

International Trade Administration

[A-549-813]

Canned Pineapple Fruit From Thailand: Extension of Time Limit of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results in the administrative review of the antidumping duty order on canned pineapple fruit (CPF) from Thailand, covering the period January 11, 1995, through June 30, 1996, since it is not practicable to complete the review within the time limits mandated by the Tariff Act of 1930 (the Act), as amended, 19 U.S.C. 1675(a)(3)(A).

EFFECTIVE DATE: January 29, 1997.

FOR FURTHER INFORMATION CONTACT: Michelle Frederick, Office of AD/CVD Enforcement II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482-0186.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act.

SUPPLEMENTARY INFORMATION:**Background**

On August 15, 1996, the Department initiated an administrative review of the antidumping duty order on CPF from Thailand, covering the period January 11, 1995, through June 30, 1996 (61 FR 42417). Based on the August 15, 1996, initiation notice, we intended to issue the preliminary results of this review no later than April 2, 1997, and the final results no later than July 31, 1997.

Postponement of Preliminary Results of Review

Section 751(a)(3)(A) of the Act requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested. However, if it is not practicable to issue the preliminary results in 245 days, section 751(a)(3)(A) allows the Department to extend this time period to 365 days.

We determine that it is not practicable to issue the preliminary results within 245 days because there are novel legal issues to address in this first review of this antidumping duty order under the new law. In addition, on December 31, 1996, the Department issued supplemental questionnaires to the three respondents with respect to third-country market selection. In order to allow the Department an opportunity to analyze the responses and select the appropriate comparison market for each respondent, we find that additional time is needed to make our preliminary determination.

Accordingly, the deadline for issuing the preliminary results of this review is now no later than July 31, 1997. The deadline for issuing the final results of this review will be 120 days from the publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: January 14, 1997.

Barbara R. Stafford,
Deputy Assistant Secretary, Import Administration.

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[A-570-506]

Porcelain-on-Steel Cooking Ware From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by a U.S. importer of the subject merchandise to the United States and by petitioner, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on porcelain-on-steel (POS) cooking ware from the People's Republic of China (PRC). The review covers two manufacturers/exporters of subject merchandise to the United States and the period December 1, 1993 through November 30, 1994. We have preliminarily determined that sales have been made at less than fair value. The Department has calculated these margins based on the best information available.

If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties on all appropriate

entries. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: January 29, 1997.

FOR FURTHER INFORMATION CONTACT: Judy Kornfeld or Kelly Parkhill, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone: (202) 482-2786.

SUPPLEMENTARY INFORMATION:**Background**

On December 2, 1986, the Department published, in the Federal Register, the antidumping duty order on POS Cooking Ware from the PRC (51 FR 43414). On December 6, 1994, the Department published, in the Federal Register, a notice of opportunity to request an administrative review of this antidumping duty order (59 FR 62710). On December 21, 1994, in accordance with 19 C.F.R. 353.22(a)(1), a U.S. importer, CGS International, Inc. (CGS), requested that we conduct an administrative review of Clover Enamelware Enterprise, Ltd. (Clover), a PRC manufacturer/exporter of the subject merchandise, and its third-country reseller in Hong Kong, Lucky Enamelware Factory Ltd. (Lucky). On December 29, 1994, in accordance with 19 CFR 353.22(a), petitioner, General Housewares Corp. (GHC), requested that we conduct an administrative review of China National Light Import and Export Corporation (China Light), Shanghai Branch, through Amerport (H.K.), Ltd. We published the initiation of this antidumping duty administrative review covering the period December 1, 1993 through November 30, 1994, on January 13, 1995 (60 FR 3192). The Department is conducting this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Applicable Statute and Regulations

Unless otherwise stated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Collapsing

The Department collapses related firms (*i.e.*, treats them as a single entity for review purposes and assigns them a single dumping margin) where the type and degree of relationship is so significant that we find there is a strong possibility of price manipulation. See *Sulfanilic Acid From the People's Republic of China; Final Results of Antidumping Administrative Review* (61 FR 53711, 53712; October 15, 1996). See

also *Nihon Cement Co. Ltd. v. United States*, 17 CIT 400 (CIT 1993).

Clover is two-thirds owned by Lucky and therefore Lucky holds controlling interest in Clover. Due to Lucky's ownership interest in Clover, and the fact that the same individual is the general manager at both companies, we consider Clover and Lucky (hereafter Clover/Lucky) to be related pursuant to section 771(13) of the Act. As such, and consistent with prior reviews of this order, we have calculated only one rate for both of these companies. For a further discussion of this issue, see *Memorandum from Case Analyst to the File Regarding Status as Related Parties* dated January 17, 1997, which is a public document on file in the Central Records Unit (room B-009 of the Department of Commerce).

Scope of Review

Imports covered by this review are shipments of POS cooking ware, 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 HTS item 7323.94.00. HTS item numbers are provided for convenience and Custom purposes. The written description remains dispositive.

Market-Oriented Industry

Clover/Lucky submitted, with its June 20, 1995 questionnaire response, a request that we treat the POS cooking ware industry as a market-oriented industry (MOI) and therefore use PRC prices for material and non-material inputs for valuing the inputs used to produce POS cooking ware. Clover/Lucky claims that it is subject to market discipline and pays market rates for production process inputs. Further, it claims that it operates as a fully independent entity, responsible to private owners rather than central planners. The Department has previously interpreted section 773(c)(1)(B) of the Act to mean that FMV can be based on a non-market economy (NME) exporter's prices or costs, despite the fact that the country may otherwise be considered an NME, if sufficient market forces are at work. See *Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes, From the People's Republic of China* (58 FR 7537, 7538; February 8, 1993).

The following three conditions must be met for an MOI to exist: (1) For the merchandise under review, there must be virtually no government involvement in setting prices or amounts to be

produced; (2) the industry producing the merchandise under review should be characterized by private or collective ownership; and (3) market-determined prices must be paid for all significant inputs, whether material or non-material (e.g., labor and overhead), and for all but an insignificant portion of all the inputs accounting for the total value of the merchandise under review. (See *Amendment to Final Determination of Sales at Less Than Fair Value and Amendment to Antidumping Duty Order: Chrome-Plated Lug Nuts from the People's Republic of China* (57 FR 15054, April 24, 1992) (*Lug Nuts*).)

The production of POS cooking ware requires a number of significant inputs including chemicals, electricity and labor. In the past, the Department has considered the prices of these inputs to be subject to pricing controls by the PRC government. See *Lug Nuts*. Clover/Lucky has not provided any information on the record of this review that would cause the Department to reconsider its determination with respect to these inputs. Because Clover/Lucky has not demonstrated that market-determined prices are paid for all significant inputs, we do not need to consider whether (1) there is state-required production of the subject merchandise and (2) there is substantial state ownership in the POS cooking ware industry. See *Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid from the People's Republic of China* (57 FR 29705, 29706; July 6, 1992). We therefore find preliminarily in this review that the POS cooking ware industry does not constitute an MOI. Accordingly, we have calculated FMV in accordance with section 773(c) of the Act. For a more detailed discussion of the Department's preliminary determination that the POS cooking ware industry does not constitute an MOI, see Decision Memorandum to Barbara E. Tillman, Director of the Office of CVD/AD Enforcement VI, dated January 17, 1997, "Market-Oriented Industry Request in the 1993-1994 Administrative Review of POS Cooking Ware from the People's Republic of China," which is a public document on file in the Central Records Unit (room B-009 of the Main Commerce Building).

Verification

We conducted verification of the information provided by Clover/Lucky. We used standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original documentation containing

relevant information. Our verification results are outlined in the public versions of the *verification reports* of Clover and Lucky dated January 13, 1997, which are on file in the Central Records Unit (room B-009 of the Main Commerce Building).

Separate Rates

AMEREX, the parent company of AMERPORT, China Light's related Hong Kong sales agent, informed the Department in writing that AMERPORT was in the process of corporate liquidation and that the company had no further interest in this matter. Hence, it did not submit a response to the Department's questionnaire, including the section regarding separate rates and, therefore, we have not given China Light a separate rate.

Lucky is located outside the PRC and there is no PRC ownership of the company. Therefore, we determine that no separate rates analysis is required for this third-country reseller because it is beyond the jurisdiction of the PRC government. See *Final Determination of Sales at Less Than Fair Value; Disposable Pocket Lighters from the People's Republic of China* (60 FR 22359, 22361; May 5, 1995). Clover is partially owned by a PRC government company and therefore a separate rates analysis is necessary to determine whether this exporter is independent from government control.

To establish whether a company is sufficiently independent 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) (*Sparklers*), as amplified in *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*). Under this policy, exporters in non-market-economy (NME) countries are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports.

1. Absence of De Jure Control

Evidence supporting, though not requiring, a finding of *de jure* absence of government control 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.

Clover's submissions pertaining to legislative enactments and the terms of its Enterprise Legal Person Operation License demonstrate the absence of *de jure* control. (See Memorandum from Kelly Parkhill to Barbara E. Tillman, dated January 17, 1997, "Assignment of Separate Rate for Clover/Lucky in the 1993-1994 and 1994-1995 Administrative Reviews of POS Cooking Ware from the People's Republic of China" (*Separate Rate Memorandum*), which is a public document on file in Central Records Unit (room B-009 of the Department of Commerce).

2. Absence of De Facto Control

De facto absence of government control with respect to exports is based on four criteria: (1) whether the export prices are set by or subject to the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits and financing of losses; (3) whether each exporter has autonomy in making decisions regarding the selection of management; and (4) whether each exporter has the authority to negotiate and sign contracts. See *Silicon Carbide* at 22587.

With respect to *de facto* absence of government control, the information submitted by Clover in the questionnaire response indicates the following: (1) no government entity exercises control over its export prices; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, utilizing profits to provide dividends to shareholders, and it has the authority to seek out loans at market interest rates. This information supports the finding that there is *de facto* absence of governmental control of export functions. Consequently, we have determined that Clover/Lucky has met the criteria for the application of separate rates according to the criteria identified in *Sparklers and Silicon Carbide*. For a further discussion of this issue, see *Separate Rate Memorandum*.

Best Information Available

We preliminarily determine, in accordance with sections 776(b) and (c) of the Act, that the use of best information available (BIA) is appropriate for China Light and Clover/Lucky. (See "Memorandum for Jeffrey P. Bialos from Barbara E. Tillman Regarding Use of Best Information Available" dated January 16, 1997, which is a public document on file in the Central Records Unit (room B-099 of

the Main Commerce Building).) Section 776(b) of the Act states that the Department shall use BIA whenever it is unable to verify the information submitted. Section 776(c) of the Act states that the Department shall use BIA whenever a company refuses or is unable to produce information in a timely manner and in the form required, or significantly impedes an investigation or review.

In deciding what to use as BIA, section 353.37(b) of the Department's regulations provide that the Department may take into account whether a party refuses to provide requested information or impedes a proceeding. Thus, the Department determines on a case-by-case basis what is BIA. The Department uses a two-tiered approach in its choice of BIA. When a company refuses to provide the information requested in the form required or otherwise significantly impedes the Department's review (first tier), the Department will normally assign to that company the higher of (1) the highest rate found for any firm in the less-than-fair-value (LTFV) investigation or a prior administrative review; or (2) the highest rate found in the current review for any firm. When a company has cooperated with the Department's request for information but fails to provide information requested in a timely manner or in the form required such that margins for certain sales cannot be calculated (second tier), the Department will normally assign to those sales the higher of (1) the highest rate applicable to that company for the same class or kind of merchandise from any previous review or the original investigation; or (2) the highest calculated margin for any respondent in the current review. See *Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of An Antidumping Duty Order: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et. al.* (58 FR 39729, July 26, 1993). This practice has been upheld in *Allied-Signal Aerospace Co. v. United States*, 996 F.2d 1185 (Fed. Cir. 1993), and *Krupp Stahl AG et al. v. United States*, 822 F. Supp. 789 (CIT 1993).

As mentioned above, China Light did not respond to our questionnaire. As non-cooperative, first-tier BIA, and in accordance with section 776(c) of the Act, we have applied the highest margin calculated in the LTFV investigation, prior administrative reviews, or in this review, which is 66.65 percent. Further, China Light was not found eligible for a separate rate in this review. Consequently, China Light is part of the single NME entity in this review, which

has been assigned the PRC country-wide rate (see, e.g., *Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review*; 67 FR 15218; April 5, 1996 at 15221, and discussion below).

Clover/Lucky cooperated with our requests for information and agreed to undergo verification. From July 17 through July 29, 1995, the Department attempted verification of the company's questionnaire response at Lucky's sales offices in Hong Kong and Clover's factory in Shenzhen, PRC. As a result of these verification efforts with respect to Clover's questionnaire response, we discovered significant discrepancies and were unable to verify substantial sections of the questionnaire response, including the statutorily required factors of production information, such as the number of labor hours worked and the per unit quantities consumed of primary material inputs. These discrepancies are detailed in Clover's *verification report*, dated January 13, 1997.

As a result, the Department has determined that the data the company submitted is unverifiable. Therefore, in accordance with section 776(b) of the Act, there is no basis to accept the integrity of the factors of production information submitted in the questionnaire response, constituting a verification failure. See, *Notice of Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware Products From the People's Republic of China* (61 FR 1708; January 13, 1997). Because the respondent failed verification, the Department must use BIA. Since Clover/Lucky was cooperative, we have applied second-tier BIA. The second-tier BIA rate is the highest rate applicable to the company from a previous review or the original LTFV investigation, which in this case is 66.65 percent, the rate Clover/Lucky received in the 1990/91 administrative review.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margins exist:

Manufacturer/exporter	Rate (percent)
Clover/Lucky	66.65
PRC-Wide Rate (including China Light)	66.65

The PRC-wide rate applies to all entries of subject merchandise except for entries from manufacturers and exporters that are individually identified above. The Department

implements a policy in NME cases whereby all exporters or producers are presumed to comprise a single entity, the "NME entity." The U.S. Court of International Trade has upheld our NME policy in previous cases. See, e.g., *UCF America, Inc. v. United States*, 870 F. Supp. 1120, 1126 (CIT 1994); *Sigma Corp. v. United States*, 841 F. Supp. 1255, 1266-67 (CIT 1993), and; *Tianjin Machinery Import & Export Corp. v. United States*, 806 F. Supp. 1008, 1013-15 (CIT 1992). Thus, we assign the NME rate to the NME entity just as we assign an individual rate to a single exporter or producer operating in a market economy. As a result, all exporters and producers that are part of the NME entity are assigned the "NME-wide" rate. Because the "NME-wide" rate is the equivalent of a company-specific rate, it changes only when we review the NME entity (i.e., all NME producers and exporters that have not qualified for a separate rate). To qualify for a separate rate, as discussed under the *Separate Rates* section of this notice, an NME exporter or producer must provide evidence showing both *de jure* and *de facto* absence of government control over export activities. Until such evidence is presented, a company is presumed to be part of the NME entity and receives the "NME-wide" rate. All exporters or producers will either qualify for a separate company-specific rate, or be part of the NME entity and receive the "NME-wide" rate. In this review, Clover/Lucky qualifies for a separate rate as discussed in the "Separate Rates" section of this notice. Because China Light does not qualify for a separate rate, it remains part of the NME entity, which is subject to the new PRC-wide rate established in the final results of this administrative review.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. See section 353.38(d) of the Department's regulations. Parties who submit arguments in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. The Department will publish a notice of final results of this administrative

review, which will include the results of its analysis of issues raised in any such comments.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and FMV may vary from the percentages stated above. The Department will issue appraisal instructions directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of POS cooking ware from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company named above which has a separate rate, Clover/Lucky, will be the rate for that company established in the final results of this administrative review; (2) for all other PRC exporters, the cash deposit rate will be the highest rate from the LTFV investigation, this review, or any prior administrative reviews, which is the PRC (country-wide) rate; and (3) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under section 353.26 of the Department's regulations 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 are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations.

Dated: January 21, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97-2211 Filed 1-28-97; 8:45 am]

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[A-538-802]

Shop Towels From Bangladesh; Amendment to Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of Amendment to Final Results of Antidumping Duty Administrative Review.

SUMMARY: On October 23, 1996, the Department of Commerce (the Department) issued the final results of administrative review of the antidumping duty order on Shop Towels from Bangladesh, which published on October 30, 1996 in the Federal Register.

The review covered six manufacturers/exporters. The review period is March 1, 1994, through February 28, 1995. Based on the correction of a ministerial error, we are amending the final results with respect to Greyfab (BD) Limited (Greyfab)

EFFECTIVE DATE: January 29, 1997.

FOR FURTHER INFORMATION CONTACT: Davina Hashmi or Kris Campbell, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482-5760; (202) 482-4733.

SUPPLEMENTARY INFORMATION:

Background

On October 30, 1996, the Department published the final results of the administrative review of Shop Towels from Bangladesh in the Federal Register (61 FR 55957). The review covers six manufacturers/exporters. The review period is March 1, 1994 through February 28, 1995.

On November 21, 1996, the Department released disclosure materials to the parties in accordance with 19 CFR 353.28. Within the time limits set forth under 19 CFR 353.28, in a submission dated November 25, 1996, Greyfab contended that, in the final results, the Department inadvertently made a ministerial error in the margin calculation of one sales transaction by assigning a positive dumping margin to this sale despite the fact that the Department's calculations indicate that there was no dumping on this sale. No parties to this proceeding filed with the Department any replies to Greyfab's November 25, 1996 submission. We agree that this is a ministerial error as defined by 19 CFR 353.28 and have corrected this error. As a result,