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MEMORANDUM TO: James J. Jochum  
Assistant Secretary  
for Import Administration

THROUGH: Joseph A. Spetrini  
Deputy Assistant Secretary  
for Import Administration, Group III

FROM: Barbara E. Tillman  
Director  
Office of AD/CVD Enforcement 7

SUBJECT: Issues and Decision Memorandum for the Final Rescission of the  
New Shipper Review of Freshwater Crawfish Tail Meat from the  
People's Republic of China for Zhoushan Huading Seafood Co.,  
Ltd. (Zhoushan Huading)

We have analyzed the information and arguments provided by interested parties in the new shipper review for Zhoushan Huading under the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC). As a result of our analysis, we have not changed our preliminary decision to rescind this new shipper review. We recommend that you approve the position we have developed in the "Discussion of the Issue" section of this memorandum.

Discussion of the Issue

**Comment: Whether The New Shipper Review of Zhoushan Huading Should Be Rescinded  
for Lack of a *Bona Fide* Sale**

Petitioners argue that the Department should rescind the new shipper review of Zhoushan Huading for the reasons stated in the preliminary notice, and because Zhoushan Huading subsequently failed to provide persuasive evidence demonstrating that a different result is appropriate, based on the totality of the circumstances. Petitioners cite to Freshwater Crawfish Tail Meat from the People's Republic of China: Preliminary Notice of Intent to Rescind New Shipper Administrative Review, 68 FR 52745 (September 5, 2003) (Preliminary Notice).

Petitioners note that in determining whether a sale is *bona fide*, the Department considers the totality of the circumstances surrounding the sale, including various factors which the

Department has found particularly relevant to the commercial realities surrounding the sale. As a result, each determination of whether a sale is *bona fide* necessarily is unique. Thus, in American Silicon Technologies v. United States, 110 F. Supp. 2d 992 (CIT 2000) (“American Silicon”), for example, the U.S. Court of International Trade (CIT) upheld the Department’s decision to regard a single “test shipment” as *bona fide*, while in Windmill v. United States, 1193 F. Supp. 2d 1301, 1313 (February 21, 2002), the CIT upheld the Department’s conclusion that a single “test shipment” was not *bona fide*. The difference between the two outcomes was in the totality of the circumstances, not in specific elements such as the size of the shipment. The CIT found that the Department had acted consistently in both cases, despite reaching opposite conclusions, because the Department “followed its prior practice and examined essentially the same factors.” See American Silicon. Thus, the CIT recognizes that the Department has wide discretion in determining, in any specific case, whether a sale is *bona fide* for antidumping duty purposes. In the Preliminary Notice, the Department preliminarily determined, based on the totality of circumstances, that the sale at issue here was not a *bona fide* sale by Zhoushan Huading.

According to petitioners, the Department based its determination on the following factors: (1) the price and quantity for Zhoushan Huading’s alleged sale was atypical when compared to the price and quantity for other exports of crawfish tail meat from China to the United States; (2) the Department received conflicting accounts regarding the identity of the party that purchased the crawfish tail meat and the identity of the party that actually paid Zhoushan Huading for it; (3) the sale did not appear to be commercially reasonable; and (4) the Department was unable to establish that the importing parties were actual commercial entities. Because these factors have not changed since publication of the Preliminary Notice, the Department should issue a final notice of rescission of this review.

Petitioners mention that after the publication of the Preliminary Notice, the Department issued additional supplemental questionnaires to Zhoushan Huading, the alleged importer, and the alleged reseller for the sale at issue. However, petitioners maintain that the questionnaire responses, when considered in light of the record evidence as a whole, do not warrant a departure from the conclusions reached by the Department in the Preliminary Notice. In this review, petitioner argues that the burden of establishing that the sale was *bona fide* rests squarely on Zhoushan Huading. See NSK Ltd. v. United States, 919 F. Supp. 442, 449 (Ct. Int’l Trade 1996) (parties “have the burden of creating an adequate record to assist Commerce’s determinations”). Zhoushan Huading has failed to meet that burden. Accordingly, in the absence of persuasive evidence demonstrating that the alleged U.S. sale was a *bona fide* sale, petitioners assert that a rescission of the new shipper review is appropriate.

Zhoushan Huading argues that its new shipper sale under review was *bona fide* and commercially viable, and that petitioners’ allegation that the sale is not *bona fide* fails to meet the standard of proof that the Department has consistently established. Zhoushan Huading also states that petitioners’ argument is inadequate in that it does not consider all factors relevant to the totality of circumstances, and it includes factors that are not dispositive.

Zhoushan Huading argues that the determination of whether a U.S. sale is *bona fide* depends on the totality of the circumstances. See, e.g., Natural Bristle Paintbrushes and Brush Heads from the People's Republic of China, 65 FR 45753, (July 25, 2000) (Paintbrushes). Zhoushan Huading argues that the “totality of the circumstances” must address all of the factors that the Department has identified in prior cases. See Oil Country Tubular Goods from Japan, 65 FR 15305, (March 22, 2000) (OCTG) (refusing to determine that a sale was not *bona fide* where petitioner failed to consider past factors used by the Department). The Department has ruled that “single sales, even those involving small quantities, are not inherently commercially unreasonable and do not necessarily involve selling practices atypical of the parties’ normal selling practices.” Certain Cut-to-Length Carbon Steel Plate from Romania, 63 FR 47232, 47234 (Sept. 4, 1998). See also Manganese Metal from the People's Republic of China, 60 FR 56045; Certain Cut-to-Length Carbon Steel Plate from Romania, 63 FR 47232 (Sept. 4, 1998); and Carbon Steel Wire Rope from Mexico, 64 FR 40549 (July 27, 1999).

Zhoushan Huading argues that petitioners’ analysis does not rest upon adequate evidence of these factors, since they only focus on volume, price, and the unrelated and irrelevant factor of the purchaser’s identity. As a result, petitioners have not shown that Zhoushan Huading’s sale was anything other than a *bona fide* transaction. Zhoushan Huading points out that the Department has ruled that a *bona fide* sale can occur despite high prices. See OCTG (high price acceptable when price is not inconsistently high and incorporates antidumping duties and expenses excluded from the entered value); Paintbrushes (high price acceptable when resulting from high cash deposit rate). Zhoushan Huading also mentions that it is ironic that petitioners now object to subject merchandise sold at prices that are too high when the original antidumping petition was filed on the premise that Chinese-origin crawfish tail meat prices in the United States were too low.

Zhoushan Huading criticizes petitioners’ argument that claims Zhoushan Huading’s sale cannot be deemed a *bona fide* transaction because the Department received conflicting accounts regarding the identity of the party that purchased the crawfish tail meat and the identity of the party who actually paid Zhoushan Huading for it. Zhoushan Huading states that they have responded to each and every question, and have provided voluminous supporting documentation to help clarify the commercial arrangement of its initial sale of the subject merchandise to the United States.

Finally, Zhoushan Huading requests that the Department reject petitioners’ argument and find that Zhoushan Huading’s U.S. sale during the POR was *bona fide*, and for the final results, grant Zhoushan Huading a company-specific dumping margin calculated on the basis of the company’s reported sales and factors of production data.

Department's Position:

There has been no information provided since the Preliminary Notice and the accompanying Memorandum to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, Group III: Freshwater Crawfish Tail Meat from the People's Republic of China: Analysis of Zhoushan Huading's New Shipper Transaction, dated August 28, 2003 (Zhoushan Huading Memo), which warrants changing our preliminary finding that the new shipper sale of freshwater crawfish tail meat made by Zhoushan Huading is not a *bona fide* sale. The Department has not acquired, nor received, any additional information that would change the determination in the Preliminary Notice that the extremely high price and unusually low quantity of Zhoushan Huading's new shipper sale was atypical vis-a-vis other imports from the PRC of freshwater crawfish tail meat into the United States during the period of review. See Zhoushan Huading Memo. Furthermore, since the publication of the Preliminary Notice, the Department solicited additional information through the issuance of supplemental questionnaires to all three parties involved in this new shipper review. The Department's goal was to address inconsistencies in reported payment information and the terms of sale for the new shipper shipment of subject merchandise under review. Zhoushan Huading, the reported buyer, and the importer of record responded to the supplemental questionnaires issued.

In their questionnaire responses, both Zhoushan Huading and the reported buyer provided documents demonstrating a wire transfer to Zhoushan Huading. Both responses also included a copy of a cashier's check as evidence of payment by the importer of record to the reported buyer. This documentation does establish who paid whom for the merchandise. However, the dollar amounts on the cashier's check and the wire transfer documentation are identical. Therefore, the record indicates that the reported buyer sold Zhoushan Huading's shipment of subject merchandise to the importer of record at a loss, *i.e.*, by selling the subject merchandise for the exact same dollar amount as they purchased it for, the reported buyer must have absorbed all of the administrative and selling costs associated with executing both transactions (the purchase and the sale).

In addition, Zhoushan Huading, in its September 12, 2003 supplemental questionnaire response, stated which party was responsible for all inland freight, brokerage and handling, and international freight expenses related to the new shipper sale under review. However, the bill of lading provided by Zhoushan Huading in its January 6, 2003, section A, C, and D questionnaire response contains information which contradicts the terms of sale as reported by Zhoushan Huading, and indicates that these costs may have been borne by a party other than the one Zhoushan Huading indicated. As such, without reliable information establishing the terms of sale, including which party was responsible for which costs, it is not possible for the Department to determine that Zhoushan Huading's sale is a commercially reasonable transaction. Our full analysis of the terms of sale issue involves information which is business proprietary. The Department's analysis is detailed in the business proprietary Memorandum to the File: Crawfish Tail Meat from the People's Republic of China: Analysis of Zhoushan Huading's Reported

Terms of Sale; dated November 25, 2003. A public version of this memorandum is on file in the Central Records Unit, room B-099 of the main Commerce Building.

Moreover, prior to the publication of the Preliminary Notice, as part of our analysis of whether the sale was commercially reasonable, we issued supplemental questionnaires that asked the reported buyer and the importer of record to provide information on the commercial structure of their business, and their business relationship to each other. The Department also attempted to gather information from the importer of record in regard to the identity of its customers and supporting sales documentation. The Department also asked Zhoushan Huading for this information. None of the requested information was provided by Zhoushan Huading, the reported buyer, or the importer of record.

Based on our analysis of information obtained before and since the Preliminary Notice from the importer's questionnaire responses and the parties' comments thereon, we find the new shipper sale was commercially unreasonable and therefore not *bona fide* for the following reasons: 1) the price was extremely high and the quantity was unusually low vis-a-vis other imports from the PRC of the subject merchandise into the United States during the period of review, 2) the merchandise was apparently resold by the reported buyer at a loss, and, 3) Zhoushan Huading provided contradictory information and documentation regarding the terms of sale and movement expenses. Because this was the sole sale under review and we have found it to be not *bona fide*, we are rescinding the new shipper review of Zhoushan Huading.

### Recommendation

Based on our analysis of the comments received, we recommend adopting the above position. If this recommendation is accepted, we will publish the final rescission notice of this new shipper review in the Federal Register.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

\_\_\_\_\_  
James J. Jochum  
Assistant Secretary  
for Import Administration

\_\_\_\_\_  
Date