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April 7, 2008

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results and Partial Rescission of the 2005-2006 Antidumping Duty Administrative Review and Rescission of 2005-2006 New Shipper Reviews of Freshwater Crawfish Tail Meat from the People's Republic of China

SUMMARY

The Department of Commerce (the Department) has analyzed the case briefs, rebuttal briefs, and other comments submitted by interested parties in the 2005-2006 administrative and new shipper reviews of freshwater crawfish tail meat from the People's Republic of China. The period of review (POR) is September 1, 2005, through August 31, 2006. On October 9, 2007, the Department 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. See Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Results and Partial Rescission of the 2005-2006 Antidumping Duty Administrative Review and Preliminary Intent to Rescind 2005-2006 New Shipper Reviews, 72 FR 57288 (October 9, 2007) (Preliminary Results). We recommend that you approve the positions described in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is a complete list of issues for which we have received comments:

Comment 1: Whether the Department Should Assign a Combination Rate to Xiping Opeck
Comment 2: Whether Jingdezhen's Sale was Bona Fide
Comment 3: Whether Xuzhou's Dumping Margin Should be Based on Total Adverse Facts Available
A. Unreported POR Sales of Subject Merchandise
B. Application of Adverse Facts Available
C. The Appropriate AFA Rate
Comment 4: Whether the Department Should have Accepted New Factual Information Submitted by Washington International Insurance Company
Comment 5: Whether Certain Factual Information Should be Removed from the Record

Discussion of Issues:

The Department published the Preliminary Results of these reviews on October 9, 2007. We invited parties to comment on our Preliminary Results of review. Case briefs were submitted by the petitioners[1], a respondent to the administrative review, Xuzhou Jinjiang Foodstuffs Co., Ltd. (Xuzhou), the surety to Xuzhou's U.S. importer, WII International Insurance Co. (WII), and a respondent to the new shipper review, Jingdezhen Garay Foods Co., Ltd. (Jingdezhen). On December 26, 2007, another respondent to the administrative review, Xiping Opeck Food Co., Ltd. (Xiping Opeck), and the petitioners submitted rebuttal briefs. On February 22, 2008, WII and Xuzhou submitted comments in response to a memorandum the Department placed on the record. See Memorandum from Jeff Pedersen to the File regarding "Information Obtained from the Food and Drug Administration Regarding Shipments by Xuzhou Jinjiang Foodstuffs Co., Ltd.," dated February 7, 2008.

**Comment 1: Whether the Department Should Assign a Combination Rate to Xiping Opeck**

The petitioners argue that Xiping Opeck, a respondent in this administrative review, should receive a combination rate limited to subject merchandise that it both produced and exported because without a combination rate, Xiping Opeck will become a conduit for future shipments from other Chinese crawfish processors with much higher cash deposit rates. The petitioners note that the Department provided for the use of combination rates in a 2003 Policy Bulletin in order to address similar concerns over producers exporting through new shippers to take advantage of a new shipper's cash deposit rate. Moreover, the petitioners point to an April 2005 Policy Bulletin in which the Department provided for the use of combination rates in NME investigations to prevent firms from shifting exports to those exporters with the lowest cash deposit rates. The petitioners contend that these Policy Bulletins recognize that the mere possibility of recovering the difference between the cash deposit and the final duty assessment after an administrative review is not an adequate remedy for the problem, and thus the use of a combination rate is appropriate.

The petitioners add that in a February 2005 decision involving pistachios from Iran, the Department decided to apply a combination rate based on the following facts: (1) similarities between the characteristics (e.g., sales terms) of the respondent's U.S. sale in the administrative review and prior new shipper review; (2) the respondent's practice of selling subject merchandise only to the U.S. market (thus normal value would be based on constructed value which could vary significantly from supplier to supplier and result in significantly different dumping margins); (3) respondent's ability to source subject merchandise from a large pool of suppliers; and (4) differences between the deposit rate for other producers subject to the order and the all-others rate.[2] See Final Results of Antidumping Duty Administrative Review: Certain

1 The petitioners are the Crawfish Processors Alliance, the Louisiana Department of Agriculture and Forestry, and Bob Odom, Commissioner.

2 The petitioners note that these criteria have also been considered in NME reviews. See Amended Final Results of Antidumping Duty Administrative Review and New Shipper Reviews: Wooden Bedroom Furniture From the People's Republic of China, 72 FR 46957 (August 22, 2007) (Wooden Bedroom Furniture from the PRC).

In-Shell Raw Pistachios From Iran, 70 FR 7470 (February 14, 2005) (Pistachios from Iran) and the accompanying Issues and Decision Memorandum at Comment 2. In this case, the petitioners maintain that: (1) Xiping Opeck's sale in this and the new shipper review are similar in terms of quantity; (2) if Xiping Opeck sourced subject merchandise from other suppliers it would likely result in a substantially different dumping margin from the one calculated in the Preliminary Results because other suppliers would likely provide tail meat priced lower than the specialty tail meat[3] sold by Xiping Opeck; (3) there is a large pool of PRC suppliers from which Xiping Opeck could source subject merchandise; and (4) deposit rates for other PRC exporters of subject merchandise are far greater than the preliminary dumping rate calculated for Xiping Opeck.

Xiping Opeck maintains that the petitioners' arguments should be rejected because they are unsupported by record evidence and are contrary to the law and the Department's practice. First, Xiping Opeck argues that all documentation on the record demonstrates that the subject merchandise sold did in fact have unusual characteristics and as such was accurately reported to the Department. Second, Xiping Opeck contends that 19 CFR § 351.107(b)(1) clearly states that combination rates may be used when subject merchandise is exported to the United States by a company that is not the producer of the merchandise. Xiping Opeck states that it is both the exporter and producer, and therefore, 19 CFR § 351.107(b)(1) is not applicable. Third, Xiping Opeck argues that neither of the policy bulletins on which the petitioners base their arguments is applicable to the current proceeding. Specifically, Xiping Opeck asserts that the March 4, 2003, Policy Bulletin 03.2 is not applicable because it only applies to new shipper reviews. Likewise, according to Xiping Opeck, the April 5, 2005, Policy Bulletin 05.1 is only applicable to antidumping investigations, not antidumping administrative reviews. Fourth, Xiping Opeck argues that none of the four factors present in Pistachios from Iran exist in this review because: (a) the sale under review differs in quantity and price from the sale in the new shipper review. Additionally, the respondent in Pistachios from Iran changed suppliers between the new shipper and administrative reviews and received different dumping margins in those reviews. In contrast, Xiping Opeck produced the subject merchandise during the new shipper and instant administrative reviews; (b) Xiping Opeck does not normally only sell subject merchandise to the U.S. market; (c) Xiping Opeck always produces its subject merchandise and has no ability to obtain subject merchandise from other suppliers because they are competitors; and (d) there are other Chinese exporters with deposit rates close to the 13.61% preliminary rate calculated in this review (e.g., 32.57 percent). Moreover, had Xiping Opeck intended to act as a conduit, it would have already done so following the new shipper review.

Department's Position:

We have not applied a combination rate to Xiping Opeck. The preamble to the Department's regulations states that "if sales to the United States are made through an NME trading company,

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3 Although the petitioners based their arguments on Xiping Opeck's claim that it sold a form of crawfish tail meat that demands a premium price, the petitioners continue to question whether this is actually the case. The petitioners suggest that Xiping Opeck may have incorrectly described the subject merchandise in order to support a finding that the sale was bona fide.

we assign a non-combination rate to the trading company … ." See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27295, 27303 (May 19, 1997). At present, the Department has not changed its general practice of not assigning combination rates in antidumping duty administrative reviews.[4]

Despite this general practice, on a case-specific basis, the Department has considered whether it was appropriate to apply a combination rate in an NME antidumping duty administrative review based on the factors examined in Pistachios from Iran. See, e.g., Wooden Bedroom Furniture from the PRC and the accompanying Issues and Decision Memorandum at Comment 5 and Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 71 FR 7013 (February 10, 2006) and the accompanying Issues and Decision Memorandum at Comment 2. We have examined the facts in the instant review and found that the unique blend of facts that led the Department to apply a combination rate in Pistachios from Iran does not exist here. Specifically, we found that: (1) the material terms of Xiping Opeck's sale in the new shipper review and the instant administrative review (e.g., price and quantity) differ; (2) it is irrelevant whether Xiping Opeck made PRC or third-country sales because normal value is based on the producer's factors of production (thus the fact that Xiping Opeck's normal value may vary depending upon the supplier, rather than its home market or third-country prices, is not unusual in an NME case); and (3) although alternative suppliers exist, unlike the respondent in Pistachios from Iran, Xiping Opeck did not purchase subject merchandise from suppliers after its new shipper review (it produced the subject merchandise both in the new shipper and administrative reviews). While there is a significant difference between Xiping Opeck's preliminary dumping margin and some of the other dumping margins calculated in various segments of this proceeding, the Department did not rely solely on such a difference to establish combination rates in Pistachios from Iran. Additionally, the petitioners have not demonstrated how a potential change in the product mix sold by Xiping Opeck (e.g., a change in the type or form of crawfish tail meat sold) distinguishes this review from other administrative reviews where respondents might change their product mix from one review segment to the next. Therefore, the instant circumstances do not warrant assigning Xiping Opeck a combination rate. Lastly, record evidence supports Xiping Opeck's description of the subject merchandise.

**Comment 2: Whether Jingdezhen's Sale was Bona Fide**

In the Preliminary Results, the Department determined that the sale made by Jingdezhen was not bona fide because the record indicated that: 1) the sales price was artificially set and commercially unreasonable; 2) the sales quantity was atypical of normal imports into the U.S. market; 3) there was a lack of prior and continuing commercial interest in subject merchandise (and seafood in general) on the part of the importer, which called into question the commercial basis for the sale; and 4) the lack of payment guarantee appeared atypical and did not reflect normal commercial considerations. Interested parties' comments regarding each of these factors, and the Department's response to those comments, are below.

4 Policy Bulletin 03.2 covers combination rates in new shipper reviews, not administrative reviews, while Policy Bulletin 05.1 applies to investigations only.

Artificially Set, Commercially Unreasonable Price

In the Preliminary Results, the Department examined whether Jingdezhen set artificial, commercially unreasonable prices for subject merchandise by comparing the company's prices for subject and non-subject merchandise to the average unit value (AUV) of U.S. imports of whole crawfish and crawfish tail meat. Jingdezhen argues that the Department should not have concluded that its sales prices are unreasonable based on U.S. import statistics because those statistics contain distorted prices. For example, Jingdezhen points to extremely low unit prices for tail meat, significant variations in the whole crawfish prices charged to a customer for the same product in the same month, and a company selling whole crawfish at more than twice the price of its tail meat in the same week (even though it takes several pounds of whole crawfish to make one pound of tail meat). According to Jingdezhen, the low tail meat prices should be eliminated from the comparison (these prices are for a different type of product or have been artificially set to lower dumping duties) and the wide range in whole crawfish prices indicates variations in product features which render comparisons to these prices meaningless. [5]

Further, Jingdezhen contends that the price of its tail meat cannot be compared to AUVs because its tail meat contains special features and commands a premium price. Although the Department dismissed Jingdezhen's premium price claims in the Preliminary Results (noting that the "unique" freezing method used only adds two to four cents to the per-pound price), Jingdezhen notes that the price of any product is determined by market demand, not cost, and customers are willing to pay a premium price for the features they desire. Moreover, Jingdezhen states that it uses a low-tech freezing process that is very different from the freezing process that purportedly adds two to four cents to the per-pound price. Lastly, Jingdezhen claims that any supposed failure on its part to accurately explain certain pricing patterns which the Department found to be unusual is because, in certain cases, its understanding of how its prices compared to those of other producers was inaccurate.

The petitioners maintain that Jingdezhen failed to support its arguments against the Department's price comparisons. First, the petitioners note that in response to the Department's request that Jingdezhen identify any factors that would result in a premium price for its tail meat, Jingdezhen made only one statement addressing market price – an unsupported claim that its product is tender and maintains a better appearance. The petitioners point out that Jingdezhen never quantified the alleged price premium. Moreover, the petitioners contend that if Jingdezhen's freezing process is technologically less advanced than the process relied upon by the Department to determine added costs (as is claimed by Jingdezhen), it would appear that Jingdezhen has even less of a reason to charge a premium. Second, the petitioners claim that the extremes and outliers in the import data, which are to be expected in any set of import statistics, were not the driving force behind the Department's analyses, which focused on the average value for all U.S. imports. Accordingly, the petitioners urge the Department to continue to find that the pricing analysis shows Jingdezhen's sale to be non-bona fide.

5 Jingdezhen notes that there are some import prices nearly as high as the price it charged. Jingdezhen questions how the Department can find its price to be commercially unreasonable given these prices.

Department's Position:

We disagree with Jingdezhen's claim that "distortions" in U.S. import statistics for crawfish (both whole and tail meat) render those statistics unreliable for determining whether a sales price is typical. First, Jingdezhen has provided no evidence to support its contention that certain relatively low import prices are for products other than crawfish tail meat or have been established to reduce the burden of antidumping duties. Second, the alleged price "distortions" constitute a relatively small portion of the import statistics. Third, even if the Department were to exclude the prices at issue from its analysis, no import price for crawfish tail meat or whole crawfish differs from the AUV as much as the price of Jingdezhen's sale. Lastly, we note that it is the Department's practice in bona fide sales analyses of the crawfish industry to compare the prices of a new shipper respondent to U.S. import data of crawfish tail meat. See, e.g., memorandum to James C. Doyle regarding "Antidumping Duty New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China: Bona fides Analysis of the Sale Reported by Xiping Opeck Food Co., Ltd," dated October 2, 2006; Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results And Rescission, In Part, of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 19174 (April 17, 2007)). The CIT has also affirmed such comparisons in new shipper reviews of products other than crawfish tail meat. See Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States, 366 F. Supp. 2d 1246, 1251 (CIT 2005) (ruling on Notice of Rescission of Antidumping Duty New Shipper Review: Glycine from the People's Republic of China, 68 FR 49434 (August 18, 2003)). Therefore, we have determined that it is appropriate to continue using U.S. import statistics in determining whether Jingdezhen's sales price was typical.

With respect to Jingdezhen's claim that its crawfish tail meat is unique and commands a premium price, we note that although Jingdezhen asserted that its freezing process would increase the price of its crawfish tail meat, it failed to provide any support for this claim and never quantified the price premium. See Jingdezhen's January 10, 2007, supplemental response at 2. Thus, there is nothing on the record indicating that Jingdezhen's freezing process results in a product that is priced so differently from other crawfish tail meat that it is meaningless to compare its price to the AUV of U.S. imports of tail meat. The only data on the record regarding this issue indicates that certain freezing processes that produce a result similar to that obtained by Jingdezhen cost approximately 1/100$^{th}$ the price of typical crawfish tail meat.[6] Based on the foregoing, we have continued to compare the price of Jingdezhen's sale to the AUV of U.S. imports of tail meat. This comparison shows that the price of Jingdezhen's sale differs significantly from the AUV of U.S. imports of tail meat. Jingdezhen has failed to demonstrate that this significant difference is solely due to the unique characteristics of its crawfish tail meat.

6 See Memorandum to Stephen J. Claeys, Deputy Assistant Secretary For Import Administration from Abdelali Elouaradia, Director, Office 4 Import Administration, regarding Bona Fide Sales Analysis and Intent to Rescind the Review with Respect to Jingdezhen Garay Foods Co., Ltd (Jingdezhen Bona Fide Sale Memorandum) (October 1, 2007) at Attachment II .

Atypical Sales Quantity

Jingdezhen asserts that the quantity of tail meat it sold was the amount demanded by the customer and nothing can be more commercially realistic than a quantity that meets the customer's request. Further, Jingdezhen maintains that when first entering a market, lower sales quantities are commercially reasonable, especially considering the fact that customers must pay an antidumping duty cash deposit of over 200% of the price of the goods. Lastly, Jingdezhen indicates that its sales quantity may differ from that of other sales (entries) because of different circumstances surrounding the sales.

The petitioners note that in finding Jingdezhen's sale to be non-bona fide, the Department followed its established practice and analyzed the totality of the circumstances surrounding the sale, not just the sales quantity.

Department's Position:

We disagree with Jingdezhen. Jingdezhen's claim that the sales quantity is based on the customer's needs does not necessarily mean that the quantity is commercially typical (i.e., part of a bona fide sale). As the Department noted in honey from the PRC, "{e}very sale quantity would be considered bona fide if a respondent simply asserted that the sale quantity was a reflection of a customer's needs." See Honey from the People's Republic of China: Rescission and Final Results of Antidumping Duty New Shipper Reviews, 71 FR 58579 (October 4, 2006) and accompanying Issues and Decision Memorandum at Comment 1. The Department cannot base its bona fide sale analysis on a respondent's assertions as to what is commercially reasonable, but must conduct an objective analysis of the facts. Such an analysis often consists of comparing the sales quantity to the quantity of subsequent sales by the respondent (if they exist), or the quantity of other sales in the industry as reflected in Customs and Border Protection (CBP) data. See e.g., Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty New Shipper Review, and Final Rescission of Antidumping Duty New Shipper Review, 68 FR 1439 (January 10, 2007). In this case, the quantity of Jingdezhen's sale is unusually small compared to the quantity of other POR entries of crawfish tail meat from the PRC. While a low sales quantity alone is not necessarily a reason to find a sale not bona fide, here the low sales quantity along with the other atypical sales terms leads us to question whether this sale is representative of sales that Jingdezhen would make in the future. The CIT has supported previous findings where the Department included extremely low sales quantity as part of a pattern demonstrating that a sale is not bona fide. See Hebei New Donghua Amino Acid Co., Ltd. v. United States, 374 F. Supp. 2d 1333, 1342 (CIT 2005) (New Donghua).

Lack of Commercial Interest

In the Preliminary Results, the Department found Jingdezhen's sale was not bona fide based, in part, on the lack of commercial interest on the part of the importer. The Department noted that it has relied on this fact in other reviews to find a sale not bona fide (citing Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results And Rescission, In Part,

of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 19174 (April 17, 2007) (2004-2005 Freshwater Crawfish Reviews).[7] However, Jingdezhen claims that the Department relied on the lack of commercial interest on the part of the respondent in the cited case, not the importer, to find the sale not bona fide. Jingdezhen points out that, in this review, it has demonstrated its continued interest in the seafood industry in general and in the crawfish tail meat industry in particular.

Contrary to Jingdezhen's claim, the petitioners contend that the Department did consider the lack of commercial interest on the part of the importer in finding the sale was not bona fide.

Department's Position:

We disagree with Jingdezhen. The Department's focus on the activities of the importer is consistent with the approach it has taken in bona fide analyses in other cases. See, e.g., Notice of Final Results of Antidumping Duty New Shipper Review: Honey From the People's Republic of China, 69 FR 24128 (May 3, 2007) and accompanying Issues and Decision Memorandum at Comment 1 ("{a}s part of its bona fides analysis, the Department also looked at the circumstances surrounding the activities of the importer"). Moreover, Jingdezhen is mistaken in its belief that the Department only considered the lack of a commercial interest on the part of the respondent in the Wentai Memorandum. In fact, the Department stated in that memorandum that the importer "has been reported to the Department to have been formed as a textile importing company, and, other than its single POR purchase, is not an importer of crawfish tail meat. See Wentai Verification Report at 9-13. These facts further suggest that the Department should not calculate a margin based on what is an atypical business transaction for both Qingdao Wentai and {the importer}." See Jingdezhen Bona Fide Sale Memorandum at Attachment V page 8. Here, Jingdezhen failed to demonstrate a regular commercial interest in subject merchandise on the part of the importer and did not support its claim that the importer had been unsuccessfully trying to sell more subject merchandise. Thus, the Department continues to find that there was a lack of demonstrated commercial interest in crawfish tail meat on the part of Jingdezhen's importer.[8] Consistent with its findings in other segments of this proceeding, the Department finds that a lack of demonstrated commercial interest in crawfish tail meat by Jingdezhen's importer is an additional indicator of a non-bona fide sale. See 2004-2005 Freshwater Crawfish Reviews.

Lack of Payment Guarantee

In the Preliminary Results, the Department found that Jingdezhen's willingness to ship its merchandise without any formal payment guarantee does not reflect normal commercial considerations. Jingdezhen claims its actions were commercially reasonable and based on the U.S. customer's: (1) demonstrated interest and sincerity in pursuing business with Jingdezhen,

7 See the Memorandum to James C. Doyle regarding "Bona fides Analysis and Intent to Rescind New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China for Qingdao Wentai Trading Co., Ltd," dated February 23, 2006 (Wentai Memorandum).

8 Although Jingdezhen maintains that it had a regular commercial interest in the crawfish industry, the Department did not question this claim in preliminarily finding that Jingdezhen's sale is not bona fide.

(2) visit to Jingdezhen's factory, and (3) disclosure of its corporate documents. According to Jingdezhen, these facts, compounded by Jingdezhen's eagerness to enter the U.S. crawfish market, compelled it to accept the reasonable payment terms reported to the Department rather than demand a letter of credit. Jingdezhen also asserts that very few traders in the international seafood market utilize letters of credit. Many international seafood sales, Jingdezhen claims, often feature no payment guarantee aside from a sales contract.

The petitioners argue that Jingdezhen misstated the Department's finding. Specifically, the petitioners claim that the Department cited the lack of *any* payment guarantee, not just the lack of a letter of credit, as indication of a lack of commercial interest by both parties to the sale. Furthermore, the petitioners state that use of a sales contract with no payment guarantees does not provide payment security and fails to explain the atypical payment terms of the sale.

Department's Position:

Jingdezhen failed to provide any documentary support for its argument that few traders of seafood in international markets utilize letters of credit, and that payments and shipments are often guaranteed by sales contract alone. In contrast, the Department placed an article on the record entitled "Essential Advice for Doing Business in China" which states that "Chinese companies usually do not use terms that allow unsecured payments after delivery of goods." See Jingdezhen Bona Fide Sale Memorandum at Attachment VII page 4. Hence, the record indicates that a lack of a payment guarantee is atypical. This fact has been among the factors relied upon by the Department in other cases to find a sale not bona fide.

The Department will find a sale to be non-bona fide, and therefore exclude it from its analysis, where the sale is unrepresentative of normal business practices, commercially unreasonable or extremely distorted. See New Donghua, 374 F. Supp. 2d 1333, 1339. Any factor that indicates a sale is not representative of a respondent's future sales is relevant. See Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States, 366 F. Supp. 2d 1246, 1250 1263 (CIT 2005) (TTPC) (citing American Silicon Technologies v. United States, 110 F. Supp. 2d 992, 995 (CIT 2000)). In this case, the above factors speak to the commercial realities surrounding the sale and indicate that the sale does not reflect normal commercial considerations. Therefore, we continue to find the sale is not bona fide.

Where a review is based on a single sale, exclusion of that sale as non-bona fide necessarily must end the review. See TTPC, 366 F. Supp. 2d 1246, 1249. Therefore, we are rescinding the new shipper review of Jingdezhen.

**Comment 3: Whether Xuzhou's Dumping Margin Should be Based on Total Adverse Facts Available**

In the preliminary results of the instant review,[9] we based Xuzhou Jinjiang Foodstuffs Co., Ltd.'s

9 See Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Results and Partial Rescission of the 2005-2006 Antidumping Duty Administrative Review and Preliminary Intent to Rescind 2005-

(Xuzhou's) dumping margin on total adverse facts available because we found evidence that the company failed to report all of its sales of subject merchandise.[10] Specifically, we obtained entry, sales, and shipping documents from CBP and a summary of information from the Food and Drug Administration's (FDA) OASIS database, which indicate that Xuzhou made unreported sales of subject merchandise during the period of review (POR). We also noted that the counts (sizes) on invoices for certain unreported sales were consistent with the sizes of subject merchandise.[11]

Since our Preliminary Results, we have examined additional information indicating that Xuzhou significantly underreported its sales of subject merchandise during the POR. On September 20, 2007,[12] and January 30, 2008,[13] we obtained information from CBP and the FDA, respectively, indicating that Xuzhou made additional sales of subject merchandise that it failed to report. Specifically, we obtained entry data showing that CBP reclassified as subject merchandise additional sales made by Xuzhou during the POR.[14] We also obtained the following information that came from the FDA's inspections of additional unreported entries: (1) pictures for two entries showing the bags and boxes containing the merchandise. These pictures show that the bags and boxes were labeled as crawfish tail meat or crawfish tails and tail meat can clearly be seen through the portions of the bag that are transparent; (2) a warehouse receiving report for one of the two aforementioned entries that identifies the merchandise as crawfish tail meat; (3) copies of computer screens in the FDA's OASIS database; and (4) a summary of an FDA surveillance assignment identifying the merchandise for a third unreported entry as crawfish tail meat.[15]

A. Unreported POR Sales of Subject Merchandise

Xuzhou and Washington International Insurance Co. (WII) dismiss the evidence relied upon by the Department, claiming that: (1) references to subject merchandise in entry forms and sales and shipping documents are simply errors; (2) CBP's reclassifications of unreported entries as entries of subject merchandise have no evidentiary value; and (3) the FDA evidence is contradictory and based on mislabeled packages. Xuzhou also argues that the counts (sizes) listed on sales invoices are expressed on a 10-pound basis and thus are consistent with counts used for whole crawfish, not tail meat.

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2006 New Shipper Reviews, 72 FR 57288 (October 9, 2007) (Preliminary Results).

10 See the memorandum from Abdelali Elouaradia to Stephen J. Claeys regarding "Unreported Sales and the Use of Adverse Facts Available," dated October 1, 2007 (Preliminary AFA Memorandum).

11 Crawfish tail meat is generally sold in several size classes based on the number of pieces of tail meat per pound: under 80, 80-100, 100-150, and 150-200 pieces per-pound. Whole crawfish (non-subject merchandise) is generally sold in the following size classes: under 15, 16-20, and 21-28 crawfish or more per pound. See Preliminary AFA Memorandum at Attachment V.

12 See the memorandum from Jeff Pedersen to the file regarding "Entry Data Obtained from the U.S. Customs and Border Protection's Database" dated September 21, 2007 (CBP Memorandum). Due to the proximity to our preliminary decision, we did not consider this information in the Preliminary Results.

13 See memorandum from Jeff Pedersen to the file regarding "Information Obtained from the Food and Drug Administration Regarding Shipments by Xuzhou Jinjiang Foodstuffs Co., Ltd." dated February 7, 2008 (FDA Inspection Memorandum).

14 See CBP Memorandum.

15 See FDA Inspection Memorandum.

Errors in Entry, Sales, and Shipping Documents

Both Xuzhou and WII contend that the merchandise for the entries at issue is actually non-subject merchandise and that any indication on documents obtained from CBP that the merchandise is crawfish tail meat is simply due to errors. Xuzhou contends the errors were made, in part, because a customer that ordered crawfish tail meat changed its order at the last moment to whole crawfish but the original documents for the tail meat sale were inadvertently given to CBP. Xuzhou notes that the record contains the corrected invoices for these entries[16] and a copy of its sales ledger identifying the sales as sales of whole crawfish. Further, Xuzhou notes that the sales price for one of the entries in question indicates that it, and other similarly priced entries, are entries of whole crawfish. Xuzhou dismisses a number of entry documents indicating that the unreported sales were of subject merchandise claiming that those documents were not based on actual inspections of the merchandise or were based on inspections of the original tail meat order that was replaced with whole crawfish. Moreover, Xuzhou claims the fact that a shipping document erroneously identified the unreported sales as shipments of subject merchandise is not unusual given the order change and the fact that errors are prevalent in such documents. Xuzhou also claims that the erroneous shipping document is not that significant in this transaction given the terms of sale. See Proprietary Memorandum: Final Results of the Antidumping Duty Administrative Review and New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China (PRC) (Proprietary Memorandum) dated concurrently with this memorandum.

Further, Xuzhou and WII claim that the entry type that was declared to CBP for a number of the entries in question does not demonstrate that the merchandise is subject merchandise. Xuzhou and WII maintain that the reported entry types were errors by the customs broker (which they claim are common), who, according to Xuzhou, may have copied information from the entry forms that were used for reported entries of subject merchandise onto the entry forms used for these entries. Moreover, Xuzhou and WII note that the importer has attempted to correct these classification errors. See WII's December 17, 2007, case brief, at Exhibit 1. WII cites a court decision that recognizes that clerical errors discovered in a review cannot be grounds for the application of adverse facts available.[17] WII also adds that the Department has inappropriately applied contradictory criteria in examining these entries, basing its decision on the entry type, not the written description of the merchandise, while it based its decision regarding other entries on the written description of the merchandise, not the entry type. Additionally, Xuzhou notes that other documents for these entries that are normally submitted to CBP for entries of subject merchandise are not specific to the entries but identical to those used for all entries of subject merchandise. See Proprietary Memorandum.

16 Although the price on one of the two corrected invoices had not been changed from the original price for crawfish tail meat, Xuzhou claims that this was an error and the actual revenue for this sale, which is reflected in the sales ledger, is based on a price that is similar to the prices it normally charges for whole crawfish.
17 See FMC Corp. v. United States, 27 C.I.T. 240 (2003), WL 648958 (2003).

Further, Xuzhou claims that during verification in the prior new shipper review, the Department examined company records pertaining to post-POR sales, including records pertaining to its sales of whole crawfish which include the unreported entries discussed in the Preliminary Results. Thus, according to Xuzhou, the Department already reviewed and verified the entries in question.

Additionally, both Xuzhou and WII assert that some of the entries in question are entries of whole crawfish because the merchandise is described in entry documents using a term that Xuzhou used at the beginning of the POR to describe whole crawfish. WII argues that since whole crawfish are not subject to an antidumping duty order, it was only important that tail meat be clearly identified, while other non-subject merchandise, such as whole crawfish, can be identified using the more general description that it used. Nevertheless, Xuzhou notes that it has modified the term it previously used to refer to whole crawfish to better distinguish the product from subject merchandise. See Proprietary Memorandum.

In their rebuttal, the petitioners contend that Xuzhou failed to provide any documentation supporting the order change that supposedly resulted in the alleged errors in entry documents. Moreover, the petitioners state that information from Xuzhou indicating that the containers for the revised order were shipped together is contradicted by certain entry documents. See Proprietary Memorandum. Further, according to the petitioners, certain entry documents for the tail meat order that was replaced with whole crawfish call into question Xuzhou's claim that it had inventories of both whole crawfish and tail meat only in August 2006. See Proprietary Memorandum. Lastly, the petitioners maintain that all of the sales and entry documents for the order that supposedly was revised indicate that the sales were of crawfish tail meat.

CBP's Reclassifications

On June 7, 2007, the Department ran a CBP data query and found that CBP had reclassified some of the unreported entries discussed above (in the "Errors in Entry, Sales, and Shipping Documents" section) as entries of subject merchandise.[18] As noted above, on September 20, 2007, which was approximately one week before the preliminary decision, the Department ran another CBP data query and found that CBP had reclassified additional unreported entries of Xuzhou's merchandise as subject merchandise.[19]

Both Xuzhou and WII dismiss all of CBP's reclassifications of unreported entries as entries of subject merchandise, claiming that such reclassifications hold no evidentiary value. WII claims that the Department has a long-standing policy of not deferring to CBP on antidumping matters. Also, WII notes that in response to CBP queries regarding certain entries of merchandise identified on documents using a general description, the importer informed CBP that the merchandise was whole crawfish. See Proprietary Memorandum. Additionally, Xuzhou claims that CBP's reclassifications are but a first step (not a final step) which could be undertaken for

18 See the memorandum from Jeff Pedersen for the file regarding "Entry Data Obtained from the U.S. Customs and Border Protection's Database" dated June 18, 2007.
19 See CBP Memorandum.

practically any reason, including inadequate responses to CBP inquires, imprecise entry documentation, or as a way of compelling the importer to prove the contents and proper classification of certain entries.

Count (Size)

Xuzhou contends the high per-pound count on the invoices for the entries in question (e.g. 80-200 pieces per pound –which is normally associated with tail meat) is because the count is per 10 pounds, not per one pound (resulting in a per-pound count between 8 and 20 which is consistent with whole crawfish – the merchandise that Xuzhou claims was actually entered). Xuzhou claims that expressing whole crawfish counts on a per-10 pound basis permits greater count accuracy because its packers need only be concerned with the 10-pound count, not the number of crawfish in each individual one-pound bag.[20] According to Xuzhou, the Department's finding that crawfish tail meat, in general, is sold on a per pound basis, does not change the fact that it identifies the size of whole crawfish on a per 10-pound basis while its retail packaging remained on a per pound basis. Xuzhou notes that it identified whole crawfish counts on a per10-pound basis for a number of sales during the POR. While CBP data shows that the count for one whole crawfish entry was on a per pound basis, Xuzhou states that this entry was sold immediately prior to the POR, nearly nine months prior to the first shipment of whole crawfish during the instant POR, to a customer other than the customer in this review. WII argues that count size is an unreliable basis for identifying subject merchandise.

The petitioners find Xuzhou's explanation regarding the count implausible. Specifically, the petitioners contend that whole crawfish with 10-pound counts of 80-100, 100-150, or 150-200 would produce implausibly large tail meat. Moreover, the petitioners point out that whole crawfish corresponding to a per 10-pound count of 150-200 are barely within the normal size range for whole crawfish while 80-100 or 100-150 counts would correspond to monstrously huge whole crawfish. See Proprietary Memorandum. Therefore, the petitioners contend that the counts listed for the entries in question are for crawfish tail meat and not whole crawfish.

FDA Information

Xuzhou claims that the FDA's pictures of bags labeled as crawfish tail meat for certain unreported entries came about because, after a customer changed its order from tail meat to whole crawfish, Xuzhou insisted that it be allowed to pack the whole crawfish in bags labeled as tail meat since it had already made a substantial investment in the bags before the customer changed its order. Xuzhou adds that the warehouse receiving report in the FDA inspection material, which indicates that the merchandise was tail meat, was created by a warehouse worker based on the packaging; the worker could not have been expected to unpack any of the cases and inspect the contents of the bags. Also, Xuzhou claims that FDA's OASIS database indicates that these shipments are of whole crawfish.

20 Xuzhou asserts that bag size has no correlation to whether counts per 10-pounds permit greater efficiency and accuracy than counts per-pound.

WII submits that the ultimate purchaser of the merchandise in question did not object to the mislabeled bags because it did not resell the merchandise in its packaged form. Further, WII dismisses the FDA's inspection results because they appear to be based entirely on photographic evidence of the packaging, without any evidence that the inspector opened the bags and inspected the contents. Additionally, WII contends that there is no direct evidence linking the photographs of the bags labeled as tail meat to the entries in question. WII adds that the handwritten entry numbers written on the bottom of the photographs appear to be "an afterthought written by some unknown person that cannot definitively tie the photos to the entry in question." See WII's February 22, 2008 submission at 9.

With respect to the inspected entry for which no photographs were provided, WII and Xuzhou argue that the inspector merely noted that the bag's label indicated that the merchandise was "in part cooked, peeled, and deveined crawfish tail meat," without supporting documentary or corroborating evidence. According to Xuzhou, the inspector did not note whether the actual merchandise was whole crawfish or crawfish tail meat.

Additionally, both WII and Xuzhou claim that the results of the FDA inspections contradict the information for these entries in the FDA's OASIS database. Specifically, WII notes that the OASIS database indicates the FDA examined or sampled all three of the entries at issue and determined that two of the entries were of whole crawfish and made no determination with respect to the third entry. WII claims that the OASIS database is an automated system consisting of unadulterated expert determinations of FDA reviewers/inspectors that serves as the official record of admissibility decisions for the importing community. According to WII, the Department should not use the photographic evidence which contradicts information in the OASIS database but must completely disregard the FDA information. See Krupp Thysen GMBH v. United States, 25 C.I.T. 793 (2001) (where the court supported the Department's decision to disregard sales data that was "fatally tainted by errors.")

Based on the foregoing, Xuzhou and WII conclude that the record does not support the finding that Xuzhou failed to report POR sales of subject merchandise. Both respondents cite court decisions noting that determinations must be supported by substantial evidence which is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion" and evidence that is "more than a mere scintilla."[21] According to WII, in applying the substantial evidence test, the courts will affirm the Department's factual determinations only "so long as they are reasonable and supported by the record as a whole…".[22] WII argues that the record, "as a whole," does not contain substantial evidence to support the conclusion that Xuzhou failed to report a significant volume of U.S. sales of subject merchandise. Rather, WII argues that, at most, the Department can only speculate that these entries are of subject merchandise and the courts have held that speculation by the Department cannot constitute substantial evidence.[23]

21 See Consolidated Edison Co. v. NLRB, 305 U.S. 197, 229, 83 L. Ed. 126, 59 S. Ct. 206 (1938); accord Matsushita Elec. Indus. Co., Ltd. v. United States, 3 Red. Cir. (T) 44, 51, 750 F.2d 927, 933 (1984). See also Gerber Good (Yunnan) Co. v. United States, 387 F. Supp. 2d 1270, 1278 (CIT 2005)
22 See Olympia Indus., Inc. v. United States, 7 F. Supp. 2d. 999, 1000 (Ct. Int'l Trade 1998).
23 See Asociacion Columbiana Exportadores de Flores v. United States, 40 F. Supp. 2d 466 (Ct. Int'l Trade 1999).

Thus, both parties maintain that the Department cannot claim that Xuzhou failed to report a significant volume of POR sales of subject merchandise.

Department's Position:

We disagree with Xuzhou and WII. For the reasons noted below, there is no basis to dismiss evidence from multiple sources indicating that Xuzhou failed to report POR sales of subject merchandise.

Xuzhou and WII have essentially argued that all of the evidence of unreported subject merchandise sales should be ignored because it results from errors by the importer/customs broker, meritless reclassifications by CBP, a legitimate count used to improve accuracy, and inaccurate FDA inspections. We have addressed each of these claims below.

Errors in Entry, Sales, and Shipping Documents

First, Xuzhou writes off much of the record evidence of unreported sales as simple errors, claiming the importer (or its broker) submitted the wrong documents to CBP for certain entries when a customer changed its order from tail meat to whole crawfish, and incorrectly declared other entries as subject merchandise. Yet Xuzhou never supported its claim with the entry and shipping documents that identify the revised order as a shipment of whole crawfish. Meanwhile, certain export documents for the shipments of tail meat that were replaced at the last moment with whole crawfish specifically indicate that the product that was shipped was actually subject merchandise. See Proprietary Memorandum. If the order had been revised from tail meat to whole crawfish and new sales documents were prepared to reflect this change, the export documents should have identified the merchandise as whole crawfish. Moreover, we question WII's unsupported assertion that errors in certain types of shipping documents are prevalent. See Proprietary Memorandum.

Second, the record does not support Xuzhou's claim that the customs broker made a simple clerical error in misclassifying certain unreported entries. The broker did more than simply record an entry type indicating subject merchandise. The importer or its broker provided additional documents for certain entries in question indicating that the merchandise is subject merchandise. See Proprietary Memorandum. Also, the record calls into question respondents' assertions that the customs broker may have mistakenly copied information from earlier entry forms for the reported sales to the entry forms used for the unreported sales in dispute. See Proprietary Memorandum. Therefore, Xuzhou's argument that the information in the entry forms for the sales in question was incorrectly copied from the entry forms for prior entries of subject merchandise is unsupported and even contradicted by the broker's actions.

Third, the record calls into question respondents' contention that the general description that appears on documents for the entries in question is a description that Xuzhou used to describe whole crawfish. Entry documents for one entry that is not among the entries discussed above show that at times Xuzhou did not use the general description to refer to merchandise that it claims was whole crawfish. See Proprietary Memorandum. Moreover, the results of the FDA

inspections indicate that an entry of merchandise that Xuzhou identified using the general description that purportedly refers to whole crawfish, is actually tail meat (see discussion below). Additionally, the record does not support Xuzhou's other claim that it modified the general description that it used to identify whole crawfish to distinguish the product from subject merchandise. See Proprietary Memorandum. Thus, we find that the general product description on documents for the entries in question, which purportedly indicates whole crawfish, does not outweigh other evidence indicating that these entries are of subject merchandise.

Fourth, the record calls into question Xuzhou's claim that the sales price of an entry in question indicates that the entry is an entry of non-subject merchandise. Due to the proprietary nature of this discussion, see Proprietary Memorandum for details.

Finally, Xuzhou's claim that the sales in question were reviewed and verified by the Department is misleading. While the Department may have examined certain post-POR sales during its verification in the new shipper review, the record indicates that the purpose of the Department's examination was to compare the prices and quantities of POR and post-POR sales in order to determine whether the sales during the new shipper POR were bona fide. There is nothing on the record indicating that the verifiers tested the descriptions of the products on post-POR sales records or found the sales in question to be sales of whole crawfish.

CBP's Reclassifications

We disagree with the conclusion that the Department cannot rely on CBP's entry reclassifications. Xuzhou and WII have only offered unsupported assertions in claiming that CBP's reclassifications do not necessarily indicate that the merchandise is subject merchandise. Those assertions are at odds with record evidence showing that a majority of the entries reclassified by CBP were either identified as entries of tail meat on documents provided to CBP by Xuzhou, entries of merchandise with a count (size) consistent with tail meat, or were identified by the FDA as tail meat. We also note that for one of CBP's reclassifications, the record contains a detailed explanation of the reasons for, and the records relied upon in, reclassifying the entry. See WII's December 17, 2007, case brief at Exhibit 2. This information supports the Department's decision to consider the merchandise as subject merchandise and lends credence to CBP's reclassifications. Furthermore, the Department placed information on the record regarding CBP's reclassifications over 200 days prior to these final results. Thus, parties were notified of these reclassifications. Yet, for all but one of the reclassified entries, no parties indicated that they have disputed CBP's reclassifications, even though the amount of potential antidumping duties on these reclassified entries is significant. While the importer has filed a Customs protest challenging one reclassification, CBP has denied the protest. See id.

Count (Size)

We continue to find that the counts listed on the invoices for the entries in dispute call into question Xuzhou's claims that these are entries of whole crawfish. Whole crawfish counts are usually in the range of 15 to 35 per pound while tail meat counts are usually in the range of 80 to 200 per pound. See Attachment V of Preliminary AFA Memorandum. Although Xuzhou claims

that it took the unusual step of identifying the count (size) of whole crawfish on a 10-pound basis (thus resulting in counts that appear to be for tail meat (i.e., counts of 80 to 200 per pound)), none of the documents on the record describe the count as being per 10 pounds, nor is there other evidence, such as customer correspondence, indicating the counts are per 10 pounds. Further, Xuzhou's claim that it expressed whole crawfish counts on a 10-pound basis is called into question by certain other record evidence. See Proprietary Memorandum. Moreover, record evidence demonstrates that a 10-pound count for whole crawfish is not the norm and is not used by other companies.[24] We also disagree with WII's statement that size cannot determine whether a product is crawfish tail meat or whole crawfish. The size of one whole crawfish is approximately 10 times greater than the size of one piece of crawfish tail meat. Thus, based solely on a per unit stated size, one could easily identify a package of crawfish as either whole crawfish or crawfish tail meat.

FDA Information

Lastly, we cannot ignore compelling evidence from the FDA, including photographic evidence, which clearly identifies certain unreported entries as entries of crawfish tail meat. Although the respondents have argued that the pictures merely show packaging labeled as tail meat, and provide no evidence as to the content of the packages, the pictures clearly show that the bags contain crawfish tail meat, not whole crawfish. See memorandum from Jeff Pedersen for the file regarding "Color Versions of Photographs Contained in the February 7, 2008, Memorandum." Thus the record contains evidence as to the content of the packages, not just how the packages were labeled, and this evidence shows that the respondents' claims that the bags contained whole crawfish are untrue. This alone conclusively demonstrates that Xuzhou failed to report all of its sales of subject merchandise. Moreover, Xuzhou failed to provide documentary evidence that discussed the order change that supposedly led to packing whole crawfish in bags labeled as tail meat (e.g., letters, email correspondence, or cancelled or new purchase orders). In addition, although Xuzhou explained the circumstances that led to, and the numerous details of, the order change, it never stated that the order change resulted in shipping whole crawfish in bags labeled as crawfish tail meat until the Department placed pictures of the bags on the record. Finally, we note that tail meat bags are inappropriately small for whole crawfish.[25]

We also disagree with WII's assertion that, aside from the FDA's handwritten notes, there is nothing explicitly linking the photographs to the entries in question. The photograph for one of the entries shows a bag with a brand name, bag size, and count that correspond to the warehouse receiving report which ties to the commercial invoice for the entry. Moreover the date written on the photograph is consistent with the date on the warehouse receiving report. See Entry Documents Memorandum. Further, we note that Xuzhou and its customer did not claim that the photographs do not relate to the entries in question, but instead attempted to explain why the shipments were packed in bags labeled crawfish tail meat.

24 See Attachments V and VI of Preliminary AFA Memo.

25 Data obtained by the Department regarding whole crawfish sales indicated that the smallest bags used to pack whole crawfish are bags holding three to four pounds of crawfish. See Attachment V of the Preliminary AFA Memorandum.

In addition to the photographic evidence and warehouse receiving report identifying the merchandise as tail meat, the FDA also supplied copies of computer screens found in the FDA's OASIS database. While the OASIS database summary that was obtained before the inspection results lists "whole" next to two of the inspected entries, this description comes from the importer (as asserted by Xuzhou). This fact is demonstrated by the OASIS database screen for one of the entries which lists the importer's description of the merchandise as "Frozen Whole Cooked Crawfish" and the corrected description as "Frozen Cooked Crawfish tail meat." Thus the corrected description in the OASIS database is consistent with the results of the FDA's inspections.

The overwhelming record evidence discussed above demonstrates that Xuzhou made a significant number of sales of subject merchandise that it failed to report. The entry, sales, and shipping documents, the FDA's photographs, warehouse record, and surveillance reports, CBP's reclassification of numerous entries as entries of subject merchandise, and counts (sizes) on sales invoices for the unreported sales that are consistent with counts for crawfish tail meat, all indicate that Xuzhou failed to report numerous sales that are of a significant quantity compared to the quantity of reported sales. Xuzhou has not provided a basis for the Department to dismiss this overwhelming evidence from multiple third-party sources, including two other U.S. government agencies. Therefore, as discussed next, we determine that Xuzhou's failure to report a significant volume of sales of subject merchandise warrants the application of facts available.

B. Application of Adverse Facts Available

If the Department continues to find that the sales in question are sales of subject merchandise, Xuzhou and WII maintain that the Department should not base the company's dumping margin on total adverse facts available (AFA). Xuzhou and WII contend that Xuzhou acted to the best of its ability in this review. Specifically, Xuzhou claims it: (1) placed information regarding all of its U.S. sales, both sales of subject and non-subject merchandise, on the record; (2) placed complete and accurate factors of production information on the record; (3) provided responses that are backed by financial, accounting, and sales records and are available for verification; and (4) addressed the Department's concerns regarding the unreported sales, to the extent that it could. With respect to this last point, Xuzhou claims that its counsel's efforts to obtain information regarding the sales in question was severely limited because the information on those sales that was obtained by the Department, and on which the Department sought comments, was virtually all treated as proprietary information. Additionally, Xuzhou asserts that the Department consciously avoided seeking information on those sales from the importer and removed WII's information on those sales from the record. Thus, Xuzhou concludes that it did not fail to act to the best of its ability in placing on the record all of the information required to calculate an accurate dumping margin.

WII claims that Xuzhou acted to the best of its ability because, according to its records, it reported all of its sales of subject merchandise. WII adds that some of the information regarding the sales at issue was solely available to the importer; and thus applying AFA, will penalize Xuzhou for failing to provide documents to which Xuzhou is neither entitled nor privy.

Additionally, Xuzhou cites a ruling by the U.S. Court of Appeals for the Federal Circuit (CAFC) finding that the Department cannot apply facts available in situations in which the information or data does not exist. See Olympic Adhesives v. United States, 899 F. 2d 1565, 1572-3 (CAFC 1990).

Furthermore, according to WII, the small amount of entries in question cannot justify the rejection of Xuzhou's entire database and does not support the use of total AFA. WII asserts that if the Department finds that the sales in question are sales of subject merchandise, it should use non-adverse facts available in calculating the dumping margin for those sales. Specifically, WII argues that the Department should apply the weighted-average dumping margin of the reported sales to such "unreported" sales.

In reply, the petitioners contend that the Department's use of total AFA is entirely appropriate because key elements of Xuzhou's explanation for certain unreported sales are absurdly implausible, internally inconsistent, and unsubstantiated. Even though Xuzhou claimed that it is unable to compel its U.S. customer to provide documentation supporting the order change and count explanation, the petitioners contend that Xuzhou could have provided some documentation, even internal documents, memoranda, or communications with customers to support its claims. In the absence of a plausible and consistent explanation for the disputed entry documents, the petitioners contend that the veracity of all of Xuzhou's information must be questioned. Therefore, according to the petitioners, it is impossible for the Department to determine which, if any, of the information submitted by Xuzhou is complete and accurate, or which, if any, of the information in the entry documents is complete and accurate, and thus the Department should base Xuzhou's dumping margin on total AFA.

In addition, the petitioners argue that WII's proposal to apply, as partial facts available, a weighted-average margin to the unreported entries, is inappropriate. First, the average unit values for the unreported sales are lower than that of the reported sales; thus assigning a dumping margin to the unreported sales based on the margin calculated for the reported sales would result in a lower margin, thereby rewarding Xuzhou for not reporting these sales. Second, the petitioners contend that, in contrast to WII's assertion, the actual quantity of the unreported sales is significant compared to the quantity of the reported sales. Third, the petitioners believe that calculating a dumping margin using Xuzhou's data is inappropriate because Xuzhou's data is unreliable, as mentioned above. According to the petitioners, if the Department finds it is appropriate to base Xuzhou's dumping margin on partial adverse facts available, it should assign the PRC-wide rate to the unreported sales, rather than calculating a dumping margin for those sales.

Department's Position:

We disagree with Xuzhou and WII. Section 776(a)(2) of the Tariff Act of 1930, as amended (the Act), provides that, if necessary information is not available on the record or an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D)

provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that if an interested party "promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information requested in the requested form and manner," the Department may modify the requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed "deficient" under section 782(d) if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Furthermore, section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. Section 776(b) of the Act also authorizes the Department to use AFA information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. See Statement of Administrative Action (SAA) accompanying the URAA, H.R. Rep. No. 103- 316 at 870 (1994).

Pursuant to section 782(d) of the Act, the Department provided Xuzhou with numerous opportunities to fully report all of its U.S. POR sales of subject merchandise. The Department's quantity and value questionnaire, as well as sections A and C of the antidumping questionnaire, requested that Xuzhou report each of its U.S. sales of subject merchandise that were made during the POR. On January 30, 2007, the Department asked Xuzhou whether it had reported all sales of subject merchandise during the POR; on February 12, 2007, the Department requested that Xuzhou provide all of the commercial invoices for, and demonstrate how it recorded the sales of, all subject merchandise sold during the POR; and on February 22, 2007, the Department requested that Xuzhou list all crawfish products sold to the United States during the POR. Xuzhou did not identify the unreported sales in its responses to these numerous requests.

Additionally, after we obtained information regarding entries of Xuzhou's crawfish products from CBP, we placed that information on the record and provided Xuzhou with an opportunity to

explain the discrepancy between its responses and this information. We again provided Xuzhou with an opportunity to comment on additional information that we obtained from the FDA and CBP indicating that Xuzhou made unreported sales of subject merchandise to the United States. However, as outlined above, we found Xuzhou's explanations to be unsatisfactory and inconsistent with certain record evidence.

Given the significant quantity of unreported sales and Xuzhou's unsatisfactory explanations regarding its reporting failures, we find that (1) the record lacks the information needed to calculate an accurate dumping margin for Xuzhou and (2) the information that was provided by Xuzhou cannot serve as a reliable basis for reaching a determination with respect to Xuzhou, within the meaning of section 782(e)(3) of the Act. Moreover, Xuzhou's failure required the Department to expend significant resources to determine whether Xuzhou reported all of its sales of subject merchandise during the POR, thus impeding this proceeding. Therefore, pursuant to section 776(a)(1) of the Act (necessary information is not on the record) and sections 776(a)(2)(A) and (C) of the Act (withholding requested information and significantly impeding the proceeding), we continue to find that the use of facts otherwise available is appropriate.

Once the Department determines that the use of facts available is warranted, section 776(b) of the Act permits the Department to apply an adverse inference if it makes the additional finding that "an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information." 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., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review, 62 FR 53808, 53819-53820 (October 16, 1997). In determining whether a party has cooperated to the best of its ability, "Commerce must necessarily draw some inferences from a pattern of behavior." See Borden, Inc. v. United States, 1998 WL 895890 (CIT 1998) at 1. See also SAA at 870. The Court of Appeals for the Federal Circuit (CAFC), in Nippon Steel Corporation v. United States, 337 F.3d 1373, 1380 (Fed. Cir. 2003) (Nippon Steel), provided an explanation of the "failure to act to the best of its ability" standard. Specifically, the CAFC held that the Department need not show intentional conduct existed on the part of the respondent, but merely that a "failure to cooperate to the best of a respondent's ability" existed (i.e., information was not provided "under circumstances in which it is reasonable to conclude that less than full cooperation has been shown"). See id. The CAFC also noted that the test is "the degree to which the respondent cooperates in investigating (its) records and in providing Commerce with the requested information." See Nippon Steel, 337 F.3d 1373, 1383.

As discussed above, the Department has rejected Xuzhou's claims and determined that the sales in question are subject merchandise sales. Xuzhou's failure to report these sales, despite the fact that it possessed the necessary records regarding these sales, indicates a lack of cooperation on its part. Further, contrary to WII's claim, the quantity of the unreported sales is significant compared to the total quantity of reported sales. The quantity of most unreported sales and the total quantity of all unreported sales are significant compared to the total quantity of reported sales. See Proprietary Memorandum. As demonstrated above, the Department provided Xuzhou

with numerous opportunities to either submit the requested information or explain why it was unable to do so. Xuzhou did not report the sales in question, or indicate that it lacked the records needed to report such sales. Moreover, Xuzhou's reporting failures result in a record that cannot serve as a reliable basis for calculating an accurate dumping margin. Hence, the record shows a pattern of behavior on the part of Xuzhou which indicates that it did not cooperate to the best of its ability within the meaning of section 776(b) of the Act. Therefore, an adverse inference is warranted.

C. The Appropriate AFA Rate

WII contends that the Department cannot use the AFA rate used in the Preliminary Results because it is punitive, unreasonable, and unsupported by substantial evidence. WII states that the Courts have found that an AFA rate must be a "reasonably accurate estimate of a respondent's actual rate, albeit with some built-in increase intended as a deterrent to non-compliance,"[26] not a "{p}unitive, aberrational, or uncorroborated" rate.[27] Moreover, WII notes that the courts have stated that the Department's discretion in selecting an AFA rate "is not unbounded."[28] WII argues that the preliminary AFA rate of 223.01% is not a reasonably accurate estimate of Xuzhou's actual rate, even with an added deterrent, given that Xuzhou's only calculated dumping margin prior to this review was zero percent. See Freshwater Crawfish Tail Meat from the People's Republic of China; Final Results and Rescission, In Part, of 2004/2005 Antidumping Duty Administrative and New Shippers Reviews, 73 FR 19174 (April 17, 2007). While the Department applied a 223.01% AFA rate to Shanghai Taoen International Trading Co., Ltd. in a previous segment of this proceeding, WII states that this company had no prior dumping margin.[29] See Freshwater Crawfish Tail Meat From the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review and Final Rescission of Review, in Part, 69 FR 7193 (February 13, 2004). In addition, WII compares the facts in the instant review to those addressed by the Court of International Trade in ruling (regarding an AFA rate selected by the Department) that the "magnitude of the increase…(from 47.88% in the final determination to 139.31% …) suggests that Commerce's selection of the 139.31% rate may have been punitive."[30] WII notes that the increase in Xuzhou's rate from zero to 223.01% is much greater than the increase that raised the court's suspicions in Shandong Huarong. According to WII, this demonstrates that the AFA rate applied in the Preliminary Results is punitive, contrary to law, and that the Department should apply a significantly lower rate if it continues to use AFA.

The petitioners did not comment on this issue.

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26 See Gerber Food v. United States, 491 F. Supp. 2d 1326, 1349 (Ct. Int'l Trade 2007) citing De Cecco v. United States, 216 F.3d 1027, 1032 (Fed. Cir. 2000) (De Cecco)).
27 See De Cecco, 216 F.3d at 1032 (Fed. Cir. 2000).
28 See id.
29 We note that WII's statement is inaccurate. Shanghai Taoen International Trading Co., Ltd. had a final rate of 7.53% in the 1999-2000 review. See Freshwater Crawfish Tail Meat From the People's Republic of China; Notice of Final Results of New Shipper Review and Final Rescission of Review, 66 FR 64948 (December 17, 2001).
30 See Shandong Huarong Gen. Group Corp. v. United States, 2004 WL 2203486 (Ct. Int'l Trade Sept. 13, 2004) (Shandong Huarong).

Department's Position:

In deciding which rate to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. In reviews, the Department normally selects, as AFA, the highest rate determined for any respondent in any segment of the proceeding. See, e.g., Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 68 FR 19504 (April 21, 2003) (1999-2000 Final Results). The Court of International Trade (CIT) and the Federal Circuit have consistently upheld this practice. See Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1190 (Fed. Circ. 1990) (Rhone Poulenc); NSK Ltd. v. United States, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in the less than fair value investigation); see also Kompass Food Trading Int'l v. United States, 24 CIT 678, 689 (2000) (upholding a 51.16% total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and Shanghai Taoen International Trading Co., Ltd. v. United States, 360 F. Supp. 2d at 1339 (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review). When selecting an adverse rate from among the possible sources of information, the Department's practice is to ensure that the rate is sufficiently adverse "as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner." See Static Random Access Memory Semiconductors from Taiwan; Notice of Final Determination of Sales at Less than Fair Value, 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See SAA at 870; see also Notice of Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil, 69 FR 76910 (December 23, 2004); D&L Supply Co. v. United States, 113 F.3d 1220, 1223 (Fed. Cir. 1997). In choosing the appropriate balance between providing respondents with an incentive to respond accurately, and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior margin "reflects a common sense inference that the highest prior margin is probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less." See Rhone Poulenc, 899 F.2d at 1190. Consistent with the statute, court precedent, and its normal practice, the Department continues to select 223.01% as the AFA rate, the highest calculated rate on the record of this proceeding. See, e.g., 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). We have corroborated this rate as explained below.

Section 776(c) of the Act requires that the Department, to the extent practicable, corroborate secondary information from independent sources that are reasonably at its disposal. Secondary information is defined as "{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any

previous review under section 751 concerning the subject merchandise." See SAA at 870. The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. See SAA at 870. As noted in F.Lii de Cecco di Filippo Fara S. Martino, S.p.A. v. United States, 216 F.3d 1027, 1030 (2000), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information. See also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1996) (unchanged in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part, 62 FR 11825 (March 13, 1997)). According to the SAA, independent sources used to corroborate secondary information may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. See Notice of Preliminary Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators from Japan, 68 FR 35627 (June 16, 2003); and Notice of Final Determination of Sales at Less Than Fair Value: Live Swine from Canada, 70 FR 12181 (March 11, 2005).

The AFA rate selected in this review constitutes secondary information. However, unlike other types of secondary information, such as input costs or selling expenses, there are no independent sources of information from which the Department can derive calculated dumping margins; the only source for dumping margins is administrative determinations. The rate that we are using as AFA is reliable because it was calculated in the 1999-2000 antidumping duty administrative review in this proceeding using respondent data that were accepted by the Department and surrogate values that were selected by the Department. See, Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 68 FR 19504 (April 21, 2003). This rate has been used as an AFA rate in every segment of this proceeding since the 1999-2000 antidumping duty administrative review and the Department has received no information that warrants revisiting the issue of its reliability.

With respect to relevancy, the Department will consider information reasonably at its disposal to determine whether a dumping margin continues to have relevance. Where circumstances indicate that the selected dumping margin is not appropriate as AFA, the Department will disregard the dumping margin and determine an appropriate dumping margin. For example, in Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review, 61 FR 6812 (February 22, 1996), the Department did not use the highest dumping margin in that case as adverse best information available (the predecessor to facts available) because the dumping margin was based on another company's uncharacteristic business expense resulting in an unusually high dumping margin. Similarly, the Department does not apply a dumping margin that has been discredited. See D&L Supply Co. v. United States, 113 F.3d at 1221 (the Department will not use a dumping margin that has been judicially invalidated). None of these unusual circumstances are present here. As noted above, the rate that we are using as AFA is a

calculated rate for a PRC company in a prior segment of this proceeding. The rate is thus based on data, including surrogate values, which were accepted by the Department in that segment of this proceeding. This rate remains applicable to exporters of crawfish from the PRC. Moreover, we disagree with WII's claim that this rate is not appropriate for Xuzhou. Comparing the entered value of a large quantity of unreported subject merchandise sales in this review to the average normal value calculated for Xuzhou in the 2004-2005 new shipper review results in an estimated dumping margin that supports the selected AFA rate. See Proprietary Memorandum. We also believe the estimated rate that we calculated is a conservative approximation of Xuzhou's dumping margin since we did not take into account all of the adjustments normally made in calculating a dumping margin.[31] Furthermore, we believe the data underlying the approximate rate are more relevant to Xuzhou's current practices than the rate from the company's new shipper review because they are based on a large quantity of sales in the current period rather than a limited number of sales from the prior new shipper POR. Thus, contrary to WII's claims, we believe the AFA rate of 223.01%, is a reasonably accurate, relevant, and reliable estimate of Xuzhou's experience, and sufficiently adverse as to effectuate the purpose of facts available to induce parties to report complete and accurate information. Use of this highest prior calculated margin reflects the common sense inference that it is probative of Xuzhou's current margins because otherwise Xuzhou "would have produced information showing the margin to be less." See Rhone Poulenc, 899 F. 2d at 1190.

**Comment 4: Whether the Department Should Have Accepted New Factual Information Submitted by WII**

WII argues that the Department abused its discretion when it found that WII's November 21, 2007, submission contained untimely filed factual information and refused to accept it. WII claims that this submission was the earliest opportunity for it to provide such information, as it only learned of the Department's decision to apply AFA to Xuzhou upon publication of the Preliminary Results, after which it immediately retained counsel and reviewed the proceeding. WII asserts that its quick reaction to the Preliminary Results demonstrates its good faith effort to submit information that would aid the Department in fulfilling its statutory duty. Moreover, WII argues that the submission of the new information did not cause the Department to begin anew or delay the final results of review since the information only serves to corroborate and support Xuzhou's questionnaire responses that are already on the record. In addition, WII argues that consideration of the information in question does not require the Department to gather new information or revise its methodology. WII also argues that the information in question was provided in response to the Department's questionnaire.

Furthermore, WII argues that, in this case, the Department has improperly chosen finality over accuracy merely because it has already issued the Preliminary Results. According to WII, the court has stated that "{p}reliminary determination{s} … are 'preliminary' precisely because they

31 Due to Xuzhou's failure to provide sales data, we were unable to consider the impact of freight costs or brokerage and handling charges in calculating the U.S. price for this comparison. Further, despite normal value coming from a period prior to the POR, we did not consider inflation in calculating normal value. Reducing U.S. price for freight costs and brokerage and handling and increasing normal value for inflation would have caused the margin to be higher.

are subject to change;"[32] thus the court "has never discouraged the correction of errors at the preliminary results stage," but "only balanced the desire for accuracy in antidumping duty determinations with the need for finality at the final results state." Xuzhou and WII note that the information was provided in response to a questionnaire from the Department, and it explains and corrects errors in the record that caused the Department to base Xuzhou's dumping margin on total AFA. WII states that the courts have found that the Department abuses its discretion by not accepting corrective information when the information: (1) is provided in a timely manner after the Preliminary Results; (2) the correction of the errors would not delay the final or require the Department to begin anew; and (3) not correcting the errors results in the imposition of multimillions of dollars in additional duty not warranted by the statute.[33] WII claims that all three of these criteria are met in this review. Therefore, WII concludes that the Department has abused its discretion by failing to consider its information.

Petitioners had no comment.

Department's Position:

We disagree with WII. In accordance with 19 CFR 351.301(b)(2), the deadline for submitting new factual information is 140 days after the last day of the anniversary month of the order, which, in this case, resulted in a deadline of February 17, 2007. WII's submission containing new factual information was submitted on November 21, 2007, or 277 days after the deadline. Therefore, the Department rejected WII's submission as untimely filed new factual information.

Also, WII's reliance on NTN and Timken is misplaced. The issue in these cases involved factual information submitted by respondents to correct errors they had made in earlier submissions to the Department. In contrast, WII submitted untimely information to substantiate Xuzhou's claims. Information calling into question Xuzhou's claims had been on the record since March 30, 2007. See the March 30, 2007, memorandum from Jeff Pedersen to the file regarding "Entry Documents of Xuzhou Jinjiang Foodstuffs Co., Ltd." Thus, WII could have provided the rejected information in a timely fashion, but failed to do so.

We further disagree with WII's contention that the earliest possible time for it to submit information on the record of this review was after the Preliminary Results. An interested party, which WII was found to be, can participate at any point during a review. We initiated the review of Xuzhou on October 31, 2006. See Initiation of Antidumping and Countervailing Duty Administrative Reviews, 71 FR 63752 (October 31, 2006). However, WII waited until October 19, 2007, or nearly one full year after the Department's initiation of the review of the entries for which WII was a surety, to apply for access to information under an administrative protective order (APO). See the Letter from "Thomas Vakerics to the Department regarding Freshwater

32 Timken U.S. Corporation v. United States, 434 F.3d at 1353 (Fed. Cir 2006)(Timken).
33 See NTN Bearing Corp. v. United States, 75 F.3d 1204, 1208 (Fed. Cir. 1995) (NTN Bearing); see also, Timken; Maui Pineapple Company, Ltd. V. United States, 264 F. Supp. 2d 1244 (Ct. Int'l Trade 2003); World Finer Foods, Inc. v. United States, No. 99-138, 2000 WL 897752 (CIT June 26, 2000).

Crawfish Tail Meat from the People's Republic of China – APO Application" (October 19, 2007).

With respect to WII's argument that it provided the information in question in response to the Department's questionnaire, we note that the Department merely requested that WII provide "a copy of customs forms 7501 concerning entries of subject merchandise imported by South Sky during this period of review (POR), 9/1/05-8/31/06; and a copy of the contract between Washington International and South Sky applicable to South Sky's imports of subject merchandise during this POR as evidence for the record." See the memorandum from Ann M. Sebastian to Thomas V. Vakerics regarding "Interested Party Status of Washington International Insurance Company in the Administrative Review of Freshwater Crawfish Tail Meat from the People's Republic of China." The purpose of this letter, to which WII responded with new factual information, was to determine whether WII's application for APO access should be granted. It was not an opportunity for WII to submit information other than that requested by the Department.

**Comment 5: Whether Certain Factual Information Should be Removed from the Record**

The petitioners argue that the case briefs submitted by Xuzhou and WII contain untimely factual information which should be removed from the record pursuant to 19 CFR 351.302(d).

Department's Position:

We disagree with the petitioners that the information should be removed from the record. Much of the information alleged to be untimely new factual information already exists on the record. See the April 7, 2008 memorandum from Jeff Pedersen for the file regarding "New Factual Information Claims by Petitioner." While some of the information noted by the petitioners is new factual information, we determine it appropriate to allow the information on the record.[34]

Pursuant to 19 CFR 351.301(c)(2)(i), the Department has the discretion to accept information provided by an interested party at any point in the proceeding. Moreover, 19 CFR 351.302(b) provides that the Department may, for good cause, extend any time limit established by the regulations. The new information submitted by WII relates to a letter to CBP attempting to change the entry type reported for certain entries and an importer's protest filed with CBP. The Department previously sought information from CBP regarding any attempts to change the reported entry type of some of the entries in question but was not informed of the letter provided by WII, nor did it have information regarding the protest. Accordingly, in the Preliminary Results, the Department stated that no party had attempted to change the entry type, and that no party had challenged CBP's reclassifications of the entries. See the memorandum from Abdelali Elouaradia to Stephen J. Claeys regarding "Unreported Sales and the Use of Adverse Facts Available" at 2 and 6. However, the letter and the protest clearly demonstrate that the reported entry type and CBP's reclassifications were in fact challenged. Therefore, even though this

34 See page 10, lines 9-14, page 11 lines 3-20, page 12 lines 1-12, and Exhibits 1 and 2 of WII's case brief and page 15 lines 3-4 and 6-8 of Xuzhou's case brief.

information can be considered untimely new factual information, we determine it appropriate to extend the time limits established by the regulations to allow this information on the record. See, e.g., Certain Preserved Mushrooms From the People's Republic of China: Final Results of Sixth Antidumping Duty New Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review, 69 FR 54635 (September 9, 2004) and accompanying Issues and Decision Memorandum at Comment 7 (where the Department accepted untimely new factual information because to do otherwise would produce the undesirable result of using less contemporaneous data). Consequently, we have accepted this new information for purposes of this administrative review.

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 this review and the final weighted-average dumping margins for the reviewed firms in the Federal Register.

Agree ___ Disagree ____

_____
David M. Spooner
Assistant Secretary
for Import Administration

_____
(Date)