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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-831]

Fresh Garlic from the People's Republic of China: Notice of Court Decision Not in Harmony with Final Results of Administrative Review and Notice of Amended Final Results of Administrative Review

SUMMARY: On June 24, 2013, the United States Court of International Trade (“CIT” or “Court”) sustained the Department of Commerce’s (“Department”) final results of the third remand redetermination<sup>1</sup> relating to the ninth administrative review of the antidumping duty order on fresh garlic from the People’s Republic of China (“PRC”), pursuant to the CIT’s remand order in *Taian Ziyang Food Co., Ltd. v. United States*, Court No. 05-00399, Slip. Op. 13-80 (CIT 2013). Consistent with the decision of the United States Court of Appeals for the Federal Circuit (“CAFC”) in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (“*Timken*”), as clarified by *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (“*Diamond Sawblades*”), the Department is notifying the public that the final CIT judgment in this case is not in harmony with the Department’s final results and is amending its final results of the administrative review of the antidumping duty order on fresh garlic from the PRC covering the period of review (“POR”) of November 1, 2002 through October 31, 2003, with respect to the weighted-average dumping margins assigned to Zhengzhou Harmoni Spice Co., Ltd., Jinan Yipin Corporation, Ltd., Linshu Dading Private Agricultural Products Co., Ltd., and Sunny Import & Export Co., Ltd. (collectively, “Respondents”).

EFFECTIVE DATE: July 5, 2013.

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<sup>1</sup> See Department of Commerce Final Remand Results of Redetermination, CIT Court No. 05-399 (January 17, 2012).

FOR FURTHER INFORMATION CONTACT: Eugene Degnan, Office 8, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-0414.

SUPPLEMENTARY INFORMATION:

Background

Subsequent to the publication of the *Final Results*<sup>2</sup> on June 13, 2005, and the *Amended Final Results*<sup>3</sup> on September 28, 2005, Chinese producers and exporters of fresh garlic filed a complaint with the CIT to challenge various aspects of the *Final Results* and *Amended Final Results* of the Department's ninth administrative review of the antidumping duty order on fresh garlic from the PRC.

On June 29, 2009, the Court sustained the Department's first remand redetermination as to three of 10 issues and remanded the remaining seven for further consideration.<sup>4</sup> On July 22, 2011, the Court sustained the Department's second remand redetermination with regard to four of the seven issues and remanded the remaining three issues, regarding valuation of factors of production for (1) labor, (2) cardboard packing cartons, and (3) plastic jars and lids, for further consideration.<sup>5</sup>

On June 24, 2013, the Court affirmed the Department's re-calculation of the surrogate labor wage rate by applying its current methodology of using certain industry-specific labor cost

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<sup>2</sup> See *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 34082 (June 13, 2005) ("*Final Results*").

<sup>3</sup> See *Notice of Amended Final Results of Antidumping Duty Administrative Review: Garlic From the People's Republic of China*, 70 FR 56639 (September 28, 2005) ("*Amended Final Results*").

<sup>4</sup> See *Taian Ziyang Food Co., Ltd. v. United States*, 637 F. Supp. 2d 1093 (CIT 2009)(sustaining application of adverse facts available to the Taian Ziyang Food Company, Ltd.'s and Taian Fook Huat Tong Kee Foodstuffs Co., Ltd.'s factors of production).

<sup>5</sup> See *Taian Ziyang Food Co., Ltd. v. United States*, 783 F. Supp. 2d 1292 (CIT 2011).

data from the selected surrogate country available during the underlying administrative review.<sup>6</sup> The Court also found that domestic producers failed to exhaust their administrative remedies to challenge surrogate value decisions concerning the cardboard packing cartons and plastic jars and lids because they did not submit comments on the Department's draft redetermination.<sup>7</sup> Lastly, the Court found that the Department's use of the "near perfect" price quotes, instead of "distorted import statistics," as the surrogate value for the cartons, jars and lids was supported by substantial evidence.<sup>8</sup>

### Timken Notice

In its decision in *Timken*, as clarified by *Diamond Sawblades*, the CAFC held that, pursuant to section 516A(c) of the Tariff Act of 1930, as amended ("the Act"), the Department must publish a notice of a court decision that is not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's June 24, 2013, judgment in this case constitutes a final decision of that court that is not in harmony with the Department's final results of the administrative review. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

### Amended Final Results

Because there is now a final court decision with respect to this case, the Department is amending its *Final Results* and *Amended Final Results* with respect to the Respondents' weighted-average dumping margins for the period November 1, 2002 through October 31, 2003. The revised weighted-average dumping margins are as follows:

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<sup>6</sup> See *Taian Ziyang Food Co., Ltd. v. United States*, Court No. 05-00399, Slip. Op. 13-80 (CIT 2013).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

Exporter	Weighted-Average Dumping Margin (percent)
Zhengzhou Harmoni Spice Co., Ltd.,	0.00
Jinan Yipin Corporation, Ltd.,	0.00
Linshu Dading Private Agricultural Products Co., Ltd.,	0.00
Sunny Import & Export Co., Ltd.	0.00

In the event that the CIT's ruling is not appealed, or if appealed, upheld by the CAFC, because the above margins are zero, the Department will instruct CBP to liquidate entries of subject merchandise exported by the Respondents without regard to dumping duties.

This notice is issued and published in accordance with section 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

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Paul Piquado  
Assistant Secretary  
for Import Administration

July 19, 2013\_  
(date)

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