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

FROM: Joseph A. Spretini
Deputy Assistant Secretary
for Import Administration, Group III

SUBJECT: Issues and Decision Memorandum for the Final Results of
the Antidumping Duty Administrative Review of
Freshwater Crawfish Tail Meat from the People's Republic
of China: September 1, 2001 through August 31, 2002

SUMMARY:

We have analyzed the comments, case and rebuttal briefs submitted by interested parties in response to Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review; Final Rescission, in Part; and Intent to Rescind, in Part, 68 FR 58064 (Preliminary Results). As a result of our analysis, we have made changes from the Preliminary Results, which are fully addressed in the "Discussion of the Issues" section below. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section. Below is the complete list of the issues in this administrative review:

1. Valuation of the Raw Crawfish Input;
2. Application of Adverse Facts Available to Shanghai Taoen International Trading Co., Ltd.;
3. Application of Adverse Facts Available to Shouzhou Huaxiang Foodstuffs Co., Ltd.

DISCUSSION OF THE ISSUES

Comment 1: Valuation of the Raw Crawfish Input

According to the Crawfish Processors Alliance, its members (together with the Louisiana Department of Agriculture and Forestry, Bob Odom, Commissioner), and the Domestic Parties (collectively, the Domestic Interested Parties), the data used by the Department to value the live crawfish input in the Preliminary Results, Spanish imports from Portugal under item 0306.29.10 of the Spanish tariff schedule, do not provide an adequate basis

for the surrogate value for live crawfish in this review because they represent just 14 metric tons of imports during the relevant period. The Domestic Interested Parties state that, in the 1999-2000 administrative review, the Department found that even 17 metric tons of Spanish imports from Portugal could not provide a reliable basis for the surrogate value. The Domestic Interested Parties therefore argue that the Department should not use the Spanish import statistics to calculate a surrogate value for live crawfish for the final results.

The Domestic Interested Parties also state that the Australian government's published, official statistics on live crawfish production are the best source on the record of this review for a surrogate value for live crawfish. According to the Domestic Interested Parties, based on known relationships between tail meat size, processing yield, and the weight of live crawfish inputs, Australian crawfish are comparable in size to the live crawfish used by Chinese crawfish processors to produce the subject merchandise. The Domestic Interested Parties also argue that if the Department again chooses to base the surrogate value for live crawfish on a source other than the published, official statistics of the Australian government, the value chosen should include prices for aesthetically unblemished crawfish and crawfish exceeding 30 grams in live weight because there is no record evidence to support the conclusion that Chinese processors use only smaller, aesthetically blemished crawfish inputs in the production of subject merchandise.

Department's Position: Because we are not basing the dumping margins for any company in this administrative review on a calculated rate, and are instead applying margins based on adverse facts available (AFA), it is not necessary to address this issue.

Comment 2: Application of Adverse Facts Available to Shanghai Taoen International Trading Co., Ltd. (Shanghai Taoen)

For purposes of the Preliminary Results, the Department relied on Shanghai Taoen's questionnaire responses. Subsequent to the Preliminary Results, we obtained information and documentation from U.S. Customs and Border Protection (CBP), which called into question the accuracy and completeness of responses submitted by Shanghai Taoen. On December 5, 2003, we asked Shanghai Taoen to explain the inconsistency between its responses and information obtained by the Department from CBP, and to demonstrate, with documentation, that the responses it submitted were accurate and complete.

Shanghai Taoen responded to the Department's December 5, 2003 request on December 16, 2003. In its response, Shanghai Taoen provided its explanation, along with supporting documentation, of the inconsistencies between the information that the Department obtained from CBP and information Shanghai Taoen provided to the Department.

On December 22, 2003, we requested that interested parties submit comments and rebuttal comments with regard to Shanghai Taoen's December 16, 2003 submission. The Domestic Interested Parties submitted comments on Shanghai Taoen's December 16, 2003 submission on January 5, 2004. No rebuttal comments were

submitted. The Domestic Interested Parties claim that Shanghai Taoen's explanation, and documents it submitted to the Department are of "questionable veracity." The Domestic Interested Parties claim that although Taoen has maintained during this proceeding that all of the merchandise it sold during the period of review (POR) was produced by Lianyungang Yuzhu Aquatic Products Processing Co., Ltd. (Yuzhu), the Department can no longer rely on Shanghai Taoen's "unsupported assurances, in light of other conflicting information on the record." As such, the Domestic Interested Parties state that the Department should apply AFA to Shanghai Taoen for purposes of this review.

Shanghai Taoen's submission, and comments received by the Domestic Interested Parties are based primarily on business proprietary information. Therefore, as this memorandum is a public document, a full analysis of all comments received by the Department is contained in the Department's memorandum, entitled Treatment of Shanghai Taoen International Trading Co., Ltd. in the Final Results of the Administrative Review for the Period 9/1/01 - 8/31/02, dated February 5, 2004 (Shanghai Taoen AFA Memo).

Department's Position:

Based on our analysis of Shanghai Taoen's explanation regarding the documentation obtained by the Department from CBP, we find that Shanghai Taoen's explanation demonstrates that its questionnaire responses to the Department, and the responses to questions asked at verification of both Shanghai Taoen and Yuzhu, were inaccurate and incomplete. As such, we find that, pursuant to sections 776(a)(2)(A) and (B) of the Tariff Act of 1930, as amended (the Act), Shanghai Taoen withheld information and failed to submit information by the deadlines required. The information withheld by Shanghai Taoen was significant, and fundamental to the Department's calculation of an accurate dumping margin. As noted above, the information obtained by the Department from CBP, and subsequent submissions by Shanghai Taoen and the Domestic Interested Parties, consists primarily of business proprietary information. A full analysis of the Department's AFA determination is therefore contained in the proprietary version of the Department's Shanghai Taoen AFA Memo.

Based on Shanghai Taoen's withholding of information, and its incomplete and inaccurate questionnaire responses, pursuant to section 776(b) of the Act, we find that the application of facts available is warranted. In applying facts available, section 776(b) of the Act provides that the Department may use an inference that is adverse to the interests of a respondent, if it determines that a party has failed to cooperate to the best of its ability to comply with the Department's request for information. See, e.g., Notice of Final Determination of Sales at Less than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil, 67 FR 55792, 55794-96 (August 30, 2002). To examine whether the respondent cooperated by acting to the best of its ability under section 776(b) of the Act, the Department considers, inter alia, the accuracy and completeness of submitted information and whether the respondent has hindered the calculation of accurate dumping margins. See e.g., Notice of Final

Determination of Sales at Less than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil, 65 FR 5554, 5567 (February 4, 2000); and Notice of Final Determination of Sales at Less than Fair Value: Polyvinyl Alcohol from the Republic of Korea, 68 FR 47540-47541 (August 11, 2003).

The Department finds that Shanghai Taoen has failed to cooperate to the best of its ability because it could have complied with the Department's request to respond accurately to the Department's initial questionnaire, requests for supplemental information, and questions asked at verification. Moreover, at no point in the administrative review, prior to or during verification, did Shanghai Taoen notify the Department of the existence of any inaccuracies in information it reported to the Department, or seek guidance on the applicable reporting requirements, as contemplated in section 782(c)(1) of the Act. Furthermore, Shanghai Taoen and its reported producer, Yuzhu, were the only parties that had access to this information and, therefore, the only parties that could have complied with the Department's requests for information. In sum, despite the Department's detailed and very specific questionnaires and questions asked at verification, Shanghai Taoen gave insufficient attention to its statutory duty to reply accurately to requests for factual information regarding its producers. For all of the aforementioned reasons, the Department finds that Shanghai Taoen failed to cooperate to the best of its ability.

As AFA, the Department is assigning the rate of 223.01 percent—the highest rate determined in the current or any previous segment of this proceeding. See 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) (99-00 Final Results). As discussed further below, this rate has been corroborated.

Comment 3: Application of Adverse Facts Available to Shouzhou Huaxiang Foodstuffs Co., Ltd.

Respondent Shouzhou Huaxiang Foodstuffs Co., Ltd. (Shouzhou Huaxiang) argues that the Department should exercise its discretion and, due to the “extraordinary circumstances” of this case—i.e., flooding of Shouzhou Huaxiang's facilities causing complete cessation of the company's operations—should not require that Shouzhou Huaxiang undergo verification. See November 7, 2003 Shouzhou Huaxiang Case Brief at 1. According to Shouzhou Huaxiang, the statute requires that the Department conduct verification only once every three administrative reviews, unless good cause for verification is shown. Section 782(i)(3)(B) of the Act (19 U.S.C. § 1677m(i)(3)(B)). Shouzhou Huaxiang states that because the Department successfully verified Shouzhou Huaxiang's responses in the previous review period, covering September 1, 2000 through August 31, 2001, there is no statutory requirement that the Department conduct a verification of Shouzhou Huaxiang in this POR. Shouzhou Huaxiang also argues that, since the Department has recently initiated an administrative review of Shouzhou Huaxiang for the September 1, 2002 through August 31, 2003 period of review, the

Department may verify Shouzhou Huaxiang's responses during that proceeding. Furthermore, Shouzhou Huaxiang argues that the administrative record in this case does not indicate any good cause that would require verification of Shouzhou Huaxiang's responses.

Shouzhou Huaxiang objects to the application of an adverse inference in the Preliminary Results. Shouzhou Huaxiang argues that an adverse inference may only be applied if the Department finds that a respondent failed to cooperate by not acting to the best of its ability to comply with the Department's request for information. Section 776(b) of the Act (19 U.S.C. § 1677e(b)). According to Shouzhou Huaxiang, before it can apply an adverse interest, the Department must articulate a finding that Shouzhou Huaxiang chose not to respond to the second supplemental questionnaire or undergo verification although it was able to do so.

Because of the flooding, Shouzhou Huaxiang states that it was not possible to answer the second supplemental questionnaire in the given response period, or to participate in verification under the Department's schedule. Shouzhou Huaxiang argues that, since it was physically unable to perform these tasks in August 2003, the company was acting to the best of its limited ability at that time. Accordingly, Shouzhou Huaxiang argues that, for purposes of the final results, an adverse inference should not be applied to Shouzhou Huaxiang.

The Domestic Interested Parties state that Shouzhou Huaxiang never proposed any alternative dates or methods of verification, and that it relies entirely on its allegation that the aforementioned flooding was sufficiently severe, and of sufficient duration, to excuse the company's failure to permit verification and its failure to respond to the second supplemental questionnaire. According to the Domestic Interested Parties, the severity and duration of the alleged flooding are factual questions to be decided by the Department, based on evidence of record. For the Preliminary Results, the Domestic Interested Parties state, the Department weighed all evidence on the record and concluded that the flooding should not have prevented Shouzhou Huaxiang from answering the second supplemental questionnaire or allowing verification. According to the Domestic Interested Parties, such factual conclusions will be upheld by the U.S. Court of International Trade if they are supported by substantial evidence on the record. 19 U.S.C. § 1516a.

The Domestic Interested Parties argue that here, the Department made numerous independent inquiries of various local sources in China to determine the severity and duration of the flooding, and found that the information it obtained was inconsistent with Shouzhou Huaxiang's account. However, according to the Domestic Interested Parties, Shouzhou Huaxiang has not attempted to explain the discrepancy between its account of the flooding and the accounts provided by other sources, nor challenged the accuracy or reliability of the information obtained by the Department. The Domestic Interested Parties argue that, in the absence of an explanation of how or why the Department erred in its weighing of the factual evidence for the preliminary results, Shouzhou Huaxiang's brief provides no basis for weighing the evidence differently in the final results.

Department's Position: For the reasons articulated below, and pursuant to sections 776(a)(2)(A), (B) and (D) and section 776(b) of the Act, the Department finds that it is appropriate to continue to apply adverse facts available to Shouzhou Huaxiang. Sections 776(a)(2)(A) and 776(a)(2)(B) of the Act provide for the use of facts otherwise available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. Section 776(a)(2)(D) of the Act warrants the use of facts otherwise available in reaching a determination when information is provided, but cannot be verified. Shouzhou Huaxiang requested an extension of the August 8, 2003 deadline for responding to the second supplemental questionnaire on August 6, 2003. See Letter from Shouzhou Huaxiang, at 1 (August 6, 2003). The Department granted a 12-day extension, to August 20, 2003. See Letter to Shouzhou Huaxiang, at 1 (August 8, 2003). However, Shouzhou Huaxiang never submitted its response. Because Shouzhou Huaxiang failed to respond to the Department's second supplemental questionnaire, pursuant to sections 776(a)(2)(A) and (B) of the Act, the Department determines that the application of facts otherwise available is warranted.

The Department finds that the application of facts available is also warranted pursuant to section 776(a)(2)(D) of the Act, because Shouzhou Huaxiang's questionnaire responses could not be verified. On July 30, 2003, Shouzhou Huaxiang submitted a letter to the Department in which it requested cancellation of verification due to flooding at Shouzhou Huaxiang (located in Shouxian Town, Anhui Province), and one of its two producers, Yancheng Yaou Seafoods Co. Ltd. (Yancheng Yaou) (located in Dafeng City, Jiangsu Province). In a follow-up conversation the same day, Shouzhou Huaxiang informed the Department that its other producer, Hubei Qianjiang Houhu Frozen & Processing Factory (Hubei Houhu) (located in Qianjiang, Hubei Province), was not affected by the flooding, and was therefore capable of holding verification on its premises. See Memorandum to the File: Shouzhou Huaxiang Foodstuffs Co., Ltd.'s Refusal to Allow Verification, (September 29, 2003) (Shouzhou Huaxiang Memo), at 1.

On August 2, 2003, we contacted U.S. Embassy officials stationed in Beijing, and asked them if they could obtain information concerning the severity of the flooding in Shouxian Town, Anhui Province, and Dafeng City, Jiangsu Province. We also conducted our own research of internet-based news sites. We found news articles discussing a flood in Anhui Province on July 11, 2003. We did not find news articles discussing flooding in Anhui Province after July 11, 2003. Furthermore, we found no news articles concerning flooding near Dafeng City, Jiangsu Province—the location of Shouzhou Huaxiang's producer Yancheng Yaou. On August 6, 2003, the Department issued a letter explaining that we still intended to conduct on-premises verifications of Shouzhou Huaxiang and its two producers, but would postpone the start of verification as long as possible, to August 29, 2003.

On August 8, 2003, embassy officials in Beijing reported that “[w]hile there were reports on the flood of July 11, there was no subsequent reporting regarding the impassibility of any roads or impeded travel.” *Id.* at 2. Furthermore, after calling hotels in the vicinity of Shouzhou Huaxiang and Yancheng Yaou to ask about the roads, they were told that “in

Shouxian, there are some roads blocked because of the flooding and people have to go around the roads. As for Jiangsu, the hotel stated there is no flooding.”

On August 8, 2003, the Department issued a letter reiterating its intent to verify. This letter stated, in part, that the Department intended to verify Shouzhou Huaxiang, as well as its suppliers Yancheng Yaou and Hubei Houhu, and that based on the telephone conversations between Shouzhou Huaxiang’s counsel and the Department over the previous two weeks, it was the Department’s understanding that Hubei Houhu was not affected by the flooding, and would be able to host verification on the company’s premises. The Department also indicated that it had confirmed, through news reports and inquiries made by embassy officials in Beijing, that the area surrounding Yancheng Yaou was not flooded and that, while the area surrounding Shouzhou Huaxiang flooded on July 11, 2003, the flood waters had largely receded as of August 7, 2003, and the area was accessible by car.

On August 11, 2003, embassy officials in Beijing provided further information indicating that in Shouxian Town, Anhui Province, conditions by that time were “good,” and that roads are no longer blocked by flooding. Id. This information was obtained from staff at the Shouzhou and Shou Xi Hu hotels in Shouxian town. Later, on August 11, 2003, the Department sent its verification outline to Shouzhou Huaxiang, specifying verification dates and locations. The outline indicated that the team would conduct the verifications of Yancheng Yaou on August 29, 2003, of Shouzhou Huaxiang from September 1 through September 2, 2003, and of Hubei Houhu on September 4, 2003.

On August 15, 2003, the Department left messages with counsel for Shouzhou Huaxiang to convey the Department’s continued willingness to try to work with Shouzhou Huaxiang, and to offer to consider any alternative proposals for conducting verification (such as by shuffling the order in which each of the three entities—Shouzhou Huaxiang, and its two producers—would be visited). See Shouzhou Huaxiang Memo, at 2.

On August 18, 2003, Shouzhou Huaxiang informed the Department that “due {sic} the continuing impact of the recent flooding of the Huaihe river, Shouzhou Huaxiang, the company {sic} will not be able to participate in the verification scheduled to begin on August 29, 2003.” See Letter from Shouzhou Huaxiang, at 1 (August 18, 2003). Also on August 18, 2003, the Department again contacted counsel for Shouzhou Huaxiang, to convey the Department’s continued willingness to try to work with Shouzhou Huaxiang, and to offer to consider any alternative proposals for conducting verification. The Department also asked whether Shouzhou Huaxiang’s producers, Yancheng Yaou and Hubei Houhu, could still be verified. Id. at 3. Counsel for Shouzhou Huaxiang indicated that they would discuss the matter with Shouzhou Huaxiang, and then get back to the Department on August 19, 2003. Id. On August 19, 2003, the Department again contacted counsel for Shouzhou Huaxiang to find out whether they had received any feedback from Shouzhou Huaxiang, concerning the Department’s offer to consider any alternative proposals for conducting verification, or whether Shouzhou Huaxiang’s producers, Yancheng Yaou and Hubei Houhu, would agree to be verified. Id.

Shouzhou Huaxiang never offered any alternative proposals for conducting verification, and never changed its position that it would not participate in verification. This decision prevented the verification of information placed on the record. Thus, the information submitted by Shouzhou Huaxiang cannot serve as a reliable basis for reaching a determination since verification provides the Department with an opportunity to check the accuracy of the information submitted by the respondent. Because Shouzhou Huaxiang did not respond to the Department's second supplemental questionnaire, and refused to allow verification, sections 782(d) and (e) of the Act are not applicable.

We disagree with Shouzhou Huaxiang's argument that the application of an adverse inference is not warranted. Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may use an inference that is adverse to the interests of a respondent, if it determines that a party has failed to cooperate to the best of its ability. The Department finds that Shouzhou Huaxiang has failed to cooperate to the best of its ability because evidence on the record of this review indicates that it could have complied with the Department's request for supplemental information and could have participated in verification. As discussed above, information on the record indicates that the flooding referred to by Shouzhou Huaxiang was not so severe that verification could not proceed by August 29, 2003, or that the company could not respond to the Department's second supplemental questionnaire by the extended August 20, 2003 deadline. See Shouzhou Huaxiang Memo at 3-4; see also Memorandum to the File, dated January 13, 2004.

Furthermore, Shouzhou Huaxiang's main business is selling crawfish tail meat, and during the period of review it dealt with a limited number of crawfish tail meat processors. With the limited number of processors, Shouzhou Huaxiang had a relatively small quantity of information to analyze and/or report to the Department. As such, Shouzhou Huaxiang was in a position to respond to the Department's supplemental questionnaire. The Department's determination that Shouzhou Huaxiang failed to act to the best of its ability is further supported by Shouzhou Huaxiang's failure to participate in, and even propose any alternatives to, the Department's request for verification. Shouzhou Huaxiang was further put on notice that the Department intended to conduct verification by the Department's letter of August 6, 2003, and by the Department's verification outline issued on August 11, 2003. *Id.* at 1-2. While Shouzhou Huaxiang initially raised concerns regarding the location and timing of the verification due to flooding in the area, Shouzhou Huaxiang failed to respond to the Department's requests that Shouzhou Huaxiang propose alternative arrangements and failed to substantiate its claims of incapacity due to the alleged flooding. For the aforementioned reasons, the Department concludes that Shouzhou Huaxiang was capable of participating in verification and responding to the Department's second supplemental questionnaire. Shouzhou Huaxiang therefore failed to cooperate to the best of its ability by refusing to participate in verification, as well as by failing to respond to the Department's second supplemental questionnaire, as discussed above.

We also disagree with Shouzhou Huaxiang's arguments that the Department should exercise its discretion by not requiring verification for this POR, and that the Department did not have "good cause" for requiring verification. According to sections 351.307(a) and (b)(2) of the Department's regulations, prior to issuing its final results of review, the Department may verify any relevant factual information. There is no requirement that the Department show good cause for doing so. The only references to "good cause" in the regulations concerning verification come under a subsection addressing when the Department is required to verify. See section 351.307(b)(1) of the Department's regulations.

Nevertheless, the Department considered verification of Shouzhou Huaxiang's questionnaire responses necessary in this administrative review. For example, as indicated in questions 22 through 42 of the Department's second supplemental questionnaire, based on an analysis of Shouzhou Huaxiang's questionnaire responses, the Department had numerous concerns relating to possible unreported sales, as well as concerns relating to the extent of certain relationships, and possible affiliations, between Shouzhou Huaxiang and particular U.S. importers. See Shouzhou Huaxiang: Second Supplemental Questionnaire, dated July 25, 2003. Thus, the Department found it necessary to require verification because a complete examination of Shouzhou Huaxiang's books and records would be necessary to ascertain whether the Department should rely on information provided by Shouzhou Huaxiang. The Department also deemed it necessary to require verification because a complete examination of the relationships between Shouzhou Huaxiang and U.S. importers would necessarily shape, on a fundamental level, the Department's analysis of Shouzhou Huaxiang. Specifically, a complete examination of these relationships would enable the Department to determine whether it should treat Shouzhou Huaxiang's U.S. sales as export price (EP) or constructed export price (CEP) sales (as defined in section 772 of the Act and section 351.401 of the Department's regulations).

The Department was neither able to analyze complete responses to its questionnaires to Shouzhou Huaxiang, nor conduct a full verification to check the accuracy and completeness of the information submitted by Shouzhou Huaxiang. Consequently, the Department was unable to ascertain the extent of the relationships between Shouzhou Huaxiang and other Chinese crawfish producers and exporters, as well as U.S. importers, and therefore could not answer the fundamental question of whether the Department should treat Shouzhou Huaxiang's U.S. sales as EP or CEP sales.

For these reasons, as well as those articulated in the Preliminary Results, we find that, pursuant to section 776(a)(2)(A), (B) and (D) of the Act, the final margin for Shouzhou Huaxiang should be based entirely on facts available. Furthermore, because the Department concludes that Shouzhou Huaxiang failed to cooperate to the best of its ability, in applying the facts otherwise available, the Department finds that an adverse inference is warranted, pursuant to section 776(b) of the Act. Since Shouzhou Huaxiang did not respond to the Department's second supplemental questionnaire, nor participate in verification of its questionnaire responses despite repeated offers by the Department to find alternative dates for verification, the Department was unable to determine whether

Shouzhou Huaxiang was eligible for a separate rate. In the absence of verifiable information establishing Shouzhou Huaxiang's eligibility for a separate rate, we have determined that it is subject to the PRC-wide rate. As AFA, and as the PRC-wide rate, the Department is assigning the rate of 223.01 percent-the highest rate determined in the current or any previous segment of this proceeding. See 99-00 Final Results. As discussed further in the Final Results, this rate has been corroborated.

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 and the final weighted-average dumping margins in the Federal Register.

Agree _____ Disagree _____

James J. Jochum
Assistant Secretary
for Import Administration

Date