

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]

BILLING CODE 3510-DS-P

## 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.

### De Jure Control

Evidence supporting, though not requiring, a finding of absence of *de jure* government control over export activities includes: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

As evidence of the absence of *de jure* government control over Songson's export activities, the Department requested that Songson provide any legislative enactments or other formal measures by the government that centralize or decentralize control of its export activities. In response, Songson responded "N/A" and did not provide the required laws applicable to Songson's export activities. *See* Songson section A response at 8. In addition, the Department requested that Songson describe the licensing process, provide the dates of any license applications, as well as all copies of paperwork and proposals submitted to government authorities regarding the license. Although Songson provided the Department with a copy of its approved business license, it did not provide any of the additional requested information noted above. *See Id.* Therefore, based on the record evidence, the Department cannot determine that there is an absence of *de jure* control over the export activities of Songson.

### De Facto Control

A determination of absence of *de facto* government control over exports is based on the following four factors: (1) whether the exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether the exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether the exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether the exporter has autonomy from the government regarding the selection of management. *See e.g. Final Determination of Sales at Less than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Ukraine*, 62 FR 61754, 61758 (November 19, 1997).

Songson asserted that it: (1) it establishes its own export prices; (2) negotiates contracts without guidance from any governmental entities or organizations; (3) makes its own personnel decisions; and (4) retains the

proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. *See* Songson section A response. However, Songson did not provide the Department with adequate information or documentation to support these claims in order to demonstrate that the company is not under the *de facto* control of the PRC government with respect to its export activities. For example, although the Department requested in its section A questionnaire that Songson provide evidence of price negotiations for its POR sales, Songson did not provide this requested documentation, and provided no explanation as to why it did not do so. *See Id.* at 9–10. In addition, although the Department requested that Songson describe how it negotiates sales to the United States, it provided no such description of its sales negotiations. *See Id.* at 14. The Department also requested that Songson describe how its management is selected. Although Songson stated that its general manager was appointed "by the board meeting," it provided no description of who selects its other managers, and provided no description of how the board selects the general manager. *See Id.* at 10. In addition, Songson has asserted that it established its own export prices. However, in response to the Department's request for a description of the process by which Songson sets prices with its U.S. customers, Songson replied "N/A." *See Id.* at 9–10.

Because we have been unable to fully analyze the level of *de facto* control over Songson's export activities due to the numerous deficiencies in Songson's Section A response, the Department concludes that the company has not satisfactorily demonstrated the absence of *de facto* control by the PRC government. Therefore, the Department has determined that Songson has not demonstrated that it qualifies for a separate rate. Because Songson did not demonstrate its eligibility for a separate rate, we have preliminarily determined that it is part of the PRC-wide entity. In the initiation notice, the Department stated that if one of the companies that we initiated a review on does not qualify for a separate rate, all other exporters of porcelain-on-steel cooking ware from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC-wide entity, of which the named exporter is a part. *See Initiation Notice* at footnote 6. As a result, we determine that it is necessary to review the PRC-wide entity,

including Songson, in this segment of the proceeding.

### Application of Adverse Facts Available

As discussed below, we find that it is appropriate to apply facts otherwise available on the record to the PRC-wide entity pursuant to section 776(a) of the Act. Section 776(a)(2) of the Act provides that, if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information, but the information cannot be verified, the Department shall, subject to section 782(d) of the Act, use facts otherwise available in reaching the determination. In the instant case, Songson, which is part of the PRC-wide entity, has withheld information by not providing (1) capital verification reports, *see* Songson section A response at 3.f.; (2) a description of the process by which it sets prices with its U.S. customers, *see* Songson section A response at 4.h.; (3) a description, and copies of, its agreements for sales to the U.S., *see* Songson section A response at 4.c.; (4) a description of the companies accounting and financial reporting practices, *see* Songson section A response at 5.a.; (5) a chart of accounts, *see* Songson section A response at 5.b.; (6) a description of the licensing process, or copies of paperwork and proposals submitted to the government in order to obtain a business license, *see* Songson section A response at 2.e.(iv); and (7) sales or FOP reconciliations as requested at Appendix V of the Department's questionnaire. The Department requires this information to evaluate U.S. sales and FOP reconciliations, as well as the nature and extent of a respondent's affiliations, which may impact the way export sales are treated in the calculation of a dumping margin. In addition, Songson did not provide a section C and D questionnaire response, which the Department requires to calculate a dumping margin. As the Department was not provided with this information, we have no information with which to calculate an antidumping duty margin. Therefore, the Department finds that facts available pursuant to sections 776(a)(2)(A) and (C) of the Act is warranted for the PRC-wide entity, including Songson, as Songson has withheld the information noted above that was requested by the Department, and has significantly impeded the proceeding by not providing

information necessary to complete this administrative review.

Section 776(b) of the Act provides that if the Department determines that a party has failed to cooperate to the best of its ability, in selecting from among the facts available, the Department may use an inference that is adverse to the interests of that party. As noted above, Songson did not provide the Department with a complete section A response or a sections C and D questionnaire response. Therefore, by failing to provide the necessary information within its possession, the PRC-wide entity, including Songson, has failed to cooperate to the best of its ability, and we find it appropriate pursuant to sections 776(a)(2) and 776(b) of the Act, to apply total AFA to the PRC-wide entity for these preliminary results.

#### Selection of AFA Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any information placed on the record. In reviews, it is the Department's practice to select, as AFA, the highest rate determined for any respondent in any segment of the proceeding. See, e.g., *Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review*, 68 FR 19504, 19506 (April 21, 2003).

The Court of International Trade ("CIT") and the Federal Circuit have consistently upheld the Department's practice. See *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990) ("*Rhone Poulenc*"); *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1335 (Ct. Int'l Trade 2004) (upholding a 73.55% total AFA rate, the highest available dumping margin from a different respondent in a less than fair value investigation); see also *Kompass Food Trading Int'l v. United States*, 24 CIT 678, 689 (2000) (upholding a 51.16% total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd. v. United States*, 360 F. Supp. 2d 1339 (CIT February 17, 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently

adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." See *Static Random Access Memory Semiconductors from Taiwan; Final Determination of Sales at Less than Fair Value*, 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. See Statement of Administrative Action ("SAA") accompanying the URAA, H.R. Rep. No. 103-316 at 870 (1994). See also *Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004); see also *D&L Supply Co. v. United States*, 113 F.3d 1220, 1223 (Fed. Cir. 1997). In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior margin reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the respondent, knowing of the rule, would have produced current information showing the margin to be less. *Rhone Poulenc*, 899 F.2d at 1190.

Consistent with section 776(b)(3) of the Act, court precedent, and its practice, the Department has assigned the rate of 66.65 percent, calculated in the less-than-fair-value investigation,<sup>1</sup> the highest rate assigned in any segment of the proceeding, to the PRC-wide entity, including Songson, as AFA. See, e.g., *Brake Rotors from the People's Republic of China: Rescission of Second New Shipper Review and Final Results and Partial Rescission of First Antidumping Duty Administrative Review*, 64 FR 61581, 61584 (November 12, 1999). As discussed further below, this rate has been corroborated.

#### Corroboration of Secondary Information Used as AFA

Section 776(c) of the Act provides that when the Department selects from among the facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The SAA states that "corroborate" means to

determine that the information used has probative value. See SAA at 870. The Department has determined that to have probative value, information must be reliable and relevant. See *Certain Tissue Paper Products from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 72 FR 58642 (October 16, 2007) and accompanying Issues and Decision Memorandum at Comment 6. The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. See SAA at 870; see also *Final Determination of Sales at Less Than Fair Value: Live Swine from Canada*, 70 FR 12181, 12184 (March 11, 2005).

To be considered corroborated, information must be found to be both reliable and relevant. Unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only sources for calculated margins are administrative determinations. The AFA rate we are applying in the current review was calculated during the Less Than Fair Value Investigation. See *Porcelain-on-Steel Cooking Ware from the People's Republic of China; Final Determination of Sales at Less Than Fair Value*, 51 FR 36419 (October 10, 1986) ("*LTFV Investigation*"). The Department corroborated the information used to calculate the 66.65 percent rate in the *LTFV investigation*, finding the rate to be both reliable and relevant. Furthermore, the AFA rate we are applying for the current review was applied in reviews subsequent to the LTFV Investigation and the Department received no information that warranted revisiting the issue. See, e.g., *Porcelain-on-Steel Cooking Ware from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 71 FR 24641 (April 26, 2006). No information has been presented in the current review that calls into question the reliability of this information. Thus, the Department finds that the information is reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. See *Fresh Cut Flowers from Mexico*:

<sup>1</sup> See *Porcelain-on-Steel Cooking Ware from the People's Republic of China; Final Determination of Sales at Less Than Fair Value*, 51 FR 36419 (October 10, 1986).

*Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996), (where the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense, resulting in an unusually high margin). Similarly, the Department does not apply a margin that has been discredited. *See D & L Supply Co. v. United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated). There is no information reasonably available at our disposal in this review to corroborate the relevance of the AFA rate in question, which, as discussed above, was last corroborated in the *LTFV Investigation*. We cannot use the margin calculations of other companies because there are no other respondents in this review. Therefore, because there is no record evidence calling into question the relevance of the selected AFA rate, we find that it is relevant for use in this administrative review.

Because the AFA rate, 66.65 percent, is both reliable and relevant, we determine that it has probative value. As a result, the Department determines that the 66.65 percent rate is corroborated for the purposes of this administrative review and may reasonably be applied to the PRC-wide entity, as AFA.

#### Preliminary Results of the Review

The Department preliminarily finds that the following margins exist for the following exporters under review during the period December 1, 2006, through November 30, 2007:

#### PORCELAIN-ON-STEEL COOKING WARE FROM THE PRC

Manufacturer/Exporter	Weighted-Average Margin (Percent)
PRC-Wide Entity (which includes Xiamen Songson Plastic Hardware Co., Ltd.) .....	66.65

Any interested party may request a hearing within 30 days of publication of this notice. Interested parties who wish to request a hearing or to participate if one 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: (1) the party's name, address, and telephone number; (2) the number of participants; and (3)

a list of issues to be discussed. *See* 19 CFR 351.310(c).

Issues raised in the hearing will be limited to those raised in case and rebuttal briefs. Case briefs from interested parties may be submitted not later than 30 days of the date of publication of this notice, pursuant to 19 CFR 351.309(c). Rebuttal briefs, limited to issues raised in the case briefs, will be due five days later, pursuant to 19 CFR 351.309(d). Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed 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, no later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

#### Assessment of Antidumping Duties

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of the final results of this review. If these preliminary results are adopted in our final results of the review, we will direct CBP to assess the resulting rate against the entered customs value for the subject merchandise on each importer's/customer's entries during the POR, as appropriate.

#### Cash Deposit Requirements

The following cash-deposit requirements will be effective upon publication of the final results for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(2)(C) of the Act: (1) for subject merchandise exported by the PRC, including Songson, the cash-deposit rate will be equal to 66.65 percent; (2) the cash-deposit rate for PRC exporters who received a separate rate in a prior segment of the proceeding will continue to be the rate assigned in that segment of the proceeding; (3) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash-deposit rate will be the PRC-wide rate of 66.65 percent; (4) for all non-PRC exporters of subject merchandise, the cash-deposit rate will

be the rate applicable to the PRC exporter that supplied that exporter.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

#### 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 review period. 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.

This administrative review and notice is in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: September 2, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8-20748 Filed 9-5-08; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Request for Panel Review

**AGENCY:** NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notice of first request for panel review.

**SUMMARY:** On August 29, 2008, Nacional de Acero S.A. de C.V. ("Nacional") filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the Final Injury Determination made by the United States International Trade Commission respecting Light-Walled Rectangular Pipe and Tube from China, Korea, and Mexico. The determination was published in the **Federal Register** (73 FR 45244) on August 4, 2008. The NAFTA Secretariat has assigned Case Number USA-MEX-2008-1904-04 to this request.

**FOR FURTHER INFORMATION CONTACT:** Valerie Dees, United States Secretary, NAFTA Secretariat, Suite 2061, 14th