

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-570-851]

Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Rescission in Part, and Intent To Rescind in Part

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

DATES: *Effective Date:* March 8, 2011.

SUMMARY: The Department of Commerce (the Department) is currently conducting an administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (PRC) covering the period February 1, 2009, through January 31, 2010. We preliminarily determine that sales made by Blue Field (Sichuan) Food Industrial Co., Ltd. (Blue Field), Guangxi Jisheng Foods, Inc. (Jisheng), and Xiamen International Trade & Industrial Co., Ltd. (XITIC) were made below normal value (NV). We invite interested parties to comment on these preliminary results. In addition, we are also rescinding this administrative review with respect to Zhangzhou Gangchang Canned Foods Co., Ltd. (Gangchang), Shandong Fengyu Edible Fungus Corporation Ltd. (Fengyu), and Zhangzhou Tongfa Foods Industry Co., Ltd. (Tongfa). Additionally, we are announcing that we intend to rescind this review with respect to five companies which we have preliminarily determined had no shipments during the period of review (POR).

FOR FURTHER INFORMATION CONTACT: Fred Baker, Scott Hoefke, 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, (202) 482-4947 or (202) 482-0649, respectively.

SUPPLEMENTARY INFORMATION:**Background**

On February 19, 1999, the Department published in the **Federal Register** the antidumping duty order on certain preserved mushrooms (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) (the Order). On February 1, 2010, the Department

published in the **Federal Register** its notice of opportunity to request an administrative review of the antidumping duty order on mushrooms from the PRC. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 75 FR 5037 (February 1, 2010). On March 1, 2010, Monterrey Mushrooms (Petitioner) requested the Department conduct an administrative review of 26 PRC mushroom producers/exporters. On March 30, 2010, the Department published in the **Federal Register** a notice of initiation of the antidumping duty administrative review of mushrooms from the PRC for the period February 1, 2009, through January 31, 2010, with respect to the 26 companies. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 75 FR 15679 (March 30, 2010) (*Initiation Notice*).

On April 9, 2010, we received a no-shipment certification from Duijianghyan Xingda Foodstuff Co., Ltd. (Xingda). On April 27, 2010, we received no-shipment certifications from Fujian Pinghe Baofeng Canned Foods, Longhai Guangfa Food Co., Ltd., Fujian Zishan Group Co., Ltd., and Xiamen Longhuai Import & Export Co., Ltd.

On April 26, 2010, we received separate rate certifications from Fujian Golden Banyan Foodstuffs Industrial Co., Ltd. (Golden Banyan)¹ and Blue Field. On April 28, 2010, we received separate rate certifications from Ayecue (Liaocheng) Foodstuff Co., Ltd. (Ayecue), and Shandong Jiufa Edible Fungus Corporation, Ltd. (Jiufa). On April 29, 2010, we received separate rate certifications from Zhejiang Iceman Group Co., Ltd. (Iceman), Gangchang, and XITIC.

On June 28, 2010 Petitioner withdrew its request for an administrative review of Gangchang.

Respondent Selection

Section 777A(c)(1) of the Tariff Act of 1930, as amended (the Act), directs the Department to calculate individual

¹ In the initiation notice we initiated reviews of, *inter alia*, Fujian Golden Banyan Foodstuffs Co., Ltd., Golden Banyan Foodstuffs, Co., Ltd., and Zhangzhou Golden Banyan Foodstuffs Industrial Co., Ltd. See *Initiation Notice* 75 FR at 15681.

However, Golden Banyan, in response to a questionnaire from the Department, placed on the record information regarding its name, its past name changes, and the addresses of its affiliates. Based on this information, we determine that these three entities are actually all the same. See petitioners' March 1, 2010 submission at Attachment, and Golden Banyan's January 20, 2011 submission.

dumping margins for each known exporter or producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters or producers if it is not practicable to examine all exporters or producers involved in the review.

On April 2, 2010, the Department released U.S. Customs and Border Protection (CBP) data for entries of the subject merchandise during the POR under administrative protective order (APO) to all interested parties having an APO, inviting comments regarding the CBP data and respondent selection. The Department received comments from Blue Field on April 12, 2010, and from Petitioner and XITIC on April 14, 2010.

Based on the large number of potential exporters or producers involved in this administrative review and, after considering our resources, we determined that it was not practicable to individually examine all twenty-six companies. Accordingly, on May 17, 2010, we issued our respondent selection memorandum indicating that, pursuant to section 777A(c)(2)(B) of the Act, we could reasonably examine only the three largest producers/exporters of subject merchandise by volume. Therefore, we selected Blue Field, Jisheng, and XITIC as mandatory respondents.² The following day we issued the standard antidumping questionnaire to those three respondents, and received the responses in June and July 2010. We issued supplemental questionnaires to Blue Field, Jisheng, and XITIC in the ensuing months, and received their responses in August, September, October, and November 2010, and January 2011.

Surrogate Country and Surrogate Value Data

On July 13, 2010, the Department sent interested parties a letter inviting comments on surrogate country selection and surrogate value data. We received a response from Jisheng on November 16, 2010, and from Petitioner and XITIC on November 22, 2010. Petitioner argued that India is the appropriate surrogate country for this review, and submitted information with which to value the factors of production (FOPs). Jisheng and XITIC made no comments regarding surrogate country

² See Memorandum to Richard Weible, Director, AD/CVD Operations, Office 7, from Scott Hoefke and Fred Baker, Analysts, AD/CVD Operations, Office 7, Subject: "Administrative Review of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China: Respondent Selection Memorandum," dated May 17, 2010.

selection, but they had obtained all of the potential surrogate value data they placed on the record from sources in India.

Partial Rescission

Section 351.213(d)(1) of the Department's regulations provide that the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation of the requested review, or withdraws it at a later date if the Department determines it is reasonable to extend the time limit for withdrawing the request. The Department initiated this administrative review on March 30, 2010. *See Initiation Notice*. As indicated above, Petitioner withdrew its request for review of Gangchang on June 28, 2010. Because the party that requested this review has timely withdrawn the request for review, we are rescinding this review with respect to Gangchang.

Furthermore, concurrent with this administrative review we are conducting new shipper reviews of Fengyu and Tongfa,³ both of which are companies on whom we initiated an administrative review in this proceeding. *See Initiation Notice*. Therefore, since we are conducting new shipper reviews of these companies for the period covered by this administrative review, we are rescinding their administrative review pursuant to 19 CFR 351.214(j).

Intent To Rescind Review in Part

In April 2010 we received certifications of no shipments from five companies for whom we initiated a review in this proceeding. Those five companies were Dujiangyan Xingda Foodstuff Co., Fujian Pinghe Baofeng Canned Foods, Fujian Zishan Group Co., Ltd., Longhai Guangfa Food Co., and Xiamen Longhuai Import & Export Co. We made inquiries with CBP as to whether any shipments were entered with respect to these five companies during the POR. *See* CBP message numbers 0347302, 0347303, 0347304, 0347305, and 0347306, all dated December 13, 2010. We received no responses from CBP to those inquiries. We also examined CBP information used in the selection of the mandatory respondents to further confirm no shipments by these companies during the POR. *See* the attachment to "Letter from Robert James to All Interested Parties" dated April 2, 2010. Based on

³ *See Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Reviews*, 75 FR 66729 (October 29, 2010).

the above, we preliminarily find that these five companies had no shipments of subject merchandise during the POR, and we intend to rescind their reviews pursuant to 19 CFR 351.213(d)(3).

Interested parties may submit comments on the Department's intent to rescind with respect to these five companies no later than 30 days after the date of publication of these preliminary results of review. The Department will issue the final rescission (if appropriate), which will include the results of its analysis of issues raised in any comments received, in the final results of review.

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 provisionally preserve them for further processing.⁴

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,

⁴ 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).

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.

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., Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 76336 (December 16, 2008); and *Frontseating Service Valves from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 74 FR 10886 (March 12, 2009). 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 Department. *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). None of the parties to this proceeding have contested such treatment, or provided record evidence to reconsider our continued treatment of the PRC as an NME. Accordingly, we calculated NV in accordance with section 773(c) of the 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 Act. Accordingly, the Department begins its separate rate analysis with a rebuttable presumption that all companies within the PRC are subject to government control, and thus should be assessed a single antidumping duty rate (*i.e.*, the PRC-wide rate).

It is the Department's 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*).

In the *Initiation Notice* the Department stated that all firms that wish to qualify for separate-rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate-rate application or certification. See *Initiation Notice*, 75 FR at 15680. To establish separate-rate eligibility, the Department requires entities for which a review was requested, that were assigned a separate rate in the most recent segment of the proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. In this administrative review, Ayecue, Gangchang, Golden Banyan, Iceman, and Jiufa (the separate-rate applicants) each submitted a separate-rate certification indicating they continued to meet the criteria for obtaining a separate rate. Although Jisheng did not submit a separate-rate certification, as a cooperating mandatory respondent it did answer all the separate-rate questions in our questionnaires. Additionally, Blue Field and XITIC both submitted a separate-rate certification and answered all the separate-rate questions in our questionnaires. As such, we have determined that Blue Field, Jisheng, XITIC, and the separate-rate applicants each provided company-specific information, and each stated that it met the criteria for the assignment of a separate rate.

The Department's separate-rate test to determine whether the exporter is independent from government control does not consider, in general, macroeconomic/border-type controls (e.g., export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Ukraine*, 62 FR 61754, 61758 (November 19, 1997), and *Tapered Roller Bearings and Parts Thereof, finished and Unfinished, From the People's Republic of China; Final Results of Antidumping Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with 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 this administrative review, Blue Field, Jisheng, and XITIC demonstrated, and the separate-rate applicants certified that, consistent with the most recent segment of this proceeding in which it participated and was granted a separate rate, there is an absence of *de jure* government control of its exports.⁵ Each of the separate-rate applicants certified to its separate-rate status. Additionally, Blue Field, Jisheng, XITIC, and the separate-rate applicants stated that their companies had no relationship with any level of the PRC government with respect to ownership, internal management, and business operations. In this segment we have no new information on the record that would cause us to reconsider our previous determinations of the absence of *de jure* government control with regard to these companies. Thus, we find that evidence on the record supports a preliminary finding of an

⁵ The most recently completed segment of this proceeding in which Golden Banyan participated and was granted separate rate status was *Certain Preserved Mushrooms from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 73 FR 75083 (December 10, 2008). The most recently completed segment of this proceeding in which Gangchang and Iceman participated and were granted separate rate status was *Certain Preserved Mushrooms from the People's Republic of China: Final Results of Antidumping Duty New Shipper Reviews*, 74 FR 28882 (June 18, 2009). The most recently completed segment of this proceeding in which Ayecue participated and was granted separate rate status was *Certain Preserved Mushrooms from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 73 FR 21904 (April 23, 2008). The most recently completed segment of this proceeding in which Blue Field participated and was granted separate rate status was *Certain Preserved Mushrooms from the People's Republic of China: Notice of Final Results of the Eighth New Shipper Review*, 70 FR 60789 (October 19, 2005). The most recently completed segment of this proceeding in which Jiufa and XITIC participated and were granted separate rate status was *Notice of Amended Final Results of Antidumping duty Administrative Review: Certain Preserved Mushrooms from the People's Republic of China*, 70 FR 60280 (October 17, 2005). The most recently completed segment of this proceeding in which Jisheng participated and was granted separate rate status was *Certain Preserved Mushrooms From the People's Republic of China: Final Results of the Tenth Antidumping Duty New Shipper Review*, 72 FR 68858 (December 6, 2007).

absence of *de jure* government control with regard to the export activities of Blue Field, Jisheng, XITIC, and the separate-rate applicants.

Absence of De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. See *Silicon Carbide*, 59 FR at 22586–87 and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255 (December 31, 1998). Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.

The Department typically considers the following four factors in evaluating whether a respondent is subject to *de facto* government control over its export functions: (1) Whether the export prices are set by, or subject to the approval of, a government agency; (2) whether the respondent retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether the respondent has the authority to negotiate and sign contracts and other agreements; (4) whether the respondent has autonomy from the government regarding the selection of management. See *Silicon Carbide*, 59 FR at 22587; *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).

The evidence provided by Blue Field, Jisheng, XITIC, and the separate-rate applicants supports a preliminary finding of absence of *de facto* government control based on the following: (1) The companies set their own export prices independent of the government and without the approval of a government authority; (2) there is no restriction on any of the companies' use of export revenue, nor the disposition of profits or financing of losses; (3) the companies have authority to negotiate and sign contracts and other agreements; (4) the companies have autonomy from the government in making decisions regarding the selection of management. See, e.g., Blue Field's June 22, 2010, Section A response at A–1 through A–8; Jisheng's June 23, 2010, Section A response at A–1 through A–8; and XITIC's June 16,

2010, Section A response at A–2 through A–9. Additionally, in this administrative review we have no new information on the record that would cause us to reconsider our previous determinations of the absence of *de facto* government control with regard to these companies. Therefore, the Department preliminarily finds that Blue Field, Jisheng, XITIC and the separate-rate applicants have established that they qualify for separate rates under the criteria established by *Silicon Carbide* and *Sparklers*.

The PRC-Wide Entity

In addition to the separate-rate applications discussed above, seven other companies for which we initiated a review in this proceeding already had separate rates.⁶ However, they failed to recertify their separate rates using the separate rate certification provided at the Department's Web site at <http://ia.ita.doc.gov/nme/nme-sep-rate.html>, to demonstrate their continued eligibility for separate rate status. See *Initiation Notice*, at 15680. These seven companies also did not make a claim that they had not sold or shipped subject merchandise to the United States during the POR. In accordance with the Department's established NME methodology, a party's separate rate status must be established in each segment of the proceeding in which the party is involved.⁷ Therefore, because these companies did not certify that they had no shipments or demonstrate that they were entitled to a separate rate, the Department preliminarily finds that each company should be considered part of the PRC-wide entity for this review.

Furthermore, there are two companies, Sun Wave Trading Co., Ltd. and Xiamen Greenland Import & Export Co., Ltd., for which we initiated a review in this proceeding and which did not previously have a separate rate. Because these companies did not file a Separate Rate Application, see generally, *Initiation Notice*, 75 FR at 15680, to demonstrate eligibility for a separate rate in this administrative review, or certify that they had no shipments, we preliminarily determine

that these companies will remain part of the PRC-wide entity.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's FOPs, valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.

The Department determined that India, the Philippines, Indonesia, Thailand, Ukraine, and Peru are countries comparable to the PRC in terms of economic development and that these six countries are significant producers of comparable merchandise.⁸ Moreover, it is the Department's practice to select an appropriate surrogate country based on the availability and reliability of data from the countries. See Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Surrogate Country Policy Bulletin). In the most recently completed proceeding involving the Order, we determined that India is comparable to the PRC in terms of economic development and has surrogate value data that are available and reliable. See *Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 74 FR 65520, (December 10, 2009). In the current proceeding, all parties who submitted factor values were in agreement that India was the appropriate surrogate country. We find based on the record of this administrative review that India is an appropriate surrogate country. We have selected India as the primary surrogate market-economy country because it is at a level of economic development similar to the PRC, it is a significant producer of comparable merchandise, and we have reliable, publicly available data from India

representing broad market averages. See 773(c)(4) of the Act; see also Memorandum to the File, from Fred Baker, Analyst, Subject: Antidumping Duty Administrative Review of Certain Preserved Mushrooms from the People's Republic of China: Selection of a Surrogate Country, dated February 28, 2011.

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of this administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results.

U.S. Price

In accordance with section 772(a) of the Act, we based Blue Field's, Jisheng's, and XITIC's U.S. prices on export prices (EP), because their first sales to unaffiliated purchasers were made before the date of importation and the use of constructed export price (CEP) was not otherwise warranted by the facts on the record.⁹ As appropriate, we deducted foreign inland freight, foreign brokerage and handling, international freight, U.S. inland freight, U.S. duties, and U.S. brokerage and handling from the starting price (or gross unit price), in accordance with section 772(c)(2) of the Act. Where these services were provided by NME vendors we based the deduction on surrogate values.

The respondents collectively used three modes of transportation for foreign inland freight. Those modes were truck, train, and barge. As previously stated, where applicable we made deductions for these expenses from the U.S. price. We valued truck freight using a per-unit, POR-wide, average rate calculated from Indian 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. See Memorandum to the File, "Surrogate Values for the Preliminary Results of Review of Certain Preserved Mushrooms from the People's Republic of China" (Surrogate Values Memorandum) dated February 28, 2011, at Exhibit 7.

For train freight, we used data published by the Indian Railway Conference Association. Specifically, we used "Goods Tariff No. 45 Pt. 1, (vol.

⁶ Those seven companies are: China National Cereals, Oils & Foodstuffs Import & Export Corp., China Processed Food Import & Export Co., Fujian Yuxing Fruits & Vegetables Foodstuffs Development Co., Ltd., Guangxi Eastwing Trading Co., Ltd., Xiamen Gulong Import & Export Co., Ltd., Primera Harvest (Xiangfan) Co. Ltd., Xiamen Jiufa Edible Fungus Corp.

⁷ See, *Sigma Corp. v. United States*, 117 F.3d 1401, 1405–06 (Fed. Cir. 1997) (affirming the Department's presumption of State control over exporters in non-market economy cases).

⁸ See Memorandum from Carole Showers, Director, Office of Policy, to Richard Weible, Director, Office 7; Subject: Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China, dated June 25, 2010. The Department notes that these six countries are part of a non-exhaustive list of countries that are at a level of economic development comparable to the PRC.

⁹ Jisheng did report a portion of its U.S. sales as CEP sales. However, we reclassified them as EP sales because given our date of sale methodology (explained below) we determined that they are more appropriately classified as EP sales. See Jisheng's September 13, 2010, submission at 6 and Jisheng's preliminary results analysis memorandum dated February 28, 2011.

II.)” See Surrogate Values Memorandum at 14 for more information.

For barge freight, we used data published in the March 2007 issue of *The Hindu Business Line*. See the Surrogate Values Memorandum at 14 for more information.

We valued foreign brokerage and handling using the publicly summarized brokerage and handling expense reported in the U.S. sales listing of Indian mushroom producer, Agro Dutch Industries, Ltd. (Agro Dutch), in the 2004–2005 administrative review of Certain Preserved Mushrooms from India, which we then inflated to be contemporaneous with the POR. See Surrogate Values Memorandum at 13.

In their Section A questionnaire responses, Blue Field, Jisheng, and XITIC stated that they intended to use the invoice date as the date of sale. See Blue Field’s June 22, 2010, submission at A–11, Jisheng’s June 23, 2010, submission at A–10, and XITIC’s June 16, 2010, submission at A–13. Subsequently, Blue Field and XITIC, in response to questions asked in supplemental questionnaires, substantiated that there were sometimes changes to the price or quantity of a sale following issuance of the purchase order but before issuance of the invoice. See Blue Field’s August 19, 2010, submission at 2 and Exhibit 3 and XITIC’s August 26, 2010, submission at S1–4. Therefore, because the record indicates that the material terms of Blue Field’s and XITIC’s U.S. sales were established on the date of invoice, pursuant to 19 CFR 351.401(i), we determine that invoice date is the appropriate date to use as the date of sale for these two respondents. However, Jisheng stated that during the POR there were no changes to either quantity or price between the purchase order date and the invoice date for any of its sales. See Jisheng’s September 13, 2010, submission at 1. Therefore, for Jisheng, we have preliminarily determined that it is appropriate to use purchase order date, rather than invoice date, as the date of sale because it was on the purchase order date that the material terms of sale (*i.e.*, quantity and price) were set.

Normal Value

1. Methodology

Section 773(c)(1)(B) of the Act provides that the Department shall determine the NV using an FOP methodology if the merchandise under review is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or

constructed value under section 773(a) of the Act. The Department bases NV on 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, *e.g.*, *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). Under section 773(c)(3) of the Act, FOPs include, but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs, including depreciation. The Department based NV on FOPs reported by the respondents for materials, energy, labor, and packing.

Thus, in accordance with section 773(c) of the Act, we calculated NV by adding the values of the FOPs, overhead, selling, general and administrative (SG&A) expenses, profit, and packing costs.

2. Selection of Surrogate Values

In selecting the “best available information for surrogate values,” see Section 773(c)(1) of the Act, consistent with the Department’s preference, we considered whether the potential surrogate value data on the record were: Publicly available; product-specific; representative of broad market average prices; contemporaneous with the POR; and free of taxes and import duties. See, *e.g.*, *Drill Pipe From the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, and Postponement of Final Determination*, 75 FR 51004 (August 18, 2010), unchanged in *Drill Pipe From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances*, 76 FR 196 (January 11, 2011). Where only surrogate values that were not contemporaneous with the POR were available on the record of this administrative review, we inflated 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 2.

In accordance with these guidelines, we calculated surrogate values, except as noted below, from import statistics of the primary selected surrogate country, India, from Global Trade Atlas (GTA), as published by Global Trade Information Services. Our use of GTA import data is in accordance with past practice and satisfies all of our criteria for surrogate values noted above.¹⁰ However, in accordance with the legislative history of the Omnibus Trade and Competitiveness Act of 1988, see Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) (OTCA 1988) at 590, the Department continued to apply its long-standing practice of disregarding surrogate values if it has a reason to believe or suspect the prices contained in the source data may be dumped or subsidized prices. In this regard, the Department has previously found that it is appropriate to disregard such surrogate value prices from Indonesia, South Korea and Thailand because we have determined that these countries maintain broadly available, non-industry specific export subsidies. Because there were generally available export subsidy programs in these countries during the POR, the Department finds that it is reasonable to infer that all exporters from Indonesia, South Korea and Thailand may have benefitted from these subsidies and to disregard prices from these countries.¹¹ Additionally, consistent with our practice, 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. See, *e.g.*, *Certain Non-Frozen Apple Juice Concentrate from the*

¹⁰ See, *e.g.*, *Certain Preserved Mushrooms From the People’s Republic of China: Preliminary Results of Antidumping Duty New Shipper Review*, 74 FR 50946, 50950 (October 2, 2009), unchanged in *Certain Preserved Mushrooms From the People’s Republic of China: Final Results of Antidumping Duty New Shipper Review*, 74 FR 65520 (December 10, 2009).

¹¹ See, *e.g.*, *Expedited Sunset Review of the Countervailing Duty Order on Certain Cut-to-Length Carbon Quality Steel Plate from Indonesia*, 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum at page 4; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at Comment 1, pages 17, 19–20; and *Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Countervailing Duty Determination*, 66 FR 50410 (October 3, 2001), and accompanying Issues and Decision Memorandum at Comment 1.

People's Republic of China: Notice of Preliminary Results of the New Shipper Review, 75 FR 47270 (August 5, 2010), unchanged in *Certain Non-Frozen Apple Juice Concentrate From the People's Republic of China: Final Results of the New Shipper Review*, 75 FR 81564 (December 28, 2010); and *Drill Pipe From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, and Postponement of Final Determination*, 75 FR 51004 (August 18, 2010), unchanged in *Drill Pipe From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances*, 76 FR 1966 (January 11, 2011).

After identifying appropriate surrogate values, we calculated NV by multiplying the reported per-unit factor-consumption rates by the surrogate values. As appropriate we also added freight costs to the surrogate values that we calculated for the respondents' material inputs to make these prices delivered prices. We calculated these 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 the factory of each of the three respondents. 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 at Exhibit 9.

Because Indian surrogate values were denominated in rupees, we converted these data to U.S. dollars (USD) using the applicable average exchange rate based on exchange rate data from the Department's Web site.

For further details regarding the specific surrogate values used for direct materials, energy inputs, and packing materials in these preliminary results, see the Surrogate Values Memorandum.

On May 14, 2010, the Court of Appeals for the Federal Circuit (Federal Circuit) in *Dorbest Ltd. v. United States*, 604 F.3d 1363 (Fed. Cir. 2010) (Dorbest IV), found that the regression-based method for calculating wage rates, as

stipulated by 19 CFR 351.408(c)(3), uses data not permitted by the statutory requirements laid out in section 773(c)(4) of the Act. See Dorbest IV, 604 F.3d at 1372. The Department is continuing to evaluate options for determining labor values in light of the recent Federal Circuit decision. However, for these preliminary results, we have calculated an hourly wage rate to use in valuing respondents' reported labor input by averaging industry-specific earnings and/or wages in countries that are economically comparable to the PRC and that are significant producers of comparable merchandise.

For the preliminary results of this administrative review, the Department is valuing labor using a simple average industry-specific wage rate using earnings or wage data reported under Chapter 5B by the International Labor Organization (ILO). To achieve an industry-specific labor value, we relied on industry-specific labor data from the countries we determined to be both economically comparable to the PRC, and significant producers of comparable merchandise. A full description of the industry-specific wage rate calculation methodology is provided in the Surrogate Values Memorandum. The Department calculated a simple average industry-specific wage rate of \$1.36 for these preliminary results. Specifically, for this review, the Department has calculated the wage rate using a simple average of the data provided to the ILO under Sub-Classification 15 of the ISIC–Revision 3 standard by countries determined to be both economically comparable to the PRC and significant producers of comparable merchandise. The Department finds this two-digit sub-classification under ISIC–Revision 3, described as “Manufacture of Food Products and Beverages” to be the best available labor wage rate surrogate value on the record because it is the most specific to mushrooms and is derived from industries that produce merchandise comparable to the subject merchandise. From the twenty countries that the Department determined were both economically comparable to the PRC and significant producers of comparable merchandise, the Department identified those with the necessary wage data. Of these twenty countries, the following eight reported industry-specific data under the ISIC–revision 3, Sub-Classification 15: Ecuador, Egypt, Indonesia, Jordan, Peru, Philippines, Thailand, and Ukraine.¹²

¹² Because India (the primary surrogate country) did not report wage data in ISIC–Revision 3, which was relied upon for industry-specific wage rates in

Consequently, we calculated a simple average industry-specific wage rate from the data obtained for these eight countries. For further information on the calculation of the wage rate, see Surrogate Values Memorandum.

We offset the respondents' material costs for revenue generated from the sale of tin scrap. See Surrogate Values Memorandum at Exhibit 8.

Finally, to value overhead, selling, general, and administrative expenses (SG&A), and profit, we have preliminarily determined that the 2009–10 financial statements of the Indian mushroom producers Flex Foods Limited and Himalya International Limited, constitute the best information available. See Surrogate Values Memorandum at Exhibit 13 for our computations.

Adverse Facts Available

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply “facts otherwise available” if, *inter alia*, necessary information is not on the record or an interested party or any other person: (A) Withholds information that has been requested by the Department; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with its request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency or its response is not submitted within the applicable time limits, then the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act also authorizes the Department to use as adverse facts available (AFA) information derived

these preliminary results, it is not among the countries that the Department considered for inclusion in the average.

from the petition, the final determination, a previous administrative review, or any other information placed on the record.

For the reasons discussed below, we determine that, in accordance with sections 776(a)(2)(A) and (B) and 776(b) of the Act, the use of partial AFA is appropriate for the preliminary results with respect to Jisheng.

1. Products With No Factors of Production Reported

The original questionnaire states: "Unless otherwise instructed by the Department, you should ensure that your factors computer file contains a separate record for each unique product control number contained in your U.S. sales file." See May 18, 2010, questionnaire at D-6. However, in filing its questionnaire response, Jisheng included several products in the reported U.S. sales listing in its response to section C of the questionnaire for which it failed to provide any factors of production in its response to section D. See Jisheng's July 8, 2010, Sections C and D questionnaire response. In subsequent supplemental questionnaires the Department requested that Jisheng revise its FOP database so as to include a control number (CONNUM) for each CONNUM represented on its U.S. sales listing. See August 13, 2010, supplemental questionnaire at 6 (question 23a) and November 3, 2010, supplemental questionnaire at 4 (question 5a). However, Jisheng did not remedy or explain its deficient responses. See Jisheng's September 13, 2010, submission at Exhibits SC-1 and SD-1, November 18, 2010, submission at Exhibits SS1 and SS2, and January 21, 2011, submission at Exhibits SSS-1, SSS-2, SSS-3, and SSS-4. Consequently, we preliminarily determine that partial facts available is warranted because necessary information is not on the record and because Jisheng (1) withheld information requested by the Department; and (2) failed to provide the requested information by the applicable deadlines or in the form and manner requested. See section 776(a)(1), and (a)(2)(A) and (B) of the Act. Moreover, by never alleging that it was unable to provide the information, and by failing to provide usable information by the applicable deadlines, we find that the conditions of section 782(c)(1) and (e), to which section 776(a)(2)(B) is subject, have not been satisfied. In addition, we determine that Jisheng has not cooperated to the best of its ability by repeatedly failing to provide the requested FOP data, despite numerous

opportunities to do so. Accordingly, an adverse inference in using facts available under section 776(b) of the Act is warranted for Jisheng with regard to this specific information. For the CONNUMs for which Jisheng has not provided factor information we have applied, as AFA, the highest NV for any CONNUM in Jisheng's database submitted on the record of this administrative review. For additional information concerning this calculation, see Jisheng's Preliminary Results Analysis Memorandum.

2. Products With Unreported Packing Usage Factors

For reasons not susceptible to public summary,¹³ some of Jisheng's reported CONNUMs were missing certain factor values. See Jisheng's September 13, 2010, submission at Exhibit SD-1, and its November 18, 2010, submission at Exhibit SS-2. Therefore, the Department requested that Jisheng submit factor values for particular CONNUMs for the twelve months of the prior POR. See January 10, 2011, supplemental questionnaire at 4 (question 6). However, despite our requests, Jisheng's revised FOP database did not include packing usage factors for all CONNUMs. See Jisheng's January 21, 2011, submission at Exhibit SSS-2, SSS-3, and SSS-4. Therefore, we preliminarily determine that partial facts available is warranted because necessary information is not on the record and because Jisheng failed to provide requested information by the applicable deadlines or in the form and manner requested by the Department. See section 776(a)(1) and (a)(2)(B) of the Act. Moreover, by never explaining why it was unable to provide the requested information, and by failing to provide usable information by the applicable deadlines, we find that the conditions of section 782(c)(1) and (e), to which section 776(a)(2)(B) is subject, have not been satisfied. In addition, we determine that by failing to provide the requested FOP data, Jisheng has not cooperated to the best of its ability. Accordingly, we find that an adverse inference in using facts available under section 776(b) of the Act is warranted for Jisheng with regard to this specific information. Specifically, for the CONNUMs for which Jisheng has not provided packing usage factors, we have applied, as AFA, the highest usage factor for any CONNUM for which it did report packing usage factors on the record of this administrative review. For additional information concerning this

¹³ See Jisheng's November 16, 2010 submission at 6 and 7.

calculation, see Jisheng's preliminary results analysis memorandum.

Preliminary Results of the Review

The Department has determined that the following preliminary dumping margins exist for the period February 1, 2009, through January 31, 2010. Respondents other than mandatory respondents will receive the weighted-average of the margins calculated for those companies selected for individual review (*i.e.*, mandatory respondents), excluding de minimis margins or margins based entirely on adverse facts available.

CERTAIN PRESERVED MUSHROOMS FROM THE PRC

Exporter	Weighted-average margin (percent)
Blue Field (Sichuan) Food Industrial Co., Ltd.	30.10
Guangxi Jisheng Foods, Inc.	146.88
Xiamen International Trade & Industrial Co., Ltd.	1.01
Ayecue (Liaocheng) Foodstuff Co., Ltd.	53.69
Fujian Golden Banyan Foodstuffs Industrial Co., Ltd.	53.69
Shandong Jiufa Edible Fungus Corporation, Ltd.	53.69
Zhejiang Icecan Group Co., Ltd.	53.69
PRC-wide rate	198.63

Public Comment

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results. See 19 CFR 351.224(b). 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 Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days after issuance of these preliminary results.

Deadline for Submission of Publicly Available Surrogate Value Information

In accordance with 19 CFR 351.301(c)(3), the deadline for submission of publicly available information to value factors of production under 19 CFR 351.408(c) is 20 days after the date of publication of the preliminary determination. In accordance with 19 CFR 351.301(c)(1), if an interested party submits factual information less than ten days before, on, or after (if the Department has extended the deadline), the applicable deadline for submission of such factual information, an interested party has ten days to submit factual information to rebut, clarify, or correct the factual information no later than ten days after such factual information is served on the interested party. However, the Department notes that 19 CFR 351.301(c)(1), permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. See, e.g., *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2. Furthermore, the Department generally will not accept business proprietary information in either the surrogate value submissions or the rebuttals thereto, as the regulation regarding the submission of surrogate values allows only for the submission of publicly available information.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess antidumping duties on all appropriate entries covered by this

review. The Department intends to issue assessment instructions directly to CBP 15 days after the date of publication of the final results of this review. In accordance with 19 CFR 351.212(b)(1), we calculated exporter/importer (or customer)-specific assessment rates for the merchandise subject to this review. Where the respondent has reported reliable entered values, we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer), and dividing this amount by the total entered value of the sales to each importer (or customer). See 19 CFR 351.212(b)(1). Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis*, we will apply the assessment rate to the entered value of the importers'/customers' entries during the POR. See 19 CFR 351.212(b)(1).

Where we do not have entered values for all U.S. sales, we calculated a per-unit assessment rate by aggregating the antidumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). See 19 CFR 351.212(b)(1). To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* ratios based on the estimated entered value. Where an importer (or customer)-specific *ad valorem* rate is zero or *de minimis*, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. See 19 CFR 351.106(c)(2).

For the companies that were not selected for individual review, we calculated an assessment rate based on the weighted-average of the cash deposit rates calculated for companies selected for individual review, where those rates were not *de minimis* or based on adverse facts available, in accordance with Department practice.

Cash Deposit Requirements

The following cash deposit requirements, when imposed, will be effective upon publication of the final results of this administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash-deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis*, i.e., less than 0.5 percent, no cash deposit will be

required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 198.63 percent; and (4) for all non-PRC exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. 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 administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: February 28, 2011.

Paul Piquado,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011-5262 Filed 3-7-11; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Smart Grid Advisory Committee

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Smart Grid Advisory Committee (SGAC or Committee), will hold a meeting on Thursday, March 24, 2011 from 8:30 a.m. to 5 p.m. The primary purpose of this meeting is to review the early findings and observations of each Subcommittee, strategize the Table of Contents for the Committee report to NIST, agree on the page limit for each subcommittee, and look for any common overarching