

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-831]

Fresh Garlic From the People's Republic of China; Final Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review

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

ACTION: Notice of Final Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review.

SUMMARY: On December 27, 1996, the Department of Commerce published the preliminary results and partial termination of administrative review of the antidumping order on fresh garlic from the People's Republic of China. The review covers 159 producers/exporters of subject merchandise. The period of review is July 11, 1994, through October 31, 1995.

We gave interested parties an opportunity to comment on the preliminary results. Our analysis of the comments we received resulted in no change in our preliminary results for these final results. The final dumping margin is listed below the section entitled "*Final Results of the Review.*"

EFFECTIVE DATE: May 1, 1997.

FOR FURTHER INFORMATION CONTACT: Andrea Chu or Thomas O. Barlow, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-4733.

SUPPLEMENTAL INFORMATION:**Applicable Statute**

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Background

On December 27, 1996, we published the preliminary results and partial termination of administrative review (61 FR 68229) of the antidumping duty

order on fresh garlic from the PRC (November 16, 1994, 59 FR 59209). Because we determined that (1) The review of Top Pearl should be terminated, and (2) the other PRC producers/exporters failed to submit responses to our questionnaires, we preliminarily determined to use facts otherwise available for cash deposit and assessment purposes for all PRC producers/exporters of the subject merchandise. We invited parties to comment on our Preliminary Results. We received comments from Top Pearl and a rebuttal brief on behalf of petitioners. A hearing was requested by Top Pearl but was subsequently canceled at its request. We have conducted this administrative review in accordance with section 751 of the Act.

Scope of the Review

The products subject to this antidumping duty 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 this order does not include: (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, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9500 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 this proceeding is dispositive.

In order to be excluded from the antidumping duty 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 the Customs Service to that effect.

Analysis of Comments Received

Comment 1: Top Pearl disagrees with the Department's preliminary

determination that Top Pearl is not the appropriate respondent for this review. It asserts that the issue before the Department is whether Shandong Wallong Import & Export Co. (Wallong) knew the destination of the merchandise at the time of the sale between Wallong and Top Pearl and argues that the sales process and evidence on record demonstrate that Wallong did not know the destination at the time of sale.

Top Pearl presents a chronology of the sales process to support its position that Wallong did not know the destination of the merchandise at the time of sale and argues that it is the Department's practice to give the original exporter a margin only if the exporter knew or had reason to know at the time of sale the destination of the shipment (citing *Final Determination of Sales at Less Than Fair Value: Manganese Sulfate From the People's Republic of China*, 60 FR 52155 (October 5, 1995) (*Manganese*), and *Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol From the People's Republic of China*, 62 FR 14063 (March 29, 1996) (*PVA*)). Top Pearl asserts that, although certain documents in *Manganese* indicated the United States as the destination of the shipment, that was not sufficient to demonstrate that respondent had knowledge of the ultimate destination at the time of sale. Top Pearl further asserts that in *PVA* the Department excluded sales to a Hong Kong trading company where none of the sales documents showed information to identify the United States as the ultimate destination at the time of sale and prior to shipment.

Top Pearl claims that none of the sales contracts between Top Pearl and Wallong make any reference to the destination of the sale and that, at the time Top Pearl made the sale to the U.S. customer, Wallong did not know of the sale. Top Pearl further claims that when it contracted with Shangdong Huangpu Group Corporation (Huangpu), a Chinese garlic producer, neither Huangpu nor Wallong knew the destination of the merchandise. Top Pearl notes that only after the sale was made did Top Pearl instruct Wallong to change the terms of sale to indicate a U.S. port. Top Pearl argues that, like *Manganese*, the invoice made by Wallong to Top Pearl does not prove Wallong knew the destination because it was issued after Top Pearl's sale to the U.S. customer and after Top Pearl's purchase from Wallong. Top Pearl further argues that, like *PVA*, none of the sales documents on record show information identifying the United States as the ultimate destination of the

merchandise. Top Pearl concludes, therefore, that the Department should calculate an individual margin for Top Pearl since Wallong did not know the destination of the shipment at the time of sale.

Petitioners assert that it is clear that Wallong sold the garlic to Top Pearl and that this sale meets the requirements of section 772(a) of the Act. Petitioners maintain that it was appropriate to treat Wallong's sale to Top Pearl as a U.S. sale, given that the Department must examine the sale from the non-market economy (NME) exporter to the intermediate-country reseller (citing the Department's November 22, 1996, memorandum, *Partial Termination of 1994-95 Administrative Review of Fresh Garlic from the PRC*, (termination memo)). Petitioners claim that the date of sale is the date upon which the essential terms of price and quantity become fixed by agreement of the parties and remain unchanged (citing *PVA from Taiwan*, 61 FR 14064, 14067-68 and *Stainless Steel Bar from India*, 62 FR 4029 (1997) (*Stainless Bar*)).

Petitioners maintain that the record evidence establishes that the date Wallong invoiced Top Pearl, and thereby confirmed the revised terms of sale, is the actual date of sale between Wallong and Top Pearl. Petitioners claim, therefore, Top Pearl's statement that the invoice was issued after the date of sale is incorrect, given that the invoice established the date of sale.

Petitioners also maintain that additional record evidence demonstrates that Wallong knew the destination of the merchandise at the time of sale. Petitioners note that correspondence between Top Pearl and Wallong and the invoice issued by Wallong indicate the United States as the destination, contrary to Top Pearl's assertion that none of the contracts with Wallong make reference to the destination of the sale. Petitioners also note that Top Pearl's questionnaire and supplemental responses indicate that, as exporter of the merchandise, Wallong supplied destination-specific export documents which alone show it had knowledge of the destination prior to sale (also citing *Certain Headwear from the People's Republic of China*, 54 FR 11983, 11987-88 (1989)).

Department's Position: We fully addressed the issue of the proper respondent in reseller or "middleman" sales situations in our termination memo. As we stated in the memo, section 772(a) of the Act permits us to use the price from a producer to a middleman if the producer knew the merchandise was intended for sale to the United States under terms of sale

fixed on or before the date of importation (see termination memo at 2-3). We further stated that we have interpreted the relevant price in such a sales situation to be the price at which the first party in the chain of distribution who has knowledge of the U.S. destination sells the merchandise. However, we explained that this practice is restricted with regard to NME cases, since we will not base export price on internal transactions between two companies located in the NME country.

Applying these principles to the facts of this case, we determined that, although Huangpu had knowledge of the U.S. destination of the merchandise and is the first party in the distribution chain, its transaction with Wallong was an internal transaction between two companies located in an NME country and inappropriate for review. We further determined that the party after Huangpu in the distribution chain is Wallong and that there was ample evidence to indicate that Wallong had knowledge of the U.S. destination of the merchandise when it sold the merchandise to Top Pearl. Therefore, our determinations remain unchanged for these final results.

As indicated above, the appropriate starting point for application of our knowledge test is the transaction between Wallong and Top Pearl because the sale from Wallong to Top Pearl is the first market-based sale in the chain of distribution for export to the United States. Based on the evidence of record, the essential terms of the transaction between Top Pearl and Wallong were established no earlier than June 30, 1994, when Top Pearl advised Wallong of new delivery terms and price which subsequently did not change. It is also clear from the record that by this date Wallong had knowledge that the destination of the merchandise was the United States (see June 30, 1994 letter from Top Pearl to Wallong). In this case it is irrelevant that the invoice from Wallong was issued after the date of sale because Wallong had knowledge of the destination when the parties finally agreed on the essential terms, as evidenced by the fact that the transaction was ultimately consummated according to those terms. Top Pearl erroneously argues that the few documents to which it refers in *Manganese* were determinative of the Department's decision not to treat the sale in question as a U.S. sale; all of the relevant sales documents in that case failed to disclose the United States as the ultimate destination. In addition, the record in this case indicates that Wallong knew the destination prior to

invoicing Top Pearl and shipping the merchandise. Our decision in *PVA* is in accord with our actions here, given that in this case the documents indicate the United States as the destination of the merchandise. Because the sale from Wallong to Top Pearl is the first market-based sale in the chain of distribution for export to the United States, we have maintained our position that the export transaction by Wallong to Top Pearl, not by Top Pearl to the unaffiliated U.S. customer, is the appropriate basis for determining the export price and that, accordingly, Top Pearl is not an appropriate respondent in this review.

Finally, we disagree with Top Pearl that we should assign it a separate rate. Because Top Pearl is not a proper respondent in this review, the issue is moot.

Comment 2: Top Pearl claims that if the Department had questions concerning the sales process it could have sent a supplemental questionnaire and conducted a verification to resolve such matters.

Petitioners assert that there is no basis for verification because the documents that form the basis for the Department's preliminary results are clear on their face and conclusively establish that, because Wallong sold the garlic to Top Pearl knowing it was destined for the United States, Top Pearl is not the appropriate respondent in this review.

Department's Position: Our decision to terminate the review with regard to Top Pearl was based on record evidence supplied by Top Pearl. We have no reason to dispute the veracity or reliability of the information and find it sufficient to support our position that it is inappropriate to review Top Pearl's transaction with the U.S. customer.

In addition, contrary to respondent's claim, on March 29, 1996, we sent a supplemental questionnaire to Top Pearl. In the supplemental questionnaire, we inquired about Top Pearl's organizational structure and export licenses, as well as sales process, specifically with respect to Huangpu's and Wallong's knowledge of the destination of the subject merchandise. We did not send additional questionnaires to Top Pearl as we determined that Top Pearl is not the appropriate respondent in this review.

Final Results of the Review

As a result of our review, we determine that a margin of 376.67 percent exists for all producers/exporters of the subject merchandise from the PRC for the period July 11, 1994 through October 31, 1995.

The Department shall determine, and the Customs Service shall assess,

antidumping duties on all appropriate entries. The Department will issue appraisal instructions directly to the Customs Service.

Furthermore, the following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) for all PRC exporters, all of which were found not to be entitled to separate rates, the cash deposit will be 376.67 percent; and (2) for other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a reminder to importers of their responsibility under 19 CFR 353.26 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.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: April 25, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97-11383 Filed 4-30-97; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-533-502]

Certain Welded Carbon Steel Standard Pipes and Tubes From India: Preliminary Results of New Shipper Antidumping Duty Administrative Review

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

ACTION: Notice of Preliminary Results of Antidumping Duty New Shipper Administrative Review.

SUMMARY: In response to requests by Lloyd's Metals & Engineers Ltd. (Lloyd's) and Rajinder Pipes Ltd. (Rajinder), the Department of Commerce (the Department) is conducting a new shipper administrative review of the antidumping duty order on certain welded carbon steel standard pipes and tubes from India. The period of review (POR) is May 1, 1995 through April 30, 1996. We have preliminarily determined that sales have been made below the normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties equal to the difference between the export price (EP) or construed export price (CEP) and NV. Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: May 1, 1997.

FOR FURTHER INFORMATION CONTACT: Kristie Strecker, Matthew Rosenbaum or Thomas O. Barlow, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 482-4733.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Background

On April 30, 1996, the Department received a request from Lloyd's for a new shipper review pursuant to section 751(a)(2)(B) of the Act and section 353.22(h) of the Department's interim regulations. On May 22, 1996, the Department also received a request from Rajinder for a new shipper review. The petitioner in this case is the Standard Pipe Subcommittee of the Committee on Pipe and Tube Imports (the Petitioner).

Section 751(a)(2) of the Act and section 353.22(h) of the Department's regulations govern determinations of antidumping duties for new shippers. These provisions state that, if the Department receives a request for review from an exporter or producer of the subject merchandise that (1) did not export the merchandise to the United States during the period of investigation (POI) and, (2) is not affiliated with any exporter or producer who exported the subject merchandise during that period, the Department shall conduct a new shipper review to establish an individual weighted-average dumping margin for such exporter or producer, if the Department has not previously established such a margin for the exporter or producer. To establish these facts, the exporter or producer must include with its request, with appropriate certification: (i) The date on which the merchandise was first entered, or withdrawn from warehouse, for consumption, or, if it cannot certify as to the date of first entry, the date on which it first shipped the merchandise for export to the United States; (ii) a list of the firms with which it is affiliated; and (iii) a statement from such exporter or producer, and from each affiliated firm, that it did not, under its current or a former name, export the merchandise during the POI. The requests from Lloyd's and Rajinder were accompanied by information and certifications establishing the date on which each company first shipped and entered subject merchandise, the names of Lloyd's and Rajinder's affiliated parties, and statements from Lloyd's and Rajinder and their affiliated parties that they did not, under any name, export the subject merchandise during the POI. Based on the above information, on June 27, 1996, the Department initiated a new shipper review of Lloyd's and Rajinder (61 FR 33492). On December 30, 1996, we published an extension of the time limit for the preliminary results of this review until April 23, 1997 (61 FR 68713). The Department is now conducting this review in accordance with section 751 of the Act and section 353.22 of its regulations.