

hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the orders were revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room 1117 of the main Department building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at <http://ia.ita.doc.gov/frn>. The paper copy and electronic version of the Decision Memo are identical in content.

### Final Results of Reviews

We determine that revocation of the antidumping duty orders on PVA from Japan, Korea, and the PRC would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/exporters/ producers	Weighted- average margin (percent)
<b>Japan:</b>	
Denki Kagaku Kogyo Kabushiki Kaisha .....	144.16
Japan VAM & POVAL Co., Ltd .....	144.16
Kuraray Co., Ltd .....	144.16
The Nippon Synthetic Chem- ical Industry Co., Ltd .....	144.16
All-Others Rate .....	76.78
<b>Korea:</b>	
DC Chemical Company, Ltd	38.74
All-Others Rate .....	32.08
<b>PRC:</b>	
Sinopec Sichuan Vinylon Works .....	5.51
PRC-Wide Rate .....	97.86

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: September 29, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-851]

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

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

**EFFECTIVE DATE:** October 3, 2008.

**SUMMARY:** The Department of Commerce (the Department) is currently conducting a new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (PRC) covering the period February 1, 2007, through February 29, 2008. We preliminarily determine that the sale made by Zhangzhou Golden Banyan Foodstuffs Industrial Co., Ltd. (Golden Banyan), was not made below normal value (NV). 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 any importer-specific assessment rates that are above *de minimis*.

**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 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) (*Order*). On February 29, 2008, 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 Tariff Act), and 19 CFR 351.214(c), from exporter and producer, Golden Banyan.<sup>1</sup> On April 7, 2008, the Department published a notice in the **Federal Register** initiating a new shipper review for Golden Banyan. *See Certain Preserved Mushrooms from the People's Republic of China: Initiation of New Shipper Review*, 73 FR 18772 (April 7, 2008) (*Initiation Notice*).

We issued the standard antidumping duty questionnaire, along with the standard importer questionnaire for new shipper reviews, on April 8, 2008, and received responses in May and June 2008. We issued supplemental questionnaires covering sections A, C, and D of the original questionnaire on July 8, 2008, August 7, 2008, and August 22, 2008, respectively, and received timely responses to those questionnaires.

#### Period of Review

The POR covers February 1, 2007, through February 29, 2008.<sup>2</sup>

#### 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" refers 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

<sup>1</sup> In its request for review, Golden Banyan indicated that it had applied to the Zhangzhou Municipal Industrial and Commercial Administrative Bureau (Commercial Administrative Bureau) to change its name to Fujian Golden Banyan Foodstuffs Industrial Co., Ltd. On December 21, 2007, the Commercial Administrative Bureau granted Golden Banyan advanced approval for the company's requested name change. At the time it submitted the request for new shipper review, however, Golden Banyan was still waiting for the name change to apply to the company's business license and certificate of approval.

<sup>2</sup> As we indicated in the initiation notice, Golden Banyan's shipment entered the United States shortly after the anniversary month. Therefore, for the reasons given in the initiation notice, we extended the POR to include Golden Banyan's shipment. *See Initiation Notice* at 18772.

provisionally preserve them for further processing.<sup>3</sup>

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.

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.

#### Bona Fide Analysis

Consistent with the Department’s practice, we investigated the *bona fide* nature of the sale made by Golden Banyan for this new shipper review. In evaluating whether a single sale in a new shipper review is commercially reasonable, and therefore *bona fide*, the Department considers, *inter alia*, such factors as: (1) The timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was made on an arm’s-length basis. *See Tianjin Tiancheng Pharm. Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1250 (CIT 2005). Accordingly, the Department considers a number of factors in its *bona fide* analysis, “all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise.” *See Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1342 (CIT 2005) (*citing Fresh Garlic From the People’s Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002) and accompanying Issues and Decision Memorandum).

<sup>3</sup> 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, the United States Court of Appeals for the Federal Circuit upheld this decision. *See Tak Fat v. United States*, 396 F.3d 1378 (Fed. Cir. 2005).

We preliminarily find that the U.S. sale made by Golden Banyan during the POR was made on a *bona fide* basis. Specifically, we find: (1) The timing of the sale does not indicate the sale might not be *bona fide*; (2) the price and quantity of the sale were within the range of the prices and quantities of other entries of subject merchandise from the PRC into the United States during the POR, based upon the Department’s review of data obtained from CBP; (3) Golden Banyan and its customer did not incur any extraordinary expenses arising from the transaction; (4) the sale was resold at a profit; and (5) the sale was made between unaffiliated parties at arm’s-length. *See Memorandum from Fred Baker, International Trade Compliance Analyst, to The File via Robert James, Program Manager, Office 7, “Bona Fide Sales Analysis for Zhangzhou Golden Banyan Foodstuffs Industrial Co., Ltd.,”* dated concurrently with this notice.

Based on our review of the record evidence concerning the *bona fide* nature of this sale, as well as Golden Banyan’s eligibility for a separate rate (*see* “Separate Rates Determination” section, below) and the Department’s determination that the seller was not affiliated with any exporter or producer that had previously shipped subject merchandise to the United States, we preliminarily determine that Golden Banyan has met the requirements to qualify as a new shipper during the POR. Therefore, for purposes of these preliminary results, we are treating the sale of subject merchandise to the United States as an appropriate transaction for this new shipper review.

#### Non-Market Economy Country Status

In every case conducted by the Department involving the PRC, we have treated the PRC as a non-market economy (NME) country. *See e.g., Brake Rotors From the People’s Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review*, 71 FR 66304 (November 14, 2006). In accordance with section 771(18)(C)(i) of the Tariff Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding have contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Tariff Act, which applies to NME countries.

#### Separate Rates Determination

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

#### 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*, 56 FR at 20589.

In the instant review, Golden Banyan submitted a complete response to the separate rates section of the Department’s questionnaire. The evidence submitted in the instant review by Golden Banyan includes government laws and regulations on corporate ownership and control, business licenses, and narrative information regarding the company’s operations and selection of management. The evidence provided by Golden Banyan supports a preliminary finding of a *de jure* absence of government control over its 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) legislative enactments exist decentralizing control of companies. *See Golden Banyan’s*

February 29, 2008, submission at pages 5–7 and Exhibits 3–4.

#### *Absence of De Facto Control*

The absence of *de facto* government control over exports generally 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 22586–87; *Sparklers*, 56 FR at 20589; and *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 February 29, 2008, submission, Golden Banyan submitted evidence demonstrating an absence of *de facto* government control over its export activities. Specifically, this evidence indicates: (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 and a sales 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 manager of each department; and (5) there is no restriction on the company's use of export revenues. Therefore, we preliminarily find that Golden Banyan 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 investigates imports from an NME country, section 773(c)(1) of the Tariff 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 Tariff 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 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 new shipper review are discussed under the "Normal Value" section, below. On June 16, 2008, the Department determined that India, Indonesia, the Philippines, Colombia, and Thailand are countries comparable to the PRC in terms of economic development, and requested comments from interested parties on selecting the appropriate surrogate country for this review. *See* Letter to All Interested Parties, RE: New Shipper Review of Certain Preserved Mushrooms from the People's Republic of China: Zhangzhou Golden Banyan Foodstuffs Industrial Co., Ltd., dated July 16, 2008. No party submitted surrogate country selection comments.

The Department has examined the export levels<sup>4</sup> of subject merchandise from the above-mentioned countries and found that India and Indonesia are significant producers of comparable merchandise. *See* Memorandum from Fred Baker, International Trade Compliance Analyst, to Richard Weible, Office Director, "Antidumping Duty New Shipper Review of Certain Preserved Mushrooms from the People's Republic of China: Selection of a Surrogate Country," dated concurrently with this notice (Surrogate Country Memorandum) at 4. However, since India has exports in both of the HTS subheadings identified for subject merchandise, while Indonesia has exports under only one of the HTS subheadings, we find that the Indian export data are more comprehensive and representative of subject merchandise than Indonesian export data. *Id.* at 5.

In selecting the appropriate surrogate country, the Department examines the availability and reliability of data from the countries deemed to be economically comparable and significant producers of subject merchandise. For a description of our practice, *see* Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004). India has been the primary surrogate country in numerous past segments for this proceeding. In those past segments, the Department found India's import statistics to be an available and reliable source for surrogate values. *Id.* at 4. Therefore, since India: (1) Is a significant producer of comparable merchandise, whose production of subject merchandise is more comprehensive than Indonesia's

production; (2) is at a similar level of economic development as the PRC; (3) has publicly available and reliable data, which the Department has relied upon for numerous segments of this proceeding; and, (4) India's data are more comprehensive and more representative of the subject merchandise than the data provided for Indonesia, the Department has selected India as the surrogate country, pursuant to section 773(c)(4) of the Tariff Act. *See* Surrogate Country Memorandum at 5.

#### **Fair Value Comparisons**

To determine whether Golden Banyan's sale of subject merchandise to the United States was made at a price below NV, we compared its U.S. price to NV, as described in the "U.S. Price" and "Normal Value" sections of this notice, below.

#### **U.S. Price**

In accordance with section 772(a) of the Tariff Act, we based U.S. price on the export price (EP) of the sale to the United States by Golden Banyan because the first sale to an unaffiliated party was made before the date of importation and the use of constructed export price was not otherwise warranted. We calculated EP based on the free-on-board (FOB) price to the first unaffiliated purchaser in the United States. For this EP sale, we deducted foreign inland freight and foreign brokerage and handling from the starting price (or gross unit price), in accordance with section 772(c) of the Tariff Act. For Golden Banyan's U.S. sale, each of these services was provided by an NME vendor. Thus, we based the deduction of these movement charges on surrogate values. We valued truck freight expenses using a per-unit average rate calculated from data on the following Web site: <http://www.infobanc.com/logistics/logtruck.htm>. The logistics section of this web site contains inland freight truck rates between many large Indian cities. Since this value is not contemporaneous with the POR, we deflated the rate using the wholesale price index (WPI). *See* Memorandum from Fred Baker, International Trade Compliance Analyst, through Robert James, Program Manager, to the File, "New Shipper Review of Certain Preserved Mushroom from the People's Republic of China: Surrogate Values for the Preliminary Results" (Surrogate Values Memorandum) at Exhibit 6. We valued foreign brokerage and handling with the publicly summarized brokerage and handling expense reported in the U.S. sales listing of Indian mushroom producer, Agro Dutch Industries, Ltd.

<sup>4</sup> The Department was unable to find world production data for subject merchandise and relied on export data as a substitute for overall production.

(Agro Dutch), in the 2004–2005 administrative review of Certain Preserved Mushrooms from India. See Surrogate Values Memorandum at Exhibit 6.

## Normal Value

### 1. Methodology

Section 773(c)(1)(B) of the Tariff Act provides that the Department shall determine the NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Tariff Act. The Department bases NV on 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. See *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part*, 70 FR 39744 (July 11, 2005), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2003–2004 Administrative Review and Partial Rescission of Review*, 71 FR 2517 (January 17, 2006).

We calculated NV by adding together the value of the FOPs, general expenses, profit, and packing costs. The FOPs for subject merchandise include: (1) Quantities of raw materials employed; (2) hours of labor required; (3) amounts of energy and other utilities consumed; (4) representative capital and selling costs; and (5) packing materials. We used the FOPs reported by Golden Banyan for materials, energy, labor, and packing, and valued those FOPs by multiplying the amount of the factor consumed in producing subject merchandise by the average unit surrogate value of the factor.

In accordance with 19 CFR 351.408(c)(1), when a producer sources an input from a market-economy country and pays for it in a market-economy currency, the Department will normally value the FOP using the actual price paid for the input. See 19 CFR 351.408(c)(1); see also *Lasko Metal Products v. United States*, 43 F.3d 1442, 1445–1446 (Fed. Cir. 1994) (affirming the Department's use of market-based prices to value certain FOPs). The Department has instituted a rebuttable presumption that market economy input prices are the best available information

for valuing an input when the total volume of the input purchased from all market economy sources during the period of investigation or review is 33 percent or greater of the total volume of the input purchased from all sources during the period. In such cases, unless case-specific facts provide adequate grounds to rebut the Department's presumption, the Department will use the weighted-average market economy purchase price to value the input. Alternatively, when the volume of an NME firm's purchases of an input from market economy suppliers during the period is below 33 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the prices, the Department will weight-average the market economy purchase price with an appropriate surrogate value according to their respective shares of the total volume of purchases, unless case-specific facts provide adequate grounds to rebut the presumption in favor of using market-economy prices. When an NME firm has made market economy input purchases that may have been dumped or subsidized, are not *bona fide*, or are otherwise not acceptable for use in a dumping calculation, the Department will exclude them from the total quantity of all market economy purchases to ensure a fair determination of whether valid market economy purchases meet the 33 percent threshold. See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716 (October 19, 2006). In this case, Golden Banyan reported that it did not purchase any inputs from market economy sources.

In addition, we added freight costs to the surrogate costs that we calculated for material inputs. We calculated freight costs by multiplying surrogate freight rates by the shorter of the reported distance from the domestic supplier to the factory that produced the subject merchandise or the distance from the nearest seaport to the factory that produced the subject merchandise, as appropriate. Where there were multiple domestic suppliers of a material input, we calculated a weighted-average distance after limiting each supplier's distance to no more than the distance from the nearest seaport to Golden Banyan. This adjustment is in accordance with the decision by the Court of Appeals for the Federal Circuit in *Sigma Corp. v. United States*, 117 F.3d 1401, 1407–1408 (Fed. Cir. 1997). We increased the calculated costs of the

FOPs for surrogate general expenses and profit. See Surrogate Values Memorandum.

### 2. Selection of Surrogate Values

In selecting surrogate values, we followed, to the extent practicable, the Department's practice of choosing public values which are non-export averages, representative of a range of prices in effect during the POR, or over a period as close as possible in time to the POR, product-specific, and tax-exclusive. See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004). We also considered the quality of the source of surrogate information in selecting surrogate values. See *Manganese Metal From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 63 FR 12440 (March 13, 1998). Where we could obtain only surrogate values that were not contemporaneous with the POR, we inflated (or deflated) the surrogate values using, where appropriate, the Indian WPI as published in *International Financial Statistics* by the International Monetary Fund. See Surrogate Values Memorandum at Exhibit 1.

In calculating surrogate values from import statistics, in accordance with the Department's practice, we disregarded statistics for imports from NME countries and countries deemed to maintain broadly available, non-industry-specific subsidies which may benefit all exporters to all export markets (e.g., Indonesia, South Korea, and Thailand). See, e.g., *Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From The People's Republic of China*, 67 FR 6482 (February 12, 2002) and accompanying Issues and Decision Memorandum at Comment 1. See also *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 68 FR 66800, 66808 (November 28, 2003), unchanged in *Notice of Final*

*Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical*

*Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004). Additionally, we excluded from our calculations imports that were labeled as originating from an unspecified country because we could not determine whether they were from an NME country.

We valued production material inputs (mushroom spawn, rice straw, and manure) using the fiscal year (FY) 2006–2007 (April 2006 through March 2007) financial statements of Agro Dutch or Flex Foods Ltd. (Flex Foods), Indian producers of mushrooms and vegetables, as follows. To value the input of mushroom spawn, we used data from the FY 2004–2005 financial statement of Agro Dutch because Agro Dutch's mushroom spawn value is specific to the species *Agaricus bisporous*, which is the species used to produce subject merchandise. To value the input of rice straw, we used the rice straw value from the FY 2006–2007 financial statement of Flex Foods because this value is specific to the input. Similarly, to value the input of manure, we used the manure value from the FY 2004–2005 financial statement of Agro Dutch because this value is specific to the input. See *Surrogate Values Memorandum* at Exhibit 2.

We valued processing and canning material inputs (super calcium phosphate, calcium carbonate, spawn, refined salt, citric acid, tin plate, copper wire, and sealing glue) using weighted-average Indian import values derived from the World Trade Atlas online (WTA), for the period February 2007 through January 2008. See *Surrogate Values Memorandum* at Exhibits 2 and 3. In addition, we valued packing material inputs (corrugated boxes, labels, paper board, hard paper board, adhesive tape, and glue) with weighted-average Indian import values derived from the WTA for the period February 2007 through January 2008. *Id.* at Exhibit 5. The Indian import statistics obtained from the WTA were published by the Indian Directorate General of Commercial Intelligence and Statistics, Ministry of Commerce of India and are contemporaneous with the POR. As the Indian surrogate values were denominated in rupees, in accordance with section 773A(a) of the Tariff Act, they were converted to U.S. dollars using the official exchange rate for India recorded on the date of sale of subject merchandise in this case. See <http://www.ia.ita.doc.gov/exchange/index.html>.

To value land rent, the Department used data from the 2001 *Punjab State Development Report*, administered by the Planning Commission of the Government of India. Since the value of land rent was not contemporaneous with the POR, the Department adjusted the value for inflation. See *Surrogate Values Memorandum* at Exhibit 2.

We valued electricity using price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India in its publication titled *Electricity Tariff & Duty and Average Rates of Electricity Supply in India*, dated July 2006. These electricity rates represent actual country-wide publicly-available information on tax-exclusive electricity rates charged to industries in India. Since the rates are not contemporaneous with the POR, we inflated the values using the WPI. See *Surrogate Value Memorandum* at Exhibit 3.

To value water, the Department used data from the Maharashtra Industrial Development Corporation (<http://www.midcindia.org>) for June 2003, which we found to be the best available information since it includes a wide range of industrial water rates. Since the water rates were not contemporaneous with the POR, the Department adjusted the value for inflation. See *Surrogate Values Memorandum* at Exhibit 4.

We valued truck freight expenses for inputs the same surrogate data we used for valuing domestic inland freight for Golden Banyan's U.S. sale (*i.e.*, we used data from the Web site <http://www.infobanc.com/logistics/logtruck.htm>, which contains inland freight truck rates between many large Indian cities). Since these values are not contemporaneous with the POR, we deflated the rate using the WPI. See *Surrogate Values Memorandum* at Exhibit 6.

The Department's regulations require the use of a regression-based wage rate. See 19 CFR 351.408(c)(3). Therefore, to value labor, the Department used the regression-based wage rate for the PRC published on the Import Administration Web site. See the IA Web site: <http://ia.ita.doc.gov/wages/05wages/05wages-041608.html>, and see *Corrected 2007 Calculation of Expected Non-Market Economy Wages*, 73 FR 27795 (May 14, 2008).

To value the surrogate financial ratios for factory overhead (OH), selling, general & administrative (SG&A) expenses, and profit, the Department used the 2006–2007 financial statements of Agro Dutch and Flex Foods. The Department notes that Agro Dutch is a producer of mushrooms, and Flex Foods is a producer of mushrooms and

vegetable products. Therefore, Agro Dutch's and Flex Foods' financial ratios for OH and SG&A are comparable to Golden Banyan's financial ratios because Agro Dutch's and Flex Foods' production experience is comparable to Golden Banyan's production experience by virtue of each company's production of subject merchandise. Additionally, the financial statements of these two companies are contemporaneous for two months of the POR. Moreover, an average of the financial statements of Agro Dutch and Flex Foods represents a broader spectrum of the Indian mushroom industry, than the financial statement of a single mushroom producer. See *Surrogate Values Memorandum* at Exhibit 8.

### Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Tariff Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. These exchange rates can be accessed at the Web site of Import Administration at <http://ia.ita.doc.gov/exchange/index.html>.

### Preliminary Results of Review

We preliminarily determine that the following margin exists during the period February 1, 2007, through February 29, 2008:

Manufacturer/exporter	Margin (percent)
Zhangzhou Golden Banyan Foodstuffs Industrial Co., Ltd. (Golden Banyan) .....	0.00

### Public Comment

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of publication of these preliminary results. Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs. See 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1). Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs. 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.

Any interested party may request a hearing within 30 days of publication of this notice. See 19 CFR 351.310(c). 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 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 the briefs.

Unless the deadline is extended pursuant to section 751(a)(2)(B)(iv) of the Tariff 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 90 days of publication of these preliminary results.

#### Assessment Rates

Upon issuing the final results of the review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of 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*. However, the final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of these reviews and for future deposits of estimated duties, where applicable.

#### Cash Deposit Requirements

The following cash deposit requirements, when imposed, will be effective upon publication of the final results of this new shipper review for all shipments of subject merchandise exported by Golden Banyan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Tariff Act: (1) For subject merchandise manufactured and

exported by Golden Banyan, the cash-deposit rate will be that established in the final results of this review; (2) for subject merchandise exported by Golden Banyan but not manufactured by Golden Banyan, the cash deposit rate will continue to be the PRC-wide rate (*i.e.*, 198.63 percent); and (3) for subject merchandise manufactured by Golden Banyan but exported by any other party, the cash deposit rate will be the rate applicable to the exporter. If the cash deposit rate calculated for Golden Banyan in the final results is zero or *de minimis*, a zero cash deposit will be required for entries of subject merchandise both produced and exported by Golden Banyan. 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 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)(2)(B) and 777(i) of the Tariff Act and 19 CFR 351.214(h)(i).

Dated: September 29, 2008.

**David Spooner,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-823-808]

#### Suspension of Antidumping Investigation: Certain Cut-to-Length Carbon Steel Plate From Ukraine

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

**ACTION:** Notice of revised suspension agreement on certain cut-to-length carbon steel plate from Ukraine.

**EFFECTIVE DATE:** November 1, 2008.

**SUMMARY:** The Department of Commerce ("the Department") has revised the agreement suspending the antidumping

duty investigation involving certain cut-to-length carbon steel plate ("CTL plate") from Ukraine. The basis for this action is an agreement between the Department and Ukrainian CTL plate producers accounting for substantially all imports of CTL plate from Ukraine, wherein each signatory producer/exporter individually agrees to make any necessary price revisions to eliminate completely any amount by which the normal value (NV) of this merchandise exceeds the U.S. price of its merchandise subject to the Agreement.

#### FOR FURTHER INFORMATION CONTACT:

Judith Wey Rudman or Jay Carreiro at (202) 482-0192 or (202) 482-3674, respectively; Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

#### SUPPLEMENTARY INFORMATION:

##### Background

On October 24, 1997, the Department entered into an agreement with the Government of Ukraine which suspended the antidumping duty investigation on certain cut-to-length carbon steel plate (CTL plate) from Ukraine. See *Suspension of Antidumping Duty Investigation: Certain Cut-to-Length Carbon Steel Plate from Ukraine*, 62 FR 61766 (November 19, 1997). In accordance with section 734(g) of the Tariff Act of 1930 (the Act), on November 19, 1997, the Department also published its final determination of sales at less than fair value in this case. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Ukraine*, 62 FR 61754 (November 19, 1997).

On February 17, 2006, based on the evidence of economic reforms to that date, the Department revoked Ukraine's status as a non-market economy country under section 771(18)(B) of the Act, effective on February 1, 2006. Based on a request by certain Ukrainian producers of CTL plate, we are converting the current non-market economy suspension agreement to a market economy agreement. On August 5, 2008, representatives of OJSC Alchevsk Iron & Steel Works, Azovstal Iron & Steel Works, and Ilyich Iron & Steel Works (collectively the "Ukrainian CTL plate producers") initialed a proposed, revised suspension agreement. We invited interested parties to comment on the proposed agreement. We received no comments.

On September 29, 2008, the revised Suspension Agreement was signed by