

Final Results of Redetermination Pursuant to Court Remand
Crawfish Processors Alliance, et., al. vs. United States, Consol. Court No. 02-00376,
Slip Op. 07-156 (October 30, 2007)

I. SUMMARY

The U.S. Department of Commerce (the “Department”) has prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (“CIT”) in *Crawfish Processors Alliance, et al. vs. United States*, Consol. Court No. 02-00376, Slip Op. 07-156 (October 30, 2007) (“*Crawfish Remand Order*”). On remand, the CIT directed the Department to recalculate the dumping margin treating Fujian Pelagic Fishery Group Co. (“Fujian”) and Pacific Coast Fishery Corp. (“Pacific Coast”) as affiliated parties in compliance with the decision of the Court of Appeals for the Federal Circuit (“CAFC”) in *Crawfish Processors Alliance, et., al. v. United States*, 477 F.3d 1375 (Fed. Cir. 2007) (“*Crawfish CAFC*”). See *Crawfish Remand Order* at 3. This remand addresses one issue in the 1999-2000 administrative review of the antidumping duty order on freshwater crawfish tail meat from the People’s Republic of China (“PRC”), whether Fujian and Pacific Coast are affiliated parties pursuant to section 771(33)(E) of the Tariff Act of 1930, as amended (“the Act”). See *Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review of Freshwater Crawfish Tail Meat from the People’s Republic of China*, 67 FR 19546 (April 22, 2002) (“*Final Results*”) and accompanying *Issues and Decision Memorandum* (“*Memo*”).

In accordance with the CIT’s instructions,¹ after considering Fujian and Pacific Coast affiliated parties under section 771(33)(E) of the Act, the Department recalculated the dumping

¹ The Court ordered the Department to report its results on remand by January 28, 2008. See *Crawfish* at 3.

margin for Fujian. Specifically, the Department used Pacific Coast's sales to unaffiliated U.S. customers as the basis for U.S. price. As a result of this redetermination, the Department has revised the dumping margin for Fujian from 174.04% to 60.83% during the September 1, 1999 - August 31, 2000 period of review ("POR"). On December 11, 2007, the Department released the draft final results of redetermination for comment. On December 18, 2007, in response to a request by Fujian, the Department granted parties an additional two days to submit comments on the draft final results of redetermination. No party submitted comments by the December 20, 2007, deadline.

II. ANALYSIS

Background

In the *Final Results*, the Department determined that Fujian and Pacific Coast were not affiliated pursuant to section 771(33) of the Act. *See Memo* at Comment 18. Fujian and Pacific Coast challenged the Department's determination and the CIT affirmed the Department's determination that Fujian and Pacific Coast were not affiliated parties because "Fujian had not made an investment, whether in cash or in the form of a promissory note, in Pacific Coast" and because "Fujian did not exercise control over Pacific Coast." *See Crawfish Processors Alliance, et., al. v. United States*, 343 F. Supp. 2d 1242, 1269 (CIT 2004).

Fujian and Pacific Coast timely appealed the CIT's decision with the CAFC. The only issue considered on appeal was whether Fujian and Pacific Coast were affiliated parties pursuant to section 771(33)(E) of the Act. Pursuant to section 771(33)(E) of the Act, "any person directly or indirectly owning, controlling, or holding the power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization" are affiliated.

The CAFC reversed the CIT's and the Department's determination that Fujian and Pacific Coast were not affiliated because section 771(33)(E) of the Act does not require "proof of full payment in cash or merchandise during the review period to show affiliation" and that Fujian and Pacific Coast "have presented sufficient evidence to show that Fujian directly or indirectly owns at least 5% of Pacific Coast's shares." *See Crawfish CAFC*, 477 F.3d at 1384. The CAFC remanded the case to the CIT for proceedings consistent with its opinion. Therefore, on October 30, 2007, the CIT directed the Department to recalculate the antidumping duty margin treating Fujian and Pacific Coast as affiliated parties in compliance with the CAFC's decision and mandate.

Recalculation of Dumping Margin

Because the Department is now considering Fujian and Pacific Coast affiliated parties under section 771(33)(E) of the Act, the appropriate U.S. price for comparison to normal value is no longer the export price ("EP")² between Fujian and Pacific Coast. The appropriate U.S. price for comparison to normal value is the constructed export price ("CEP")³ between Pacific Coast and its first unaffiliated U.S. customer. During the course of the administrative review, the Department collected both EP and CEP sales data from Fujian and Pacific Coast.

We have recalculated Fujian's dumping margin using Pacific Coast's CEP sales data. Using all factors of production and surrogate value information already on the record, we

² The term "export price" means the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c). *See* section 772(a) of the Act.

³ The term "constructed export price" means the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d). *See* section 772(b) of the Act.

calculated normal values for each of Pacific Coast's CEP sales reported during the POR. See *Memorandum to the File from Alex Villanueva, Program Manager, Recalculation of Fujian's Dumping Margin Pursuant to Court Order*, dated December 10, 2007 ("*Fujian Recalculation Memorandum*"). As a result, Fujian's antidumping duty margin during the POR is now 60.83%.

III. CONCLUSION

Pursuant to the CIT's order, the Department considered Fujian and Pacific Coast affiliated parties under section 771(33)(E) of the Act and recalculated Fujian's dumping margin using Pacific Coast's CEP sales data. As a result of this redetermination, the antidumping duty margin during the POR for Fujian is 60.83%.

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Date