

CERTAIN FROZEN FISH FILLETS FROM  
VIETNAM—Continued

Manufacturer/Exporter	Weighted-Average Margin (Percent)
Acom .....	0.00

#### Disclosure

The Department will disclose to parties of this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

#### Comments

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of this administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results. Interested parties must provide the Department with supporting documentation for the publicly available information to value each FOP. Additionally, in accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record.<sup>11</sup>

Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of this new shipper review. See 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 5 days after the deadline for submitting the case briefs. See 19 CFR 351.309(d). The Department requests that interested parties provide an executive summary of each argument contained within the case briefs and rebuttal briefs.

Any interested party may request a hearing within 30 days of publication of these preliminary results. See 19 CFR 351.310(c). Requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral

<sup>11</sup> See *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission*, in Part 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

presentations will be limited to issues raised in the briefs. If we receive a request for a hearing, we plan to hold the hearing seven days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Department intends to issue the final results of these new shipper reviews, which will include the results of its analysis raised in any such comments, within 90 days of publication of these preliminary results, pursuant to section 751(a)(2)(B)(iv) of the Act.

#### Assessment Rates

Upon completion of the final results, pursuant to 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries on a per-unit basis.<sup>12</sup> The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. If these preliminary results are adopted in our final results of review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific (or customer) per-unit duty assessment rates. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this is above *de minimis*.

#### Cash-Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this new shipper review for all shipments of subject merchandise from Hiep Thanh or Acom 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 subject merchandise produced and exported by Hiep Thanh or produced and exported Acom, the cash deposit rate will be zero; (2) for subject merchandise exported by Hiep Thanh or Acom but not manufactured by Hiep Thanh or Acom, the cash deposit rate will continue to be the Vietnam-wide rate (*i.e.*, 63.88 percent); and (3) for

<sup>12</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.

subject merchandise manufactured by Hiep Thanh or Acom, but exported by any other party, the cash deposit rate will be the rate applicable to the exporter. If the cash deposit rate calculated in the final results is zero or *de minimis*, no cash deposit will be required for those specific producer-exporter combinations. These cash deposit requirements, when imposed, shall remain in effect until further notice.

#### Notification to Importers

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. 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)(2)(B) and 777(i) of the Act, and 19 CFR 351.214(h) and 351.221(b)(4).

Dated: January 16, 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E9-1722 Filed 1-27-09; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

A-552-802

#### Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of the Second New Shipper Review

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

**SUMMARY:** On February 1, 2005, the Department of Commerce ("the Department") published in the **Federal Register** the antidumping duty order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam ("Vietnam"). See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam*, 70 FR 5152 (February 1, 2005) ("VN Shrimp Order"). The Department is conducting a new shipper review ("NSR") of the VN Shrimp Order, covering the period of review ("POR")

of February 1, 2007, through January 31, 2008. If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (“CBP”) to assess antidumping duties on entries of subject merchandise during the POR for which the importer-specific assessment rates are above *de minimis*.

**EFFECTIVE DATE:** January 28, 2009.

**FOR FURTHER INFORMATION CONTACT:** Emeka Chukwudebe, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482-0219.

**SUPPLEMENTARY INFORMATION:**

**General Background**

On February 28, 2008, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (“the Act”), and 19 CFR 351.214(c), the Department received a NSR request from BIM Seafood Joint Stock Company (“BIM Seafood”). On March 26, 2008, the Department initiated a new shipper review for BIM Seafood. *See Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Review*, 73 FR 18510 (April 4, 2008).

On April 15, 2008, the Department issued its non-market economy (“NME”) questionnaire to BIM Seafood. BIM Seafood responded to the Department’s NME questionnaire and subsequent supplemental questionnaires between May and December 2008.

**Extension of Time Limits**

On September 17, 2008, the Department extended the time limits for these preliminary results. *See Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Extension of Time Limit for the Preliminary Results of the New Shipper Review*, 73 FR 54788 (September 23, 2008).

**Surrogate Country and Surrogate Values**

On December 1, 2008, BIM Seafood submitted surrogate country comments and surrogate value data. No other party submitted surrogate country or surrogate value data.

**Verification**

Pursuant to 19 CFR 351.307(b)(iv), we conducted verification of the sales and factors of production (“FOP”) for BIM Seafood between November 3–11, 2008. *See Memorandum to the File from Emeka Chukwudebe, Case Analyst*

through Alex Villanueva, Program Manager, Verification of the Sales and Factors Response of BIM Seafood Joint Stock Company (“BIM Seafood”) in the Antidumping New Shipper Review of frozen Warmwater Shrimp from the Socialist Republic of Vietnam (“Vietnam”), dated December 17, 2008.

**Scope of the Order**

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,<sup>1</sup> deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations, which are not “prepared meals,” that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

Excluded from the scope are: 1) Breaded shrimp and prawns (HTS subheading 1605.20.10.20); 2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; 3) fresh shrimp and

prawns whether shell-on or peeled (HTS subheadings 0306.23.00.20 and 0306.23.00.40); 4) shrimp and prawns in prepared meals (HTS subheading 1605.20.05.10); 5) dried shrimp and prawns; 6) canned warmwater shrimp and prawns (HTS subheading 1605.20.10.40); 7) certain dusted shrimp; and 8) certain battered shrimp. Dusted shrimp is a shrimp-based product: 1) that is produced from fresh (or thawed-from-frozen) and peeled shrimp; 2) to which a “dusting” layer of rice or wheat flour of at least 95 percent purity has been applied; 3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; 4) with the non-shrimp content of the end product constituting between four and 10 percent of the product’s total weight after being dusted, but prior to being frozen; and 5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classified under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

**Non-Market Economy Country Status**

In every Vietnamese antidumping duty (“AD”) case conducted by the Department, Vietnam has been treated as a NME country. 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. *See Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 71005, 71007 (December 8, 2004); and *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the First Administrative Review*, 71 FR 14170 (March 21, 2006) (“FFF1 Final Results”); *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Second Administrative Review*, 72 FR 13242 (March 21, 2007) (“FFF2 Final Results”). No party to this proceeding has contested such

<sup>1</sup> “Tails” in this context means the tail fan, which includes the telson and the uropods.

treatment. Accordingly, we calculated normal value (“NV”) in accordance with section 773(c) of the Act, which applies to NME countries.

### Separate Rate Determination

A designation as an NME remains in effect until it is revoked by the Department. See section 771(18)(C) of 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.

In this review, BIM Seafood submitted complete responses to the separate rate section of the Department’s NME questionnaire. The evidence submitted by BIM Seafood includes government laws and regulations on corporate ownership, business licenses, and narrative information regarding the company’s operations and selection of management. The evidence provided by BIM Seafood supports a finding of a *de jure* absence of government control over their export activities. We have no information in this proceeding that would cause us to reconsider this determination. Thus, we believe that the evidence on the record supports a preliminary finding of an absence of *de jure* government control 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 its questionnaire responses, BIM Seafood submitted evidence indicating an absence of *de facto* government control over its export activities. Specifically, this evidence indicates that: (1) BIM Seafood sets its own export prices independent of the government and without the approval of a government authority; (2) BIM Seafood retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) BIM Seafood has a general manager, branch manager or division manager with the authority to negotiate and bind the company in an agreement; (4) the general manager is selected by the board of directors or company employees, and the general manager appoints the deputy managers and the manager of each department; and (5) there is no restriction on BIM Seafood’s use of export revenues. Therefore, the Department preliminarily finds that BIM Seafood has established *prima facie* that it qualifies for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers*.

#### New Shipper Review Bona Fide Analysis

Consistent with the Department’s practice, we investigated the *bona fide* nature of the sale made by BIM Seafood for this new shipper review. We found that the new shipper sale by BIM Seafood was made on a *bona fide* basis. Based on our investigation into the *bona fide* nature of the sales, the questionnaire responses submitted by BIM Seafood, and our verification thereof, as well as the company’s eligibility for a separate rate (see Separate Rates Determination section above), we preliminarily determine that BIM Seafood has met the requirements

to qualify as a new shipper during this POR. Therefore, for the purposes of these preliminary results of review, we are treating BIM Seafood’s sale of subject merchandise to the United States as an appropriate transaction for this new shipper review.<sup>2</sup>

#### 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 factors of production (“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 Department determined that Bangladesh, Pakistan, India, Sri Lanka, and Indonesia are countries comparable to Vietnam in terms of economic development.<sup>3</sup> Moreover, it is the Department’s practice to select an appropriate surrogate country 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) (“Surrogate Country Policy Bulletin”). Since the less-than-fair value investigation, we have determined that Bangladesh is comparable to Vietnam in terms of economic development and has surrogate value data that is available and reliable. In this proceeding, we only received comments from BIM Seafood in which it argues that the Department should again select Bangladesh as the surrogate country based on the two factors listed in the Surrogate Country Policy Bulletin. Since no information has been provided in this review that would warrant a change in the Department’s selection of Bangladesh from the prior segments, we continue to

<sup>2</sup> For more detailed discussion of this issue, please see Memorandum from Emeka Chukwudebe, Case Analyst, Office 9, through Alex Villanueva, Program Manager, Office 9, to the File, “Bona Fide Nature of the Sale in the Second Antidumping Duty New Shipper Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: BIM Seafood,” (January 16, 2009).

<sup>3</sup> See Memorandum from Kelley Parkhill, Acting Director, Office of Policy, to Alex Villanueva, Program Manager, AD/CVD Enforcement, Office 9: New Shipper Review of Certain Warmwater Shrimp from Vietnam: List of Surrogate Countries, dated January 15, 2009.

find that Bangladesh is the appropriate surrogate country here 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 reliable, publicly available data representing a broad-market average. See Memorandum to the File, through James C. Doyle, Office Director, Office 9, Import Administration, from Irene Gorelik, Senior Case Analyst, Subject: Second Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Selection of a Surrogate Country (February 28, 2008), which is on the record of this review.

## U.S. Price

### A. Export Price (“EP”)

In accordance with section 772(a) of the Act, we calculated the EP for sales to the United States for BIM Seafood because the first sale to an unaffiliated party was made before the date of importation and the use of constructed EP (“CEP”) was not otherwise warranted. We calculated EP based on the price to unaffiliated purchasers in the United States. In accordance with section 772(c) of the Act, as appropriate, we deducted foreign inland freight and brokerage and handling from the starting price to the unaffiliated purchasers. We have reviewed each of these services and expenses reported by BIM Seafood and find that they were provided by an NME vendor or paid for using Vietnamese currency. Thus, we based the deduction of these movement charges on surrogate values. See Memorandum to the File through Alex Villanueva, Program Manager, Office 9 from Emeka Chukwudebe, Case Analyst, Office 9: Antidumping Duty New Shipper of Certain Warmwater Shrimp from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Results, (January 16, 2008) (“Surrogate Values Memo”) for details regarding the surrogate values for movement expenses.

## Normal Value

### 1. Methodology

Section 773(c)(1)(B) of the Act provides that the Department shall determine the NV using a 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. The Department bases NV on the FOPs because the presence of

government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department’s normal methodologies.

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors-of-production methodology if: (1) the merchandise is exported from an NME country; and (2) 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.

Although the respondents reported the inputs used to produce the main input to the processing stage (raw head-on, shell-on shrimp), for the purposes of these preliminary results, we are not valuing those inputs when calculating NV. Rather, our NV calculation begins with a valuation of the shrimp input (raw head-on, shell-on shrimp) used to produce the merchandise under investigation for the following three reasons. First, in reviewing BIM Seafood’s direct, indirect and contract labor hours for hatchery and farming, we noted that they did not keep track of the actual hours worked. BIM Seafood officials explained that there are no real fixed-time labor shifts due to the 24-hour cyclical growth period of shrimp. Second, BIM Seafood did not report water usage for the hatchery and farming stages of production. In its October 16, 2008, questionnaire response, BIM Seafood explained that water consumption at the hatchery and farming stages was not available from its own books and records. See BIM Seafood’s Questionnaire Response at 3. However, during verification we noted that water was used in ponds and tanks throughout the hatchery and farming stages. Third, due to inadequate FOP descriptions, certain material inputs at the hatchery and farming stages are not easily identifiable for the purpose of selecting surrogate values. When asked to provide a detailed description for these material inputs, BIM Seafood only provided a broad, general description. For instance, BIM Seafood’s first Section D response contains two FOPs described as “enzymes.” When asked in a supplemental response to provide the HTS classification for these inputs such as these two items, BIM Seafood only provided a broad 4-digit HTS number. At verification, BIM Seafood was unable to provide additional information regarding the descriptions and more specific HTS classifications for these and other inputs and we noted that a more detailed level of specificity did not appear to be tracked by BIM seafood’s book and records. Because BIM Seafood

could not provide more detailed information regarding these and other inputs, the Department is unable to determine appropriate surrogate values for these inputs.

In the past, the Department has used an intermediate input methodology when the accuracy of the normal value based on an integrated FOP calculation would be sacrificed, (e.g., *Fish Fillets from Vietnam*<sup>4</sup> and *Garlic from China*<sup>5</sup>). In this case, because the labor reported was not based on actual hours worked, water was unreported, and the surrogate valuation of the inadequately described hatchery and farming FOPs would be speculative at best, we have determined to use an intermediate input methodology. As a result, we will begin the normal value calculation at the processing stage and apply a surrogate value for raw, head-on, shell-on shrimp.

### 2. Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by BIM Seafood during the POR. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available Bangladeshi surrogate values. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Bangladeshi import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory of production or the distance from the nearest seaport to the factory of production where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit’s decision in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1407–

<sup>4</sup> See Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam, 68 FR 4986 (January 31, 2003), Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 FR 37116 (June 23, 2003), and accompanying Issues and Decision Memorandum at Comment 3.

<sup>5</sup> See Fresh Garlic from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 34082 (June 13, 2005) and accompanying Issues and Decision Memorandum at Comment 1, Fresh Garlic from the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews, 71 FR 26329, 26330 (May 4, 2006), and accompanying Issues and Decision Memorandum, at Comment 1.

1408 (Fed. Cir. 1997). Where we did not use Bangladeshi Import Statistics, we calculated freight based on the reported distance from the supplier to the factory.

It is the Department's practice to calculate price index adjusters to inflate or deflate, as appropriate, surrogate values that are not contemporaneous with the POR using the wholesale price index ("WPI") for the subject country. See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Hand Trucks and Certain Parts Thereof from the People's Republic of China*, 69 FR 29509 (May 24, 2004). However, in this case, a WPI was not available for Bangladesh. Therefore, where publicly available information contemporaneous with the POI with which to value factors could not be obtained, surrogate values were adjusted using the Consumer Price Index rate for Bangladesh, or the WPI for India or Indonesia (for certain surrogate values where Bangladeshi data could not be obtained), as published in the International Financial Statistics of the International Monetary Fund.

Bangladeshi and other surrogate values denominated in foreign currencies were converted to USD using the applicable average exchange rate based on exchange rate data from the Department's website.

For details regarding the surrogate values used to calculate NV, see the Surrogate Values Memo.

**Preliminary Results of the Review**

The Department has determined that the following preliminary dumping margins exist for the period February 1, 2007, through January 31, 2008:

**CERTAIN FROZEN WARMWATER SHRIMP FROM VIETNAM**

Manufacturer/Exporter	Weighted-Average Margin (Percent)
BIM Seafood Join Stock Company (BIM Seafood) .....	0.00

**Disclosure**

The Department will disclose to parties of this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

**Comments**

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in an antidumping duty new shipper review, interested parties may submit

publicly available information to value FOPs within 20 days after the date of publication of these preliminary results. Interested parties must provide the Department with supporting documentation for the publicly available information to value each FOP. Additionally, in accordance with 19 CFR 351.301(c)(1), for the final results of this new shipper review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record.<sup>6</sup>

Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of this new shipper review. See 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 5 days after the deadline for submitting the case briefs. See 19 CFR 351.309(d). The Department requests that interested parties provide an executive summary of each argument contained within the case briefs and rebuttal briefs.

Any interested party may request a hearing within 30 days of publication of these preliminary results. See 19 CFR 351.310(c). Requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If we receive a request for a hearing, we plan to hold the hearing seven days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Department intends to issue the final results of this new shipper review, which will include the results of its analysis raised in any such comments, within 90 days of publication of these preliminary results, pursuant to section 751(a)(2)(B)(iv) of the Act.

**Assessment Rates**

Upon completion of the final results, pursuant to 19 CFR 351.212(b), the Department will determine, and CBP

shall assess, antidumping duties on all appropriate entries on a per-unit basis.<sup>7</sup> The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. If these preliminary results are adopted in our final results of review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific (or customer) per-unit duty assessment rates. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this is above *de minimis*.

**Cash-Deposit Requirements**

The following cash deposit requirements will be effective upon publication of the final results of this new shipper review for all shipments of subject merchandise from BIM Seafood 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 subject merchandise produced and exported by BIM Seafood, the cash deposit rate is zero; (2) for subject merchandise exported by BIM Seafood but not manufactured by BIM Seafood, the cash deposit rate will continue to be the Vietnam-wide rate (*i.e.*, 25.76 percent); and (3) for subject merchandise manufactured by BIM Seafood, but exported by any other party, the cash deposit rate will be the rate applicable to the exporter. If the cash deposit rate calculated in the final results is zero or *de minimis*, no cash deposit will be required for those specific producer-exporter combinations. These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

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. Failure to comply with this requirement could result in the Secretary's

<sup>6</sup> See *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission in Part*, 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

<sup>7</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.

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)(2)(B) and 777(i) of the Act, and 19 CFR 351.214(h) and 351.221(b)(4).

Dated: January 16, 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E9-1711 Filed 1-27-09; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

(A-570-939)

#### **Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination**

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

**EFFECTIVE DATE:** January 28, 2009.

**SUMMARY:** The Department of Commerce (the "Department") preliminarily determines that certain tow behind lawn groomers and certain parts thereof ("lawn groomers") from the People's Republic of China ("PRC") are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733(b) of the Tariff Act of 1930, as amended (the "Act"). The estimated dumping margins are shown in the "Preliminary Determination Margins" section of this notice.

**FOR FURTHER INFORMATION CONTACT:**

Karine Gziryan or Thomas Martin, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4081 or (202) 482-3936, respectively.

**SUPPLEMENTARY INFORMATION:**

#### **Background**

On June 24, 2008, the Department received a petition concerning imports of certain non-motorized tow behind lawn groomers and certain parts thereof from the PRC filed in proper form by Agri-Fab Inc. ("Agri-Fab", hereafter referred to as "Petitioner"). See Petition for the Imposition of Antidumping Duties: Certain Tow Behind Lawn

Groomers and Parts Thereof from the People's Republic of China, dated June 24, 2008 ("Petition"). The Department initiated an antidumping duty investigation of lawn groomers from the PRC on July 21, 2008. See *Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 73 FR 42315 (July 21, 2008) ("Initiation Notice").

On July 14, 2008, the Department requested quantity and value ("Q&V") information from the twelve companies that were identified in the Petition as potential producers or exporters of lawn groomers from the PRC. See Exhibit I-19 of the Petition. The Department received timely responses to its Q&V questionnaire from the following companies: Qingdao Huatian Hand Truck Co., Ltd., Jiashan Superpower Tools Co., Ltd., T.N. International, Inc., Nantong Duobang Machinery Co., Ltd., and Princeway Furniture (Dong Guan) Co., Ltd. Five companies to which the Department sent the Q&V questionnaire received the questionnaire but did not respond. These non-responsive companies were: Hangzhou Geesun International Co., Ltd., Qingdao Huandai Tools Co., Ltd., Qingdao Taifa Group Co., Ltd., Maxchief Investments Ltd., and Qingdao EA Huabang Instrument Co., Ltd.

With regard to two additional companies, World Factory, Inc., and Sidepin, Ltd., on July 21, 2008, we spoke with Federal Express, via telephone, and were informed that, although World Factory, Inc., originally accepted delivery of the Q&V questionnaire, it ultimately rejected our mailing and returned the package to Federal Express. In addition, on July 21, 2008, we spoke via telephone with DHL and were informed that DHL was unable to deliver our mailing to Sidepin, Ltd., due to a "bad address."<sup>1</sup> See Memorandum to The File, from Maisha Cryor, Senior Import Compliance Specialist, Regarding "Certain Tow Behind Lawn Groomers and Certain

<sup>1</sup> The petitioner provided contact information for the twelve Chinese producers/exporters of lawn groomers named in the Petition. See Petition at Exhibit I-19. However, upon noticing that several of the addresses provided were incomplete, the Department asked the petitioner to update the aforementioned contact information to account for full addresses, e.g., contact name, postal code, street names and numbers, etc. See the Department's July 3, 2008, supplemental questionnaire at 3. In response, the petitioner provided updated contact information, but noted that this information represented its "best attempt using reasonably available information to update the Chinese manufacturer and exporter contact information." See Supplement to the Petition at 2 and Exhibit 2, dated July 8, 2008.

Parts Thereof from the People's Republic of China: Summary of Issuance of Quantity and Value Questionnaires," dated July 21, 2008.

On August 21, 2008, the International Trade Commission ("ITC") preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of lawn groomers from the PRC. See *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from China Determinations Investigation Nos. 701-TA-457 and 731-TA-1153 (Preliminary)*, 73 FR 49489 (August 21, 2008).

On August 18, 2008, the Department selected Jiashan Superpower Tools Co., Ltd. ("Superpower"), and Princeway Furniture (Dong Guan) Co., Ltd. ("Princeway"), as mandatory respondents and issued antidumping duty questionnaires to the companies. See Memorandum regarding "Selection of Respondents for the Antidumping Duty Investigation of Certain Tow Behind Lawn Groomers and Parts Thereof from the People's Republic of China," dated August 18, 2008 ("Respondent Selection Memorandum").

Superpower and Princeway submitted timely responses to the Department's antidumping duty questionnaire on September 24, 2008, and October 14, 2008, respectively. On July 23, 2008, and July 30, 2008, the Department received separate-rate applications from Nantong D&B Machinery Co., Ltd., and Qingdao Huatian Truck Co., Ltd., respectively.

The Department issued supplemental questionnaires to, and received responses from, Superpower and Princeway from September through December 2008. Petitioner submitted comments to the Department regarding Princeway's and Superpower's responses to sections C and D of the antidumping duty questionnaire on October 24, 2008 and additional comments on Princeway's submissions on December 2, 2008.

On September 30, 2008, the Department released a memorandum to interested parties which listed potential surrogate countries and invited interested parties to comment on surrogate country and surrogate value selection. See Memorandum to All Interested Parties Regarding Antidumping Duty Investigation of Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China ("PRC"). On October 17, 2008, and October 28, 2008, Petitioner and Princeway submitted comments and rebuttal comments,