



## U.S. Customs and Border Protection

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### **PUBLIC VERSION**

EAPA Case Number: 7292

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### **Re: Notice of Final Determination as to Evasion**

Pursuant to an examination of the record in Enforce and Protect Act (EAPA) Investigation Number 7292, U.S. Customs and Border Protection (CBP) has determined that there is substantial evidence that IPC International, Inc. (IPC) entered merchandise covered by antidumping duty (AD) order A-570-831<sup>1</sup> into the customs territory of the United States through evasion. Substantial evidence demonstrates that IPC imported fresh garlic from the People's Republic of China (China) into the United States under a significantly lower AD duty rate than the applicable cash deposit rate. As a result, insufficient AD cash deposits were applied to the merchandise.

### **Background**

On December 18, 2018, the Fresh Garlic Producers Association (FGPA) filed an allegation against IPC, which it later supplemented on February 27, 2019.<sup>2</sup> CBP acknowledged receipt of the properly filed allegation on March 18, 2019.<sup>3</sup> 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 the allegation submitted by FGPA. FGPA contends that IPC evaded AD order A-570-831 on fresh garlic from China by claiming a lower AD rate, to which it was not entitled, when entering the merchandise into the United States, thereby reducing the amount of AD cash deposits

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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.

collected by CBP.

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 (Commerce) calculated a substantially reduced "combination rate" on fresh garlic both produced in China by Jinxiang Zhongtian Business Company (Zhongtian) and exported by Shijiazhuang Goodman Trading Company (Goodman). This combination rate amounts to \$0.08 cents per kilogram instead of the China-wide rate of \$4.71 per kilogram otherwise prescribed by A-570-831. Since the end of 2017, IPC has entered fresh garlic from China under this combination rate of \$0.08 per kilogram, claiming the merchandise was produced by Zhongtian and exported by Goodman.<sup>4</sup>

Zhongtian has produced or continues to produce three types of garlic: peeled, whole bulb, and clove. Garlic clove is produced by separating, but not peeling, cloves from the bulb. Peeled garlic is the result of separating cloves from the bulb and peeling them. Whole bulb garlic remains in one piece and is not separated from the bulb.

FGPA contends that IPC's peeled garlic is not eligible for the combination rate because it is not all produced by Zhongtian. To support its claim, FGPA contends that Zhongtian lacks the capacity to produce covered merchandise at the volume exported by Goodman and imported by IPC. As evidence in its allegation, FGPA proffered an order from the Jinxiang County Environmental Protection Bureau (JCEPB) in Shandong Province, China which states that as of January 2018, Zhongtian's equipment is only capable of producing [ ] metric tons (MT) of garlic per year.<sup>5</sup> Conversely, publicly available customs data published by the General Administration of Customs of the People's Republic of China indicates that Goodman exported almost double that amount in the 12 months between February 2018 and January 2019, an amount significantly larger than the amount assessed by JCEPB.<sup>6</sup>

As part of the EAPA investigatory process, CBP issued a Customs Form 28 (CF-28) questionnaire on May 4, 2019, and IPC responded on June 1, 2019.<sup>7</sup> The discrepancy in garlic production, along with photographs in the CF-28 of Zhongtian's processing equipment, which depicted pristine, apparently unused equipment, created reasonable suspicion that Goodman was exporting subject merchandise from producer(s) other than Zhongtian, yet claiming the combination rate applicable to only garlic produced by Zhongtian.<sup>8</sup> As a result, CBP implemented Interim Measures against IPC on July 8, 2019.<sup>9</sup>

On July 29, 2019, in response to the NOI, IPC provided additional information from the JCEPB and other sources to assert that JCEPB "misstate{d}" Zhongtian's production capacity, as the JCEPB subsequently stated that Zhongtian is capable of producing 11,000 tons of fresh garlic a

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<sup>4</sup> See Allegation at 8.

<sup>5</sup> See Allegation at Exhibit 11.

<sup>6</sup> See Supplemental Allegation at 3.

<sup>7</sup> See IPC's Response to CF-28, dated June 1, 2019.

<sup>8</sup> See Notice of initiation of an investigation and interim measures taken as to IPC concerning evasion of the antidumping duty order on Fresh Garlic from the People's Republic of China (NOI), dated July 12, 2019, at 3.

<sup>9</sup> *Id.* at 4.

year at its facility.<sup>10</sup> To rebut IPC's claims, on August 8, 2019, FGPA provided an affidavit from [

] (Declarant 1).<sup>11</sup> Declarant 1 contends that Zhongtian is too small and too inexperienced to produce the volume of garlic exported by Goodman.<sup>12</sup> The affidavit also clarified that the JCEPB merely gave Zhongtian approval to produce 11,000 tons of garlic and stated that this approval does not necessarily equate to capacity to do so. In Declarant 1's professional opinion, [ ] square meters at Zhongtian's facility is not sufficient space to produce even half that amount.

In the August 8, 2019, submission, FGPA also alleged that Zhongtian is commingling finished garlic from another supplier, [ ]. In support of this claim, FGPA provided a video recording and affidavit from [ ].<sup>13</sup> He declared that he video-recorded a delivery of fresh peeled garlic to Zhongtian from [ ] that took place the night of May 31, 2019, to June 1, 2019. FGPA provided a copy of this video with the affidavit from [ ]. FGPA also included an affidavit from [ ], wherein he explained that he is an outsourced garlic peeler processor and claimed that [ ] of Zhongtian pays him for garlic peeling processing.<sup>14</sup> In support of his claim, [ ] submitted bank statements showing transfers from [ ].<sup>15</sup>

On September 19, 2019, to further challenge FGPA's assertions in its allegation against IPC, IPC placed information from Goodman on the record.<sup>16</sup> In reference to the delivery from [ ] to Zhongtian discussed above, Goodman proffers an affidavit from [ ], the driver of the delivery truck.<sup>17</sup> The driver declares that he was actually making a delivery to a different company, [ ], and that the alleged falsified the information provided to CBP, but does not explain or prove how.

FGPA filed its last voluntary submission of factual information on October 25, 2019, the factual information deadline for this investigation.<sup>18</sup> The submission included a photo of [ ] production facility and videos from [ ] (Declarant 2) showing finished garlic produced therein and labeled with the Goodman logo.<sup>19</sup> Goodman states that it only purchases garlic from Zhongtian, and only exports Zhongtian garlic to IPC. Declarant 2 alleges that Zhongtian sells [ ]-produced finished garlic to Goodman so that [ ] can receive a lower rate.<sup>20</sup> Finally, FGPA provided "pre-verification" comments to CBP on November 6, 2019, but this submission came subsequent to the factual information deadline, and thus, will not be considered part of the official record of this EAPA proceeding.

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<sup>10</sup> See IPC, *et. al's* Request for Modification of Interim Measures, dated July 29, 2019, at 3.

<sup>11</sup> See FGPA's Submission of Rebuttal Information, dated August 8, 2019, at Exhibit 5.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*, at Exhibits 1-2.

<sup>14</sup> *Id.*, at Exhibit 3.

<sup>15</sup> *Id.*

<sup>16</sup> See Goodman's Information to Negate Allegation, dated September 19, 2019.

<sup>17</sup> *Id.*, at Exhibit 1.

<sup>18</sup> See FGPA's Voluntary Submission of Factual Information, dated October 25, 2019.

<sup>19</sup> *Id.*, at Exhibits 5-6.

<sup>20</sup> *Id.*, at Exhibit 1.

During the week of November 11, 2019, and pursuant to 19 CFR 165.25(a), the CBP investigative team visited both Zhongtian's and Goodman's facilities in China to verify production, RFI responses, and other relevant information as appropriate.<sup>21</sup> CBP released the findings of these verification visits to the parties on December 19, 2019.<sup>22</sup> On January 6, 2020, interested parties submitted written arguments for this investigation, followed by rebuttal comments on January 21, 2020, completing the case record for this investigation.<sup>23</sup>

### **Final Determination as to Evasion**

In accordance with 19 U.S.C. 1517(c)(1)(A), to reach a final determination as to evasion, CBP must "make a determination, based on substantial evidence, with respect to whether such covered merchandise entered into the customs territory of the United States through evasion." Evasion is defined as "the entry of covered merchandise into the customs territory of the United States for consumption by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material, and that results in any cash deposit or other security of any amount of applicable antidumping or countervailing duties *being reduced* or not being applied with respect to the merchandise" (emphasis added).<sup>24</sup> Thus, CBP must reach a determination as to whether merchandise subject to an AD/CVD order was entered into the United States by the importer and such entry was made by a material false statement or act or material omission that resulted in the reduction or avoidance of applicable AD/CVD cash deposits or other security.

During the period of investigation (POI), which started on March 19, 2018, IPC entered fresh garlic into the United States, declaring that all such merchandise was produced by Zhongtian and exported from China by Goodman. Instead of the \$4.71 per kilogram duty rate established for the China-wide entity under A-570-831, IPC claimed that its imports of fresh garlic were entitled to a lower combination rate of \$0.08 per kilogram applicable to fresh garlic produced by Zhongtian and exported from China by Goodman. The factual record of this investigation provides substantial evidence that at least some of the merchandise entered by IPC was not produced by Zhongtian and therefore should have been entered at the duty rate of \$4.71 per kilogram. In the aggregate, this resulted in the loss of tens of millions of dollars in AD duties to the U.S. government.

Substantial evidence of evasion compiled during this investigation includes evidence of commingling of products from another garlic producer, the discoveries made during Zhongtian's site verification visit, the gap between Zhongtian's production capacity and IPC's imports, and material inconsistencies in statements within Zhongtian and between Zhongtian and Goodman. Individually and in total, these factors create more than substantial evidence that IPC paid AD

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<sup>21</sup> See CBP's Engagement Letter to Ed Lebow, Counsel for Shijiazhuang Goodman Trading Company and Jinxiang Zhongtian Business Company, dated November 4, 2019, at 4 (Engagement Letter).

<sup>22</sup> See CBP's On-Site Verification Report for Enforce and Protect Act Case 7292, dated December 19, 2019 (Verification Report).

<sup>23</sup> See IPC's and FGPA's Final Written Arguments, dated January 6, 2020.

<sup>24</sup> See 19 CFR 165.1.

cash deposits that were \$4.63 per kilogram less than it should have paid, through material false statements that all covered merchandise was produced by Zhongtian.

### Site Verification and Actual Production

To confirm Zhongtian's production during the POI and record responses, CBP deployed a site verification team during the week of November 11, 2019, under 19 CFR 165.25(a).<sup>25</sup> As early as August 2019, both Goodman and Zhongtian, specifically invited CBP to visit and inspect their facilities in China in order to confirm production and export capacities.<sup>26</sup> In November 2019, CBP provided all parties with official notification of the visit.<sup>27</sup> Moreover, parties to an EAPA investigation are aware of the potential for site visits to confirm RFI responses and other information, according to 19 CFR 165.25(a). Once on site, CBP reiterated its specific requirements to Zhongtian and its attorneys in-person, and provided instructions to Zhongtian with specific guidance as to what documents were required and already requested in the Engagement Letter.

In the Engagement Letter, CBP notified IPC, Goodman, and Zhongtian, through their attorney, that a CBP verification team would visit Goodman and Zhongtian facilities in China during the week of November 11, 2019.<sup>28</sup> Furthermore, the letter requested access to all “[o]riginal company records and other source documentation used to prepare any part of” their responses to RFI as well as access to “respondents’ database(s) and accounting system(s)” and “personnel who are knowledgeable about the data in the responses.”<sup>29</sup> Finally, the Engagement Letter instructed recipients to prepare to walk the CBP team through their production process in detail using five invoices and specific supporting documents enumerated in the letter.<sup>30</sup> CBP selected five invoices from the RFI responses submitted by Zhongtian and Goodman, and specified its selections for Zhongtian and Goodman in the Engagement Letter. In the Engagement Letter, CBP also requested original documentation supporting those invoices, to include *inter alia* bills of materials, purchase orders, invoices, transportation and shipping records, and inventory records, specific to each invoice. Each invoice and its original supporting documents comprises a sales and production trace package.

Despite the three-months of notice before the verification visit and assistance from the CBP team during the visit, Zhongtian was unable to demonstrate the validity of the data in its responses or to provide all of the requested supporting documentation for its whole bulb, clove, or peeled garlic production in a timely manner during the verification.<sup>31</sup> Overall, the CBP team was unable to verify the amount of actual production by Zhongtian during the POI. In addition, the team identified several other material inconsistencies that contribute to substantial evidence of evasion per 19 CFR 165.27(a).

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<sup>25</sup> See CBP's Engagement Letter to Ed Lebow, Counsel for Shijiazhuang Goodman Trading Company and Jinxiang Zhongtian Business Company at 1, dated November 4, 2019 (Engagement Letter).

<sup>26</sup> See Goodman's Invitation Letter to CBP and Zhongtian's Invitation Letter to CBP, both dated August 20, 2019.

<sup>27</sup> See Engagement Letter.

<sup>28</sup> *Id.*, at 1.

<sup>29</sup> *Id.*, at 1-2.

<sup>30</sup> *Id.*, at 2.

<sup>31</sup> See Verification Report.

On the first day of verification, the CBP team arrived at Zhongtian to discover that the requested sales and production trace packages (trace packages) were fatally deficient and notified company officials and their counsel that the five trace packages were substantially incomplete.<sup>32</sup> Zhongtian did not provide documentation to support the purchases and payments for any of the non-garlic raw material inputs into the production process (*i.e.*, boxes, labels, tape, chemicals, mesh bags, bottles, *etc.*).<sup>33</sup> In addition, not all of the sales records and payments for the raw material garlic were provided, nor were all of the raw material and finished goods warehouse in and out slips for the inputs provided.<sup>34</sup> Zhongtian officials also said they were not able to provide a bill of materials.<sup>35</sup>

In some instances, Zhongtian provided “samples” or “examples” of some documents requested by CBP, but the trace packages presented to CBP did not provide all of the documents required to trace raw material purchases into production and then to trace the finished goods produced to export sales.<sup>36</sup> Zhongtian also did not provide complete labor records. Specifically, Zhongtian did not provide timecards or records of signatures of employees who reported to work. Additionally, there was no documentation supporting the cash dispersion payments to the employees. Upon discovering this on the first day, the CBP team notified Zhongtian immediately that it had not adequately prepared all the documentation requested by CBP in the Engagement Letter.<sup>37</sup> By doing so, the CBP team provided the opportunity to the company to complete the trace packages during the onsite verification.

Despite the deficiencies in the trace packages, CBP nonetheless attempted to trace one export sale to production.<sup>38</sup> However, CBP was unable to determine production quantity in this manner. Therefore, upon the recommendation of Zhongtian’s attorney, the CBP team agreed to attempt to verify production quantities during the POI using the production values and quantities in the monthly inventory sub-ledger.<sup>39</sup> However, when the company presented CBP with monthly production data for whole bulb garlic, the CBP team found numerous inconsistencies in the data, including [redacted].<sup>40</sup> Zhongtian officials were eventually able to explain these [redacted], but there was no time remaining for the CBP team to tie the monthly sub-ledger summaries to any production, sales, and/or labor documents kept in the normal course of business.<sup>41</sup> As a result, CBP team was also unable to verify in this manner the amount of actual production by Zhongtian during the POI.<sup>42</sup>

IPC argues that because “Zhongtian engages in continuous production of garlic, {i}t cannot and does not produce to individual purchase orders from Goodman... Therefore, the fact that ‘the

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<sup>32</sup> *Id.*, at 8.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*, at 8-9.

<sup>35</sup> A bill of materials is a comprehensive inventory of the raw materials, sub-assemblies, intermediate assemblies, sub-components, parts and components, and the quantities of each needed to manufacture an end product.

<sup>36</sup> *See* Verification Report at 8-9.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*, at 9-11 and Exhibit 4.

<sup>39</sup> *Id.*, at 11.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*, at 11-12.

<sup>42</sup> *Id.*, at 12.

CBP team determined that reviewing the walk-through transaction<sup>43</sup> at the sales trace (micro) transactional level was not feasible’ {and} was the result of the structure of Zhongtian’s business and not an indication of any lack of cooperation on the part of Zhongtian.... Zhongtian provided documents maintained in its normal course of business.”<sup>44</sup> However, in responses to CBP Requests for Information (RFIs), Zhongtian stated that it “manufactures quantities according to orders placed” by Goodman.<sup>45</sup> This statement alone contradicts the claims of continuous production IPC made only after the verification site visit.<sup>46</sup> In addition, IPC did not address the issues the CBP team encountered when it attempted to verify monthly production sub-ledger values.<sup>47</sup>

Moreover, prior to the site visit, CBP specifically requested the trace packages as part of its Engagement Letter directed to Zhongtian and Goodman.<sup>48</sup> In response, Zhongtian provided no indication that meeting CBP’s request would be a problem. As noted above, when the CBP team arrived and Zhongtian’s lack of preparation became clear, the CBP team immediately notified company officials and their legal representatives, then attempted to work with them to try an alternate method of verifying production quantity. Ultimately, due to Zhongtian’s lack of preparation despite prior notification, CBP was unable to confirm Zhongtian’s actual production quantity during the POI.

Further, Zhongtian provided incomplete labor records. Zhongtian did not provide any timecards or records of signatures of employees that reported to work. Additionally, there was no documentation supporting the cash dispersion payments to the employee,<sup>49</sup> *i.e.*, there was no way of verifying whether or not individual workers were actually paid or specifically who was paid for what work performed (Zhongtian workers versus subcontractors)<sup>50</sup>. Thus, CBP was unable to confirm labor, in addition to production, and was unable to verify the number of employees throughout the POI or the lengths of the shifts during the POI.<sup>51</sup>

IPC contends that FGPA’s “allegation was based on an incorrect document issued by” the JCEPB and that documents provided subsequently by IPC “demonstrated that IPC was capable of peeling 11,000 MT per year.”<sup>52</sup> IPC reiterates this argument in its rebuttal to Written Arguments submitted by the Alleger, in attempt to discredit the underlying allegation.<sup>53</sup> As noted above, IPC did indeed place corrective information on the record to claim that the JCEPB had misstated Zhongtian’s authorized production levels. However, as FGPA noted, there is a difference between legally authorized production and the capacity to produce at a certain level.<sup>54</sup> Though the corrective information proffered by IPC suggests it is authorized to produce 11,000

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<sup>43</sup> *I.e.*, trace packages.

<sup>44</sup> See IPC’s Final Written Arguments at 6, dated January 6, 2020.

<sup>45</sup> According to record evidence, Goodman is Zhongtian’s [ ] export customer.

<sup>46</sup> See Zhongtian’s Response to RFI at 8, dated September. 3, 2019.

<sup>47</sup> See IPC’s Final Written Arguments at 6, dated January 6, 2020.

<sup>48</sup> See Engagement Letter.

<sup>49</sup> See Verification Report at 9.

<sup>50</sup> *Id.*, at 4.

<sup>51</sup> *Id.*, at 6.

<sup>52</sup> See IPC’s Final Written Arguments at 2, dated January 6, 2020.

<sup>53</sup> See IPC’s Response to FGPA Comments at 1-2, dated January 21, 2020.

<sup>54</sup> See FGPA’s Submission of Rebuttal Information, dated August 8, 2019, at Exhibit 5.

tons per year, the results of the CBP site verification and evidence submitted by the Alleger indicate Zhongtian cannot or does not produce at that level.

IPC additionally argues that the Zhongtian’s inability to provide “full exculpatory evidence” and production records does not rise to substantial evidence of evasion in this matter.<sup>55</sup> IPC argues that “Zhongtian’s verification issues do not constitute substantial evidence of evasion,” because the evidentiary “burden is on the alleger and on CBP.”<sup>56</sup> However, under EAPA, CBP is charged to conduct an investigation and “may require additional information as is necessary, from... {a}n importer who allegedly engaged in evasion {and}... a foreign producer or exporter” under 19 CFR 165.23(a). Further, “CBP may in its discretion verify information... collected under 165.23(a) as is necessary to make its determination” under 19 CFR 165.25. Under 19 U.S.C. 1517(c), CBP is to determine whether covered merchandise is entered through evasion based on substantial evidence on the record.

Here, Zhongtian was unable to provide basic, fundamental documentation onsite at its own premises to support its RFI submissions, despite the Engagement Letter sent prior to and guidance provided during the visit. The attorney for IPC, Goodman and Zhongtian even concedes that Zhongtian “was not able to produce all the requested record... because it did not have such records.” If Zhongtian lacked the records used to write its RFI responses, CBP cannot rely on the accuracy of the RFI response from Zhongtian and its business partners, and this dearth itself is evidence of evasion. In sum, because the CBP team was unable to verify information provided by Zhongtian regarding its actual production levels during the POI, CBP must consider as evidence of evasion Zhongtian’s failure to provide production records.

#### Materially Inconsistent Statements and Evidence of Commingling

In addition to Zhongtian’s failure to substantiate its POI production quantity during the verification, the CBP team identified several material discrepancies regarding the relationship between producer, exporter, and importer as well as discrepancies between RFI responses and facts witnessed on the ground during the site verification. Most notably, discrepancies regarding the relationship between Zhongtian and one of its suppliers provides evidence of commingling. During the on-site verification, the CBP team requested that Zhongtian provide a list of suppliers. The list provided included [ ] suppliers of which [ ] was listed as the [ ] of raw garlic bulb;<sup>57</sup> [ ] was not identified as a raw garlic supplier in the list of suppliers provided while on-site.<sup>58</sup> Prior to the verification, Zhongtian had listed both [ ] as its suppliers of raw garlic in its RFI and Supplemental RFI responses,<sup>59</sup> yet later in the same Supplemental RFI submission, Zhongtian claimed that it stopped purchasing from [ ] prior to the POI.<sup>60</sup>

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<sup>55</sup> See IPC’s Final Written Arguments at 7-8, dated December 6, 2019.

<sup>56</sup> See IPC’s Response to FGPA Comments at 4-5, dated January 21, 2020.

<sup>57</sup> See Verification Report at 10.

<sup>58</sup> See Verification Report at Exhibit 3 for documents reviewed.

<sup>59</sup> See Zhongtian’s Response to Supplemental RFI at 8, dated October 25, 2019.

<sup>60</sup> *Id.*, at 11.

During the verification visit, after the CBP team requested that Zhongtian’s accountant run the accounts payable query and sub-ledger report for [ ], the CBP team observed that Zhongtian made [ ] large purchases from [ ] during the POI.<sup>61</sup> IPC claims that “Zhongtian did not purchase raw garlic from the supplier during {POI}; it merely paid for the garlic during” this time.<sup>62</sup> A review of Zhongtian’s responses to the RFIs belies this claim. Zhongtian provided CBP with two contracts it signed with [ ] for garlic purchases, and both are signed and dated well within the POI, on [ ] and [ ] respectively.<sup>63</sup> It is clear that Zhongtian was still purchasing garlic from [ ] during the POI, despite its protestations to the contrary.

In its RFI response, Zhongtian stated that it “did not purchase fresh whole-bulb garlic in finished form from other producers,” and claims to only have purchased raw garlic from its suppliers, including [ ].<sup>64</sup> However, both videos and affidavits provided by the alleged support the conclusion that Zhongtian purchased finished garlic from [ ] within the POI. During the course of this investigation, the FGPA provided CBP with a video of [ ] delivering processed garlic to Zhongtian under the cover of night.<sup>65</sup> In the same submission, FGPA provided a second affidavit from another garlic producer in the region, [ ], who explained that Zhongtian purchased finished garlic from him and provided bank statements to support his claim.<sup>66</sup> This evidence illustrates a pattern of Zhongtian purchasing processed garlic from [ ] and other suppliers in the region, which it would then sell to Goodman for export to IPC. Commingling finished product from other producers would explain why Zhongtian was unable to provide production records kept in the normal course of business to support Goodman’s export levels during the POI.

Zhongtian has also been inconsistent in defining its relationship with Goodman. As stated above, Commerce, on remand from CIT, issued a precipitously reduced “combination rate” on fresh garlic produced by Zhongtian and imported by Goodman. During interviews, the respective Directors of Zhongtian and Goodman made several contradictory statements to the CBP team regarding their business relationship. When interviewed, [ ] “indicated Goodman never invested money in Zhongtian. The next day, {he} indicated the peeled clove garlic facility was funded by borrowing money from Goodman {and}... the loan was repaid with [ ] in future garlic sales.”<sup>67</sup> Later in the week, the team interviewed the manager and owner of Goodman, [ ] who stated that “Zhongtian used its own money to finance the peeled clove garlic facility.”<sup>68</sup> The attorney for IPC, Goodman, and Zhongtian later clarified, “Goodman did not fund Zhongtian to build its garlic peeling facility {and} payment was never regarded by either party as some of kind loan.”<sup>69</sup> This is exactly what [ ] told the CBP team on November 11, 2019, on the verification’s first day, before he recanted on the second day.

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<sup>61</sup> See Verification Report at 10.

<sup>62</sup> See Respondents’ (IPC, et al.) Comments on VR and Written Argument at 7, dated January 6, 2020.

<sup>63</sup> See Zhongtian’s RFI response at Appx. 3, dated September 3, 2019.

<sup>64</sup> *Id.*, at 20.

<sup>65</sup> See FGPA’s Submission of Rebuttal Information, dated August 8, 2019, at Exhibit 2.

<sup>66</sup> *Id.* at Exhibit 3.

<sup>67</sup> See Verification Report at 4-5.

<sup>68</sup> *Id.*

<sup>69</sup> See IPC’s Final Written Arguments at 2-4, dated January 6, 2020.

Further complicating the story, “Goodman told {CBP} that it prepaid [ ] to Zhongtian for garlic around December 2017,” the same time that Zhongtian was building its peeled garlic facility.<sup>70</sup>

[ ] further contradicted himself when discussing Zhongtian’s use of subcontractors. As with the issue of outside funding, his story changed from the first day of the verification to the second. He stated, “initially that all products are produced in the factory and not outsourced. However, the next day {he} changed his statement and said that there were [ ] sub-contractors that performed approximately [ ] percent of garlic splitting.”<sup>71</sup> Zhongtian’s inconsistency on this point, coupled with its lack of records to support its own production quantities, the dusty state of its whole bulb facilities during verification,<sup>72</sup> and its established purchases from other processors who provide “raw garlic” to them<sup>73</sup> suggests Zhongtian may be commingling its garlic with finished garlic from other processors in Shandong Province. Shandong Province is “the world’s garlic capital” and “produces 80 percent of the world’s garlic exports.”<sup>74</sup> It would thus be very easy for Zhongtian to purchase finished product from [ ] or myriad other producers and processors nearby to supplement production.

### Production Facility Conditions

While touring the whole-bulb processing section of the Zhongtian facility with company officials, the “CBP team noted the warehouse (machine room) had cobwebs and dirt which suggests it had been idle much longer than [ ].<sup>75</sup> This contradicts Zhongtian’s claim that it had ceased all production since the NOI.<sup>76</sup> IPC contends that “cobwebs and dirt observed by the CBP team were on the upward girders outside of the warehouses.... It is perfectly expectable to have a substantial amount of dust on the tables inside the workshop.”<sup>77</sup> As noted above, the team observed cobwebs and thick dust on the tables and scales inside the warehouse as well as in the girders.<sup>78</sup> The CBP Import Specialist accompanying the team estimated this section of the facility had been idle for over a year, well before the NOI, which indicates Zhongtian had not been producing whole-bulb garlic and instead had been receiving finished product from an outside source, making IPC ineligible to claim the combination rate on the fresh garlic it imported from Goodman.

### Conclusions for Final Determination

Pursuant to 19 CFR 165.27(a) and based upon the full record of this investigation, CBP has determined that there is substantial evidence that IPC entered covered merchandise into the United States at a reduced rate through evasion of A-570-831. In sum, Zhongtian failed to support its claimed production during the POI, and as a result it failed to link its production to

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<sup>70</sup> See Verification Report at 5.

<sup>71</sup> *Id.*, at 4.

<sup>72</sup> *Id.*, at 6.

<sup>73</sup> *Id.*, at Exhibits 3 and 5.

<sup>74</sup> See Yuan Yang, *Supply chains: the dirty secret of China’s prisons*, The Financial Times (August 29, 2018).

<sup>75</sup> See Verification Report at 5.

<sup>76</sup> *Id.*

<sup>77</sup> See IPC’s Final Written Arguments at 5, dated January 6, 2020.

<sup>78</sup> See CBP’s Verification Photos, figs. 2-3, dated December 19, 2019.

Goodman's exports to IPC. In addition, the CBP team identified numerous material inconsistencies at verification. Taken together, this creates substantial evidence that IPC has evaded AD order A-570-831 by claiming an unwarranted, lower rate on fresh garlic from China than it should have, resulting in lost revenue.

First, Zhongtian could not support on-site the production levels it claimed on paper; thus, the remainder of IPC's imports must have come from other supplier(s) and should have been subject to the rate of \$4.71 per kilogram AD cash deposit rate prescribed by the Order. Second, Zhongtian has been consistently inconsistent in its statements to CBP regarding its relationships with its suppliers and Goodman. Third, substantial evidence suggests Zhongtian is commingling for export to IPC garlic finished by [ ] and other processors in Shandong Province instead of Zhongtian. Finally, conditions in Zhongtian's whole-bulb production facility indicate it was not in use during the entire time that IPC was claiming the combination rate. Thus, substantial evidence suggests IPC imported without justification covered merchandise into the United States at a lower rate of \$0.08 per kilogram instead of \$4.71 per kilogram as required by A-570-831. As such, CBP finds that IPC entered covered merchandise through evasion of full cash deposits.

#### **Actions Taken Pursuant to the Affirmative Determination of Evasion**

In light of CBP's determination that IPC entered merchandise into the customs territory of the United States through evasion, and pursuant to 19 U.S.C. 1517(d) and 19 CFR 165.28, CBP will continue to suspend the liquidation for any entry that has entered on or after April 8, 2019, the date of initiation of this investigation. CBP will continue to extend the period for liquidation for all unliquidated entries that entered before that date until instructed to liquidate these entries. For future entries, CBP will continue to require live entry, which requires that the importers post the applicable cash deposits prior to the release. Finally, CBP will evaluate the continuous bond of the importer in accordance with CBP's policies, and may require single transaction bonds as appropriate. None of the above actions precludes CBP or other agencies from pursuing additional enforcement actions or penalties.

Sincerely,

*Kristina Horgan*

Kristina Horgan  
Acting Director, Enforcement Operations Division  
Trade Remedy & Law Enforcement Directorate  
CBP Office of Trade