh Garlic from the People's Republic of China—Surrogate Value Information (October 26, 2010). The Fresh Garlic Producers Association (FGPA) and its individual members (Christopher Ranch L.L.C., the Garlic Company, Valley Garlic, and Vessey and Company, Inc.) (collectively, Petitioners) also submitted comments regarding surrogate values for this NSR. *See* Letter to the Department, from Petitioners, Re: 17th New Shipper Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China—Petitioners' Rebuttal Submission Concerning Surrogate Values for Factors of Production (November 4, 2010). No other party has submitted surrogate values or surrogate country comments on the record of this proceeding.

On November 23, 2010, the Department placed a copy of the U.S. Customs and Border Protection (CBP) data run on the record of this review, which contains all entries of subject merchandise exported from the PRC to the United States during the PORs. *See* Memorandum to the File, from The Team, AD/CVD Operations, Office 6, Re: New Shipper Review of Fresh Garlic from the People's Republic of China: Customs Entries from November 1, 2009 through May 31, 2010 (November 23, 2010). On November 30, 2010, the Department extended the deadline for the preliminary results of these NSRs to no later than April 26, 2011. *See Fresh Garlic From the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty New Shipper Reviews*, 75 FR 74002 (November 30, 2010).

On February 11, 2011, the Department placed on the record of this review, copies of CBP documents pertaining to Shenzhen Bainong's and Jining Yifa's shipments of garlic during the POR. On

February 14, 2011, the Department placed on the record of this review, copies of CBP documents pertaining to Yantai Jinyan's shipment of garlic during the POR. *See* Memorandum to the File, from Justin M. Neuman, Analyst, Re: Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China (A-570-831): Customs Entry Packages (February 11, 2011) and Memorandum to the File, from Jacqueline Arrowsmith, International Trade Analyst, Re: Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China (A-570-831): Customs Entry Documents (February 14, 2011).

Period of Review

Pursuant to 19 CFR 351.214(g), the POR of the NSRs of Shenzhen Bainong and Jining Yifa is the semi-annual period November 1, 2009, through April 30, 2010. In its request for a new shipper review, Yantai Jinyan requested that we extend the POR for its NSR to capture the entry of its shipment in early May, after the six-month semi-annual NSR POR. When the sale of the subject merchandise occurs within the POR specified by the Department's regulations, but the entry occurs after the POR, the POR may be extended unless it would be likely to prevent the completion of the review within the time limits set by the Department's regulations. *See* 19 CFR 351.214(f)(2)(ii). Additionally, the preamble to the Department's regulations states that both the entry and the sale should occur during the POR, but that under "appropriate" circumstances the Department has the flexibility to extend the POR. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27319-20 (May 19, 1997). Based on the information contained in Yantai Jinyan's request for an NSR, it appeared that the sale of subject merchandise was made during the POR specified by the Department's regulations and that the shipment entered in the subsequent month. Based on information provided by Yantai Jinyan, the Department found that extending the POR to capture this entry would not prevent the completion of the review within the time limits set by the Department's regulations. Therefore, the Department extended the POR for Yantai Jinyan's NSR by one month, *i.e.*, through May 31, 2010. *See Initiation Notice*.

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,

provisionally preserved, or packed in 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 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 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 CBP to that effect.

Intent To Rescind the New Shipper Review of Yantai Jinyan

The NSR provisions of the Department's regulations require that the entity making a request for an NSR must document and certify, among other things: (i) The date on which the merchandise was first entered, or withdrawn from warehouse, for consumption, or, if it cannot establish the date of first entry, the date on which it first shipped the merchandise for export to the United States; (ii) the volume of that and subsequent shipments; and (iii) the date of the first sale to an unaffiliated customer in the United States. See 19 CFR 351.214(b)(2)(iv). If these provisions are met, the Department will conduct an NSR to establish an individual weighted-average dumping margin for such new shipper, if the Department has not previously established such a margin for the exporter or producer. See generally 19 CFR 351.214(b)(2).

In its request for an NSR, Yantai Jinyan made a representation and certified that it made a sale on April 19, 2010, to an unaffiliated customer, and that the sale entered the United States

on May 25, 2010. See Letter from Yantai Jinyan to the Secretary of Commerce, dated May 28, 2010. At the time of Yantai Jinyan's request, the Department determined that the request met the requirements of 19 CFR 351.214 and the Department published its *Initiation Notice*. In the *Initiation Notice*, the Department extended the POR for Yantai Jinyan because the Department considered that extending the POR to capture this entry would not prevent the completion of the review within the time limits set by the Department's regulations. See *Initiation Notice*. The Department's determination to initiate the NSR and decision to extend the POR was based on the information provided by Yantai Jinyan in its request for an NSR.

In its Section A response, dated August 18, 2010, however, and its subsequent responses, Yantai Jinyan identified the customer to which its April 19, 2010 sale was made as an affiliated company. Further, the Section A response showed that the sale to the first unaffiliated customer occurred on May 25, 2010, a date outside the original semi-annual POR.

Based on information that Yantai Jinyan submitted after the initiation of the NSR, the Department has now determined that Yantai Jinyan did not meet the minimum requirements in its request for an NSR under 19 CFR 351.214(b)(2)(iv)(C). The sale that Yantai Jinyan certified in its request as its first sale to an unaffiliated customer in the United States was later identified by Yantai Jinyan as a sale to an affiliated customer. Consequently, the Department has now determined that the initiation and expansion of the POR to capture the entry was based on inaccurate information and that there was neither a sale nor an entry during the original POR. See 19 CFR 351.214(b)(2)(iv)(C). In order to qualify for an NSR under 19 CFR 351.214, a company must certify and document, among other things, the date of the first sale to an unaffiliated customer in the United States. *Id.* Because information provided by Yantai Jinyan after the initiation shows that Yantai Jinyan's request for review did not meet this key requirement, Yantai Jinyan is not entitled to an NSR. Further, the preamble to the Department's regulations also explains that "we do not believe it appropriate to base a new shipper review on anything short of a sale." Because there was neither a sale to an unaffiliated customer in the United States nor an entry during the original POR, there was no basis to initiate the NSR. Therefore, the Department preliminarily determines

that it is appropriate to rescind the NSR for Yantai Jinyan.

The Department is currently conducting an antidumping duty administrative review for the POR November 1, 2009, through October 31, 2010, which includes Yantai Jinyan and its entries. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 75 FR 81565 (December 28, 2010). Therefore, the Department intends to move Yantai Jinyan's separate rate application from the record of this NSR to the record of the administrative review, and consider it in the context of the administrative review.

Bona Fides Analysis

Consistent with Department practice, we examined the *bona fides* of the sales of Jining Yifa and Shenzhen Bainong.¹ In evaluating whether a sale in an NSR is commercially reasonable, and therefore *bona fide*, the Department considers, *inter alia*, such factors as: (1) The timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was made on an arm's-length basis. See *Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1250 (Ct. Int'l Trade 2005) (*TTPC*). Accordingly, the Department 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." See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1342 (Ct. Int'l Trade 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), and accompanying Issues and Decision Memorandum: New Shipper Review of Clipper Manufacturing Ltd.). In *TTPC*, the court also affirmed the Department's decision that "any factor which indicates that the sale under consideration is not likely to be typical of those which the producer will make in the future is relevant." (*TTPC*, 366 F. Supp. 2d at 1250), and found that "the weight given to each factor investigated will depend on the circumstances surrounding the sale." *TTPC*, 366 F. Supp. 2d at 1263. Finally,

¹ Because we intend to rescind the NSR of Yantai Jinyan based on the lack of a sale and entry during the POR, there is no basis to evaluate the *bona fides* of Yantai Jinyan's sale. Our analysis of the *bona fides* of the sale is limited to the sales of Shenzhen Bainong and Jining Yifa.

in *New Donghua*, the Court of International Trade affirmed the Department's practice of evaluating the circumstances surrounding an 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.

Shenzhen Bainong

Based on the totality of circumstances, we preliminarily find that the sale made by Shenzhen Bainong during the POR was not a *bona fide* commercial transaction. Shenzhen Bainong's POR sales price and quantity were both atypical and aberrational. In addition, we sought information from the importer in order to evaluate the commercial reasonableness of the sale and to consider whether this sale is predictive of future commercial activity. The importer has not substantiated its claims that it is trying to establish a garlic business; the importer has also said that it has no immediate plans to import garlic. Because much of the factual information used in our analysis of the *bona fides* of the transactions involves business proprietary information, a full discussion of the basis for our preliminary finding that the sale is not *bona fide* is set forth in the Memorandum to: Barbara E. Tillman, Director, AD/CVD Operations, Office 6, From: Dana S. Mermelstein, Program Manager, AD/CVD Operations, Office 6, Import Administration: *Bona Fides* Analysis of Shenzhen Bainong Co., Ltd.'s New Shipper Sale in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China (PRC) (Shenzhen Bainong *Bona Fides* Memorandum). Because we have found Shenzhen Bainong's sale to not be *bona fide*, we cannot rely on it to calculate a dumping margin and we are, therefore, preliminarily rescinding Shenzhen Bainong's NSR. See Shenzhen Bainong *Bona Fides* Memorandum; *TTPC*; and *New Donghua*.

Jining Yifa

Based on the totality of circumstances, we preliminarily find that the sales made by Jining Yifa during the POR are not *bona fide* commercial transactions. Jining Yifa's POR sales price and quantity were both atypical and aberrational. In addition, the affiliated importer was not forthcoming with information that would have permitted a full analysis of the commercial reasonableness of the sales. Because much of the factual information used in our analysis of the *bona fides* of the transactions involves business

proprietary information, a full discussion of the bases for our preliminary finding that the sales are not *bona fide* is set forth in the Memorandum to: Barbara E. Tillman, Director, AD/CVD Operations, Office 6, From: Dana S. Mermelstein, Program Manager, AD/CVD Operations, Office 6, Import Administration: *Bona Fides* Analysis of Jining Yifa Garlic Produce Co., Ltd.'s New Shipper Sales in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China (PRC) (Jining Yifa *Bona Fides* Memorandum). Because we have found Jining Yifa's sales to not be *bona fide*, we cannot rely on them to calculate a dumping margin and we are, therefore, preliminarily rescinding Jining Yifa's NSR. See Jining Yifa *Bona Fides* Memorandum; *TTPC*; and *New Donghua*.

Preliminary Rescission of Shenzhen Bainong and Jining Yifa

For the foregoing reasons, the Department finds that the sales of Shenzhen Bainong and Jining Yifa are not *bona fide* and that these sales do not provide a reasonable or reliable basis for calculating a dumping margin. Because these non-*bona fide* sales were the only sales of subject merchandise during the POR, the Department is preliminarily rescinding the NSRs of Shenzhen Bainong and Jining Yifa.

Assessment Rates

If we proceed to a final rescission of Jining Yifa's and Shenzhen Bainong's NSRs, Jining Yifa's and Shenzhen Bainong's entries will be subject to the PRC-wide rate. The Department is currently conducting an administrative review for the POR November 1, 2009, through October 31, 2010, which includes the entries subject to these NSRs. Thus the PRC-wide rate is under review. Upon completion of the administrative review, we will instruct CBP to assess antidumping duties on entries for Jining Yifa and Shenzhen Bainong at the appropriate PRC-wide rate.

If we proceed to a final rescission of the NSR of Yantai Jinyan, we will determine, during the course of the ongoing administrative review, if Yantai Jinyan is entitled to a separate rate. We will instruct CBP to assess antidumping duties on entries by Yantai Jinyan in accordance with the final results of the administrative review.

Cash Deposit Requirements

Effective upon publication of the final rescission of these NSRs or the final results of these NSRs, we will instruct CBP to discontinue the option of posting

a bond or security in lieu of a cash deposit for entries of subject merchandise by Jining Yifa, Shenzhen Bainong, and Yantai Jinyan. If we proceed to a final rescission of these NSRs, the cash deposit rate will continue to be for the per-unit PRC wide rate for Jining Yifa, Shenzhen Bainong, and Yantai Jinyan. If we issue a final results of NSR for any of these respondents, we will instruct CBP to collect cash deposits, effective upon the publication of the final results, at the rates established therein.

Disclosure

We will disclose our analysis to parties to this proceeding not later than five days after the date of public announcement, or if there is no public announcement within five days of the date of publication of this notice. See 19 CFR 351.224(b).

Comments

Interested parties are invited to comment on these preliminary results and may submit case briefs and/or written comments within 30 days of the date of publication of this notice, unless otherwise notified by the Department. See 19 CFR 351.309(c)(ii). Rebuttal briefs, limited to issues raised in the case briefs, will be due five days later, pursuant to 19 CFR 351.309(d). Parties who submit case or rebuttal briefs in these proceedings are requested to submit with each argument: (1) A statement of the issue; and (2) a brief summary of the argument. Parties are requested to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Additionally, parties are requested to provide their case and rebuttal briefs in electronic format (*e.g.*, preferably in Microsoft Word).

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. See 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in case and rebuttal briefs. The Department will issue the final results of this NSR, including the results of its analysis of issues raised in any such written briefs, not later than 90 days after these preliminary results are issued, unless the final results are extended. See 19 CFR 351.214(i).

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these preliminary results in accordance with sections 751(a)(2)(B) and 777(i) of the Act, and 19 CFR 351.214(h) and 351.221(b)(4).

Dated: April 26, 2011.

Paul Piquado,

Acting Deputy Assistant Secretary, for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

Request for Public Comments Concerning Regulatory Cooperation Between the United States and the European Union That Would Help Eliminate or Reduce Unnecessary Divergences in Regulation and in Standards Used in Regulation That Impede U.S. Exports

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The U.S. Government recognizes that economic recovery and job creation will depend significantly on its ability to work collaboratively with key trading partners to promote free and open trade and investment while also protecting public health and safety, the environment, intellectual property, and consumers' rights. In our trade and investment relationship with the European Union, the main impediments to greater trade and investment—and more open foreign markets for U.S. exporters and investors—are not tariffs or quotas, but rather differences in regulatory measures. These regulatory measures—which include standards developed by a government and used in regulation, standards developed by other bodies at the request or direction of a regulator for use in regulation, or proposals to provide a presumption of compliance to technical requirements developed by a government—may be

unnecessary and may increase costs for producers and consumers.

With this Notice, the Department of Commerce's International Trade Administration (ITA), in support of the National Export Initiative (NEI) and the U.S.-EU High Level Regulatory Cooperation Forum (HLRCF), and pursuant to the Secretary of Commerce's role as the chair of Trade Promotion Coordinating Committee, is requesting stakeholders assist the Administration identify opportunities for cooperation between the United States and the European Union to reduce or eliminate divergences in regulatory measures that impede trade in goods in the transatlantic marketplace, in ways that may be unnecessary, as well as any existing or emerging sectors that may benefit from transatlantic regulatory cooperation.

For more information on U.S.-EU regulatory cooperation, see the Web site: http://www.whitehouse.gov/omb/oira_irc_europe.

DATES: The agency must receive comments on or before June 2, 2011.

ADDRESSES: Submissions should be made via the internet at <http://www.regulations.gov> under docket ITA-2011-0006. Please direct written submissions to Lori Cooper, Office of the European Union, Department of Commerce, Room 3513, 14th and Constitution Avenue, NW., Washington, DC 20230. The public is strongly encouraged to file submissions electronically rather than by mail.

FOR FURTHER INFORMATION CONTACT:

Questions regarding this notice should be directed to *TransatlanticRegulatoryCooperation@trade.gov*.

SUPPLEMENTARY INFORMATION: With this notice, the Commerce Department, on behalf of the Administration, is seeking public input to help identify divergences in regulatory measures in the transatlantic marketplace, so that the U.S. Government can work cooperatively with the European Union to address them.

President Obama linked trade to job creation when he announced the National Export Initiative (NEI) in his 2010 State of the Union address and set the ambitious goal of doubling U.S. exports in the next five years to support millions of jobs here at home. To help achieve this goal, the U.S. Government is working to remove unnecessary divergences in regulations and in standards used in regulation between the United States and the European Union. The European Union, with its 27 member countries, is our largest trading partner, accounting for 19 percent of U.S. merchandise exports in 2010.

Since 2005, the U.S. Government has worked with officials from the European Commission, within the framework of the U.S.-EU High Level Regulatory Cooperation Forum (HLRCF), to strengthen regulatory cooperation, to promote better regulation, and to reduce or eliminate unnecessary regulatory differences that hinder trade and reduce competitiveness, when doing so does not compromise those protections Americans expect from their government. In addition, at the conclusion of its December 2010 meeting, the Transatlantic Economic Council, comprised of Cabinet-level officials from the United States and the European Union, endorsed several initiatives aimed at further promoting U.S.-EU regulatory cooperation, including directing the HLRCF to develop a process for identifying, with stakeholder input, sectors in which the United States and the European Union could pursue upstream regulatory cooperation.

In his January 2010 State of the Union address, President Obama announced the NEI to double U.S. exports over five years and support the creation of new jobs. As the President's Export Promotion Cabinet has undertaken to implement the NEI, regional and sectoral plans are being developed to tailor the U.S. Government's NEI efforts based on the realities of trade with key trading partners. For example, bilateral trade between the United States and the European Union was \$559.4 billion in 2010. Despite this extensive trade between the United States and the European Union, U.S. exporters indicate that they continue to encounter unnecessary transatlantic divergences in regulatory measures that impede trade.

ITA has developed a Mature Markets Initiative (MMI) to evaluate how best to grow exports, create jobs, and support U.S. business growth in areas where trade is robust. Regulatory cooperation is a key component of the MMI. Accordingly, ITA has identified the European Union as a mature market and will seek ways to ease or eliminate unnecessary differences in regulation and in standards used in regulation that hinder competitiveness and negatively impact trade for U.S. firms, including new-to-market and new-to-export businesses, and particularly for small- and medium-sized enterprises (SMEs).

Trade may be impeded, for example, because countries apply different standards or technical requirements to address common environmental, health, safety, or other concerns with respect to certain products or product categories. In some instances, such divergences may be arbitrary and can lead to delays,