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MEMORANDUM TO: Ronald K. Lorentzen /RL/
Acting Assistant Secretary
for Import Administration

FROM: John M. Andersen /JA/
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review of Freshwater Crawfish Tail Meat from the People's Republic of China for the Period of Review September 1, 2006, through August 31, 2007

Summary

We have analyzed the case and rebuttal briefs of interested parties in the administrative review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China for the period of review (POR) September 1, 2006, through August 31, 2007. The sole issue in this administrative review for which we received comments and rebuttal comments from parties concerns the calculation of surrogate values for inland-freight expenses. We recommend that you approve the position described in this memorandum.

Background

On October 6, 2008, the Department of Commerce (the Department) published Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind Review in Part, 73 FR 58115 (October 6, 2008) (Preliminary Results), in the Federal Register.

We invited interested parties to comment on the Preliminary Results. On November 5, 2008, we received a case brief from the petitioners, the Crawfish Processors Alliance and the Louisiana Department of Agriculture and Forestry. On November 10, 2008, we received a rebuttal brief from Yancheng Hi-King Agriculture Developing Co., Ltd. (Hi-King).

Discussion of the Issue

Calculation of Surrogate Values for Inland-Freight Expenses

Comment: The petitioners assert that the Department's simple-average method of deriving surrogate values[1] for refrigerated and non-refrigerated inland-freight trucking expenses is not appropriate because the resulting amounts do not reflect Hi-King's actual experience. According to the petitioners, the rates for inland freight, whether for use of a refrigerated or non-refrigerated truck, are a function of ranges of carriage distances based on the logarithmic (exponential) relationship where an increase in carriage distances results in a disproportionate decrease in trucking rates. In other words, the petitioners assert, the Department's simple-average calculation does not address the underlying mathematical relationship that shows an imperfect linear dependency between truck rates and carriage distances. The petitioners argue that a simple average of such rates in the calculation of surrogate values skews the result in favor of a respondent such as Hi-King which reported short distances for transporting inputs of production and the finished product.

The petitioners propose that the Department use the same data but, instead, calculate a freight rate specific to Hi-King's actual reported distances for each input using a formula that estimates the logarithmic relationship between trucking rates and distances. Alternatively, for inland freight applicable to non-refrigerated trucking, the petitioners propose that the Department use a distance-specific Indian freight rate that reflects Hi-King's actual reported distances for transporting its inputs of production. For freight applicable to refrigerated trucking, the petitioners propose that the Department use a distance-specific freight rate that corresponds most closely to Hi-King's actual reported distance for transporting the finished product.

Hi-King disagrees with the petitioners' proposed changes to the calculation of the surrogate values for inland-freight trucking expenses. Hi-King asserts that the petitioners did not demonstrate that their suggested methodology improves the accuracy of the Department's surrogate-value calculations or the overall margin calculation nor did the petitioners demonstrate that the Department's methodology is unreasonable and distorts the margin calculations. Hi-King asserts that, lacking a compelling reason to do so, the Department should not alter its consistent past practice of calculating surrogate values for truck freight by adopting changes to its methodology proposed by the petitioners.

Citing Cinsa S.A. DE C.V., v. United States, 966 F. Supp. 1230, 1235 (CIT 1997), Hi-King argues that the petitioners have not met their burden in demonstrating that the Department's methodology causes distortions in freight calculations for the determination of normal value. Citing surrogate-valuation memoranda from earlier reviews of the order, Hi-King asserts that the Department used the same methodology for calculating surrogate values for inland freight by refrigerated and non-refrigerated truck. Hi-King contends that the Department may not depart from its longstanding practice without providing a sufficient explanation for doing so, citing Shakeproof Assembly Components Division of Illinois Tool Works, Inc. v. United States, 412 F. Supp. 2d 1330, 1336-1337 (CIT 2005), and Allied Tube and Conduit Corp. v. United States, 374 F. Supp. 2d 1257, 1262 (CIT 2005). Moreover, Hi-King contends, the petitioners did not cite to any case precedent where the Department calculated surrogate values using the methodology

[1] The petitioner does not dispute the data sources for freight rates applicable to refrigerated and non-refrigerated trucking which we used in computing surrogate values.

similar to that suggested by the petitioners.

Hi-King asserts that distance is not the only or the most important factor that influences freight rates, citing other factors such as geographic location, market competition, road quality and accessibility, convenience or frequency of route traveled, service times, weight, and type of product carried. Without more data on Indian freight rates and routes, Hi-King argues, it is impossible to determine which of these various factors could have the greatest impact on freight rates in different situations. Moreover, Hi-King argues, the data upon which the Department relied in calculating its surrogate values for inland freight show that distance is not the determining factor in influencing freight rates. As such, argues Hi-King, a recalculation of freight rates based on distance alone will ignore these other factors, will not improve the accuracy of the freight surrogate-value calculations, and will result in a less accurate and more distorted margin calculation.

Hi-King argues that the Department's use of a simple-average method in calculating surrogate values for inland freight was reasonable. Citing Fuyao Glass Indus. Group Co. v. United States, 27 C.I.T. 1892 (CIT 2003) (Fuyao Glass), Rhodia, Inc. v. United States, 185 F. Supp. 2d 1343 (CIT 2001) (Rhodia), and Comitex Knitters, Ltd. v. United States, 803 F. Supp. 410 (CIT 1992), Hi-King asserts that simple-averaging has been used by the Department in calculating numerous surrogate values throughout the history of this proceeding and others. Citing Fuyao Glass, Hi-King contends that courts have upheld the Department's use of a simple average of country-wide Indian electricity rates even in a situation where it was known that underlying electricity rates were subject to location-specific influences. Hi-King argues that the issue of simple-averaging truck-based inland-freight rates is not dissimilar from this judicial precedent.

Hi-King asserts that section 777A(a) of the Tariff Act of 1930, as amended (the Act), authorizes the Department to use, where appropriate, averaging methods in calculating normal value. Citing Ceramica Regiomontana v. United States, 636 F. Supp. 961 (CIT 1986), Hi-King argues that the Department may use any calculation it deems appropriate as long as its methodology produces a result that comports with statutory intent. Hi-King argues that in Sigma Corp. v. United States, 117 F.3d 1401 (Fed. Cir. 1997), the court found averaging in non-market-economy (NME) cases particularly appropriate given the inherent difficulty in NME cases to derive a methodology that will produce a reasonable estimate of the true market value of the factors of production. In fact, argues Hi-King, the court recognized that the Department is not required to determine the most accurate method in deriving surrogate values in NME cases because when surrogates are used there is an inherent imprecision by definition. Hi-King cites China Nat'l Mach. Imp. & Exp. Corp. v. United States, 293 F. Supp. 2d 1334 (CIT 2003), and Geum Poong Corp. v. United States, 26 C.I.T. 991 (CIT 2002). Hi-King asserts that the petitioners do not argue that the Department's methodology is inaccurate or unreliable or that it produces distortions in margin calculations. Rather, Hi-King argues, the petitioners merely assert that their methodology is more accurate. Hi-King reiterates that the petitioners' suggested methodology does not account for differences in freight rates resulting from numerous factors other than distance. As such, argues Hi-King, instead of deriving surrogate values that capture all factors responsible for rate variations, the use of a simple-average method is reasonable and sufficiently accurate.

Hi-King argues further that adaptation of the petitioners' proposed methodology would burden the Department's margin calculation significantly without improving its accuracy. According to Hi-King, the petitioners' approach would require a selection or a calculation of an

inland-freight rate specific to each input procured from each supplier. While the number of inputs of production and respective suppliers in this case is relatively small, Hi-King maintains, in other cases the reverse is true. Instead of constructing surrogate values to emulate each vendor's freight costs for a given input, Hi-King argues that it is much more reasonable to calculate a simple-average surrogate value for equal application across all vendors and inputs. Hi-King argues that the burden on the Department under the petitioners' proposed methodology increases because it first has to overcome the issue of multiple freight rates for equal or similar distances in its attempts to match a respondent's specific distances to specific freight rates on the record. While Hi-King acknowledges that the Department's burden may be alleviated by using a formula as proposed in the alternative by the petitioners, such formula suffers from a flawed assumption that freight rates are an exclusive function of distances.

Department's Position: The petitioners have not demonstrated that the simple-average methodology we used distorts the calculation of surrogate values for inland-freight expenses applicable to refrigerated and non-refrigerated trucking and, ultimately, the margin calculation for Hi-King. In addition, the petitioners did not demonstrate that their proposed methodology increases the accuracy of the margin calculation for Hi-King.

Section 773(c)(1)(B) of the Act states that "{t}he valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority." As explained below, we find that the average inland-freight rates that we calculated are the best available information in terms of being most representative of freight rates in the primary surrogate country, India.

The focal point of the petitioners' argument rests on the assumption that, because by-truck inland-freight rates decrease disproportionally with increases in carriage distances, the average inland-freight surrogate values that we calculated do not reflect Hi-King's experience. We do not find this argument convincing. As Hi-King asserts, distance may be only one of many factors that influence freight rates. Further, as explained below, the record evidence makes it clear that distance does not have a meaningful correlation, if any, with trucking rates. As such, adoption of the petitioners' proposed methodology in calculating surrogate values for the necessary freight expenses as producing the most representative freight rates in India would place more emphasis on the importance of one factor, distance, which has a limited influence on inland-freight rates, while diminishing or ignoring other factors that have more significant influence on freight rates. In turn, this approach could result in a calculation of surrogate values for inland-freight expenses that decreases the accuracy of the margin calculation for Hi-King.

Using the surrogate-value data on the record, Hi-King demonstrated that freight rates vary between routes and their respective reverse trips of equal distances and freight rates vary for routes of similar or nearly identical distances based on various city pairings. In essence, Hi-King demonstrated that there is a range of varying trucking rates for identical or similar distances. See Hi-King's rebuttal brief, dated November 10, 2008, at pages 3 and 4. This suggests that there are factors other than distance that may explain variations in truck freight rates. Hi-King's hypothesis that these factors are geographic locations of points of origin and points of destination, market competition in different regions, road conditions and accessibility in different locations, convenience and frequency of routes traveled, weight, volume, type of product, etc. is reasonable, given the reputable sources of authority upon which Hi-King draws for its analysis. Accordingly, the selection of individual inland-freight trucking rates that correspond to distances comparable to those reported by Hi-King does not render such freight rates more reflective of

Hi-King's experience as the petitioners argue.

We have analyzed the underlying data for freight by non-refrigerated truck in detail in order to examine the petitioners' argument regarding the mathematical integrity of the methodology we used in calculating the surrogate value. To control for freight rates varying among different city pairings and their reverse routes, we grouped all data into distance segments of 100 kilometers and calculated an average freight rate for each distance segment. See Memorandum to File entitled "Analysis of Inland-Freight Rate Data," dated February 3, 2009. We then plotted distance segments and their respective calculated average freight rates. Id. We found that, although the freight rates exhibited an exponential rate of decline between the carriage-distance segments of 100-200 kilometers and 200-300 kilometers, for carriage-distance segments beyond 500 kilometers the freight rates show measured fluctuations in the range of 1.65 Rs/MT/km and 2.04 Rs/MT/km. Moreover, for carriage-distance segments between 500 and 1800 kilometers we observed a trend exhibiting a gradual but not significant decrease in freight rates while for carriage-distance segments between 1800 and 2800 kilometers we observed a trend exhibiting a gradual but not significant increase in freight rates. In sum, it is clear that freight rates decline (first rapidly, then gradually) with incremental increases in distance but only up to a point; thereafter, they increase gradually. Therefore, our analysis of the freight data does not suggest a logarithmic mathematical relationship between the freight rates for non-refrigerated trucking and their respective distances as argued by the petitioners.

Even when assuming that distance is the only factor influencing freight rates, based on our analysis its affect is only observable for a portion of the freight data with respect to carriage distances ranging from 100 to 300 kilometers. In comparing freight rates for carriage distances ranging from 300 to 1800 kilometers with those for carriage distances ranging from 1800 to 2800 kilometers we do not find support for the petitioners' argument that freight rates decline exponentially with increases in distances. In fact, the results of our analysis indicate that distance is not the primary or even a dominating factor that influences freight rates for use of non-refrigerated trucks. We make a similar conclusion with regard to inland-freight expenses for refrigerated trucks because the petitioners' argument regarding such expenses was grounded in its analysis of rates for non-refrigerated trucks. Accordingly, we find that the petitioners did not demonstrate why our methodology of simple-averaging inland-freight rates, using all available carriage distances, creates distortions in the calculation of surrogate values for inland-freight trucking expenses.

The petitioners argue that the methodology we used produces average inland-freight rates that are lower than the rates Hi-King's shipments would experience based on actual reported distances. As a preliminary matter, the administrative record lacks freight rates corresponding to certain short distances Hi-King reported for certain inputs of production. Nevertheless, following our discussion above, had such rates been available, they would not be more representative of Hi-King's experience than the average rate we calculated because there is no definitive correlation between carriage distances and freight rates; other factors influencing the freight rates might render the freight rate, selected solely on the basis of a reported distance, unrepresentative of Hi-King's experience. In sum, we find that the average inland-freight rates that we calculated are most representative of Hi-King's experience and, therefore, the best available information.

Our discussion above does not lead to a conclusion that definitive evidence exists that specific inland-freight trucking rates are more representative than others (or more representative than the average) of Hi-King's experience with respect to its inland-freight expenses. Barring

evidence to the contrary, we must assume that all of the inland-freight rates are equally representative of the surrogate experience. Therefore, average inland-freight rates are the best available information as the most representative of freight rates in India. The courts have upheld simple averaging in other determinations with similar circumstances where we explained why simple averaging is reasonable and why the data on which we rely represents the best available information. See, e.g., Zhejiang Native Produce & Animal By-Products Imp. & Exp. Corp. v. United States, 28 C.I.T. 1427, 1437 (CIT 2004), Anshan Iron & Steel Co. v. United States, 27 C.I.T. 1234, 1251 (CIT 2003), Rhodia, 185 F. Supp. 2d at 1350, and Fuyao Glass, 27 C.I.T. at 1924. In light of the reasons we discussed, we find that we do not have a compelling reason to depart from the simple-averaging method we used in calculating surrogate values for inland-freight expenses by refrigerated and non-refrigerated trucks.

Recommendation

Based on our analysis of the comments received, we recommend adopting the above position. If this recommendation is accepted, we will publish the final results of the review in the Federal Register.

Agree ___√_____ Disagree _____

/RL/

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Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

February 3, 2009

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Date