

MEMORANDUM TO: Faryar Shirzad
Assistant Secretary
Import Administration

FROM: Jeffrey A. May
Director, Office of Policy
Import Administration

SUBJECT: Issues and Decision Memorandum for the Expedited 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 substantive response of the domestic interested parties, which are the only parties participating in the expedited sunset review of the antidumping duty order on freshwater crawfish tail meat 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. Below is the complete list of issues in this expedited sunset review for which we received substantive comments from the domestic interested parties and for which we discuss in greater detail below:

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

History of the Order

On September 15, 1997, the Department of Commerce (“the Department”) published the antidumping duty order on freshwater crawfish tail meat from the People’s Republic of China.¹ In the order, the Department published individual weighted-average dumping margins for manufacturers, producers, and exporters of freshwater crawfish tail meat, and a PRC-wide rate of 201.63 percent. Since the issuance of the order, the Department has completed three administrative reviews.² The Department found duty absorption in the second administrative review.³ The Department is currently conducting the fourth and fifth administrative reviews of the order. The final results of the fourth administrative review are scheduled to be completed by February 13, 2003. The order remains in effect for all manufacturers, producers, and exporters of freshwater crawfish tail meat from the PRC.

Background:

On August 2, 2002, the Department published the notice of initiation of the five-year sunset review of the antidumping duty order on freshwater crawfish tail meat from the PRC, in

¹ 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).

² 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); 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 Full Partial Rescission of Administrative Review, 66 FR 20634 (April 24, 2001); 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).

³ 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).

accordance with section 751(c) of the Tariff Act of 1930, as amended (“the Act”).⁴ On August 16, 2002, the Department received a Notice of Intent to Participate on behalf of the Crawfish Processors Alliance (“CPA”) and its members; the Louisiana Department of Agriculture and Forestry (“LDAF”); Bob Odom, Commissioner; and an ad hoc association entitled “Domestic Parties”⁵ (collectively, “the domestic interested parties”) as specified in section 351.218(d)(1)(i) of the *Sunset Regulations*.

On September 3, 2002, we received a complete substantive response from the domestic interested parties, as specified in the *Sunset Regulations* under 19 CFR 351.218(d)(3)(1).

We did not receive a response from any respondent interested party in this proceeding. Consequently, pursuant to section 751(c)(3)(B) of the Act, and 19 CFR 351.218(e)(1)(ii)(C), the Department is conducting an expedited (120-day) sunset review of this order.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping. Section 751(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for

⁵ The “Domestic Parties” are an ad hoc association comprising the CPA, LDAF, Commissioner Odom, and each of the individual members of the CPA listed in Exhibit A of the Petitioner’s Substantive Response dated September 2, 2002. The Domestic Parties are “‘an association, a majority of whose members is composed of interested parties described in subparagraph (C), (D), or (E) of {19 U.S.C. 1677(9)}[771(9)(C)(D)(E) of the Act] with respect to the domestic like product,’ and are an interested party under 19 U.S.C. 1677(9) [771(9)(F) of the Act].”

the period before and the period after the issuance of the antidumping duty order. In addition, section 751(c) of the Act provides that the Department should consider whether respondent interested parties have waived participation in the review. Section 752(c)(3) of the Act provides that the Department shall provide to the International Trade Commission (“the Commission”) the magnitude of the margin of dumping likely to prevail if the order were revoked.

Below we address the domestic interested parties’ comments with respect to continuation or recurrence of dumping and the magnitude of the margin.

1. Likelihood of Continuation or Recurrence of Dumping:

Interested Party Comments:

The domestic interested parties assert that revocation of the antidumping duty order on freshwater crawfish tail meat from the PRC would likely lead to increased dumping in the United States.

With respect to weighted-average dumping margins, the domestic interested parties note that the PRC-wide rate found in each of the administrative reviews completed by the Department has been in excess of 200 percent, and every shipper that has obtained a separate rate in an administrative review has continued to engage in dumping, at levels well above the *de minimis* level of 0.5 percent, after issuance of the order. The domestic interested parties further note that in the original investigation the Department established dumping margins above a level of *de minimis* for Chinese producers and exporters of freshwater crawfish tail meat, including a “PRC-wide” rate of 201.63 percent.

With respect to import volumes, the domestic interested parties argue that the Department should not give any weight to post-order import volumes because dumping was not eliminated

and, as indicated by the Department's conduct of three administrative reviews and numerous new shipper reviews, the imports of subject merchandise did not cease after issuance of the order.

The domestic interested parties further argue that published import statistics do not necessarily provide precise information regarding imports of subject information because the tariff classifications used for subject merchandise may include nonsubject merchandise.

For these reasons, the domestic interested parties believe that revocation of the antidumping order would result in the continuation or recurrence of dumping.

Department's Position:

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreement Act ("URAA"), specifically the Statement of Administrative Action ("SAA"), H.R. Doc. No. 103-316, vol. 1 (1994), the House Report, H.R. Rep. No. 103-826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103-412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations.⁶ The Department clarified that determinations of likelihood will be made on order-wide basis (*see* section II.A.2 of the *Sunset Policy Bulletin*). In addition, the Department indicated that it will normally determine that revocation of an antidumping order is likely to 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* section II.A.3 of the

⁶ *Policy Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Sunset Policy Bulletin).

In addition to the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of the order would be likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In this review, the Department did not receive a substantive response from any respondent interested party.

As discussed above, in conducting its sunset review, the Department considers: (1) the weighted-average dumping margins determined in the investigation and subsequent reviews and (2) the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order when determining whether revocation of the order would lead to continuation or recurrence of dumping. In the original investigation, the Department calculated weighted-average dumping margins that range between 91.50 percent and 156.77 percent for several Chinese manufacturers, producers, and exporters of freshwater crawfish tail meat.⁷ Moreover, in the subsequent administrative reviews of this order, margins above levels of *de minimis* continued for Chinese companies, including a PRC-wide rate.⁸

Import statistics provided by the domestic interested parties and confirmed by the Department indicate that import volumes increased immediately after the order was issued and have fluctuated since the life of this order. *See* Memorandum to File, Import Volumes in the Sunset Review of the Antidumping Duty Order on Freshwater Crawfish Tail Meat from the

⁷ 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).

⁸ 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).

People's Republic of China, October 28, 2002.

Based on the data on the record, the Department finds that imports increased after the imposition of the order and that dumping continued at levels well above *de minimis*. Moreover, respondent interested parties waived their right to participate in this review. Therefore, given that (1) dumping has continued following the issuance of the order, (2) respondent interested parties waived their right to participate in this review, and (3) the absence of argument and evidence to the contrary, we find that dumping is likely to continue or recur if the order were revoked.

2. Magnitude of the Margin Likely to Prevail:

Interested Party Comments:

In their substantive response, the domestic interested parties recommend that, consistent with the *Sunset Policy Bulletin*, the Department should provide to the Commission the company-specific margins from the original investigation. Moreover, regarding companies not reviewed in the original investigation, including Ningbo Nanlian/Huaiyin5, the domestic interested parties suggest that the Department report the “PRC-wide” rate of 201.63 percent from the original investigation. The domestic interested parties also argue that the Department should make adjustments to take into account previous findings on duty absorption in reporting the magnitude of the margin likely to prevail.

Department's Position:

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination of the original investigation. Further, for companies not specifically investigated or for companies that did not

begin shipping until after the order was issued, the Department normally will provide a margin based on the “all-others” rate from the investigation. *See* section II.B.1 of the *Sunset Policy Bulletin*. Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. *See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.

The Department considers that the margins calculated in the original investigation best reflect the behavior of producers/exporters who were not included in the initial investigation of the order. However, the Department may, under certain circumstances, adjust the margin of dumping to be provided to the Commission to account for duty absorption. The Department considered its duty absorption finding in the second administrative review, but found that the calculated margin adjusted for duty absorption is less than the margin calculated in the original investigation. Therefore, consistent with II.B.1 of the *Sunset Policy Bulletin*, the Department will report to the Commission the company specific and “PRC-wide” rate of 201.63 percent from the original investigation as the margins likely to prevail were the order revoked.

Final Results of Review

We determine that revocation of the antidumping duty order on freshwater crawfish tail meat from the People’s Republic of China would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/producers/exporter	Weighted-Average Margin (percent)
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 comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review in the *Federal Register*.

/ S /
Faryar Shirzad
Assistant Secretary
for Import Administration

November 27, 2002
(Date)