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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

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

SUMMARY: On January 30, 2019, the United States Court of International Trade (the CIT) entered final judgment sustaining the Department of Commerce's (Commerce) second remand results pertaining to the fifteenth administrative review of the antidumping duty order on fresh garlic from the People's Republic of China (China) for Shenzhen Xinboda Industrial Co., Ltd. (Xinboda). Commerce is notifying the public that the final judgment in this case is not in harmony with the final results and partial rescission of the fifteenth antidumping duty administrative review, and that Commerce has amended the dumping margin found for Xinboda.

DATES: Applicable **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

FOR FURTHER INFORMATION CONTACT: Alexander Cipolla, 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) 482-4956.

SUPPLEMENTARY INFORMATION:

Background

On June 27, 2011, Commerce published the *Final Results* pertaining to mandatory respondent Xinboda, along with other exporters.¹ In the *Final Results*, Commerce selected India as the primary surrogate country.² Pursuant to section 773(c)(1) of the Tariff Act of 1930, as amended (the Act), and applying our intermediate input methodology, Commerce used prices published for Azadpur in India to value whole raw garlic bulbs (bulbs). Commerce calculated a rate of \$0.06 per kilogram for Xinboda, and the separate rate respondents.³

On April 16, 2014, the CIT remanded for Commerce to: (1) consider information indicating the Azadpur bulb prices might involve a higher level of processing that potentially double-counted processing of factors of production (FOPs) reported by Xinboda that Commerce included in normal value (NV); (2) consider information indicating that prices for grade A bulbs already reflect prices for grade S.A. bulbs; (3) explain why Tata Tea's financial statements are useable, in light of information Xinboda provided allegedly indicating that Tata Tea received countervailable subsidies, and why Garlico Industries Limited's (Garlico) statements are not useable; (4) explain further the intermediate labor methodology or revise the surrogate value (SV) for labor; and (5) explain why zeroing is permissible in non-market economy (NME) reviews.⁴

¹ See *Fresh Garlic from the People's Republic of China: Final Results and Final Rescission, in Part, of the 2008-2009 Antidumping Duty Administrative Review*, 76 FR 37321 (June 27, 2011) (*Final Results*) and accompanying Issues and Decision Memorandum (IDM).

² See IDM.

³ See *Final Results*, 76 FR at 37326.

⁴ See *Shenzhen Xinboda Industrial Co., Ltd. v. United States*, Slip Op. 14-45, Court No. 11-00267 (CIT 2014) (*First Remand Opinion*).

On August 4, 2014, Commerce filed the *First Remand Results*, revising Xinboda's rate from \$0.06 per kilogram to \$0.02 per kilogram.⁵ In accordance with the *First Remand Opinion*, Commerce adjusted its NV calculation by removing the costs of self-produced and consumed green leaf from the surrogate manufacturing overhead ratio from Tata Tea. In addition, we revised our SV for labor, in compliance with Commerce's current surrogate labor rate methodology. We revised our margin calculation to exclude the inland freight expense of transportation expenses for raw garlic bulbs from Indian growers to the Azadpur market.⁶ Commerce continued to rely on grade A and grade S.A. bulb data from the Azadpur market data, explaining that those prices were "more similar" to the input being valued and that the Researcher Declaration submitted by Xinboda was unreliable and did not undermine the Azadpur prices to the point of being unusable. Commerce also continued to rely on Tata Tea's financial statements in order to value the surrogate financial ratios and gave a more fulsome explanation of Commerce's practice in interpreting the "reason to believe or suspect" standard regarding whether financial statements contain evidence of countervailable subsidies. Finally, we continued to utilize our zeroing methodology.

On December 15, 2017, the CIT sustained Commerce's application of its zeroing methodology, and the SV for labor in the *First Remand Results*.⁷ However, the Court again remanded the *First Remand Results* for Commerce to reconsider the SV for whole raw garlic bulbs and the selection of surrogate financial statements.⁸ Per the Court's instructions, Commerce recalculated Xinboda's rate using only the contemporaneous grade A bulb prices

⁵ See "Final Results of Redetermination Pursuant to Remand, Shenzhen Xinboda Industrial Co., Ltd. v. United States, Court of International Trade No. 11-00267, Slip Op. 14-45," dated August 14, 2014 (*First Remand Results*).

⁶ *Id.* at 6.

⁷ See Shenzhen Xinboda Industrial Co. v. United States, CIT Slip Op. 17-166, Consol. Ct. No. 11-00267 (December 15, 2017) (*Second Remand Opinion*).

⁸ See *Second Remand Opinion* at 4.

from the Azadpur data. In addition, as directed by the Court, Commerce adjusted the surrogate bulb value in order to reflect the expenses associated with intermediaries and further processing of the garlic bulb. Moreover, Commerce continued to apply financial ratios derived from the 2010 unconsolidated financial statements of Tata Tea, after further explaining our practice regarding the “reason to believe or suspect” standard for countervailable subsidies in financial statements.⁹ The calculations performed in the *Second Remand Results* resulted in a weighted-average dumping margin of \$0.00 per kilogram for Xinboda.

On January 30, 2019, the CIT sustained Commerce’s *Second Remand Results* with respect to the fifteenth administrative review of the AD order on fresh garlic from China.¹⁰

Timken Notice

In its decision in *Timken*,¹¹ as clarified by *Diamond Sawblades*,¹² the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(e) of the Act, Commerce must publish a notice of a court decision that is not “in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s January 30, 2019, final judgment sustaining the *Second Remand Results* constitutes a final decision of the Court that is not in harmony with Commerce’s *Final Results*.¹³ This notice is published in fulfillment of the *Timken* publication requirements.

Amended Final Results

Because there is now a final court decision, we are amending the *Final Results* with respect to the dumping margins calculated for Xinboda. Based on the *Second Remand Results*,

⁹ See Memorandum, “Final Results of Redetermination Pursuant to Remand: Fresh Garlic from the People’s Republic of China, Shenzhen Xinboda Industrial Co., Ltd. v. United States, U.S. Court of International Trade, Consol. Ct. No. 11-00267, Slip Op. 17-166,” dated April 24, 2018 (*Second Remand Results*).

¹⁰ See *Shenzhen Xinboda Industrial Co., Ltd. v. United States*, CIT Slip Op. 19-16, Consol. Ct. No. 11-00267 (January 30, 2019) (Slip Op. 19-16).

¹¹ See *Timken Co. v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

¹² See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

¹³ See *Final Results*.

as affirmed by the CIT, the revised dumping margin for Xinboda, for the period of review of November 1, 2008, through October 31, 2009, is \$0.00 per kilogram.

Accordingly, Commerce will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. In the event the CIT's ruling is not appealed or, if appealed, upheld on appeal, Commerce will instruct U.S. Customs and Border Protection to liquidate the unliquidated entries of subject merchandise based on the revised dumping margin above.

Cash Deposit Requirements

Commerce will not update the cash deposit requirements for Xinboda as it has later-determined rates from subsequent administrative reviews.

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: February 11, 2019.

Christian Marsh,

Deputy Assistant Secretary

for Enforcement and Compliance.

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