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Administrative Review
09/01/2017-08/31/2018
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October 25, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Freshwater Crawfish Tail Meat from the People's Republic of
China: Issues and Decision Memorandum for the Final Results of
the Antidumping Duty Administrative Review; 2017-2018

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on freshwater crawfish tail meat from the People's Republic of China (China). The period of review (POR) for the administrative review is September 1, 2017 through August 31, 2018. The administrative review covers two mandatory respondents, Hubei Qianjiang Huashan Aquatic Food and Product Co., Ltd. (Hubei Qianjiang) and Nanjing Gensen International Co., Ltd. (Nanjing Gensen). We recommend that you approve the positions we developed in the "Discussion of the Issues" section of this memorandum. Below is a complete list of the issues for which we have received comments from interested parties.

Comment 1: Separate Rate for Non-Selected Respondents

Comment 2: Valuation of Live Crawfish

II. BACKGROUND

On September 15, 1997, Commerce published an amended final determination and AD order on freshwater crawfish tail meat from China.¹ On September 11, 2018, Commerce published a

¹ See *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) (*Order*).

notice of opportunity to request an administrative review of the order.² On November 15, 2018, based on timely requests for an administrative review, Commerce initiated an administrative review of 15 exporters/producers.³ On February 13, 2019, we selected Hubei Qianjiang and Nanjing Gensen as mandatory respondents for individual examination in this review.⁴

On July 18, 2019, we published the preliminary results of this review and invited interested parties to comment.⁵ On August 26, 2019, Yancheng Hi-King Agriculture Developing Co., Ltd. (Yancheng)⁶ and Hubei Qianjiang, Nanjing Gensen, China Kingdom (Beijing) Import & Export Co., Ltd. (China Kingdom), Deyan Aquatic Products and Food Co., Ltd. (Deyan Aquatic), Xiping Opeck Food Co., Ltd. (Xiping Opeck), and Xuzhou Jinjiang Foodstuffs Co., Ltd. (Xuzhou Jinjiang) (collectively, Respondents)⁷ timely submitted their case briefs. We received no rebuttal briefs.

We are conducting this review in accordance with sections 751(a)(1), 751(a)(2)(B), 751(a)(3), and 777(i)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213.

III. SCOPE OF THE ORDER

The product covered by the AD order is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or un-purged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 1605.40.10.10 and 1605.40.10.90, which are the HTSUS numbers for prepared foodstuffs, indicating peeled crawfish tail meat and other, as introduced by U.S. Customs and Border Protection (CBP) in 2000, and HTSUS numbers 0306.19.00.10 and 0306.29.00.00, which are reserved for fish and crustaceans in general. On February 10, 2012, Commerce added HTSUS classification number 0306.29.01.00 to the scope description pursuant to a request by CBP. On September 21, 2018, Commerce added HTSUS classification numbers 0306.39.0000 and 0306.99.0000 to the scope description pursuant to a request by CBP. The HTSUS subheadings are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 83 FR 45888 (September 11, 2018).

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 57411 (November 15, 2018).

⁴ See Memorandum, “Freshwater Crawfish Tail Meat from the People’s Republic of China - Respondent Selection for the 2017-2018 Antidumping Duty Administrative Review,” dated February 13, 2019.

⁵ See *Freshwater Crawfish Tail Meat from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018*, 84 FR 34339 (July 18, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

⁶ See Yancheng’s Letter, “Freshwater Crawfish Tail Meat from The People’s Republic of China: Case Brief,” dated August 26, 2019 (Yancheng Case Brief).

⁷ See Respondents’ Letter, “Freshwater Crawfish Tail Meat from the PRC Respondents’ Case Brief,” dated August 26, 2019 (Respondent Case Brief).

IV. SURROGATE COUNTRY

In the *Preliminary Results*, we treated China as a non-market economy (NME) country and, therefore, we calculated normal value in accordance with section 773(c) of the Act. We selected Malaysia as the primary surrogate country, pursuant to section 773(c)(4) of the Act, because it is a significant producer of merchandise comparable to subject merchandise and is at the same level of economic development as China.⁸

For these final results, we continue to treat China as an NME country and used the same primary surrogate country, Malaysia. For the valuation of crawfish shell or scrap for these final results, we continue to use the 2001 Indonesian price quote.⁹ For the valuation of the major input (freshwater crawfish tail meat or whole crawfish), we continue to find Spain to be a significant producer of whole processed crawfish, which we consider comparable to processed crawfish tail meat and, thus, we valued this input using Spanish import statistics.¹⁰ We also continue to find that, pursuant to section 773(c)(1) of the Act, Malaysian frozen seafood manufacturer's 2017 Annual Report constitutes the "best available information" from a market-economy, at the same level of economic development to China, which is also a significant producer of comparable merchandise, to value the financial ratios for these final results.¹¹

V. SEPARATE RATES

In proceedings involving NME countries, Commerce begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single AD deposit rate.¹² It is Commerce's policy to assign all exporters of merchandise subject to review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

In the *Preliminary Results*, we found that, in addition to two of the companies we selected for individual examination, Deyan Aquatic, Hubei Nature Agriculture Industry Co., Ltd. (Hubei Nature), Hubei Yuesheng Aquatic Products Co., Ltd. (Hubei Yuesheng), Xiping Opeck, Xuzhou Jinjiang, and Yancheng demonstrated their eligibility for separate rate status by demonstrating that they operated free of *de jure* and *de facto* government control.¹³ Based on the information on the record of this review, we continue to find that these companies are eligible for a separate rate.

⁸ See *Preliminary Results* PDM at 3-4.

⁹ *Id.* at 5.

¹⁰ *Id.* at 3-4.

¹¹ See Hubei Qianjiang's and Nanjing Gemsen's Letter, "Freshwater Crawfish Tail Meat from the People's Republic of China: Comments on Surrogate Value," dated April 26, 2019.

¹² See, e.g., *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303, 29307 (May 22, 2006); and *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079 (September 8, 2006).

¹³ See *Preliminary Results* PDM at 5-8.

VI. DISCUSSION OF THE ISSUES

Comment 1: Separate Rate for Non-Selected Respondents

Respondents' Arguments

- The preliminary decision assigning the dumping margin of a single mandatory respondent to all non-selected respondents is improper and unreasonable.
- In the *Preliminary Results*, Commerce calculated a *de minimis* dumping margin for Hubei Qianjiang, and a 7.92 percent margin for Nanjing Gemen, and assigned Nanjing Gemen's rate of 7.92 percent for all six non-individually reviewed respondents who qualified for separate rates.
- Under section 735(c)(5)(A) of the Act, the all-others rate is normally "an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely {on the basis of facts available}."¹⁴
- The Act is not clear about the situation when multiple margins are not available to be averaged.¹⁵ When one of the two mandatory respondents receive a *de minimis rate*, and the other mandatory respondent receives a calculated positive margin, there would not be more than one margin to average.
- The reasonable dumping margin for the non-selected respondents would be the average of the two mandatory respondents, and not the single margin from one of the two.¹⁶
- To assign the non-selected respondents a dumping margin by averaging the two mandatory respondents' margins is the best method to render the most accurate, reasonable and fair final result of review.¹⁷

The Crawfish Processors Alliance (the petitioner) did not comment on this issue.

Commerce's Position: The statute and Commerce's regulations do not address the establishment of a rate to be applied to individual companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in an investigation,¹⁸ when calculating the rate for respondents we did not individually examine in an administrative review. Under section

¹⁴ See Respondent Case Brief at 3.

¹⁵ *Id.*

¹⁶ *Id.* at 4.

¹⁷ *Id.* at 6.

¹⁸ See section 735(c)(5) of the Act; see also *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012- 2013*, 79 FR 57872 (September 26, 2014).

735(c)(5)(A) of the Act, the all-others rate is normally “an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely {on the basis of facts available}.” Accordingly, when only one weighted-average dumping margin for the individually investigated respondents is above *de minimis* and not based on total facts available, the separate rate will be equal to that single above *de minimis* rate.¹⁹ Commerce has continued to calculate a rate for the mandatory respondent Hubei Qianjiang that is *de minimis* and a rate for the mandatory respondent Nanjing Gemen that is not zero, *de minimis*, or based entirely on facts available. Therefore, in accordance with section 735(c)(5)(A) of the Act and its prior practice,²⁰ Commerce has assigned Nanjing Gemen’s calculated rate (*i.e.*, 7.92 percent) as the separate rate for the non-examined separate rate exporters, Deyan Aquatic, Hubei Nature, Hubei Yuesheng, Xiping Opeck, Xuzhou Jinjiang, and Yancheng, for these final results.

Comment 2: Valuation of Live Crawfish

Yancheng’s Argument

- In Commerce’s surrogate value memo, Commerce stated that it was using contemporaneous Spanish import data of whole crawfish from Portugal to derive the surrogate value for the live crawfish factor of production. Yancheng agrees that this use of Spanish import data of whole crawfish imported from Portugal was consistent with Commerce’s surrogate value methodology in numerous prior administrative and new shipper reviews of this proceeding.²¹
- Because Commerce specifically stated it was using only Integrated Tariff of the European Communities (TARIC) number 0306.39.10, it would be inappropriate for Commerce to use a surrogate value that incorporated import data from any other TARIC number.²²
- Commerce noted certain changes that were made in 2017 that affected the classification of products under both the HTSUS and the European TARIC system. Commerce noted that merchandise which had been classified under TARIC number 0306.29.10 prior to 2017 would now be classifiable under numbers 0306.19.10, 0306.39.10 and 0306.99.10.
- Although Commerce in a prior new shipper review had noted this same change in TARIC numbering for whole crawfish, Commerce still nonetheless identified only TARIC number 0306.19.10 as the only appropriate data source to derive the surrogate value for

¹⁹ See *Longkou Haimeng Mach. Co. v. United States*, 581 F. Supp. 2d 1344, 1357-60 (CIT 2008); see also *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2014-2015*, 81 FR 62717 (September 12, 2016), and accompanying Issues and Decision Memorandum (IDM) at Comment 7.

²⁰ See, e.g., *Freshwater Crawfish Tail Meat from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of New Shipper Review; 2015–2016*, 82 FR 47469 (October 12, 2017), and accompanying IDM at 3-4.

²¹ See Yancheng Case Brief at 1.

²² *Id.* at 2.

live crawfish and did not include import data from TARIC numbers 0306.39.10 or 0306.99.10.²³

- Because Commerce stated that it would use import data only from TARIC 0306.19.10 in its surrogate value memo, Commerce should ensure that the final results calculate the surrogate value for live crawfish only using this TARIC number and not data from other TARIC numbers such as 0306.39.10 or 0306.99.10.²⁴

The petitioner did not comment on this issue.

Commerce’s Position: Commerce determines that Yancheng’s explanation and understanding of the facts of this case are incorrect. Yancheng incorrectly argues that Commerce “identified only TARIC number 0306.19.10 as the only appropriate data source to derive the surrogate value for live crawfish”²⁵ when, in fact, we specifically stated that we used TARIC number 0306.39.10 for that purpose. The record of this review does not support Yancheng’s claim that Commerce identified TARIC number 0306.19.10 as the only appropriate data source to derive the surrogate value for live crawfish.²⁶ As noted in our surrogate value memorandum, Commerce explains that “we preliminarily find it is appropriate to use contemporaneous Spanish import data on the record under TARIC number, 0306.39.10, which represents live crawfish.”²⁷

Additionally, we did not state that we used TARIC number 0306.19.10 as the only appropriate data source to derive the surrogate value for live crawfish in the most recently completed new shipper review of crawfish. We explicitly stated that “we used the data sourced from *Agencia Tributaria* under the TARIC code 0306.39.10 to value freshwater crawfish.”²⁸ Therefore, Commerce will continue to use contemporaneous Spanish import data on the record under TARIC number, 0306.39.10, as in the *Preliminary Results*, to value live crawfish for these final results.

In the alternative, and at odds with Yancheng’s initial argument, Yancheng also argues that, “because TARIC numbers 0306.39.10 and 0306.99.10 appear to correspond to the HTSUS headings that refer to “other” categories that are more general than TARIC numbers 0306.19.10, {Commerce} should not include these other TARIC numbers” in its calculation.²⁹ Recently, Commerce discovered that merchandise which would have been classified under HTSUS numbers 0306.29.00.00 and 0306.29.01.00, prior to 2017, has now been re-classified under the HTSUS numbers 0306.19.00.10, 0306.39.00.00 and 0306.99.00.00. Likewise, merchandise

²³ *Id.* at 3.

²⁴ *Id.* at 4.

²⁵ See Yancheng Case Brief.

²⁶ See *Preliminary Results* PDM at 15.

²⁷ See Memorandum, “Freshwater Crawfish Tail Meat from the People’s Republic of China: Surrogate-Value Memorandum,” dated July 11, 2019 (Surrogate Value Memorandum).

²⁸ See *Freshwater Crawfish Tail Meat from the People’s Republic of China: Preliminary Results of Antidumping Duty New Shipper Review; 2017-2018*, 84 FR 12585 (April 2, 2019) and accompanying PDM at 13, unchanged in *Freshwater Crawfish Tail Meat from the People’s Republic of China: Final Results of Antidumping Duty New Shipper Review; 2017-2018*, 84 FR 28268 (June 18, 2019).

²⁹ See Yancheng Case Brief.

which would have otherwise been classified by Spain under TARIC number 0306.29.10 (the HTSUS number Commerce has used in prior reviews to value Spanish imports of whole crawfish from Portugal), has been re-classified under TARIC numbers 0306.19.10, 0306.39.10 and 0306.99.10.³⁰ As a result, Commerce began valuing Spanish imports of whole live crawfish from Portugal using data related to TARIC number 0306.39.10.³¹ Similarly, for the present review, Commerce determines that it is appropriate to value live freshwater crawfish according to TARIC number 0306.39.10 because this number covers live freshwater crawfish.

Commerce further observes that Yancheng is incorrect in arguing that TARIC number 0306.39.10 is more general than TARIC number 0306.19.10. This argument mischaracterizes the relationship between TARIC numbers 0306.39.10 and 0306.19.10. Commerce observes that while both TARIC number 0306.39.10 and 0306.19.10 encompass other items including “flours, meals, and pellets of crustaceans, fit for human consumption,” these TARIC numbers include crawfish. TARIC number 0306.39.10 covers live crawfish, and TARIC number 0306.19.10 covers frozen crawfish.

Finally, in analyzing surrogate values, Commerce considers the quality, specificity, and contemporaneity of the data.³² In selecting the best available information for valuing factors of production, in accordance with section 773(c)(1) of the Act, Commerce’s practice is to choose publicly available values which are non-export average values, most contemporaneous with the period of review, product-specific, and tax exclusive.³³ Here, Commerce selected TARIC number 0306.39.10 to value Spanish imports of crawfish because the respondents reported using live crawfish in the production of subject merchandise.³⁴ Thus, TARIC number 0306.39.10 is most specific to the respondents’ input. For the foregoing reasons, Commerce determines that it is appropriate to continue relying on TARIC number 0306.39.10 for these final results.

³⁰ See Hubei Qianjiang’s and Nanjing Gensen’s Letter, “Freshwater Crawfish Tail Meat from the People’s Republic of China Comments on Surrogate Value,” dated April 26, 2019 at Exhibit SV-2.

³¹ See, e.g., *Freshwater Crawfish Tail Meat from the People’s Republic of China: Preliminary Results of Antidumping Duty New Shipper Review; 2017-2018*, 84 FR 12585 (April 2, 2019) and accompanying PDM at 13, unchanged in *Freshwater Crawfish Tail Meat from the People’s Republic of China: Final Results of Antidumping Duty New Shipper Review; 2017-2018*, 84 FR 28268 (June 18, 2019); see also *Freshwater Crawfish Tail Meat from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 34339 (July 18, 2019) and accompanying PDM at 15, unchanged in *Freshwater Crawfish Tail Meat from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2016-2017*, 84 FR 2489 (February 7, 2019).

³² See, e.g., *Fresh Garlic from the People’s Republic of China: Final Results of Antidumping Duty New Shipper review*, 67 FR 72139 (December 4, 2002), and accompanying IDM at Comment 6.

³³ See, e.g., *Freshwater Crawfish Tail Meat from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Rescission of Review in Part, and Preliminary Intern to Rescind New Shipper Review: 2015-2016*, 82 FR 26435 (June 7, 2017), and accompanying PDM at 8-10, unchanged in *Freshwater Crawfish Tail Meat from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of New Shipper Review; 2015-2016*, 82 FR 47469 (October 12, 2017).

³⁴ See Surrogate Value Memorandum at 4.

VII. RECOMMENDATION

We recommend applying the above methodology for these final results.

Agree

Disagree

10/25/2019

X 

Signed by: JEFFREY KESSLER
Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance