

October 2, 2009

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

FROM: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of
Antidumping Duty Administrative Review of Freshwater Crawfish
Tail Meat from the People's Republic of China for the Period of
Review September 1, 2007, through August 31, 2008

Summary

We have analyzed the case brief of an interested party in the administrative review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China for the period of review (POR) September 1, 2007, through August 31, 2008. As a result of our analysis, we did not make changes in the margin calculations. We recommend that you approve the positions we have developed in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in this administrative review for which we received comments from a party.

1. Verification Requirement
2. Draft Liquidation Instructions

Background

On June 8, 2009, the Department of Commerce (the Department) published *Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind Review in Part*, 74 FR 27109 (June 8, 2009) (*Preliminary Results*), in the *Federal Register*.

We invited interested parties to comment on the *Preliminary Results*. On July 8, 2009, we received a case brief from the petitioner, the Crawfish Processors Alliance. We did not receive a rebuttal brief from the sole respondent in this review, Xiping Opeck Opeck Food Co., Ltd. (Xiping Opeck). No interested party has requested a hearing.

Discussion of the Issues

Verification Requirement

Comment 1: The petitioner argues that, pursuant to section 782(i)(3) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.307(b)(1)(v), the Department is required to conduct a verification of information submitted by Xiping Opeck in this review. The petitioner urges the Department to do so prior to the completion of the final results.

The petitioner argues that, under the statute's directive, two conditions must be satisfied in order to warrant a mandatory verification. The petitioner asserts that the first requirement was met because it requested, in a timely manner, that the Department conduct a verification of Xiping Opeck. The petitioner asserts that a second statutory requirement was also met because the Department did not verify information submitted in either of the two immediately preceding administrative reviews.

The petitioner also contests the Department's decision to not verify Xiping Opeck in this review on the grounds that Xiping Opeck participated in the 2005-2006 and 2006-2007 reviews, despite acknowledging the fact that the Department rescinded the 2006-2007 review with respect to Xiping Opeck. The petitioner argues that the Department's practice of verifying a specific respondent in every third review in which a respondent is examined is contrary to the plain statutory and regulatory language. Citing *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837 (1984), the petitioner argues that, absent any specific references in the language to a respondent or participation thereof, the Department's interpretation of the statute may not be contrary to the expressed intent of Congress. The petitioner argues that, on the subject of mandatory verifications, the courts have favored the enforcement of the plain language of the statute. In support of its argument, the petitioner cites *Taian Ziyang Food Co. v. United States*, 2009 Ct. Intl. Trade LEXIS 72 (CIT 2009), *Shakeproof Assembly Components Div. of Ill. Tool Works v. United States*, 268 F.3d 1376, 1380 (CAFC 2001), and *Al Tech Speciality Steel Corp. v. United States*, 22 C.I.T. 941 (CIT 1998). Moreover, the petitioner argues, the Department may use its discretionary authority to retain its current practice of verification and regard it as "good cause" under the statute. The petitioner argues that such an option should not be confused, however, with the Department's statutory obligation to conduct verification where one did not take place in the two immediately preceding reviews.

The petitioner argues that, notwithstanding the Department's interpretation of the statutory provision for mandatory verification, the history of the various segments of the underlying proceeding should lead the Department to conclude that a good cause for verification exists. The petitioner argues that section 782(i)(3)(B) of the Act and 19 CFR 351.307(b)(1)(iv) provide for verification under such circumstances. Finally, citing *Ass'n of Am. Sch. Paper Suppliers v. United States*, 2008 Ct. Intl. Trade LEXIS 128 (CIT 2008), the petitioner asserts that the court held that generally, when requested by a party and to the extent practicable, the Department must verify information submitted to it. The petitioner argues that, because the deadline for the final

results of review can be extended, it is practicable to complete a verification of Xiping Opeck within this time frame.

Department's Position: Section 782(i)(3) of the Act states that the administering authority shall verify all information relied upon in making a final determination in a review under section 751(a) of the Act if verification is timely requested by an interested party and no verification was made during the two immediately preceding reviews and determinations under section 751(a) of the Act of the same order, finding, or notice. Verification may also take place if good cause for verification is shown. The Department's practice under section 782(i)(3) of the Act has been to verify a respondent's data in the third administrative review of that respondent, if requested.¹ Because an administrative review under section 751(a)(1) of the Act is conducted with respect to specific individual exporters or producers of merchandise subject to an order, we interpret the verification requirements of section 782(i)(3) of the Act to be exporter/producer-specific.

We rescinded the 2006-2007 review of Xiping Opeck because it reported no shipments during the period of review. See *Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of Review in Part*, 74 FR 6571 (February 10, 2009). As such, with the completion of the current 2007-2008 review and the immediately preceding 2005-2006 review, the current review does not mark the third review (but only the second) of Xiping Opeck and, therefore, does not require a verification under section 782(i)(3) of the Act.

The petitioner argues that, based on the plain language of the statute, the Department is required to conduct verification in this review because there was no verification conducted in the 2005-2006 and 2006-2007 administrative reviews. In essence, the petitioner argues the following: (1) the rescission of a review with respect to company A in either of the two previously completed reviews counts towards its time frame in which a mandatory verification is triggered or (2) a verification of company A's response counts towards company B's time frame in which a mandatory verification is triggered. With respect to the first argument, if a respondent reports that it had no shipments during an administrative review, we rescind the review under 19 CFR 351.213(d)(3). Therefore, we cannot reasonably conclude that a review has taken place with respect to that respondent.

¹ The Department's practice is demonstrated through an examination of the history of verifications that have taken place in the administrative reviews of various antidumping duty orders. For example, we verified SKF France in the 2007-2008 administrative review of the antidumping duty order on ball bearings and parts thereof from France because the last time this company was verified was in the 2004-2005 review. See *Ball Bearings and Parts Thereof from France, et al: Preliminary Results of Antidumping Duty Administrative Reviews*, 71 FR 12170, 12171 (March 9, 2006), and *Ball Bearings and Parts Thereof From France, et al: Preliminary Results of Antidumping Duty Administrative Reviews and Intent To Revoke Order In Part*, 74 FR 19056, 19058 (April 27, 2009). See also *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review*, 67 FR 65779 (October 28, 2002), and accompanying Issues and Decision Memorandum at Comment 7.

With respect to the petitioner's second argument, such an interpretation would result in the verification of certain companies simply depending on the pattern of participation by companies in different reviews. The Department would be required to verify all companies in every third review conducted, but it would not be required to verify any companies in the two prior reviews. Clearly such a practice provides for not only an unpredictable outcome but also renders inequitable decisions about verification of respondents. Finally, the petitioner did not cite a single judicial precedent where the courts did not agree with the Department's current practice of identifying respondents for which a verification is mandatory under section 782(i)(3) of the Act. In fact, the cases that the petitioner did cite all appear to discuss the verification requirements with respect to a specific respondent.

Moreover, because there have not been "two immediately preceding reviews" with no verification, the Department would only be required to conduct a verification of Xiping Opeck in this review if good cause is shown. The Department does not find that good cause exists to require a verification of Xiping Opeck's data. The petitioner argues that good cause exists because of certain difficulties the Department encountered in conducting reviews of previous segments of the underlying proceeding. Congress has stated that "good cause" could be such factors as "significant issue of law or fact, changed or special circumstances, discrepancies found in previous verifications, or the likelihood of a significant impact on the result." See Trade Remedies Reform Act of 1984, 98th Congress, 2nd Session (May 1, 1984), HR 98-725 at 43, reprinted in 5 U.S.C.A.A.N. 5127, 5169 (1984). We do not find the petitioner's argument that the difficulties we encountered in conducting previous administrative reviews of this order are compelling or illustrative of good cause for verification of Xiping Opeck in this review. In fact, the Department verified Xiping Opeck successfully in the 2004-2005 review. See *Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Results and Partial Rescission of the 2004/2005 Administrative and New Shipper Reviews*, 71 FR 59432, 59434 (October 10, 2006) (unchanged in final results).

Draft Liquidation Instructions

Comment 2: The petitioner contends that the Department's draft liquidation instructions refer to Xiping Opeck's importer by a name other than the name Xiping Opeck reported in its questionnaire response. The petitioner urges the Department to resolve this discrepancy in the final liquidation instructions it will issue to U.S. Customs and Border Protection.

Department's Position: We agree and will correct the name of the importer in the liquidation instructions we will issue with the completion of the final results of this review.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of the

review and the final dumping margin for Xiping Opeck in the *Federal Register*.

Agree _____

Disagree _____

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

Date