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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 Rescission and Notice of Amended Final Results

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: On May 26, 2017, the Court of International Trade (the CIT) sustained the Department of Commerce's (the Department) final remand results pertaining to the new shipper review of the antidumping duty order on fresh garlic from the People's Republic of China (PRC) for Shijiazhuang Goodman Trading Co., Ltd. (Goodman). The Department is notifying the public that the final judgment in this case is not in harmony with the final rescission of the new shipper review and that the Department has found Goodman eligible for a new shipper review resulting in an individually-determined dumping margin of \$0.08/kg.

DATES: Applicable June 5, 2017.

FOR FURTHER INFORMATION CONTACT: Chien-Min Yang, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-5484.

SUPPLEMENTARY INFORMATION:

Background

Goodman is a Chinese producer/exporter of fresh garlic and requested a new shipper review on November 27, 2012, and amended that request on December 6, 2012.¹ On January 2,

¹ See Goodman's letter, "Fresh Garlic from the People's Republic of China – Re-filing Request for Antidumping New Shipper Review of Shijiazhuang Goodman Trading Co., Ltd.," (December 6, 2012).

2013, the Department initiated the requested NSR covering the period November 1, 2011, through October 31, 2012.

On April 21, 2014, the Department issued the *Final Rescission*. In the *Final Rescission*, the Department determined that Goodman's sales were not *bona fide* and, accordingly, rescinded its new shipper review.² Goodman challenged the Department's findings in the *Final Rescission* at the CIT.

On March 22, 2016, the CIT remanded for the Department to reconsider its decision.³

Per the Court's instructions, the Department reconsidered its previous analysis and determined, under protest, Goodman's U.S. sales to be *bona fide*. The Department found Goodman to be eligible for a new shipper review and addressed comments raised in case briefs and rebuttal briefs during the new shipper review regarding the preliminarily-calculated rate. In the final remand results filed with the CIT on August 22, 2016 (Final Redetermination), the Department made changes to the surrogate values and re-calculated Goodman's individually-determined antidumping duty rate to be \$0.08 per kilogram.

On May 26, 2017, the CIT sustained the Department's Final Redetermination in full.⁴ Thus, the CIT affirmed the \$0.08/kg dumping margin the Department calculated for Goodman in the Final Redetermination.

Timken Notice

In its decision in *Timken*,⁵ as clarified by *Diamond Sawblades*,⁶ the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended

² See *Fresh Garlic from the People's Republic of China: Final Rescission of Antidumping Duty New Shipper Review of Shijiazhuang Goodman Trading Co., Ltd.*, 79 FR 22,098 (April 21, 2014) (*Final Rescission*), and accompanying Issues and Decision Memorandum.

³ See *Shijiazhuang Goodman Trading Co. v. United States*, 172 F. Supp. 3d 1363, 1368-82 (Ct. Int'l Trade 2016).

⁴ See *Shijiazhuang Goodman Trading Co., Ltd. v. United States*, CIT Slip Op. 17-63, Consol. Ct. No. 14-00101 (May 26, 2017).

⁵ See *Timken Co. v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

(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 May 26, 2017, final judgment sustaining the Final Redetermination constitutes a final decision of the Court that is not in harmony with the Department’s *Final Rescission*. This notice is published in fulfillment of the *Timken* publication requirements. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending a final and conclusive court decision.

Amended Final Results

Because there is now a final court decision, we are amending the *Final Rescission* with respect to the dumping margin calculated for Goodman. Based on the Final Redetermination, as affirmed by the CIT, the revised dumping margin for Goodman, from November 1, 2011, through October 31, 2012, is \$0.08/kg.

In the event that the CIT’s ruling is not appealed or, if appealed, is upheld by a final and conclusive court decision, the Department will instruct Customs and Border Protection (CBP) to assess antidumping duties on unliquidated entries of subject merchandise based on the revised dumping margin listed above.

Cash Deposit Requirements

Since the *Final Rescission*, the Department has not established a cash deposit rate for Goodman.⁷ Therefore, the Department will issue revised cash deposit instructions to CBP, adjusting the cash deposit rate for Goodman to \$0.08/kg, effective June 5, 2017.

⁶ See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

⁷ See *Fresh Garlic from the People’s Republic of China: Final Results and Partial Rescission of the 18th Antidumping Duty Administrative Review; 2011-2012*, 79 FR 36,721 (June 30, 2014) (*Final Results*).

Notification to Interested Parties

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

Dated: July 13, 2017.

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

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