

Any interested party may request a hearing within 30 days of the date of publication of this notice. Interested parties who wish to request a hearing, or to participate in a hearing if a hearing is requested, must submit a written request to the Assistant Secretary for Import Administration within 30 days of the date of publication of this notice. Requests should contain the following: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed.

Issues raised in the hearing will be limited to those raised in the case and rebuttal briefs. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs. Parties who submit case briefs or rebuttal briefs in this review are requested to submit with each argument a statement of the issue, a summary of the arguments not exceeding five pages, and a table of statutes, regulations, and cases cited.

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

#### Assessment Rates

The Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. We intend to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of review. We will instruct CBP to assess the antidumping liability for all shipments of CVP 23 from India produced and/or exported by Alpanil or Pidilite and entered, or withdrawn from warehouse, for consumption during the period of review. We will instruct CBP to assess antidumping duties at the adjusted rate of 49.57 percent if CBP has collected the appropriate countervailing duties on the same entry. We will instruct CBP to assess antidumping duties at the unadjusted rate of 66.59 percent if the appropriate countervailing duties are not collected by CBP.

#### Cash-Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of CVP 23 from India entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) The cash-deposit rates for Alpanil and Pidilite will be the rates established in

the final results of this review; (2) if the exporter is not a firm covered in this review, a previous review, or the less-than-fair-value investigation but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (3) if neither the exporter nor the manufacturer has its own rate, the cash-deposit rate will be 27.48 percent, the all-others rate published in *Antidumping Duty Order*, 69 FR at 77989. These deposit requirements, when imposed, shall remain in effect until further notice.

#### Notification to Importer

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

These preliminary results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 2, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E8-20752 Filed 9-5-08; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

(A-570-827)

#### **Certain Cased Pencils from the People's Republic of China: Notice of Correction of Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review**

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

**EFFECTIVE DATE:** September 8, 2008.

**FOR FURTHER INFORMATION CONTACT:** Alexander Montoro at (202) 482-0238 or Shane Subler at (202) 482-0189; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

#### Background

On August 25, 2008, the Department published a notice of extension of the time limit for the preliminary results of the antidumping duty review on certain cased pencils from the People's Republic of China. *See Certain Cased Pencils from the People's Republic of China: Extension of Time Limits for Preliminary Results of the Antidumping Duty Administrative Review*, 73 FR 49993 (August 25, 2008) (Extension Notice). We identified an error in the published version of the notice. Specifically, in the Extension Notice, the case number was incorrectly listed as C-570-827. The correct case number is A-570-827. This notice serves to correct the case number listed in the Extension Notice.

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

Dated: September 2, 2008.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E8-20749 Filed 9-5-08; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-552-801]

#### **Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Preliminary Results of the New Shipper Review and Fourth Antidumping Duty Administrative Review and Partial Rescission of the Fourth Administrative Review**

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

**SUMMARY:** The Department of Commerce ("Department") is conducting an administrative review of the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam ("Vietnam"). *See Notice of Antidumping Duty Order: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam*, 68 FR 47909 (August 12, 2003) ("Order"). We preliminarily find that QVD Food Company Ltd. ("QVD") and Binh An Seafood Joint Stock Co. ("Binh An") did not sell subject merchandise at less than normal value ("NV") during the period of review ("POR"), August 1, 2006, through July 31, 2007.

**DATES:** *Effective Date:* September 8, 2008.

**FOR FURTHER INFORMATION CONTACT:** Alan Ray (QVD) and Matthew Renkey

(Binh An), Office 9, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-5403 and (202) 482-2312, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Case History

On August 2, 2007, the Department published a notice of an opportunity to request an administrative review of the order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 72 FR 42383 (August 2, 2007). By August 31, 2007, the Department received review requests for 32 companies from Petitioners<sup>1</sup> and certain individual companies. In addition, pursuant to 19 CFR 351.214(c), the Department also received a new shipper review request from Binh An.

On September 25, 2007, the Department initiated an antidumping duty administrative review on frozen fish fillets from Vietnam covering 32 companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 72 FR 54428 (September 25, 2007). On October 9, 2007, the Department initiated the new shipper review for Binh An. *See Notice of Initiation of Antidumping Duty Administrative Reviews: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 72 FR 57296 (October 9, 2007).<sup>2</sup> On March 3, 2008, the Department extended the deadline for the preliminary results of this review by 120 days, to September 2, 2008. *See Notice of Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative and Partial Rescission of Administrative Review: Certain Frozen Fish Fillets from Vietnam ("Extension and Partial*

<sup>1</sup> The Catfish Famers of America and individual U.S. catfish processors, America's Catch, Consolidated Catfish Companies, LLC dba Country Select Catfish, Delta Pride Catfish, Inc., Harvest Select Catfish, Inc., Heartland Catfish Company, Pride of the Pond, Simmons Farm Raised Catfish, Inc., and Southern Pride Catfish Company LLC ("Petitioners").

<sup>2</sup> The Department also initiated a new shipper review on October 9, 2007, for Southern Fishery Industries Company, Ltd. ("South Vina"). However, unlike Binh An, South Vina did not agree to aligning its new shipper review with the concurrent administrative review and therefore, the preliminary results for South Vina were issued on July 22, 2008. *See Notice of Preliminary Rescission of New Shipper Review: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 73 FR 43689 (July 28, 2008).

*Rescission Notice*"), 73 FR 11391 (March 3, 2008).

On October 12, 2007, the Department issued a letter to all interested parties informing them of its decision to select QVD and Vinh Hoan Co., Ltd. ("Vinh Hoan"), the two largest exporters of subject merchandise during the POR, as mandatory respondents based on Customs and Border Protection ("CBP") import data. *See Memorandum to the File from Catherine Bertrand, Senior Case Analyst Through Alex Villanueva, Program Manager, Respondent Selection Memorandum ("Respondent Selection Memo")*, dated October 11, 2007.

Between November 1, 2007, and August 25, 2008, QVD submitted responses to the original sections A, C, and D questionnaires and supplemental sections A, C, and D questionnaires. Between November 11, 2007, and August 15, 2008, Binh An submitted responses to the original sections A, C, and D questionnaires and supplemental sections A, C, and D questionnaires. Vinh Hoan also submitted questionnaire responses, as indicated below; however, the administrative review for Vinh Hoan was rescinded. On August 22, 2008, Petitioners submitted comments regarding the preliminary results with respect to QVD and Binh An.

On March 3, 2008, the Department extended the preliminary results of administrative review and rescinded the administrative with respect to 25 companies, including Vinh Hoan, because all requesting parties for those companies timely withdrew their requests for review. *See Extension and Partial Rescission Notice*. Therefore, seven companies remain in this administrative review: An Xuyen Company Ltd. ("An Xuyen"), Lian Heng Trading Co., Ltd. ("Lian Heng"), QVD Food Company, Ltd. ("QVD"), QVD Dong Thap Food Co., Ltd. ("QVD DT"), Thuan Hung Co., Ltd. ("Thuan Hung"), An Giang Fisheries Import and Export Joint Stock Company ("Agifish" or "AnGiang Fisheries Import and Export"); Anvifish Co., Ltd. ("Anvifish").

##### An Xuyen/Vietnam-Wide Entity

As discussed above, in this administrative review we limited the selection of respondents using CBP import data. *See Respondent Selection Memo* at 3. In this case, we sent companies who were not selected the separate rates application and certification. *See Letter to All Interested Parties*, dated October 17, 2007. An Xuyen did not apply for a separate rate in this administrative review. Therefore, An Xuyen will continue to be part of the Vietnam-wide entity. Because the

Department determines preliminarily that there were exports of merchandise under review from Vietnam producers/exporters that did not demonstrate their eligibility for separate-rate status, the Vietnam-wide entity is now under review.

##### Preliminary Partial Rescission

###### Lian Heng

On October 22, 2007, Lian Heng stated that it made no exports of subject merchandise during the POR. Our examination of shipment data from CBP for Lian Heng confirmed that there were no entries of subject merchandise from it during the POR. Therefore, because the record indicates that Lian Heng did not sell subject merchandise to the United States during the POR, we are preliminarily rescinding the administrative review for Lian Heng. *See* 19 CFR 351.213(d)(3).

###### QVD, QVD DT and Thuan Hung

On November 1, 2007, we received a questionnaire response from QVD indicating that QVD, QVD DT and Thuan Hung had export licenses during the POR, but that only QVD exported subject merchandise to the United States during the POR. *See* QVD's Questionnaire Response at 5. QVD, QVD DT and Thuan Hung provided a joint response to the separate rates section of the Department's questionnaires. Our examination of shipment data from CBP for QVD DT and Thuan Hung confirmed that there were no entries of subject merchandise from these entities during the POR. However, because QVD, QVD DT and Thuan Hung will continue to be treated as a single entity (see "Affiliations" section below), we will not rescind the review for QVD DT and Thuan Hung, because a component of the QVD Single Entity had entries of subject merchandise during the POR and remains subject to the administrative review.

###### Agifish & Anvifish

On November 30, 2007, Agifish submitted a separate rate certification. On December 11, 2007, Anvifish submitted a separate rate application. We also examined the CBP data placed on the record and confirmed that Agifish and Anvifish had entries of subject merchandise during the POR.

##### Separate Rates

A designation as a non-market economy ("NME") remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Tariff Act of 1930, as amended ("the Act"). Accordingly, there is a rebuttable presumption that all companies within

Vietnam are subject to government control and, thus, should be assessed a single antidumping duty rate. It is the Department's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in the *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("Sparklers"), as amplified by the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("Silicon Carbide").

#### A. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; and (2) any legislative enactments decentralizing control of companies.

Although the Department has previously assigned a separate rate to all of the companies eligible for a separate rate in the instant proceeding, it is the Department's policy to evaluate separate rates questionnaire responses each time a respondent makes a separate rates claim, regardless of whether the respondent received a separate rate in the past. See *Manganese Metal from the People's Republic of China, Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 63 FR 12440 (March 13, 1998).

In this review, Agifish, Anvifish, QVD, and Binh An<sup>3</sup> submitted complete responses to the separate rates certification and application. The evidence submitted by these companies includes government laws and regulations on corporate ownership, business licenses, and narrative information regarding the companies' operations and selection of management. The evidence provided by these companies supports a finding of a *de jure* absence of government control over their export activities, based on: (1) an absence of restrictive stipulations

associated with the exporter's business license; and (2) the legal authority on the record decentralizing control over the respondents.

#### B. Absence of De Facto Control

The absence of *de facto* government control over exports is based on whether the respondent: (1) Sets its own export prices independent of the government and other exporters; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other agreements; and (4) has autonomy from the government regarding the selection of management. See *Silicon Carbide*, 59 FR at 22587; *Sparklers*, 56 FR at 20589; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

In this review, Agifish, Anvifish, QVD, and Binh An submitted evidence indicating an absence of *de facto* government control over their export activities. Specifically, this evidence indicates that: (1) Each company sets its own export prices independent of the government and without the approval of a government authority; (2) each company retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) each company has a general manager, branch manager or division manager with the authority to negotiate and bind the company in an agreement; (4) the general managers are selected by the board of directors or company employees, and the general managers appoint the deputy managers and the manager of each department; and (5) there is no restriction on any of the companies' use of export revenues. Therefore, the Department preliminarily finds that Agifish, Anvifish, QVD, and Binh An have established *prima facie* that they qualify for separate rates under the criteria established by *Silicon Carbide* and *Sparklers*.

#### Rate for Non-Selected Companies

The statute and the Department's regulations do not directly address the establishment of rates to be applied to companies not selected for examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. However, we normally determine the rates for non-selected companies in reviews in a manner that is consistent with section 735(c)(5) of the Act. In this review, we have only a *de minimis* company-specific dumping margin for

QVD, the only mandatory respondent. However, we also have considered that we found dumping margins in previous segments of this proceeding. Therefore, based on the facts of this case, we have considered the prior rates calculated for these companies and others in choosing a reasonable method to determine the rates for these companies in the current review. See *Brake Rotors From the People's Republic of China: Final Results of 2006–2007 Administrative and New Shipper Reviews and Partial Rescission of 2006–2007 Administrative Review*, 73 FR 32678 (June 10, 2008) and accompanying Issues and Decision Memorandum at Comment 1 ("the selection of a 'reasonable method' to use when, as here, the rates of the mandatory respondents are zero and *de minimis*, must be made on a case-by-case basis and would depend on the facts of the case"). For the separate rate companies, that method is to use the most recent rate calculated for the non-selected company in question, unless we calculated in a more recent review a rate for any company that was not zero, *de minimis* or based entirely on facts available.

Anvifish recently received a calculated rate of *de minimis* in a new shipper review. See *Notice of Amended Final Results of Antidumping Duty New Shipper Review: Certain Frozen Fish Fillets from Vietnam ("New Shipper Review Final")*, 73 FR 47884 (August 15, 2008). Agifish has not been subject to an administrative review since the less-than-fair-value investigation in which it received a rate of 47.05 percent. See *Order*. For purposes of these preliminary results, we have assigned Anvifish's *de minimis* rate calculated in the recent new shipper review as Anvifish's non-selected separate rate in this review. For Agifish, we have assigned the rate of 15.38 percent, which represents the most recent calculated rate that is not zero or *de minimis* and not based entirely on facts available and a rate for a period that is more recent than is Agifish's rate from the investigation. For the Vietnam-wide entity (including An Xuyen), we have assigned the entity's current rate and only rate ever determined for the entity in this proceeding.

#### Scope of the Order

The product covered by this Order is frozen fish fillets, including regular, shank, and strip fillets and portions thereof, whether or not breaded or marinated, of the species *Pangasius Bocourti*, *Pangasius Hypophthalmus* (also known as *Pangasius Pangasius*), and *Pangasius Micronemus*. Frozen fish fillets are lengthwise cuts of whole fish.

<sup>3</sup> Binh An addressed the separate rates section of the Department's questionnaire in its November 1, 2007, submission.

The fillet products covered by the scope include boneless fillets with the belly flap intact (“regular” fillets), boneless fillets with the belly flap removed (“shank” fillets), boneless shank fillets cut into strips (“fillet strips/finger”), which include fillets cut into strips, chunks, blocks, skewers, or any other shape. Specifically excluded from the scope are frozen whole fish (whether or not dressed), frozen steaks, and frozen belly-flap nuggets. Frozen whole dressed fish are deheaded, skinned, and eviscerated. Steaks are bone-in, cross-section cuts of dressed fish. Nuggets are the belly-flaps. The subject merchandise will be hereinafter referred to as frozen “basa” and “tra” fillets, which are the Vietnamese common names for these species of fish. These products are classifiable under tariff article codes 1604.19.4000, 1604.19.5000, 0305.59.4000, 0304.29.6033 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the Harmonized Tariff Schedule of the United States (“HTSUS”).<sup>4</sup> This Order covers all frozen fish fillets meeting the above specification, regardless of tariff classification. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the Order is dispositive.

#### Non-Market Economy Country Status

In every case conducted by the Department involving Vietnam, Vietnam has been treated as a non-market economy (“NME”) country. In accordance with section 771(18)(C)(i) of the Act (“the Act”), any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See Notice of Final Results of Administrative Review: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 73 FR 15479 (March 17, 2008) and accompanying Issues and Decision Memorandum (“3rd AR Final Results”). None of the parties to this proceeding have contested such treatment. Accordingly, we calculated normal value (“NV”) in accordance with section 773(c) of the Act, which applies to NME countries.

<sup>4</sup> Until July 1, 2004, these products were classifiable under tariff article codes 0304.20.60.30 (Frozen Catfish Fillets), 0304.20.60.96 (Frozen Fish Fillets, NESOI), 0304.20.60.43 (Frozen Freshwater Fish Fillets) and 0304.20.60.57 (Frozen Sole Fillets) of the HTSUS. Until February 1, 2007, these products were classifiable under tariff article code 0304.20.60.33 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the HTSUS.

#### Surrogate Country and Surrogate Values

On February 25, 2008, the Department sent interested parties a letter requesting comments on surrogate country selection and information pertaining to valuing factors of production (“FOP”). Binh An submitted surrogate country comments and surrogate value data on March 24, 2008. QVD and Petitioners submitted surrogate country comments and surrogate value data on May 22, 2008.

#### Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer’s FOPs, valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the “Normal Value” section below and in the Memorandum to the File through Alex Villanueva, Program Manager, Office 9, from Matthew Renkey, Senior Case Analyst, dated September 2, 2008.

The Department determined that Bangladesh, Pakistan, India, Indonesia, and Sri Lanka are countries comparable to Vietnam in terms of economic development.<sup>5</sup> Once it has identified economically comparable countries, the Department’s practice is to select an appropriate surrogate country from the list based on the availability and reliability of data from the countries. *See* Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004). In this case, we have found that Bangladesh is a significant producer of comparable merchandise. We find Bangladesh to be a reliable source for surrogate values because Bangladesh is at a similar level of economic development pursuant to section 773(c)(4) of the Act, is a significant producer of comparable merchandise, and has publicly available and reliable

<sup>5</sup> *See* Memorandum from Carole Showers, Acting Director of Office of Policy, to Alex Villanueva, Program Manager, China/NME Group, Office 9: Antidumping Duty Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam (Vietnam): Request for a List of Surrogate Countries (February 20, 2008).

data. *See* Memorandum to the File, from Alan Ray, Case Analyst, dated September 2, 2008. Thus we have selected Bangladesh as the primary surrogate country for this administrative review. However, in certain instances where Bangladeshi data was not available, we used data from Indian sources.

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in an antidumping administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results.

#### Affiliations

Section 771(33) of the Act provides that:

The following persons shall be considered to be “affiliated” or “affiliated persons”:

- (A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants;
- (B) Any officer of director of an organization and such organization;
- (C) Partners;
- (D) Employer and employee;
- (E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization;
- (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person;
- (G) Any person who controls any other person and such other person.

Additionally, section 771(33) of the Act stipulates that: “For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.”

In the final results of the third antidumping duty administrative review, the Department determined that QVD Choi Moi Farming Cooperative (“QVD Choi Moi”) would no longer be collapsed with QVD, QVD DT, and Thuan Hung pursuant to sections 771(33)(A), (B), (E), (F), and (G) of the Act and 19 CFR 351.401 (f). *See 3rd AR Final Results*. The Department also determined that QVD USA LLC (“QVD USA”) is affiliated with QVD, QVD Dong Thap, and Thuan Hung pursuant to sections 771(33)(A), (B), (E), (F), and (G) of the Act. Therefore, the Department determined to calculate a CEP through QVD USA to its first unaffiliated U.S. customer. *See 3rd AR Final Results*. The Department also determined that Beaver Street Fisheries (“BSF”) and QVD USA were not affiliated. *See 3rd AR Final Results*.

In QVD's supplemental section A response, it stated that "{d}uring the POR there were no changes in the corporate structures of any of the QVD companies, or affiliates. There were no changes from POR 3 in the capital structure, scope of operations, affiliations, production capacity, ownership or management." See QVD's July 11, 2008, Section A Supplemental Questionnaire at 20.

For these preliminary results, based on the information on the record of this proceeding, the Department continues to find that QVD, QVD DT, and Thuan Hung should be collapsed and treated as a single entity. See *3rd AR Final Results*. Similarly, for these preliminary results, based on the information on the record of this proceeding, the Department continues to find that QVD and QVD USA are affiliated pursuant to sections 771(33)(A), (B), (E), (F), and (G) of the Act. For these preliminary results, we also continue to find that BSF and QVD USA are not affiliated.

#### Fair Value Comparisons

To determine whether sales of the subject merchandise made by QVD or Binh An to the United States were at prices below NV, we compared each company's export price ("EP") or constructed export price ("CEP"), where appropriate, to NV, as described below.

#### U.S. Price

For Binh An's EP sales, we used the EP methodology, pursuant to section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation and CEP was not otherwise warranted by the facts on the record. We calculated EP based on the Free-on-board foreign port price to the first unaffiliated purchaser in the United States. For the EP sale, we also deducted foreign inland freight, foreign cold storage, and international ocean freight from the starting price (or gross unit price), in accordance with section 772(c) of the Act.

In accordance with section 772(b) of the Act, we used the CEP methodology when the first sale to an unaffiliated purchaser occurred after importation of the merchandise into the United States. In this instance, we calculated CEP for all of QVD's U.S. sales through its U.S. affiliate, QVD USA, to unaffiliated customers.

For QVD's CEP sales, we made adjustments to the gross unit price for billing adjustments, rebates, foreign inland freight, international freight, foreign cold storage, U.S. marine insurance, U.S. inland freight, U.S. warehousing, U.S. inland insurance, other U.S. transportation expenses, and

U.S. customs duties. In accordance with section 772(d)(1) of the Act, we also deducted those selling expenses associated with economic activities occurring in the United States, including commissions, credit expenses, advertising expenses, indirect selling expenses, inventory carry costs, and U.S. re-packing costs. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

Where movement expenses were provided by NME-service providers or paid for in NME currency, we valued these services using either Bangladeshi or Indian surrogate values. See Surrogate Value Memo. Where applicable, we used the actual reported expense for those movement expenses provided by ME suppliers and paid for in ME currency.

#### Bona Fide New Shipper Analysis

Consistent with the Department's practice, we investigated the *bona fide* nature of the sales made by Binh An for the new shipper review. We preliminarily find that the new shipper sales made by Binh An are *bona fide* transactions. Based on our investigation into the *bona fide* nature of the sales, the questionnaire responses submitted by Binh An, as well the company's eligibility for a separate rate (see "Separate Rates" section above), and the Department's preliminary determination that Binh An was not affiliated with any exporter or producer that had previously shipped subject merchandise to the United States, we preliminarily determine that Binh An has met the requirements to qualify as a new shipper during the POR. Therefore, for purposes of these preliminary results of review, we are treating Binh An's respective sales of subject merchandise to the United States as appropriate transactions for this new shipper review. We will continue to evaluate all aspects of Binh An's sales during verification and for the final results.

#### Duty Absorption

On October 25, 2007, Petitioner requested that the Department determine whether antidumping duties had been absorbed for U.S. sales of frozen fish fillets made during the POR by the respondents selected for review. Section 751(a)(4) of the Act provides for the Department, if requested, to determine during an administrative review initiated two or four years after publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. In this case, only QVD sold

subject merchandise in the United States through an affiliated importer. Because the antidumping duty order underlying this review was issued in 2003, and this review was initiated in 2007, we are conducting a duty absorption inquiry for this segment of the proceeding.

In determining whether the antidumping duties have been absorbed by the respondent, we presume the duties will be absorbed for those sales that have been made at less than NV. This presumption can be rebutted with evidence (*e.g.*, an agreement between the affiliated importer and unaffiliated purchaser) that the unaffiliated purchaser will pay the full duty ultimately assessed on the subject merchandise. See, *e.g.*, *Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part*, 70 FR 39735, 39737 (July 11, 2005) (unchanged in final results). On August 18, 2008, the Department requested QVD to provide evidence to demonstrate that its unaffiliated U.S. purchasers will pay any antidumping duties ultimately assessed on entries of subject merchandise.

On August 25, 2008, QVD filed a response rebutting the duty-absorption presumption by explaining that the ultimate unaffiliated U.S. purchasers paid for the duties. QVD references its financial statements and a transaction-specific analysis in which they argue that even after all price adjustments are considered, QVD has passed on duty costs to unaffiliated customers. We conclude that this information sufficiently demonstrates that the unaffiliated purchasers in the United States will ultimately pay the assessed duties. See QVD's August 25, 2008, Submission at 2. Therefore, we preliminarily find that antidumping duties have not been absorbed by QVD on U.S. sales made through its affiliated importer.

#### Normal Value

Section 773(c)(1) of the Act provides that, in the case of an NME, the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Because information on the record does not permit the calculation of NV using home-market prices, third-country prices, or constructed value and no party has argued otherwise, we calculated NV based on FOPs reported

by QVD and Binh An, pursuant to sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

As the basis for NV, QVD and Binh An provided FOPs used in each of the stages for processing frozen fish fillets. Our general policy, consistent with section 773(c)(1)(B) of the Act, is to value the FOPs that a respondent uses to produce the subject merchandise.

To calculate NV, we valued QVD's and Binh An's reported per-unit factor quantities using publicly available Bangladeshi, Indian, and Indonesian surrogate values. In selecting surrogate values, we considered the quality, specificity, and contemporaneity of the available values. As appropriate, we adjusted the value of material inputs to account for delivery costs. Specifically, we added surrogate freight costs to surrogate values using the reported distances from the Vietnam port to the Vietnam factory or from the domestic supplier to the factory, where appropriate. This adjustment is in accordance with the decision of the CAFC in *Sigma Corp. v. United States*, 117 F.3d 1401, 1407–1408 (Fed. Cir. 1997).

For those values not contemporaneous with the POR, we adjusted for inflation using data published in the International Monetary Fund's International Financial Statistics. Import data from South Korea, Thailand and Indonesia were excluded from the surrogate country import data due to generally available export subsidies. See *China Nat'l Mach. Import & Export Corp. v. United States*, CIT 01–1114, 293 F. Supp. 2d 1334 (CIT 2003), aff'd 104 Fed. Appx. 183 (Fed. Cir. 2004), and *Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 12651, and accompanying issues and Decision Memorandum at Comment 4 (March 15, 2005). Additionally, we excluded prices from NME countries and imports that were labeled as originating from an "unspecified" Asian country. The Department excluded these imports because it could not ascertain whether they were from either an NME country or a country with general export subsidies. We converted the surrogate values to U.S. dollars as appropriate, using the official exchange rate recorded on the dates of sale of subject merchandise in this case, obtained from <http://www.ia.ita.doc.gov/exchange/index.html>. For further detail, see Surrogate Values Memo.

**Preliminary Results of the Review**

As a result of our review, we preliminarily find that the following margins exist for the period August 1, 2006, through July 31, 2007:

**CERTAIN FROZEN FISH FILLETS FROM VIETNAM**

Manufacturer/exporter	Weighted-average margin
QVD <sup>6</sup> .....	<i>de minimis</i>
Anvifish .....	<i>de minimis</i>
Agifish .....	15.38
Binh An .....	<i>de minimis</i>
Vietnam-wide Entity <sup>7</sup> .....	63.88

<sup>6</sup>This rate is applicable to the QVD Single Entity which includes QVD, QVD DT, and Thuan Hung.

<sup>7</sup>Includes An Xuyen.

**Public Comment**

The Department will disclose to parties of this proceeding the calculations performed in reaching the preliminary results within ten days of the date of announcement of the preliminary results. An interested party may request a hearing within 30 days of publication of the preliminary results. See 19 CFR 351.310(c). Interested parties may submit written comments (case briefs) within 20 days of publication of the preliminary results and rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, within five days after the time limit for filing case briefs. See 19 CFR 351.309(c)(1)(ii) and 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a diskette containing the public version of those comments. Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days of publication of the preliminary results. The assessment of antidumping duties on entries of merchandise covered by this review and future deposits of estimated duties shall be based on the final results of this review.

**Assessment Rates**

Upon completion of this administrative review, pursuant to 19 CFR 351.212(b), the Department will calculate an assessment rate on all

appropriate entries. For the mandatory respondent, QVD, and new shipper, Binh An, we will calculate importer-specific duty assessment rates on a per-unit basis.<sup>8</sup> Where the assessment rate is *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. We will instruct CBP to liquidate entries containing merchandise from the PRC-wide entity at the PRC-wide rate we determine in the final results of review. We will issue assessment instructions to CBP 15 days after the date of publication of the final results of review.

**Cash-Deposit Requirements**

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis*, the cash deposit will be zero); (2) for previously investigated or reviewed Vietnam and non-Vietnam exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all Vietnam exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the Vietnam-wide rate of 63.88 percent, and (4) for all non-Vietnam exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Vietnam exporters that supplied that non-Vietnam exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Interested Parties**

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR.

<sup>8</sup>We divided the total dumping margins (calculated as the difference between NV and EP or CEP) for each importer by the total quantity of subject merchandise sold to that importer during the POR to calculate a per-unit assessment amount. We will direct CBP to assess importer-specific assessment rates based on the resulting per-unit (*i.e.*, per-kilogram) rates by the weight in kilograms of each entry of the subject merchandise during the POR.

Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

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

Dated: September 2, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E8-20755 Filed 9-5-08; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

A-570-506

#### Porcelain-on-Steel Cooking Ware from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review

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

**SUMMARY:** The Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on porcelain-on-steel cooking ware from the People's Republic of China ("PRC") covering the period December 1, 2006, to November 30, 2007. The Department has preliminarily determined to apply adverse facts available to the PRC-wide entity, which includes Xiamen Songson Plastic Hardware Co., Ltd. ("Songson"), the only respondent in this review. If these preliminary results are adopted in the final results of this review, the Department will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on entries of subject merchandise during the period of review ("POR"). Interested parties are invited to comment on these preliminary results. See the "Preliminary Results of Review" section of this notice.

**EFFECTIVE DATE:** September 8, 2008.

**FOR FURTHER INFORMATION CONTACT:** Toni Dach or Scot Fullerton, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1655 or (202) 482-1386, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

In response to a request from Columbian Home Products, LLC ("petitioner") and OXO International Ltd., an importer of the subject merchandise, the Department of Commerce (the "Department") initiated an administrative review of Songson's exports of merchandise covered by the antidumping duty order on porcelain-on-steel cooking ware from the PRC. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 73 FR 4829 (January 28, 2008) ("Initiation Notice").

On January 31, 2008, the Department issued its sections A, C and D antidumping duty questionnaire to Songson. The section A response was due on February 21, 2008, and the sections C and D response, as well as U.S. sales and factors of production ("FOP") reconciliations, were due on March 10, 2008. On February 19, 2008, Songson requested an extension, until March 6, 2008, to file its section A response, and until March 24, 2008, to submit its sections C and D responses. On February 20, 2008, the Department granted Songson's extension request. We received the company's response to section A via regular mail on March 6, 2008. On March 14, 2008, the Department rejected Songson's section A response, as it was not filed in accordance with the Department's regulations. See Letter from the Department of Commerce to Xiamen Songson Plastic Hardware Co., Ltd., Re: Rejection of Section A Questionnaire Response (March 14, 2008). We granted Songson a second opportunity to file a complete section A response, and Songson submitted its revised section A response on March 28, 2008 ("Songson section A response"). Songson did not submit its sections C and D responses, or the required sales and FOP reconciliations by the extended due date, or on any date thereafter.

### Period of Review

The POR is December 1, 2006, through November 30, 2007.

### Scope of Order

The merchandise covered by this order is porcelain-on-steel cooking ware from the PRC, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. The merchandise is currently classifiable under the United States Harmonized Tariff Schedule ("USHTS") item 7323.94.00. USHTS item numbers

are provided for convenience and customs purposes. The written description of the scope remains dispositive.

### Non-Market-Economy Country

The Department considers the PRC to be a non-market economy ("NME") country. See, e.g., *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 30758, 30760 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 60632 (October 25, 2007). In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. No party has challenged the designation of the PRC as an NME country in this investigation. Therefore, we continue to treat the PRC as an NME country for purposes of this preliminary determination.

### Separate Rates

A designation of a country as an NME remains in effect until it is revoked by the Department. See section 771(18)(C)(i) of the Act. Accordingly, there is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate. It is the Department's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports.

To establish whether a company operating in a non-market economy country ("NME") is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994). Under the separate rates criteria, the Department assigns separate rates in NME cases only if the respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.