



## U.S. Customs and Border Protection

### **PUBLIC VERSION**

July 12, 2019

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This letter is to inform you that U.S. Customs and Border Protection (“CBP”) has commenced a formal investigation of IPC International, Inc. (“IPC”) under Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, commonly referred to as the Enforce and Protect Act (“EAPA”). Specifically, CBP is investigating whether IPC has evaded antidumping duty (“AD”) order A-570-831<sup>1</sup> on Fresh Garlic from the People’s Republic of China by entering into the United States fresh garlic of Chinese-origin (“covered merchandise”) and claiming a low cash deposit rate to which IPC’s imports of covered merchandise are not entitled. Because evidence establishes a reasonable suspicion that IPC has entered covered merchandise into the United States through evasion, CBP has imposed interim measures.

### **Period of Investigation**

Pursuant to 19 C.F.R. § 165.2, entries covered by an EAPA investigation are those “entries of allegedly covered merchandise made within one year prior to the receipt of an allegation ....” Entry is defined as an “entry for consumption, or withdrawal from warehouse for consumption of merchandise in the customs territory of the United States.” *See* 19 C.F.R. § 165.1. The Fresh Garlic Producers Association (“FGPA”) filed the allegation on December 18, 2018, and supplemented that allegation on February 27, 2019.<sup>2</sup> CBP acknowledged receipt of the properly filed allegation against IPC on March 18, 2019.<sup>3</sup> As such, the entries covered by the investigation are those entered for consumption, or withdrawn from warehouse for consumption, from March 19, 2018, through the pendency of this investigation. *See* 19 C.F.R. § 165.2.

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<sup>1</sup> *See* Antidumping Duty Order: Fresh Garlic from the People’s Republic of China, 59 FR 28,462 (Nov. 16, 1994).

<sup>2</sup> *See* FGPA’s EAPA Allegation, dated December 18, 2018 (“Allegation”) and supplemental allegation, dated February 27, 2019 (“Supplemental Allegation”).

<sup>3</sup> *See* email from CBP dated, March 18, 2019 acknowledging receipt of FGPA’s allegation.

## **Initiation**

On April 8, 2019, the Trade Remedy Law Enforcement Directorate (“TRLED”) within the CBP Office of Trade initiated an EAPA investigation as the result of an allegation submitted by FGPA. FGPA alleges that IPC evaded AD order A-570-831 on fresh garlic from China by claiming a lower AD rate when entering the merchandise into the United States. A more detailed description of the alleged evasion scheme follows below.

### *Description of the Alleged Evasion Scheme*

IPC states that it imports garlic that is produced in China by Jinxiang Zhongtian Business Company (“Zhongtian”) and then exported from China by Shijiazhuang Goodman Trading Company (“Goodman”). On remand from the Court of International Trade’s (CIT) decision in *Shijiazhuang Goodman Trading Co. v. United States*, 227 F. Supp. 3d 1343 (Ct. Int’l Trade 2017), the U.S. Department of Commerce calculated for Zhongtian and Goodman a “combination rate” of 8 cents per kilogram instead of the China-wide rate of \$4.71 per kilogram under A-570-831. IPC claims that its imports of fresh garlic are produced by Zhongtian and exported by Goodman and thus IPC is entitled to the lower combination rate.

However, FGPA alleges that not all of the garlic exported by Goodman and imported by IPC comes from Zhongtian. According to FGPA’s allegation, Zhongtian lacks the requisite capacity to produce all of the garlic exported by Goodman to IPC;<sup>4</sup> therefore, at least some of the garlic must come from a source other than Zhongtian. According to publically available customs data published by the General Administration of Customs of the People’s Republic of China (“GACC”), Goodman exports both peeled and whole-bulb garlic.<sup>5</sup> Upon entry into the United States, IPC claims the combination rate for both types of garlic.

FGPA alleges that IPC’s peeled garlic is not eligible for the combination rate, because it is not produced by Zhongtian. As evidence, FGPA contends that Zhongtian lacks the capacity to produce covered merchandise at the volume claimed by Goodman in its exports for IPC. Specifically, an order from the Jinxiang County Environmental Protection Bureau in Shandong County, China states that Zhongtian’s equipment is only capable of producing 2,000 metric tons of fresh garlic per year, while GACC records indicate that Goodman exports four times that amount.<sup>6</sup> Therefore, approximately 75% of the peeled garlic exported from China by Goodman and imported into the United States by IPC must come from a source other than Zhongtian and is thus ineligible for the producer-exporter combination rate claimed by IPC. FGPA alleges that IPC is not entitled to the lower combination rate and thus is evading the fresh garlic AD order on their imports of covered merchandise.

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<sup>4</sup> See Allegation, at 9-10.

<sup>5</sup> *Id.*, at Exh. 10.

<sup>6</sup> *Id.*, at 14-15, Exh. 10-11

### *Discrepancies Resulting from Review of Documents Provided*

On June 1, 2019, IPC responded to two CF-28 requests from CBP, regarding Entries [ ]8127 and [ ]8411.<sup>7</sup> As discussed below, CBP has found that inconsistencies in these responses reinforce the allegations made by FGPA and create reasonable suspicion that IPC has evaded AD on covered merchandise.

In its allegation, the FGPA cited documents that undermined Zhongtian's purported production capacity. Goodman declared [ ] metric tons of fresh garlic exports to GACC, which IPC imported into the United States. However, records produced by local Chinese authorities and by the CF-28 response from IPC indicate Zhongtian does not have the capacity to produce this amount of garlic and can only produce a substantially lesser amount. This disparity suggests that not all of the garlic exported by Goodman came from Zhongtian. In export documents filed with GACC, Goodman claimed that from November 1, 2017, through January 31, 2019, Zhongtian produced [ ] tons of fresh garlic or about [ ] tons per month.<sup>8</sup> According to the CF-28 response from IPC, Zhongtian only has a production capacity of [ ] tons per month.<sup>9</sup> This is [ ] tons per month fewer than the totality of exports claimed by Goodman in its export documents. This creates a gap of [ ] tons of garlic unaccounted for over this 15-month period.

More substantially, the Environmental Protection Bureau of Jinxiang County, China assessed in January 2018 that Zhongtian was capable of producing only [ ] tons annually.<sup>10</sup> This is an amount significantly less than the [ ] tons claimed by Goodman and IPC in the 15 months between November 1, 2017 and January 31, 2019. Compared to either the assessment from Jinxiang County or the CF-28 responses provided by IPC, Zhongtian's production capacity appears to be significantly less than the amount claimed by Goodman in exports to IPC. Goodman would then need to be completing its export orders with garlic from a producer other than Zhongtian, rendering the IPC imports ineligible for the combination rate claimed.

Moreover, photographs of Zhongtian facilities provided with the CF-28 response depict clean, pristine equipment and no employees present.<sup>11</sup> Zhongtian is a "primary process[ ]" of fresh garlic which means the company performs the "peeling, cleaning, sterilizing, cooling and etc. {sic}" of fresh garlic purchased locally within China.<sup>12</sup> Photographs of facilities provided with the CF-28 response show the equipment Zhongtian uses to perform these production processes. However, the equipment shown in the photographs is pristinely clean, appearing unused.<sup>13</sup> There is little dirt present in the photographs and no visible "wear and tear" on the machines being used to process the

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<sup>7</sup> See CF-28 responses from IPC regarding entries [ ]8127 and [ ]8411 (June 3, 2018).

<sup>8</sup> See Supplemental Allegation at 3.

<sup>9</sup> See CF-28 at 8.

<sup>10</sup> Zhongtian is a producer of both peeled and whole-bulb fresh garlic, both of which are exported by Goodman to IPC, which then imports both into the United States. The garlic is "peeled" using an air-blasting machine. Fresh garlic from China is subject to the same China-wide rate of \$4.71 per kilogram or the \$0.08 combination rate, regardless of whether it is peeled or whole-bulb. See Allegation at 4.

<sup>11</sup> See CF-28 at Attach. 9.

<sup>12</sup> *Id.* at p.6, Attach. 7.

<sup>13</sup> *Id.* at Attach. 9.

volume of covered merchandise declared for export by Goodman, which is unusual in an environment in which an agricultural product harvested from the soil is processed. Furthermore, no employees are present in the pictures. CBP has identified inconsistencies in the CF-28 response from IPC and in the records provided by the allegor. The volume of garlic that Goodman claimed to have been produced by Zhongtian for export to IPC is substantially more than the amount that Zhongtian appears capable of producing. In addition, it is questionable whether the processing equipment in Zhongtian's facilities has been used. These discrepancies amount to reasonable suspicion that Goodman is completing its exports to IPC with fresh garlic from a producer or producers other than Zhongtian. Because this garlic is not produced by Zhongtian, it would be ineligible for the combination rate of 8 cents per kilogram claimed by IPC upon entry into the United States. Instead, the imports of garlic by IPC would be subject to the China-wide rate of \$4.71 per kilogram. Therefore, we find reasonable suspicion that IPC is effectively evading duties on its imports of covered merchandise in the amount of \$4.63 per kilogram. As a result, CBP will implement the interim measures described below during the pendency of the present investigation.

### **Interim Measures**

As interim measures, CBP is directing that all unliquidated entries of fresh garlic, both peeled and whole-bulb, subject to this investigation that entered the United States as not subject to AD will be rate-adjusted to reflect that they are subject to the AD order on fresh garlic from China and AD cash deposits are owed. Additionally, "live entry" will be required for all future imports by IPC beginning on the date of this notice, meaning that all entry documents and duties must be provided before cargo is released by CBP into U.S. commerce. CBP will reject any entry summaries that do not comply with live entry and require refile of entries that are within the entry summary rejection period; suspend the liquidation for any entry that has entered on or after April 8, 2019, the date of initiation of this investigation; and extend the period for liquidation for all unliquidated entries that entered before that date. See 19 C.F.R. §165.24(b)(1)(i) and (ii). CBP will also evaluate IPC's continuous bond and will require single transaction bonds, as appropriate.

For any future submissions or factual information to CBP pursuant to this EAPA investigation, please provide a business confidential version and public version to CBP, in addition to providing public versions to all parties to this investigation, including Mr. Coursey, counsel for FGPA, at [MCoursey@KelleyDrye.com](mailto:MCoursey@KelleyDrye.com). See 19 C.F.R. §§ 165.4, 165.23(c), and 165.26. Should you have any questions regarding this investigation, please feel free to contact us at [eapallegations@cbp.dhs.gov](mailto:eapallegations@cbp.dhs.gov). Please include "EAPA Case Number 7292" in the subject line of your email. Additional information on this investigation, including the applicable statute and regulations, may be found on CBP's EAPA website, <https://www.cbp.gov/trade/trade-enforcement/tftea/enforce-and-protect-act-eapa>.

Sincerely,

*Africa R. Bell*

Africa R. Bell  
Acting Director, Enforcement Operations Division  
CBP Office of Trade