

OCT 29, 2008

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys /s/ SJC
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Expedited Second
Sunset Review of the Antidumping Duty Order on Freshwater
Crawfish Tail Meat from the People's Republic of China-Final
Results

Summary

We have analyzed the response of the domestic interested party, the Crawfish Processors Alliance (CPA), in the second sunset review of the antidumping duty order on freshwater crawfish tail meat (crawfish) from the People's Republic of China (PRC). We recommend that you approve the positions we have developed in the Discussion of the Issues section of this memorandum. The two issues in this sunset review are as follows:

1. Likelihood of continuation or recurrence of dumping
2. Magnitude of the margins likely to prevail

History of the Order

On August 1, 1997, the Department of Commerce (the Department) published its final affirmative determination of sales at less than fair value (LTFV) in the Federal Register with respect to imports of crawfish from the PRC at the following rates:¹

China Everbright Trading Company	156.77
Binzhou Prefecture Foodstuffs Import Export Corp.	119.39

¹ See Notice of Final Determination of Sales at Less Than Fair Value: Freshwater Crawfish Tail Meat From the People's Republic of China, 62 FR 41347 (August 1, 1997), as amended by the Notice of Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Freshwater Crawfish Tail Meat From the People's Republic of China, 62 FR 48218 (September 15, 1997).

Huaiyin Foreign Trade Corp.	91.50
Yancheng Foreign Trade Corp.	108.05
Jiangsu Cereals, Oils & Foodstuffs Import & Export Corp.	122.92
Yancheng Baolong Aquatic Foods Co., Ltd.	122.92
Huaiyin Ningtai Fisheries Co., Ltd.	122.92
Nantong Delu Aquatic Food Co., Ltd.	122.92
China-wide Rate	201.63

Since the issuance of the antidumping duty order on September 15, 1997 (see footnote 1), the Department has completed several administrative and new-shipper reviews. See Attachment 1 of this memorandum. There have been no changed-circumstances reviews of the antidumping duty order. The Department has issued two scope rulings with respect to the antidumping duty order. See Notice of Scope Rulings, 70 FR 24533 (May 10, 2005), and Notice of Scope Rulings, 73 FR 9293 (February 20, 2008).

On December 6, 2002, the Department conducted the first sunset review of the order where it determined that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping.² On August 1, 2003, the International Trade Commission (ITC) determined that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.³ On August 13, 2003, the Department announced the continuation of the antidumping duty order.⁴

On July 1, 2008, the Department initiated the second sunset review of the antidumping duty order on crawfish from the PRC. See Initiation of Five-year (“Sunset”) Review, 73 FR 37411 (July 1, 2008). The Department received a Notice of Intent to Participate from CPA within the deadline specified in 19 CFR 351.218(d)(1)(i). On July 30, 2008, we received a complete substantive response from CPA within the 30-day deadline in accordance with 19 CFR 351.218(d)(3)(i). We did not receive responses from any other parties.

The Department is currently conducting an administrative review of the order for the period September 1, 2006, through August 31, 2007. The preliminary results of review published on October 6, 2008. See Freshwater Crawfish Tail Meat From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent to Resend Review In Part, 73 FR 58115 (October 6, 2008).

Discussion of the Issues

In accordance with section 751(c)(1) of the Act of 1930, as amended (the Act), the Department is conducting this sunset review to determine whether revocation of the antidumping duty order

² See Notice of Final Results of Expedited Sunset Review: Freshwater Crawfish Tail Meat From the People’s Republic of China, 67 FR 72645 (December 6, 2002), and accompanying Issues and Decision Memorandum (First Sunset Review).

³ See Crawfish Tail Meat from China, 68 FR 45276 (August 1, 2003).

⁴ See Continuation of Antidumping Duty Order: Freshwater Crawfish Tail Meat from the People’s Republic of China, 68 FR 48340 (August 13, 2003) (Notice of Continuation).

would be likely to lead to the continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making this determination, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order. In addition, section 752(c)(3) of the Act states that the Department shall provide to the ITC the magnitude of the margins of dumping likely to prevail if the order were revoked. Below we address the comments of the domestic interested party.

1. Likelihood of continuation or recurrence of dumping

Comment:

CPA contends that, in accordance with sections 751(c)(1) and 752(c)(1)(A) and (B) of the Act, the Department should find that revoking the order on imports of crawfish from the PRC would likely lead to the continuation or recurrence of dumping in the United States. According to CPA, evidence of continuous dumping is illustrated by the dumping margins found in the nine administrative reviews conducted by the Department.⁵ Specifically, CPA states that the Department found in each administrative review PRC-wide rates which exceed 200 percent and company-specific separate rates which well exceed the 0.5 percent *de minimis* requirement.

CPA contends that the fact that dumping of the subject merchandise was not eliminated and imports of the subject merchandise did not cease after issuance of the antidumping duty order supports the likelihood that dumping will continue or recur if the order is lifted. Accordingly, CPA asserts, the Department is not required to evaluate the volume of imports before and after the issuance of the antidumping duty order. CPA adds that it provided import statistics at Exhibit B of its Substantive Response.

Department's Position:

Consistent with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (URAA), specifically the Statement of Administrative Action (SAA), H.R. Doc. No. 103-316, vol. 1 (1994), the House Report, H. Rep. No. 103-826, pt. 1 (1994) (House Report), and the Senate Report, S. Rep. No. 103-412 (1994) (Senate Report), the Department's determinations of likelihood will be made on an order-wide basis. See SAA at 879 and House Report at 56. Normally the Department will determine that revocation of an antidumping duty order will likely lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly. See SAA at 889 and 890, House Report at 63-64, and Senate Report at 52.

In this case, the record shows that dumping continued at levels above *de minimis* in every administrative review we have completed during this sunset-review period (*i.e.*, September 1, 2002, through August 31, 2007). Specifically, of the twelve times antidumping duty rates were

⁵ Letter from CPA entitled "Substantive Response to Notice of Initiation" dated July 30, 2008 (Substantive Response), at 14-17.

determined by the Department during this sunset-review period, only one was *de minimis*. Otherwise, the antidumping duty margins ranged from 13.61 percent to 223.01 percent, with an average margin of 141.09 percent. See the results of the administrative reviews between September 1, 2002, through August 31, 2007 (included in Attachment 1). See also CPA's Substantive Response at 14-17.

In accordance with section 752(c)(1)(B) of the Act, the Department also considers the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping duty order. In its Substantive Response, CPA provided import data for the period covered by this sunset review. See CPA's Substantive Response at Exhibit B. The Department confirmed the accuracy through its own research which is based on United States ITC Import Data for Harmonized Tariff Schedule of the United States item numbers 1605.40.10.10, 1605.40.10.90, 0306.19.00.10, and 0306.29.00.00. See Attachment 2 of this memorandum. This data is available at <http://dataweb.usitc.gov>. In analyzing the import data, the Department found that the level of imports of crawfish from the PRC has fluctuated from year to year but, for the most part, it has increased significantly since the beginning of this sunset-review period. The Department found also that the volume of imports has increased significantly when comparing recent imports to pre-order imports.

Given that dumping continued following the issuance of the order and given absence of argument and evidence to the contrary, we find that dumping is likely to continue or recur if the order is revoked.

2. Magnitude of the Margins Likely to Prevail

Comment:

CPA requests that, with the exception of instances where duty absorption applies, the Department report to the ITC the company-specific margins and the PRC-wide rate determined in the LTFV investigation.⁶ In addition, CPA requests that the Department report the PRC-wide rate from the LTFV investigation for all other shippers which established eligibility for separate rates in reviews conducted after the LTFV investigation and where duty absorption does not apply.

Because the Department found duty absorption in the 1998/1999 and 2000/2001 administrative reviews, CPA argues that, in accordance with the SAA at 885 and the House Report at 60, the Department should report to the ITC that the current margins for Ningbo Nanlian/Huaiyin5, Yancheng Foreign Trade Corp.,⁷ Qingdao Rirong Foodstuff Co., Ltd. (Qingdao Rirong), China

⁶ CPA refers to both a China-wide rate and a PRC-wide rate and suggests a different rate for each in its Substantive Response (at 20-22). The terms "China-wide" and "PRC-wide" are interchangeable; thus, there can only be one rate. Therefore, we assume CPA is recommending that the Department report to the ITC only the PRC-wide rate adjusted for the Department's duty-absorption determination.

⁷ Specifically, for sales to Ocean Harvest in which Yancheng FTC acted as exporter for Nantong Delu as the Department determined in Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, and Final Partial Rescission of Antidumping Duty Administrative Review, 66 FR 20634 (April 24, 2001) (Second Admin Review).

Kingdom Import & Export Co., Ltd. (China Kingdom), and all exporters that are part of the PRC-wide entity are not indicative of the margin likely to prevail if the order is revoked. Accordingly, for these entities, CPA asserts, the Department should report the higher of the margin from the LTFV investigation or the most recently assigned margin increased by 100 percent as described in the Department's Policies Regarding the Conduct of Five-year ("Sunset") Review of Antidumping and Countervailing Duty Orders; Policy Bulletin (Sunset Policy), 63 FR 18871.

Department's Position:

Normally the Department will provide to the ITC the company-specific margin from the LTFV investigation for each company. In non-market-economy (NME) cases, for companies not investigated specifically and which were not found to be eligible for a separate rate or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the NME-entity rate from the investigation. As we have explained in prior sunset reviews, our preference for selecting a margin from the investigation is based on the fact that it is the only calculated rate that reflects the behavior of manufacturers, producers, and exporters without the discipline of an order or suspension agreement in place.⁸

We determine that it is not appropriate, in this second sunset review, to report to the ITC our duty-absorption findings from the first sunset-review period. The Department's duty-absorption findings in the second and fourth administrative reviews correspond to the first sunset-review period (*i.e.*, 1997-2002). There are no duty-absorption findings that correspond to the second sunset-review period (*i.e.*, 2002-2007). Moreover, the Court of Appeals for the Federal Circuit (CAFC) has held that the statute only authorizes the Department to conduct duty-absorption inquiries in the second and fourth administrative reviews after publication of the order and has rejected the idea that the Department can conduct duty-absorption inquiries beyond the initial sunset-review period. See FAG Italia S.p.A. and FAG Bearings Corporation and SKF USA Inc. and SKF Industries S.p.A. v. United States and The Torrington Company, 291 F.3d 806, at 815 n.3 (CAFC 2002). Therefore, in light of the CAFC's decision in FAG Italia, because this is the second sunset review, we determine that it is inappropriate to make any adjustments to account for our findings on duty absorption from the second and fourth administrative reviews.

Accordingly, the Department finds that, in this case, it is appropriate to provide the ITC with the corresponding individual company rates and the PRC-wide rate from the LTFV investigation.

Final Results of the Review

We determine that revocation of the antidumping duty order on crawfish from the PRC would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

⁸ See, *e.g.*, Certain Steel Concrete Reinforcing Bars from Turkey; Final Results of the Expedited Sunset Review of the Antidumping Duty Order, 73 FR 24534 (May 5, 2008), and the accompanying Issues and Decision Memorandum at page 5.

<u>Manufacturer/Exporter</u>	<u>Percentage Margin</u>
China Everbright Trading Company	156.77
Binzhou Prefecture Foodstuffs Import Export Corp.	119.39
Huaiyin Foreign Trade Corp.	91.50
Yancheng Foreign Trade Corp.	108.05
Jiangsu Cereals, Oils & Foodstuffs Import & Export Corp.	122.92
Yancheng Baolong Aquatic Foods Co., Ltd.	122.92
Huaiyin Ningtai Fisheries Co., Ltd.	122.92
Nantong Delu Aquatic Food Co., Ltd.	122.92
PRC-wide Rate	201.63

Recommendation

Based on our analysis of the substantive response received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of this sunset review in the Federal Register.

Agree Disagree

_____/s/ David M. Spooner _____

David M. Spooner
Assistant Secretary
for Import Administration

__10/29/2008_____

(Date)

Attachments

ATTACHEMENT 1

Administrative and New-Shipper Reviews Completed Since the Issuance of the Antidumping Duty Order on Freshwater Crawfish Tail Meat from the People's Republic of China

- 1) Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Administrative Antidumping Duty and New Shipper Reviews, and Final Rescission of New Shipper Review, 65 FR 20948 (April 19, 2000), as amended by Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Amended Final Results and Amended Order Pursuant to Final Court Decision, 71 FR 64926 (November 6, 2006)
- 2) Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, and Final Partial Rescission of Antidumping Duty Administrative Review, 66 FR 20634 (April 24, 2001), as amended by Freshwater Crawfish Tail Meat From the People's Republic of China: Amended Final Results of Administrative Review and New Shipper Reviews, 66 FR 30409 (June 6, 2001)
- 3) Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review, 67 FR 19546 (April 22, 2002), as amended by Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Amended Final Results and Amended Order Pursuant to Final Court Decision, 71 FR 27458 (May 11, 2006), and Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Amended Final Results of Administrative Review Pursuant to Final Court Decision, 73 FR 39939 (July 11, 2008)
- 4) Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, 68 FR 19504 (April 21, 2003)
- 5) Freshwater Crawfish Tail Meat From the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review and Final Rescission of Review, in Part, 69 FR 7193 (February 13, 2004)
- 6) Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review and Final Rescission of Review, in Part, 69 FR 61636 (October 20, 2004)
- 7) Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 71 FR 7013 (February 10, 2006)
- 8) Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results And Rescission, In Part, of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 19174 (April 17, 2007)
- 9) Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results and Partial Rescission of the 2005-2006 Antidumping Duty Administrative Review and Rescission of 2005-2006 New Shipper Reviews, 73 FR 20249 (April 15, 2008)

10) Freshwater Crawfish Tail Meat From the People's Republic of China; Final Results of New Shipper Review, 64 FR 27961 (May 24, 1999)

11) Freshwater Crawfish Tail Meat From the People's Republic of China; Notice of Final Results of New Shipper Antidumping Duty Review, 65 FR 47958 (August 4, 2000)

12) Freshwater Crawfish Tail Meat From the People's Republic of China; Notice of Final Results of Antidumping Duty New Shipper Reviews, 66 FR 45002 (August 27, 2001)

13) Freshwater Crawfish Tail Meat From the People's Republic of China; Notice of Final Results of New Shipper Review and Final Rescission of Review, 66 FR 64948 (December 17, 2001)

14) Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty New Shipper Review, and Final Rescission of Antidumping Duty New Shipper Review, 68 FR 1439 (January 10, 2003)

15) Notice of Final Results of Antidumping Duty New Shipper Review: Freshwater Crawfish Tail Meat From the People's Republic of China, 68 FR 43085 (July 21, 2003)

ATTACHMENT 2

**Crawfish: First Unit of Quantity by Country Name, HTS Number and First Unit of Quantity
for PRC**

U.S. Imports for Consumption

Annual Data

Country	HTS Number	Quantity Description	1996	2002	2003	2004	2005	2006	2007
			<i>In Actual Units of Quantity</i>						
China	306190010	kilograms	1,266,041	369,066	1,308,684	2,243,282	830,675	2,164,420	1,485,325
.	306290000	kilograms	26,057	10,710	6,169	1,350	700	9,057	4,500
.	1605401010	kilograms	0	3,645,918	5,669,494	4,071,718	2,848,160	3,995,843	5,006,936
.	1605401090	kilograms	0	2,932,992	2,263,482	2,377,695	5,405,146	2,352,267	2,603,578

Total 1,292,098 6,958,686 9,247,829 8,694,045 9,084,681 8,521,587 9,100,339

Source: Data on this site have been compiled from tariff and trade data from the U.S. Department of Commerce and the U.S. International Trade Commission

