



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

A-570-848

Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of Review in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: On October 7, 2011, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC). The review covers five exporters. The period of review is September 1, 2009, through August 31, 2010.

Based on our analysis of the comments received, we have made changes in the margin calculations for one company. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of the Review."

EFFECTIVE DATE: (Insert date of publication in the *Federal Register*.)

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov or Minoo Hatten, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0665 or (202) 482-1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 7, 2011, 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*, 76 FR 62349 (October 7, 2011) (*Preliminary Results*),<sup>1</sup> in the *Federal Register*. The administrative review covers Xiping Opeck Food Co., Ltd. (Xiping Opeck), Shanghai Ocean Flavor International Trading Co., Ltd. (Shanghai Ocean Flavor), China Kingdom (Beijing) Import & Export Co., Ltd. (China Kingdom), Xuzhou Jinjiang Foodstuffs Co., Ltd. (Xuzhou Jinjiang), and Nanjing Gensen International Co., Ltd. (Nanjing Gensen).

On January 25, 2012, we published *Freshwater Crawfish Tail Meat from the People's Republic of China: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review*, 77 FR 3730 (January 25, 2012), in which we extended fully the deadline for the final results to April 4, 2012.

On February 13, 2012, we determined a rate for Xiping Opeck, the sole mandatory respondent in this review, on the basis of adverse facts available (AFA). See memorandum to Paul Piquado, Assistant Secretary for Import Administration, entitled “Freshwater Crawfish Tail Meat from the People’s Republic of China – Post-Preliminary Analysis Memorandum -- The Use of Adverse Facts Available,” dated February 13, 2012 (AFA Memo). We invited interested parties to comment on the *Preliminary Results* and the AFA Memo.

We received case and rebuttal briefs from Xiping Opeck and the petitioner, the Crawfish Processors Alliance. No interested party requested a hearing.

The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

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<sup>1</sup> In publishing the *Preliminary Results*, the *Federal Register* distorted the title of the notice; the *Federal Register* thereafter published the correct title of the notice in 76 FR 65497 (October 21, 2011).

### Scope of the Order

The product covered by the antidumping duty 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. The HTSUS subheadings are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.

### Rescission of Administrative Review in Part

In the *Preliminary Results*, we preliminarily found that Shanghai Ocean Flavor, Xuzhou Jinjiang, and Nanjing Gemen had no shipments of subject merchandise during the period of review and we stated our intent to rescind the administrative review with respect to these companies. *See Preliminary Results*, 76 FR at 62350. We have received no comments concerning our intent to rescind this administrative review in part. We continue to find that Shanghai Ocean Flavor, Xuzhou Jinjiang, and Nanjing Gemen had no shipments of freshwater crawfish tail meat from the PRC during the period of review. In accordance with 19 CFR 351.213(d)(3), we are rescinding the review of Shanghai Ocean Flavor, Xuzhou Jinjiang, and Nanjing Gemen.

### Adverse Facts Available

In the *Preliminary Results*, we stated that the record evidence suggests a lack of commercial soundness in the transactions reported by Xiping Opeck in this review and that another entity (hereinafter, Company A)<sup>2</sup> plays a role in the pricing associated with the entries of subject merchandise in this review. *See Preliminary Results*, 76 FR at 62350. For a detailed discussion on this issue, *see* the memorandum entitled “Freshwater Crawfish Tail Meat from the People’s Republic of China – Evaluation of an Allegation of Middleman Dumping and Nature of Transactions Pertaining to the Entries Under Review,” dated September 30, 2011. In the *Preliminary Results*, we also stated that further inquiry on this issue is necessary. *See Preliminary Results*, 76 FR at 62350. Consequently, on October 3, 2011, we issued a non-market economy questionnaire to Company A. Company A did not answer the non-market economy questionnaire, arguing that it was not required to submit a response. *See AFA Memo at 2.* We determined that Company A significantly impeded the proceeding because it did not provide any of the information which we determined to be critical and necessary for the completion of an administrative review of the entries and sales made by Xiping Opeck. *See AFA Memo at 3.* We found it necessary, pursuant to sections 776(a)(1), (2)(A) and (C) of the Act, to use facts otherwise available to calculate the dumping margin for Xiping Opeck in this review. *See AFA Memo at 4.* Because Company A did not cooperate to the best of its ability in this review, in relying on facts otherwise available, we found that pursuant to section 776(b) of the Act an adverse inference is warranted in determining a dumping margin for Xiping Opeck in this review. *See AFA Memo at 4.* In determining the AFA rate for Xiping Opeck in this review,

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<sup>2</sup> We are withholding the identity of Company A because Xiping Opeck’s U.S. customer claimed business-proprietary treatment of this information.

we relied on primary information on the record. Using this information, we calculated an AFA rate of 70.12 percent for Xiping Opeck in this review. *See* AFA Memo at 4.

After our consideration of the comments on this issue, for the final results of this review, we continue to find that the use of AFA is warranted for Xiping Opeck in this review pursuant to sections 776(a) (1), (2)(A) and (C) and 776(b) of the Act.

#### Non-Market-Economy Country Status

In the *Preliminary Results*, we treated the PRC as a non-market-economy (NME) country. *See Preliminary Results*, 76 FR at 62350. No interested party commented on our designation of the PRC as an NME country. Therefore, for the final results of review, we have continued to treat the PRC as an NME country in accordance with section 773(c) of the Act.

#### Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department'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 Xiping Opeck and China Kingdom demonstrated their eligibility for separate-rate status. *See Preliminary Results*, 76 FR at 62351-62352. We received no comments from interested parties regarding the separate-rate status of these companies. Therefore, in these final results of review, we continue to find that the evidence placed on the record of this review by Xiping Opeck and China Kingdom demonstrates an absence of government control, both in law and in fact, with respect to these companies'

exports of the subject merchandise. Thus, we have determined that Xiping Opeck and China Kingdom are eligible to receive a separate rate.

#### Separate Rate for a Non-Selected Company

China Kingdom is the only exporter of crawfish tail meat from the PRC that demonstrated its eligibility for a separate rate which was not selected for individual examination in this review. The statute and the Department's regulations do not address the establishment of a rate to be applied to individual companies not selected for examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, we have looked to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents we did not examine in an administrative review. Section 735(c)(5)(A) of the Act articulates a preference that we are not to calculate an all-others rate using any zero or *de minimis* margins or any margins based entirely on facts available. Accordingly, the Department's usual practice has been to average the margins for the selected companies, excluding margins that are zero, *de minimis*, or based entirely on facts available.<sup>3</sup> Section 735(c)(5)(B) of the Act also provides that, where all margins are zero, *de minimis*, or based entirely on facts available, we may use "any reasonable method" for assigning the rate to non-selected respondents, including "averaging the estimated weighted-average dumping margins determined for the exporters and producers individually investigated."

In previous cases, the Department has determined that a "reasonable method" to use

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<sup>3</sup> See *Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision (I&D) Memorandum at Comment 16.

when, as here, the rate of the respondent selected for individual examination is based entirely on facts available is to apply to those companies not selected for individual examination (but eligible for a separate rate in NME cases) the average of the most recently determined rates that are not zero, *de minimis*, or based entirely on facts available (which may be from a prior administrative review or a new shipper review).<sup>4</sup> If any such non-selected company had its own calculated rate that is contemporaneous with or more recent than such prior determined rates, however, the Department has applied such individual rate to the non-selected company in the review in question, including when that rate is zero or *de minimis*.<sup>5</sup> In this case, there is only one non-selected company under review that is eligible for a separate rate and this company received its own calculated rate that is contemporaneous with or more recent than the most recent rates determined for other companies that are not zero, *de minimis*, or based entirely on facts available. Accordingly, we have concluded that in this case a reasonable method for determining the rate for the non-selected company, China Kingdom, is to apply its most recent individually calculated rate. Pursuant to this method, we have assigned a rate of 18.87 percent to China Kingdom, its

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<sup>4</sup> See *Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results and Preliminary Partial Rescission of Fifth Antidumping Duty Administrative Review*, 76 FR 8338, 8342 (February 14, 2011) (unchanged in *Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 51940 (August 19, 2011)); see also *Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 75 FR 49460, 49463 (August 13, 2010), and *Amanda Foods (Vietnam) Ltd. v. United States*, 774 F. Supp. 2d 1286 (CIT April 14, 2011).

<sup>5</sup> See *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Preliminary Results of the New Shipper Review and Fourth Antidumping Duty Administrative Review and Partial Rescission of the Fourth Administrative Review*, 73 FR 52015 (September 8, 2008), *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews*, 74 FR 11349 (March 17, 2009) (changing rate for non-selected respondents because the final calculated rate for the selected respondent was above *de minimis*) (unchanged in *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Amended Final Results of the Fourth Antidumping Duty Administrative Review*, 74 FR 17816 (April 17, 2009)); see also *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 47191, 47195 (September 15, 2009), and accompanying I&D Memorandum at Comment 16.

calculated rate in the previous administrative review.<sup>6</sup> In assigning this separate rate, we did not impute the actions of any other companies to the behavior of the company not individually examined but based this determination on record evidence that may be deemed reasonably reflective of the potential dumping margin for the non-individually examined company, China Kingdom, in this administrative review.

#### Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the I&D Memorandum which is hereby adopted by this notice. A list of the issues raised is attached to this notice as an appendix. The I&D Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). Access to IA ACCESS is available in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building. In addition, a complete version of the I&D Memorandum can be accessed directly on the internet at <http://www.trade.gov/ia/>. The signed I&D Memorandum and the electronic versions of the I&D Memorandum are identical in content.

#### Changes Since the Preliminary Results

We determined the margin for Xiping Opeck based on AFA.

#### Final Results of the Review

As a result of the administrative review, we determine that the following percentage weighted-average dumping margins exist for the period September 1, 2009, through August 31, 2010:

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<sup>6</sup> See *Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Antidumping Duty Administrative and New-Shipper Reviews*, 75 FR 79337 (December 20, 2010).

| <u>Company</u>                                    | <u>Margin (percent)</u> |
|---|-------------------------|
| Xiping Opeck Food Co., Ltd.                       | 70.12                   |
| China Kingdom (Beijing) Import & Export Co., Ltd. | 18.87                   |

### Assessment

For Xiping Opeck and China Kingdom, we will instruct CBP to apply the rates listed above to all entries of subject merchandise exported respectively by these companies. We intend to issue assessment instructions to CBP 15 days after the date of publication of the final results of review.

### Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results of this review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date as provided by section 751(a)(2)(C) of the Act: (1) for subject merchandise exported by Xiping Opeck and China Kingdom, the cash deposit rate will be the rate established in this final results of review, as listed above, for each exporter; (2) for previously reviewed or investigated companies not listed above that have separate rates, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be PRC-wide rate of 223.01 percent; (4) for all non-PRC exporters of subject merchandise the cash deposit rate will be the rate applicable to the PRC entity that supplied that exporter. These deposit requirements shall remain in effect until further notice.

### Notifications

This notice also serves as a final reminder to importers of their responsibility under

19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i) of the Act.

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Paul Piquado  
Assistant Secretary  
for Import Administration

April 4, 2012  
(Date)

## **Appendix**

1. Determination that Company A is an Interested Party
2. Application of Adverse Facts Available
3. Selection of Adverse Facts Available Rate

**[FR Doc. 2012-8601 Filed 04/09/2012 at 8:45 am; Publication Date: 04/10/2012]**