

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-570-851]

Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of the Antidumping Duty New Shipper Review

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

SUMMARY: The Department of Commerce ("the Department") is currently conducting a new shipper review ("NSR") of the antidumping duty order on certain preserved mushrooms from the People's Republic of China ("PRC") covering the period February 1, 2005, through August 15, 2005. We preliminarily determine that sales have been made below normal value ("NV") with respect to Guangxi Eastwing Trading Co., Ltd. ("Eastwing"), which participated fully and is entitled to a separate rate in this review. If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on entries of subject merchandise during the period of review ("POR") for which the importer-specific assessment rates are above *de minimis*.

EFFECTIVE DATE: July 7, 2006.

FOR FURTHER INFORMATION CONTACT: Matthew Renkey, 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) 482-2312.

SUPPLEMENTARY INFORMATION:**Case History****General**

On February 19, 1999, the Department published in the **Federal Register** an amended final determination and antidumping duty order on certain preserved mushrooms from the PRC. See *Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms from the People's Republic of China*, 64 FR 8308 (February 19, 1999). On August 23, 2005, we received a timely new shipper review request in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and section 351.214(c) of the Department's regulations, from an exporter, Eastwing, and its producer, Raoping CXF Foods,

Inc. ("CXF"). On October 7, 2005, the Department published a notice in the **Federal Register** initiating a NSR for Eastwing. See *Certain Preserved Mushrooms from the People's Republic of China: Initiation of New Shipper Review*, 70 FR 58686 (October 7, 2005) ("Initiation Notice").

On January 19, 2006, we issued a memorandum that extended the end of the POR from July 31, 2005, to August 15, 2005, in order to capture the entry of Eastwing's merchandise into the United States market. See *Memorandum to the File from Matthew Renkey, Senior Analyst, through Alex Villanueva, Program Manager, Office 9: Expansion of the Period of Review in the New Shipper Review of Certain Preserved Mushrooms from the People's Republic of China*, dated January 19, 2006. On February 16, 2006, we placed the entry package we received from CBP for Eastwing's new shipper sale on the record of this review. See *Memorandum to the File from Matthew Renkey, Senior Analyst, through Alex Villanueva, Program Manager, Office 9: Certain Preserved Mushrooms from the People's Republic of China: Entry Packages from U.S. Customs and Border Protection ("CBP")*, dated February 16, 2006.

Questionnaires and Responses

On October 21, 2005, we issued sections A, C, and D of the general antidumping duty questionnaire to Eastwing, along with the standard importer questionnaire for new shipper reviews. Eastwing submitted its response to section A of the questionnaire on November 21, 2005, and subsequently submitted its response to sections C, D, and the importer questionnaire on November 25, 2005. On December 6, 2005, we issued our first supplemental questionnaire for sections A, C and D; Eastwing filed its response to this supplemental questionnaire on December 20, 2005. On December 14, 2005, we sent a supplemental questionnaire to Eastwing's importer; Eastwing's importer filed its response on December 22, 2005.

On January 12, 2006, we sent Eastwing a second supplemental questionnaire for sections A, C, and D, and Eastwing submitted its response on January 26, 2006. We issued a third supplemental questionnaire to Eastwing, covering sections A, C, and D, as well as a question for Eastwing's importer, on March 23, 2006. Eastwing filed its response to this supplemental questionnaire (including a response to the question for the importer) on April 3, 2006.

Surrogate Country and Values

On November 30, 2005, we requested from the Office of Policy a memorandum listing surrogate countries. We received a list of surrogate countries on December 16, 2005, and in a letter dated December 19, 2005, notified parties of the opportunity to submit comments on surrogate country selection. Additionally, in the same letter, we also provided interested parties an opportunity to submit surrogate value comments. No party submitted surrogate country selection comments. On January 20, 2006, we issued our surrogate country selection memorandum. See *Memorandum to the File from Matthew Renkey, Senior Analyst, through Alex Villanueva, Program Manager, Office 9, and Jim Doyle, Director, Office 9: Antidumping Duty New Shipper Review of Certain Preserved Mushrooms from the People's Republic of China: Selection of a Surrogate Country*, dated January 20, 2006 ("Surrogate Country Memo"). To date, no party has submitted comments on surrogate values.

Period of Review

The POR covers February 1, 2005, through August 15, 2005.

Scope of the Order

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The certain preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis*. "Certain Preserved Mushrooms" refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including, but not limited to, cans or glass jars in a suitable liquid medium, including, but not limited to, water, brine, butter or butter sauce. Certain preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including "refrigerated" or "quick blanched mushrooms"; (3) dried mushrooms; (4) frozen mushrooms; and (5) "marinated," "acidified," or "pickled" mushrooms, which are prepared or preserved by means of

vinegar or acetic acid, but may contain oil or other additives.¹

The merchandise subject to this order is classifiable under subheadings: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153 and 0711.51.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Verification

On April 4, 2006, we issued the verification outline to Eastwing. The Department conducted verification of the questionnaire responses submitted by Eastwing at its office in Nanning, PRC from April 17–18, 2006, and at its producer's factory in Raoping, PRC from April 20–21, 2006. We used standard verification procedures, including on-site inspection of the manufacturer's and exporter's facilities, and examination of relevant sales and financial records. Our verification results are outlined in the verification report, which is being issued concurrently with this notice. For further discussion, see *Memorandum to the File from Matthew Renkey, Senior Analyst, Office 9, through Alex Villanueva, Program Manager, Office 9: Verification of the Sales Response of Guangxi Eastwing Trading Co., Ltd. and the Factors of Production Response of Raoping CXF Foods, Inc. in the Antidumping Duty New Shipper Review of Certain Preserved Mushrooms from the People's Republic of China*, dated June 27, 2006, ("*Eastwing Verification Report*").

Consistent with the Department's practice, we investigated the *bona fide* nature of the sale made by Eastwing for this new shipper review. We found that Eastwing's new shipper sale was made on a *bona fide* basis. Based on our investigation into the *bona fide* nature of the sales, the questionnaire responses submitted by each company, and our verification thereof, as well as Eastwing's eligibility for a separate rate (see below) and the Department's

preliminary determination that Eastwing was not affiliated with any exporter or producer that had previously shipped subject merchandise to the United States, we preliminarily determine that the respondent has met the requirements to qualify as a new shipper during the POR. Therefore, for purposes of these preliminary results of the review, we are treating Eastwing's sale of subject merchandise to the United States as an appropriate transaction for this new shipper review. See *Memorandum from Matthew Renkey, Senior Analyst, Office 9, through Alex Villanueva, Program Manager, Office 9, to James C. Doyle, Office Director, Office 9: Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Certain Preserved Mushrooms: Guangxi Eastwing Trading Co., Ltd.*, dated June 27, 2006 ("*Eastwing Prelim Bona Fide Memo*"). As stated in the *Eastwing Prelim Bona Fide Memo*, we will continue to examine certain aspects of Eastwing's entry of subject merchandise.

Separate Rates

The Department has treated the PRC as a non-market economy ("NME") country in all previous antidumping cases. See, e.g., *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006). 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. There is no evidence on the record suggesting that this determination should be changed. Therefore, we treated the PRC as an NME country for purposes of this review and calculated NV by valuing the factors of production ("FOP") in a surrogate country. It is the Department's policy to assign all exporters of the merchandise subject to review, located in NME countries, a single antidumping duty rate unless an exporter can demonstrate an absence of governmental control, both in law (*de jure*) and in fact (*de facto*), with respect to its export activities. To establish whether an exporter is sufficiently independent of governmental control to be entitled to a separate rate, the Department analyzes the exporter using the criteria 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 adopted and amplified in the *Final Determination of Sales at*

Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585, 22586–87 (May 2, 1994) ("*Silicon Carbide*"). Under the separate rates criteria established in these cases, the Department assigns separate rates to NME exporters only if they can demonstrate the absence of both *de jure* and *de facto* governmental control over their export activities.

Absence of De Jure Control

Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) an absence of restrictive stipulations associated with the 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. See *Sparklers* at 20589.

In the instant review, Eastwing submitted a complete response to the separate rates section of the Department's questionnaire. The evidence submitted in the instant review by Eastwing includes government laws and regulations on corporate ownership and control, business licenses, and narrative information regarding the company's operations and selection of management. See *Eastwing Verification Report* at Exhibits 2, 3, and 6. The evidence provided by Eastwing supports a finding of a *de jure* absence of governmental control over their export activities because: (1) there are no controls on exports of subject merchandise, such as quotas applied to, or licenses required for, exports of the subject merchandise to the United States; and (2) the subject merchandise does not appear on any government list regarding export provisions or export licensing.

Absence of De Facto Control

The absence of *de facto* governmental 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* at 22587; *Sparklers* at 20589; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of*

¹ On June 19, 2000, the Department affirmed that "marinated," "acidified," or "pickled" mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order. See "Recommendation Memorandum-Final Ruling of Request by Tak Fat, et al. for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China," dated June 19, 2000. On February 9, 2005, this decision was upheld by the United States Court of Appeals for the Federal Circuit. See *Tak Fat v. United States*, 39 C.F.3d 1378 (Fed. Cir. 2005).

China, 60 FR 22544, 22545 (May 8, 1995).

In its questionnaire responses, Eastwing submitted evidence demonstrating an absence of *de facto* governmental control over its export activities. Specifically, this evidence indicates that: (1) the company sets its own export prices independent of the government and without the approval of a government authority; (2) the company retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) the company has a general manager with the authority to negotiate and bind the company in an agreement; (4) the general manager is selected by the board of directors, and the general manager appoints the deputy managers and the manager of each department; and (5) there is no restriction on the company's use of export revenues. Therefore, we have preliminarily found that Eastwing has established *prima facie* that it qualifies for a separate rate under the criteria established by *Silicon Carbide and Sparklers*.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base normal value ("NV"), in most circumstances, on the NME producer's factors of production, 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 factors of production, the Department shall utilize, to the extent possible, the prices or costs of factors of production in one or more market-economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate values we have used in this investigation are discussed under the "Normal Value" section below.

The Department determined that India, Sri Lanka, Indonesia, the Philippines, and Egypt are countries comparable to the PRC in terms of economic development. See *Memorandum from Ron Lorentzen, Director, Office of Policy, to Alex Villanueva, Program Manager, Office 9; New Shipper Review of Certain Preserved Mushrooms from the People's Republic of China (PRC): Request for a List of Surrogate Countries*, dated December 16, 2005. Because of India's and Indonesia's relative levels of production, and consistent with worldwide characteristics of frozen

shrimp production, these countries were selected as significant producers of comparable merchandise. See *Surrogate Country Memo* at 4. The Department selects 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 ("Policy Bulletin")*, dated March 1, 2004. In this case, we have found that India is a significant producer of comparable merchandise, is at a similar level of economic development pursuant to section 773(c)(4) of the Act, and has publicly available and reliable data. See *Surrogate Country Memo*.

U.S. Price

In accordance with section 772(a) of the Act, we calculated the export price ("EP") for sales to the United States for Eastwing 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 from the starting price to unaffiliated purchasers foreign inland freight and brokerage and handling. For Eastwing, each of these services was either provided by an NME vendor or paid for using an NME currency. Thus, we based the deduction of these movement charges on surrogate values. See *Memorandum from Matthew Renkey, Senior Analyst, through Alex Villanueva, Program Manager, Office 9, to the File; New Shipper Review of Certain Preserved Mushrooms from the People's Republic of China: Surrogate Values for the Preliminary Results*, dated June 27, 2006 ("*Surrogate Values Memo*") for details regarding the surrogate values for movement expenses.

Normal Value

In accordance with section 773(c) of the Act, we calculated NV based on factors of production ("FOP") reported by the Respondents for the POR. To calculate NV, we valued the reported FOP by multiplying the per-unit factor quantities by publicly available Indian surrogate values. In selecting surrogate values, we considered the quality, specificity, and contemporaneity of the available values. As appropriate, we adjusted the value of material inputs to account for delivery costs. Where appropriate, we increased Indian surrogate values by surrogate inland freight costs. We calculated these inland

freight costs using the shorter of the reported distances from the PRC port to the PRC factory, or from the domestic supplier to the factory. This adjustment is in accordance with the United States Court of Appeals for the Federal Circuit's ("CAFC") decision in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1407-1408 (Fed.Cir. 1997). For those values not contemporaneous with the POR, we adjusted for inflation or deflation using data published in the International Monetary Fund's *International Financial Statistics*. Imports from Korea, Thailand, and Indonesia were excluded from the surrogate country import data due to generally available export subsidies. See *China Nat'l Mach. Import & Export Corp. v. United States*, CIT 01-1114, 293 F. Supp. 2d 1334 (CIT 2003), *aff'd* 104 Fed. Appx. 183 (Fed. Cir. 2004) and *Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 12651 (March 15, 2005) and accompanying Issues and Decision Memorandum at Comment 4. Furthermore, we disregarded prices from NME countries. Finally, imports that were labeled as originating from an "unspecified" country were excluded from the average value because the Department could not be certain that they were not from either an NME country or a country with general export subsidies. Finally, we converted the surrogate values to U.S. dollars as appropriate, using the official exchange rate recorded on the dates of sale of subject merchandise in this case, obtained from the Import Administration's website at <http://www.ia.ita.doc.gov/exchange/index.html>. For further detail, see the *Surrogate Values Memo*.

Preliminary Results of Review
We preliminarily determine that the following margin exists during the period February 1, 2005, through August 15, 2005:

CERTAIN PRESERVED MUSHROOMS FROM THE PRC

Exporter/Manufacturer	Weighted-Average Margin (Percent)
Guangxi Eastwing Trading Co., Ltd./Raoping CXF Foods, Inc.	104.32

Public Comment

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within ten days of the date of announcement of these

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

Assessment Rates

Upon issuing the final results of the review, the Department shall determine, and CBP shall assess and liquidate, antidumping duties on all appropriate entries. The Department will issue appropriate appraisal instructions for the companies subject to this review directly to CBP within 15 days of publication of the final results of this review. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. 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 review is above *de minimis*.

Cash Deposit Requirements

Upon completion of this review, we will require cash deposits at the rate established in the final results as further described below.

Bonding will no longer be permitted to fulfill security requirements for shipments of certain preserved mushrooms from the PRC produced by

CXF and exported by Eastwing that are entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this new shipper review. See 19 CFR 351.214(e). 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 Eastwing entered, or withdrawn from warehouse, for consumption on or after the publication date: (1) for subject merchandise manufactured by CXF and exported by Eastwing, the cash deposit rate will be the rate established in the final results of this review, except that no cash deposit will be required if the cash deposit rate calculated in the final results is zero or *de minimis*; and (2) for subject merchandise exported by Eastwing but not manufactured by CXF, the cash deposit rate will continue to be the PRC-wide rate (*i.e.*, 198.63 percent); and (3) for subject merchandise produced by CXF but not exported by Eastwing, the cash deposit rate will be the rate applicable to the exporter. These 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 new shipper review and notice are in accordance with sections 751(a)(1), 751(a)(2)(B), and 777(i) of the Act and 19 CFR 351.214(h)(i).

Dated: June 27, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.
[FR Doc. E6-10667 Filed 7-6-06; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-565-801]

Stainless Steel Butt-Weld Pipe Fittings from the Philippines: Notice of Rescission of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: July 7, 2006.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482 2924 or (202) 482-0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2006, the Department published in the **Federal Register** (71 FR 5239) a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on stainless steel butt-weld pipe fittings from the Philippines for the period February 1, 2005, through January 31, 2006. On February 28, 2006, petitioners (Flowline Division of Markovitz Enterprises, Inc., Gerlin, Inc., Shaw Alloy Piping Products, Inc., and Taylor Forge Stainless, Inc.) requested an administrative review of Tung Fong Industrial Co., Inc. (Tung Fong) and Enlin Steel Corporation (Enlin) for this period. On April 5, 2006, the Department published a notice of initiation of an administrative review of the antidumping duty order on stainless steel butt-weld pipe fittings from the Philippines with respect to these two companies. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Reviews*, 71 FR 17077 (April 5, 2006).

Rescission of Review

On June 19, 2006, petitioners withdrew their request for an administrative review of Tung Fong's and Enlin's sales during the above-referenced period. Section 351.213(d)(1) of the Department's regulations stipulates that the Secretary will rescind an administrative review if the party that requests a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. In this case, petitioners have withdrawn their