

Fresh Garlic Producers Association, et. al. v. United States
Consol. Court No. 07-00407 (October 8, 2008)

FINAL RESULTS PURSUANT TO REMAND

SUMMARY

On October 8, 2008, the U.S. Court of International Trade (“Court”) granted the request of the Department of Commerce (“Department”) for a voluntary remand in the above-referenced proceeding. See Fresh Garlic Producers Association, et. al. v. United States, Consol. Court No. 07-00407 (October 8, 2008) (“Remand Order”). This Remand Order concerns the Department’s final results of the new shipper reviews of the antidumping duty order on fresh garlic from the People’s Republic of China. See Fresh Garlic From the People’s Republic of China: Final Results of the Eleventh New Shipper Reviews, 72 FR 54896 (September 27, 2007) and accompanying Issues and Decision Memorandum (“Final Results”).

The Court granted the Department’s request for a voluntary remand to “reevaluate its calculation of the surrogate value for raw garlic bulb, based upon the existing record data.” See Remand Order.

The Department has reconsidered the surrogate value for raw garlic bulb used in the Final Results and, based on information on the record, is no longer averaging grades “A” and “Super A” for the garlic bulb surrogate value. The garlic bulb surrogate value is now based solely on data from “Super A.”

BACKGROUND

On September 27, 2007, the Department published the final results of the new shipper reviews of the antidumping duty order on fresh garlic from the People’s Republic of China. See Final Results. 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”) subsequently challenged the raw garlic bulb surrogate value used in the Final Results before the Court. On July 11, 2008, the Department filed a partial consent motion for a voluntary remand. On October 8, 2008, the Court granted the Department’s motion for a voluntary remand of the Final Results. On December 1, 2008, the Department provided the draft remand redetermination (“Draft Remand”) to the interested parties. On December 10, 2008, respondent Shenzhen Xinboda Industrial Co., Ltd. (“Xinboda”) submitted comments on the Draft Remand. No other party submitted comments on the Draft Remand.

ANALYSIS

In the Final Results, the Department used the raw garlic bulb values from Azadpur Agricultural Produce Marketing Committee (“APMC”) market information bulletin to calculate the normal value. See Final Results at Comment 1.A. The APMC bulletin includes values for various grades of garlic bulbs including, among others, grades “A” and “Super A.” Id. The evidence on the record established that grade “A” garlic bulbs had diameters measuring between 40 millimeters and 55 millimeters, while “Super A” bulbs had diameters measuring 40 millimeters and greater. Id. In the Final Results, the Department used an average of both grade “A” and “Super A” to value respondents’¹ raw garlic bulb factors of production, without considering all the record evidence pertaining to the diameters of respondents’ raw garlic bulbs.

In reviewing the underlying facts on the record, the Department determines that the information provided in the verification reports for each of the four respondents was not properly

¹ The respondents are: Shandong Wonderland Garlic Industry Co., Ltd., Jinxiang Tianma Freezing Storage Co., Ltd., Weifang Hongqiao International Logistics Co., Ltd., and Xinboda.

analyzed for purposes of the Final Results.² Consequently, the Department determined that it did not select the most appropriate surrogate value for each respondent’s raw garlic bulb because the record shows that all four respondents produced garlic sold to the United States from raw garlic bulb of sizes in excess of 55 millimeters. Therefore, using only the APMC’s grade “Super A” raw garlic bulb prices is the most appropriate surrogate value for raw garlic bulbs and results in a more accurate margin. Because the respondents’ raw garlic inputs exceed 55 millimeters in diameter, as verified by the Department, the use of grade “A” values is inappropriate in this case. The difference in margins for all four respondents is listed below:

Company Name	Final Results Margin	Remand Margin
Jinxiang Tianma Freezing Storage Co., Ltd.	21.79 %	29.12 %
Shandong Wonderland Garlic Industry Co., Ltd.	17.31 %	23.92 %
Weifang Hongqiao International Logistics Co., Ltd.	18.56 %	25.32 %
Shenzhen Xinboda Industrial Co., Ltd.	0.00 (<u>de minimis</u>)	3.00 %

COMMENTS FROM INTERESTED PARTIES

Xinboda disagrees with using only the APMC’s grade “Super A” raw garlic bulb prices to value its raw garlic bulb input. Xinboda argues that because the definitions for “A” and “Super A” overlap – 40 to 55 millimeters and 40 millimeters and greater, respectively, and Xinboda’s garlic inputs were [] centimeters in diameter, the Department should continue to average both grades to value its raw garlic bulbs. Xinboda argues that the Department placed an

² See Memorandum to the File from Irene Gorelik, Case Analyst through Alex Villanueva, Program Manager; Fresh Garlic from the People’s Republic of China (“PRC”): Verification of Sales and Factors of Production for Shandong Wonderland Garlic Industry Co., Ltd., dated April 23, 2007 at page 7; Memorandum to the File from Irene Gorelik, Case Analyst through Alex Villanueva, Program Manager; New Shipper Review of Fresh Garlic from the People’s Republic of China (“PRC”): Verification of Sales and Factors of Production for Jinxiang Tianma Freezing Storage Co., Ltd. dated April 23, 2007, at page 18; Memorandum to the File from Javier Barrientos, Senior Case Analyst Analyst through Alex Villanueva, Program Manager; New Shipper Review of Fresh Garlic from the People’s Republic of China: Verification of Weifang Hongqiao International Logistics Co., Ltd. and Jinxiang Dingtai Garlic Product Co., Ltd. dated April 23, 2007, at page 13; and Memorandum to the File from Javier Barrientos, Senior Case Analyst Analyst through Alex Villanueva, Program Manager; New Shipper Review of Fresh Garlic from the People’s Republic of China: Verification of Shenzhen Xinboda Industrial Co., Ltd. and Zhengzhou Dadi Garlic Industry Co., Ltd. dated April 23, 2007, at page 10.

inordinate amount of weight on the statement in the verification report regarding its raw garlic bulb input given that its Section D questionnaire response identified the raw garlic input as [] centimeters. Therefore, Xinboda argues that the Department did not overlook any record evidence with respect to Xinboda's raw garlic bulb input and properly averaged both categories to value its raw garlic bulb input in the Final Results.

In addition, Xinboda argues that the overlap in definitions was modified in the subsequent reviews so that they are now distinguishable. According to Xinboda, in subsequent reviews the Department also collected more detailed information from the respondents regarding their specific garlic bulb sizes and this information became a standard part of the respondents' factors of production databases. Xinboda argues that the Department did not modify the definition of "Super-A" and "A" in this review or collect this additional information as it did in subsequent reviews and, therefore, cannot seek to distinguish them now. Finally, Xinboda notes that even if the Department were able to create distinguishable definitions of the two grades in this review, the margin calculation for Xinboda would not change because Xinboda reported that its garlic sold to the United States is between [] centimeters in diameter and, therefore, the average of both categories should be used to value its raw garlic bulb input. Thus, Xinboda argues that the decision to use an average of the "A" and "Super A" surrogate values was appropriate and should not be changed in the final remand results.

Department's Position:

First, we hereby clarify that this remand is not concerned with the size of garlic sold to the United States, but the size of the raw garlic bulb used to produce the subject merchandise. It

is apparent from Xinboda's comments, and a review of the Draft Remand and the Final Results³, that the size of the raw garlic bulb input and the size of the garlic sold were incorrectly used interchangeably. We agree with Xinboda that all the evidence on the record should have been considered, including a chart that Xinboda submitted with its Section D questionnaire response. The chart attached to Xinboda's Section D questionnaire response of August 21, 2006, identifies the garlic farmers that supplied Xinboda with the raw garlic bulb inputs during the POR and this chart clearly indicates that all sizes used during the POR were [] centimeters. Therefore, when considering the statement made by the company officials at verification in conjunction with the Section D questionnaire chart, it is clear that Xinboda used raw garlic bulbs that were of at least the [] centimeters size.

In addition to the questionnaire responses cited by Xinboda, we have again reviewed the July 2007 Foreign Market Research Report that provides clarification on the size ranges of Grade A and Grade Super-A. Specifically, we note that the July 2007 Foreign Market Research Report states that: "garlic with bulb sizes above 50 mm would most likely be one of the newer clonal varieties classified as 'Super A', and bulb sizes above 55 mm would invariably be one of the newer clonal varieties classified as 'Super A.'" Petitioners' July 11, 2007, Factor Values Supplemental Questionnaire Response, at Attachment 1 (page 5). We have concluded that a more accurate analysis would be for the Department to use only Grade Super-A values for reported bulb sizes in ranges of 55 mm and above because bulb sizes that are 55 mm and above are typically classified as Grade Super-A.

³ In the Final Results, we stated that "the garlic {that} entered into the United States by respondents during the POR is greater than 40mm," however, as discussed above, the size of garlic sold to the United States is not directly relevant in determining the appropriate surrogate value for the raw garlic bulb input.

Xinboda also argues that in subsequent reviews the Department collected additional data from the respondents that allowed the Department to more specifically select between the “A” and “Super-A” surrogate values. While Xinboda is correct that in recent reviews the Department now collects bulb size as part of the factors of production database, in this review, the record does contain Xinboda’s input bulb sizes, albeit not in the factors of production database. On August 21, 2006, in its Section D questionnaire response, Xinboda provided a chart which identifies the input bulb sizes from each garlic farmer that supplied Xinboda during the POR. See Xinboda’s August 21, 2006 Questionnaire Response, at Exhibit 2. According to this chart, all sizes purchased from the garlic farmers during the POR were [] centimeters. This information and the market research report that defines “Super-A” as greater than or equal to 5.5 centimeters, support our determination to value Xinboda’s raw garlic bulbs using only the “Super-A” surrogate data.

Next, Xinboda appears to argue that even if the Department were to distinguish between grades “A” and “Super A”, Xinboda sold garlic to the United States that ranged from [] centimeters and, therefore, an average of grades “A” and “Super A” is still the appropriate surrogate value. However, as clarified above, this remand addresses the valuation of the raw garlic bulb input, and not the size of the product sold to the United States during the POR. Therefore, the size of the garlic sold in the United States is not relevant in determining whether it is more accurate to average the “A” and “Super A” grades.

After considering Xinboda’s comments to our Draft Remand, we find that the record continues to support a conclusion that Xinboda used at least [] centimeter garlic bulbs to produce the subject merchandise sold to the United States during the POR. As a result, because grade “A” does not contain data for bulbs beyond 5.5 centimeters, and Xinboda’s bulb inputs

were of sizes at least as large as [] centimeters, we find that it is more accurate to use only the “Super A” raw garlic bulb prices.

FINAL REMAND CONCLUSION

After considering the comments submitted by Xinboda, we continue to determine that the record establishes that a more accurate margin for all four respondents results from using only grade “Super A” prices to value raw garlic bulb. We continue to find that using only grade “Super A” prices, rather than an average of “A” and “Super A” grades of garlic bulb, better reflects the size of garlic bulb entered into the United States by each of the four respondents. Therefore, we find that it is appropriate to recalculate the normal value for each respondent to obtain the most accurate dumping margin calculation.

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

Date