

UNITED STATES COURT OF INTERNATIONAL TRADE

BEFORE: HON. RICHARD W. GOLDBERG, SENIOR JUDGE

HARMONI INTERNATIONAL SPICE, INC.

Plaintiff,

Court No. 16-00251

V.

UNITED STATES,

Defendant.

[AMENDED] COMPLAINT [PUBLIC VERSION]

Plaintiff, through its undersigned attorneys, alleges the following as its complaint in this case:

STANDING AND JURISDICTION

1. Plaintiff, Harmoni International Spice, Inc (Harmoni) is the importer of record of entries AYD- 0548206-0 and AYD-0548247-4 which contain imported peeled garlic (subject merchandise) made in China.
2. Plaintiff is entitled to bring this action pursuant to 28 U.S.C. §2631(i) and 28 U.S.C. §1581(i)(3) and (4).
3. On October 13 and 14, 2016, Customs issued a notice for each entry advising Harmoni that release of the subject merchandise was being detained to determine admissibility pursuant to 19 U.S.C. §1307 and 19 C.F.R. §12.42.
4. On October 28, 2016, Harmoni submitted documentation to contest the Customs' decision to detain the subject merchandise in conformity with 19 CFR 12.43.

5. On November 4, 2016, a meeting was held at Customs headquarters to review the documents previously presented and to produce supplemental documentation to contest Customs decision to detain the subject merchandise.
6. After the meeting at Customs headquarters, Harmoni submitted additional documentation to Customs to contest the detention of the subject merchandise.
7. Harmoni has urged Customs on a number of occasions to release the subject merchandise because of the perishable nature of the goods and the lack of evidence that Customs has to support these detentions.
8. As of November 16, 2016, Customs had not made a decision to release the goods for consumption in the United States, which means that the subject merchandise was deemed to be excluded by operation of law pursuant to 19 USC 1499(c)(5).
9. On November 17, 2016, Harmoni filed protest 4601-16-101272 to contest these exclusions.
10. On November 17, 2016, Harmoni requested accelerated disposition of its protest pursuant to 19 CFR 174.22.
11. This action is brought to contest Customs' decision by operation of law to exclude the subject merchandise.
12. Customs has not made a decision on Harmoni's protest, thereby delaying access to this court under 28 USC 1581(a).
13. Relief in the court under 28 USC 1581(a) is manifestly inadequate.
14. The perishable nature of the subject goods requires immediate court relief.
15. Customs has already detained for the same reason as the initial detention 22 additional Harmoni shipments of peeled garlic made by the same producers (schedule attached as **Exhibit 1**).

16. Customs refusal to release the subject merchandise and similarly situated shipments for consumption in the United States is causing financial injury to Harmoni.

FACTS

17. The subject merchandise was produced in China by [business proprietary factory names redacted].
18. The subject merchandise was shipped to the United States by [business proprietary trading company name redacted].
19. The garlic on the subject shipments that was produced and processed in China was exported to the United States on August 30 and September 6, 2016 respectively.
20. The documentation submitted by Harmoni to Customs to contest Customs detention of the subject goods consists of certificates/statements issued by the producers, exporters, and importers as set out in 19 CFR 12.43, production records for each shipment, and Phytosanitary Certificates issued by the Chinese government after inspection of the factories.
21. The documentation Harmoni submitted establishes that the subject merchandise was not produced or processed by Hongchang Fruits and Vegetable Products Co. Ltd. (Hongchang), a producer subject to a Withhold Release Order for peeled garlic issued by Customs on September 16, 2016 pursuant to 19 U.S.C. §1307.
22. The documentation submitted to Customs establishes that the subject merchandise was produced and processed by [business proprietary factory names redacted].
23. The documentation submitted to Customs establishes that no forced labor was involved in the production or processing of the subject merchandise.

24. Customs has yet to identify or provide Harmoni with any information or documentation to establish or provide reasonable cause to believe that the subject goods were produced and/or processed by Hongchang.
25. Customs has yet to produce or identify any information or documentation to substantiate that the subject goods were produced or processed by forced labor at or by [business proprietary factory names redacted].
26. Customs has no proof or reasonable basis in law or fact to detain or exclude the subject merchandise.
27. The subject merchandise has a shelf life of three months from the date of packing for shipment.
28. The shelf life of the subject merchandise will expire before the end of November and during the first week of December 2016.
29. The value of the subject merchandise will decline precipitously on and after the shelf life expiration date.

CAUSE OF ACTION

30. 19 C.F.R. §12.43 states that importers who want to contest any Customs decision to detain goods in order to establish that they were not made by forced labor can submit documentation within three months of the date of the detention.
31. Customs has failed to release the subject merchandise notwithstanding the fact that Harmoni submitted documentation of the type identified in 19 C.F.R. §12.43, as well as additional documentation to establish that no forced labor was used in production or processing..
32. Under 19 U.S.C. §1499, detained merchandise not released for entry within 30 days of detention is deemed excluded.

33. The subject merchandise has been excluded from entry into the United States because more than thirty (30) days has elapsed since Customs detained the goods without releasing them for consumption in the United States.
34. The subject merchandise is not within the scope of the Withhold Release Order issued on shipments of peeled garlic produced and processed by Hongchang.
35. The subject merchandise was produced and processed by [business proprietary factory names redacted] without use of forced labor.
36. Customs has no basis to exclude the merchandise from the United States.

WHEREFORE, plaintiff respectfully urges this Honorable Court to render judgment:

- 1) Releasing the subject merchandise for consumption in the United States;
- 2) Enjoining Customs from further detentions or exclusions of the subject merchandise without having some basis for these decisions; and
- 3) Granting additional relief as may be just and required.

Respectfully submitted,

Grunfeld Desiderio Lebowitz
Silverman&Klestadt, LLP
Attorneys for Plaintiff
599 Lexington Avenue, 36th Floor
New York, New York 10022
Tel: 212-557-4000

s/ Robert F. Seely
Ned H. Marshak
Robert B. Silverman

Dated: New York, New York
December 12, 2016