



A-570-851
AR: 2/1/2011 – 1/31/2012
PUBLIC DOCUMENT
AD/CVD7: MJH

March 4, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Christian Marsh *CM*
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Memorandum for the Preliminary Results in the Administrative
Review: Certain Preserved Mushrooms from the People's Republic
of China

In response to requests from interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (PRC) covering the period of review (POR) of February 1, 2011, through January 31, 2012. We preliminarily determine that sales made by Blue Field (Sichuan) Food Industrial Co. (Blue Field) were made below normal value (NV). Dujiangyan Xingda Foodstuff Co., Ltd. (Xingda) and Zhejiang Iceman Group Co., Ltd. (Iceman Group)/Zhejiang Iceman Food Co., Ltd. (Iceman Food) (together, Iceman),¹ and other companies named in the review, failed to establish that they are separate from the PRC-wide entity. As a result, the PRC-wide entity is now under review. We have preliminarily applied adverse facts available (AFA) to the PRC-wide entity because elements of the entity, Xingda and Iceman, failed to act to the best of their ability in complying with the Department's request for information in this review within the established deadlines and significantly impeded the proceeding.

If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. We intend to issue the final results of this review no later than 120 days from the date of publication of the preliminary results notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).

¹ The Department has found Zhejiang Iceman Food Co., Ltd. should be equated with Zhejiang Iceman Group Co., Ltd. See Certain Preserved Mushrooms From the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review, 76 FR 70112 (November 10, 2011).



Background

On February 19, 1999, the Department published in the Federal Register the antidumping duty order on certain preserved mushrooms from the PRC.² On February 1, 2012, the Department published in the Federal Register its notice of opportunity to request an administrative review of the antidumping duty order on certain preserved mushrooms from the PRC.³

On February 29, 2012, Blue Field, Zhangzhou Long Mountain Food Co., Ltd. (Zhangzhou Long Mountain), Xiamen International Trade and Industrial Co., Ltd. (XITIC), and Iceman Group filed requests for self-review. Also, on February 29, 2012, Petitioner, Monterey Mushrooms, Inc., requested reviews for the following exporters: (1) Ayecue (Liaocheng) Foodstuffs Co., Ltd. (Ayecue), (2) Blue Field, (3) China National Cereals, Oils & Foodstuffs Import & Export Corp. (China National), (4) China Processed Food Import & Export Co. (China Processed), (5) Xingda, (6) Fujian Golden Banyan Foodstuffs Industrial Co., Ltd. (Golden Banyan), (7) Fujian Pinghe Baofeng Canned Foods (Fujian Pinghe), (8) Fujian Yuxing Fruits and Vegetables Foodstuffs Development Co., Ltd. (Fujian Yuxing), (9) Fujian Zishan Group Co., Ltd. (Fujian Zishan), (10) Guangxi Eastwing Trading Co., Ltd. (Guangxi Eastwing), (11) Guangxi Hengyong Industrial & Commercial Dev., Ltd. (Guangxi Hengyong), (12) Guangxi Jisheng Foods, Inc. (Jisheng), (13) Inter-Foods (Dongshan) Co., Ltd. (Inter-Foods) (14) Linyi City Kangfa Foodstuff Drinkable Co., Ltd. (Kangfa), (15) Longhai Guangfa Food Co., Ltd. (Longhai Guangfa), (16) Primera Harvest (Xiangfan) Co., Ltd. (Primera Harvest), (17) Shandong Fengyu Edible Fungus Corporation Ltd. (Shandong Fengyu), (18) Shandong Jiufa Edible Fungus Corporation, Ltd. (Shandong Jiufa), (19) Sun Wave Trading Co., Ltd. (Sun Wave Trading), (20) Xiamen Greenland Import & Export Co., Ltd. (Xiamen Greenland), (21) Xiamen Gulong Import & Export Co., Ltd. (Xiamen Gulong), (22) Xiamen International Trade & Industrial Co., Ltd. (XITIC), (23) Xiamen Jiahua Import & Export Trading Co., Ltd. (Xiamen Jiahua), (24) Xiamen Longhuai Import & Export Co., Ltd. (Xiamen Longhuai), (25) Zhangzhou Gangchang Canned Foods Co., Ltd.⁴ (Zhangzhou Gangchang), (26) Zhangzhou Golden Banyan Foodstuffs Industrial Co., Ltd. (Zhangzhou Golden Banyan), (27) Zhangzhou Hongda Import & Export Trading Co., Ltd. (Zhangzhou Hongda), (28) Zhangzhou Long Mountain, (29) Zhangzhou Tongfa Foods Industry Co., Ltd. (Zhangzhou Tongfa), (30) Iceman Food, and (31) Iceman Group.

On March 30 2012, the Department published in the Federal Register a notice of initiation of the antidumping duty administrative review of certain preserved mushrooms from the PRC for the period February 1, 2011, through January 31, 2012, with respect to the 31 companies named in the review requests specified above.⁵

² 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).

³ See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review, 77 FR 4990 (February 1, 2012).

⁴ Zhangzhou Gangchang Canned Foods Co., Ltd., Fujian was found to be the name of the company initially referenced by that party and the Department as Zhangzhou Gangchang Canned Foods Co., Ltd. See Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Reviews 74 FR 14772 (April 1, 2009) unchanged at Certain Preserved Mushrooms from the People's Republic of China: Final Results of Antidumping Duty New Shipper Reviews 74 FR 28882 (June 18, 2009).

⁵ See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part, and Deferral of Administrative Review, 77 FR 19179 (March 30, 2012) (Initiation Notice).

On May 21, 2012, (1) Guangxi Hengyong, (2) Zhangzhou Tongfa, and (3) Zhangzhou Hongda submitted no shipment certifications. On May 29, 2012, Golden Banyan filed a no shipment certification.⁶

On May 29, 2012, (1) Iceman, (2) Kangfa, (3) XITIC, and (4) Zhangzhou Gangchang submitted separate rate certifications.

On June 20, 2012, Petitioner filed a letter withdrawing its request for review for the following companies: (1) China National, (2) China Processed, (3) Fujian Pinghe, (4) Fujian Yuxing, (5) Fujian Zishan, (6) Guangxi Eastwing, (7) Jisheng, (8) Inter-Foods, (9) Kangfa, (10) Longhai Guangfa, (11) Primera Harvest, (12) Shangdong Fengyu, (13) Sun Wave Trading, (14) Xiamen Greenland, (15) Xiamen Gulong, (16) Xiamen Jiahua, (17) Xiamen Longhuai, (18) Zhangzhou Gangchang, (19) Zhangzhou Golden Banyan, and (20) Zhangzhou Long Mountain.

On June 28, 2012, the petitioner filed a letter withdrawing its request for XITIC. Additionally, on June 28, 2012, XITIC withdrew its request for review.

Respondent Selection

Section 777A(c)(1) of the Tariff Act of 1930, as amended (the Act), directs the Department to calculate individual 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 19, 2012, the Department released 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 XITIC on April 20, 2012, Blue Field on April 26, 2012, and Petitioner on April 27, 2012.

Based on the large number of potential exporters involved in this administrative review and, after considering our resources, we determined that it was not practicable to individually examine all 31 companies. Accordingly, on May 9, 2012, we issued our first respondent selection memorandum indicating that we could reasonably examine only two exporters of subject merchandise. Pursuant to section 777A(c)(2)(B) of the Act, the Department decided to select the two largest exporters of subject merchandise by volume during the POR. As a result, we selected Blue Field and Xingda as mandatory respondents.⁷ We issued antidumping

⁶ The Department considers Zhangzhou Golden Banyan to be distinct from another company with a similar name for which a review was requested, Golden Banyan. In the immediately-preceding review, the Department calculated a separate rate for Golden Banyan, while it considered Zhangzhou Golden Banyan to remain a part of the PRC-wide entity. See Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty Administrative Review 77 FR 55808 (September 11, 2012).

⁷ See Memorandum to Richard Weible, Director, AD/CVD Operations, Office 7, from Michael J. Heaney, Analyst, 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 9, 2012.

questionnaires to Blue Field and Xingda on May 31, 2012. On June 21, 2012, Blue Field filed its response to section A of our antidumping questionnaire. On July 5, 2012, Blue Field filed its response to sections C and D of our antidumping questionnaire. Xingda, however, filed no response to our antidumping questionnaire. Accordingly, on July 26, 2012, we issued a second respondent selection memorandum in which we selected Iceman, the second largest exporter of the remaining respondents for which the Department had a continuing request for review, as the second respondent in this review.⁸ We issued our antidumping questionnaire to Iceman on August 3, 2012. Iceman also filed no response to our antidumping questionnaire.

On October 12, 2012, we issued a supplemental questionnaire to Blue Field. Blue Field filed its response to our request for supplemental information on October 31, 2012.

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.⁹

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.

⁸ See Memorandum to Richard Weible, Director, AD/CVD Operations, Office 7, from Michael J. Heaney, Analyst, 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 July 26, 2012

⁹ 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).

Partial Rescission of Review

For those companies named in the Initiation Notice for whom all review requests have been withdrawn and are not part of the PRC-wide entity, we are rescinding this administrative review, in accordance with 19 CFR 351.213(d)(1). The companies for which we are rescinding this review include (1) Jisheng, (2) XITIC, (3) Kangfa, and (4) Zhangzhou Gangchang.

Intent Not To Rescind Review In Part

We have received withdrawal of review requests for the following companies that remain a part of the PRC-wide entity, which is currently under review: (1) China National, (2) China Processed, (3) Fujian Pinghe, (4) Fujian Yuxing, (5) Fujian Zishan, (6) Guangxi Eastwing, (7) Inter-Foods, (8) Longhai Guangfa, (9) Primera Harvest, (10) Shandong Fengyu, (11) Sun Wave Trading, (12) Xiamen Greenland, (13) Xiamen Gulong, (14) Xiamen Jiahua, (15) Xiamen Longhuai, (16) Zhangzhou Long Mountain, and (17) Zhangzhou Golden Banyan.

For those companies named in the Initiation Notice for which all review requests have been withdrawn, but which have not previously received separate rate status, the Department's practice is to refrain from rescinding the review with respect to these companies at this time.¹⁰ As explained above, requests for review of several companies belonging to the PRC-wide entity were timely withdrawn. While the requests for review were timely withdrawn, these companies remain part of the PRC-wide entity. The PRC-wide entity is under review for these preliminary results. Therefore, at this time, we are not rescinding this review with respect to those companies belonging to the PRC-wide entity for which a request for review has been withdrawn.

Preliminary Determination of No Shipments

The following companies submitted timely certifications of no shipments during the POR: (1) Guangxi Hengyong, (2) Zhangzhou Tongfa, (3) Zhangzhou Hongda, and (4) Golden Banyan. In addition, CBP did not provide any evidence that contradicts their claims of no shipments.

On February 20, 2013, we notified CBP that we were in receipt of no-shipment certifications from Guangxi Hengyong, Zhangzhou Tongfa, Zhangzhou Hongda, and Golden Banyan and requested CBP to report any contrary information within 10 days. CBP did not report any contrary information.

Based on the no-shipment certifications and our analysis of the CBP information, we preliminary determine that Guangxi Hengyong, Zhangzhou Tongfa, Zhangzhou Hongda, and Golden Banyan did not have any reviewable transactions during the POR. In addition, the Department finds that consistent with its recently announced refinement to its assessment practice in non-market economy (NME) cases, it is appropriate not to rescind the review in part in this circumstance but, rather, to complete the review with respect to Guangxi Hengyong, Zhangzhou Tongfa,

¹⁰ See, e.g., Handtrucks and Certain Parts Thereof from the People's Republic of China: Preliminary Results of the 2010-2011 Antidumping Duty Administrative Review, 78 FR 1835 (January 9, 2013), and accompanying Preliminary Decision Memorandum at 3.

Zhangzhou Hongda, and Golden Banyan and issue appropriate instructions to CBP based on the final results of the review.¹¹

DISCUSSION OF THE METHODOLOGY

Non-Market Economy Country Status

The Department considers the PRC to be an NME country.¹² In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Therefore, we continue to treat the PRC as an NME country for purposes of these preliminary results.

Separate Rates Determination

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.¹³ In the Initiation Notice, the Department notified parties of the application process by which exporters may obtain separate rates.¹⁴ 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 Sparklers, as amplified by Silicon Carbide.¹⁵ However, if the Department determined that a company is wholly foreign-owned or located in a market economy (ME), then a separate rate analysis is not necessary to determine whether it is independent from government control.¹⁶

In this administrative review, the Department received complete separate rate certifications from Kangfa, Iceman, XITIC, and Zhangzhou Gangchang. However, these companies have either declined to cooperate with the Department in this proceeding (Iceman), or the Department has

¹¹ See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties, 76 FR 65694 (October 24, 2011).

¹² See, e.g., Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Results of the First Administrative Review, Preliminary Rescission, in Part, and Extension of Time Limits for the Final Results, 76 FR 62765, 62767-68 (October 11, 2011), unchanged in Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review, 77 FR 21734 (April 11, 2012).

¹³ See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances. In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079, 53082 (September 8, 2006); Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China, 71 FR 29303, 29307 (May 22, 2006).

¹⁴ See Initiation Notice, 77 FR at 19180-81.

¹⁵ See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China, 56 FR 20588 (May 6, 1991) (Sparklers) and 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).

¹⁶ See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China, 72 FR 52355, 52356 (September 13, 2007).

rescinded the review of the particular company due to a timely withdraw of the request for review (XITIC, Kangfa, and Zhangzhou Gangchang). Consequently, the Department need not consider separate rate treatment for these companies in this review.

In this administrative review, the Department received complete separate rate information from Blue Field in response to questionnaire items pertaining to Blue Field's eligibility for a separate rate.

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.¹⁷

The evidence submitted by Blue Field includes government laws and regulations on corporate ownership and control (i.e., the Foreign Trade Law of the People's Republic of China and the Law of the People's Republic of China on Foreign Joint Ventures), their business licenses, and narrative information regarding their operations and selection of management. The evidence provided by Blue Field supports a preliminary finding of a de jure absence of government control over their export activities. Specifically, record evidence indicates that: (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; (2) the government of the PRC has passed legislation decentralizing control of companies; and (3) the government has taken formal measures to decentralize control of companies.¹⁸

Absence of De Facto Control

Typically, the Department considers four factors in evaluating whether each respondent is subject to de facto government control of its export functions, which are whether each company: (1) sets its own export prices independent of the government and without the approval of a government authority; (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; (4) has autonomy from the government regarding the selection of management.¹⁹

The Department has determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of government control over export activities which would preclude the Department from assigning separate rates. In Blue Field's June 21, 2012, Section A response, Blue Field submitted evidence demonstrating an absence of de facto government control over its export activities. Specifically, this evidence indicates that: (1) Blue

¹⁷ See Sparklers, 56 FR at 20589.

¹⁸ See Blue Field June 21, 2012 Section QA response at 1-4.

¹⁹ See Silicon Carbide, 59 FR at 22587; Sparklers, 56 FR at 20589; and Notice of 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).

Field set its own export prices independent of the government and without the approval of a government authority; (2) Blue Field retained the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) that Blue Field has a general manager with the authority to negotiate and bind the company in an agreement; (4) the general manager is selected by Blue Field's board of directors; (5) Blue Field's general managers appoint the other management personnel; and (6) there are no restrictions on Blue Field's use of export revenues. Therefore, we preliminarily find that Blue Field has established that it qualifies for a separate rate under the criteria established by Silicon Carbide and Sparklers.

The PRC-Wide Entity

As discussed above, Xingda and Iceman have become part of the PRC-wide entity by virtue of their failure to respond to the antidumping questionnaire.

Moreover, Ayecue²⁰ and Shandong Jiufa failed to file separate rate applications, and because outstanding review requests remain for these three companies, we preliminarily determine that Ayecue and Shandong Jiufa are a part of the PRC-wide entity.

Finally, even though requests for review of the companies below were timely withdrawn, these companies are part of the PRC-wide entity and, thus, are subject to the results of this review: (1) China National, (2) China Processed, (3) Fujian Pinghe, (4) Fujian Yuxing, (5) Fujian Zishan, (6) Guangxi Eastwing, (7) Inter-Foods, (8) Longhai Guangfa, (9) Primera Harvest, (10) Shangdong Fengyu, (11) Sun Wave Trading, (12) Xiamen Greenland, (13) Xiamen Gulong, (14) Xiamen Jiahua, (15) Xiamen Longhuai, (16) Zhangzhou Golden Banyan, and (17) Zhangzhou Long Mountain.

Adverse Facts Available

1. Use of Facts Available and AFA

Section 776(a) of the Act provides that the Department shall apply "facts otherwise available" if (1) necessary information is not on the record or (2) an interested party or any other person (A) withholds information that has been requested, (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.

Furthermore, section 776(b) of the Act states that if the Department "finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority . . . {the Department} . . . may use an inference that

²⁰ On April 23, 2008, the Department granted a separate rate to merchandise exported by Ayecue International SLU and manufactured by Ayecue (Liaocheng) Foodstuff Co., Ltd. See Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review 73 FR 21904 (April 23, 2008). However, because Ayecue has not filed a separate rate application in the course of this review, this exporter no longer qualifies for a separate rate.

is adverse to the interests of the party in selecting from among the facts otherwise available.”²¹ Adverse inferences are appropriate to “ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”²² In selecting an adverse inference, the Department may rely on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record.²³

2. Application of Total AFA to the PRC-Wide Entity

In the Initiation Notice, the Department stated that if “one of the above-named companies do not qualify for a separate rate, all other exporters of certain preserved mushrooms from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.”²⁴ The Department determines that the PRC-wide entity, which includes Xingda and Iceman, has failed to cooperate to the best of its ability in providing the requested information within the established deadlines and significantly impeded the proceeding. Accordingly, pursuant to sections 776(a)(2)(A), (B), and (C), the Department preliminarily determines that it must rely on facts otherwise available to assign a dumping margin to the PRC-wide entity. Further, the Department finds that the PRC-wide entity’s failure to provide the requested information constitutes circumstances under which the Department concludes that less than full cooperation has been shown. Hence, pursuant to section 776(b) of the Act, the Department has preliminarily determined that because the PRC-wide entity has failed to cooperate by not acting to the best of its ability, when selecting from among the facts otherwise available, an adverse inference is warranted with respect to the PRC-wide entity.

3. Selection of AFA Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any information placed on the record. The Department’s practice in reviews, when selecting a rate as total AFA, is to use the highest rate on the record of the proceeding which, to the extent practicable, can be corroborated.²⁵ The Court of International Trade (CIT) and the Court of Appeals for the Federal Circuit (Federal Circuit) have affirmed decisions to select the highest

²¹ See also Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No., 103-316 at 870 (1994) (SAA).

²² Id.

²³ See section 776(b) of the Act.

²⁴ See Initiation Notice, 77 FR at 19181 n.7.

²⁵ See Glycine from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 74 FR 15930, 15934 (April 8, 2009), unchanged in Glycine From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 41121 (August 14, 2009); see also Fujian Lianfu Forestry Co., Ltd. v. United States, 638 F. Supp. 2d 1325, 1336 (CIT August 10, 2009) (“Commerce may, of course, begin its total AFA selection process by defaulting to the highest rate in any segment of the proceeding, but that selection must then be corroborated, to the extent practicable.”)

margin from any prior segment of the proceeding as the AFA rate on numerous occasions.²⁶ The Department's practice is to select an AFA rate that is sufficiently adverse as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner and that ensures that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.²⁷

In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's commercial activity, selecting the highest prior margin reflects a "common sense inference that the highest prior margin is the most probative evidence of current rates because, if it were not so, the importer, knowing the rule, would have produced current information showing the respondent's rate to be less."²⁸

Consistent with the statute, court precedent, and our practice, the Department has assigned, as AFA, a rate of 308.33 percent to the PRC-wide entity, including Xingda and Iceman. This margin is the highest rate on the record of any segment of this proceeding.²⁹

4. Corroboration of Secondary Information

Section 776(c) of the Act provides that, when the Department relies upon secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonable at its disposal. Secondary information is defined as "{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 {of the Act} concerning the subject merchandise."³⁰ To corroborate means that the Department must find the information has

²⁶ See, e.g., KYD, Inc. v. United States, 607 F.3d 760, 766-767 (Fed. Cir. 2010) (KYD); Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1190 (Fed. Cir. 1990) (Rhone Poulenc); NSK Ltd. v. United States, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in a less-than-fair-value (LTFV) investigation); Kompass Food Trading International v. United States, 24 CIT 678, 684 (2000) (upholding a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); Shanghai Taoen International Trading Co., Ltd. v. United States, 360 F. Supp. 2d 1339, 1348 (CIT 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

²⁷ See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909, 8911 (February 23, 1998); see also Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review, 70 FR 69937, 69939 (November 18, 2005); SAA at 870.

²⁸ See KYD, 607 F.3d at 766 (citing Rhone Poulenc, 899 F.2d at 1190).

²⁹ See Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty Administrative Review 77 FR 55808 (September 11, 2012) (2/1/2010-1/31/2011 Final Results).

³⁰ See SAA at 870.

probative value, meaning that the information must be both reliable and relevant.³¹ Independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.³²

Pursuant to section 776(c) of the Act, the Department has corroborated the 308.33 percent rate assigned as AFA to the PRC-wide entity in this review. Specifically, the selected AFA margin is reliable because it is based upon the calculated rate for another respondent in the immediately-preceding review and reflects the recent commercial behavior and commercial reality of a competitor in the same industry.³³ Moreover, the selected AFA margin is relevant and, thus, probative of commercial behavior for the current review period for the following reasons: (1) Xingda's rate in the immediately preceding review was 223.74 percent;³⁴ (2) this rate was a calculated rate based upon Xingda's full cooperation;³⁵ (3) during the current review period, Xingda and Iceman were selected as mandatory respondents based upon their status as one of the largest exporters subject to review, and Xingda has continued to pay cash deposits at a rate of 223.74 percent on imports of mushrooms;³⁶ (4) Xingda's rate of 223.74 percent did not induce the company to cooperate in the current review and, therefore, a rate higher than their previous rate is necessary to induce cooperation; (5) Xingda was on notice that, if it did not cooperate in the instant review, it could receive a higher antidumping duty rate than the cooperative rate from the immediately-preceding review; and (6) nothing on the record of this review indicates a change in the U.S. market that would call into question the relevance of the 308.33 percent rate. Consequently, we conclude that a rate higher than 223.74 percent is necessary to induce Xingda's and Iceman's future cooperation in reviews of this case. Based upon the foregoing, we determine the 308.33 percent rate is probative of current commercial behavior and, thus, is corroborated to the extent practicable, in accordance with section 776(c) of the Act. Therefore, we have assigned this rate as AFA to exports of the subject merchandise by the PRC-wide entity, including Xingda and Iceman.

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 factors of production (FOPs), valued in a surrogate ME country or countries considered to be appropriate by the

³¹ See SAA at 870; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter and Components Thereof, From Japan: Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1996) unchanged in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter and Components Thereof, From Japan: Final Results of Antidumping Duty Administrative Reviews and Termination in Part, 62 FR 11825 (March 13, 1997).

³² See SAA at 870; see also Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada, 70 FR 12181, 12183 (March 11, 2005).

³³ See 2/1/2010-1/31/2011 Final Results, 77 FR at 55809.

³⁴ See id.

³⁵ See id.

³⁶ See May 9, 2012, Memorandum from Michael J. Heaney to Richard Weible Re: Administrative Review of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China: Respondent Selection Memorandum at Attachment 1.

Department. In accordance with section 773(c)(4) of the Act, in valuing FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.³⁷

The Department determined that Colombia, Indonesia, Peru, the Philippines, South Africa, Thailand, and Ukraine are countries comparable to the PRC in terms of economic development.³⁸ Moreover, it is the Department's practice to select an appropriate surrogate country based on the availability and reliability of data from the countries that are producers of comparable merchandise.³⁹ Sources of the surrogate values we have used in this review are discussed under the "Normal Value" section, infra.

In the current segment of the proceeding, Petitioner was the only party to submit comments regarding surrogate country selection. Petitioner argued that Colombia was the most comparable economically to the PRC and was a significant producer of certain preserved mushrooms during the POR.⁴⁰ Among the countries identified as economically comparable to the PRC, based on record evidence, we find that Colombia is the most appropriate surrogate country for valuing FOPs because it is a significant producer of comparable merchandise, and we have reliable, publicly-available data from Colombia representing broad-market averages.⁴¹

Fair Value Comparisons

To determine whether sales of certain preserved mushrooms to the United States by Blue Field were made at less than NV, the Department compared export price to NV, as described in the "U.S. Price" and "Normal Value" sections below. For these preliminary results, the Department applied an average-to-average comparison methodology adopted in the Final Modification for Reviews.⁴²

U.S. Price

In accordance with section 772(a) of the Act, we based Blue Field's U.S. prices on export prices, because their first sales to an unaffiliated purchaser were made before the date of importation and the use of constructed export price was not otherwise warranted by the facts on the record. As appropriate, we deducted foreign inland freight and foreign brokerage and handling from the

³⁷ See Import Administration Policy Bulletin 04.1, "Non-Market Economy Surrogate Country Selection Process" (March 1, 2004) (Policy Bulletin).

³⁸ See Memorandum from Carole Showers, Director, Office of Policy, to Robert James, Program Manager, Office 7; Subject: Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Hand Trucks and Parts Thereof from the People's Republic of China, dated July 26, 2012 (Surrogate Country List). The Department notes that these seven countries are part of a non-exhaustive list of countries that are at a level of economic development comparable to the PRC in terms of per capita gross national income.

³⁹ See Policy Bulletin.

⁴⁰ See Petitioner November 16, 2012 submission at 2.

⁴¹ See 773(c)(4) of the Act; see also Memorandum to the File, from Michael J. Heaney, Analyst, Subject: Antidumping Duty Administrative Review of Certain Preserved Mushrooms from the People's Republic of China: Selection of a Surrogate Country, dated concurrently with this notice and incorporated herein by reference.

⁴² See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Proceedings: Final Modification, 77 FR 8101 (February 14, 2012) (Final Modification for Reviews).

starting price (or gross unit price), in accordance with section 772(c)(2) of the Act. These services were provided by NME vendors for Blue Field's U.S. sales. Therefore, we based the deduction of these movement charges on surrogate values.⁴³

We used Colombian transport information in order to value the freight-in cost of the raw materials. The Department determined the best available information for valuing truck freight to be from the World Bank's *Doing Business 2012: Colombia*. We calculated the per-unit inland freight costs using the distance from various points within Colombia as reported in the World Bank study. We calculated a per-kilogram/per-kilometer surrogate inland freight rate of 0.00079 U.S. dollars per kilometer/per kilogram based on using the full capacity of a 20-foot container as reported in the World Bank report.⁴⁴

We valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in Colombia. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in Colombia that is published in the World Bank's *Doing Business 2012: Colombia*.⁴⁵

Normal Value

Section 773(c)(1) 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 the NME economy renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.⁴⁶

Factors Valuation

In accordance with section 773(c) of the Act, we calculated NV by adding the value of the FOPs, general expenses, profit, and packing costs reported by Blue Field. With the exception of spawn and land rent discussed *infra*, the Department relied on Colombian import data and other publicly available Colombian sources in order to calculate SVs for Blue Field.⁴⁷ To calculate NV, the Department multiplied the reported per-unit FOP quantities by publicly available SVs reported by Blue Field. The Department's practice when selecting the best available information for valuing FOPs is to select, to the extent possible, SVs which are product-specific, representative

⁴³ See Memorandum to the File, "Administrative Review of Certain Preserved Mushrooms the People's Republic of China: Surrogate Values for the Preliminary Results" (Surrogate Values Memorandum), dated concurrently with this notice and incorporated herein by reference, at Exhibit 3.

⁴⁴ See Surrogate Values Memorandum, at Exhibit 3.

⁴⁵ See Surrogate Values Memorandum, at 10.

⁴⁶ 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).

⁴⁷ See Surrogate Values Memorandum.

of a broad market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.⁴⁸

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. See section 773(c)(3) of the Act. We valued the FOPs that Blue Field reported by multiplying the amount of the factor consumed in producing subject merchandise by the average unit surrogate value of the factor derived from the Colombian surrogate values selected.

In accordance with section 773(c) of the Act, for merchandise produced by Blue Field, the Department calculated NV based on the FOPs that Blue Field reported for the POR. The Department used Colombian import statistics to value the raw material and packing material inputs that Blue Field used to produce the merchandise under review except where listed below. We used data from the Colombia import statistics in the Global Trade Atlas (GTA), published by Global Trade Information Services, Inc. The GTA reports import statistics for Colombia in the original reporting currency and thus these data correspond to the original currency value reported by each country. The record shows that data in the Colombian import statistics, as well as those from the other Colombia sources, are contemporaneous with the POR, product-specific, and tax-exclusive.⁴⁹

During the POR, there were no available Colombian GTA data available to value two of Blue Field's production inputs: (1) spawn and (2) land-rent. Accordingly, the Department used POR GTA values from Ukraine to value spawn because Ukraine is (1) among the countries determined to be comparable to the PRC⁵⁰ and (2) the GTA data from the Ukraine is product-specific, representative of a broad market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties. With respect to value land rent, the Department used rent farm data provided by the Philippine Bureau of Agricultural Statistics because (1) data for this production input from the Philippines are also product-specific, representative of a broad market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties. We also note that the Philippines is comparable in economic development to the PRC.⁵¹

As appropriate, we added freight costs to the surrogate values that we calculated for Blue Field's 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 Blue Field. This adjustment is in accordance with the decision by the Federal Circuit in Sigma Corp.

⁴⁸ See, e.g., Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 48195 (August 8, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

⁴⁹ See Surrogate Values Memorandum.

⁵⁰ See Surrogate Country List.

⁵¹ See id.

v. United States, 117 F.3d 1401, 1407-1408 (Fed. Cir. 1997). We also increased the calculated costs of the FOPs for surrogate general expenses and profit.⁵²

BlueField's energy inputs consisted of water, electricity, natural gas, and coal. We valued water using a 2004 World Bank study entitled "Colombia: Recent Economic Development in Infrastructure: Water Supply Sector" which was provided by Petitioner.⁵³ We inflated the water values to POR amounts using the Colombian Wholesale price index provided by the International Monetary Fund.⁵⁴ We valued electricity and natural gas using a 2009 Stanford University Study "Report on Market Performance and Market Monitoring on the Colombian Electric Supply Industry."⁵⁵ We inflated the electricity and natural gas values to POR amounts using the Colombian Wholesale price index. To value coal, we used the Colombian GTA value for this input.⁵⁶

Blue Field reported that scrap tin plate is produced in the production of mushrooms.⁵⁷ Therefore, we offset Blue Field's material costs for revenue generated from the sale of recovered tin plate.⁵⁸

To value the surrogate financial ratios for factory overhead (OH), selling, general & administrative (SG&A) expenses, and profit, the Department used the 2011 financial statements of Setas Colombianas SA (Setas).⁵⁹ Setas' financial ratios for OH and SG&A expenses are comparable to Blue Field's financial ratios by virtue of each company's production of identical merchandise.

In accordance with the legislative history of the Omnibus Trade and Competitiveness Act, the Department continues to disregard surrogate values if it has a reason to believe or suspect the inputs reflected in the source data may be subsidized.⁶⁰ In this regard, the Department has previously found that it is appropriate to disregard prices based upon exports from India, Indonesia, and South Korea because we have determined that these countries maintain broadly available, non-industry specific export subsidies. Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters from India,

⁵² See Surrogate Values Memorandum, at 11.

⁵³ See Petitioner November 16, 2012 Submission, at exhibit 27.

⁵⁴ Petitioner provided the Colombian Wholesale price Index at exhibit 2 of its November 16, 2012 submission.

⁵⁵ The 2009 Stanford Study is set forth at Exhibit 29A (electricity) and exhibit 29B (natural gas of Petitioner's November 16, 2012, submission).

⁵⁶ See Surrogate Values Memorandum, at 8.

⁵⁷ See Blue Field July 5, 2012, Section D Response, at Exhibit D-5.

⁵⁸ See Surrogate Values Memorandum, at 12.

⁵⁹ See Petitioner November 16, 2012 submission, at exhibits 43A-43C.

⁶⁰ See Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988), at 590.

Indonesia, and South Korea may have benefitted from these subsidies.⁶¹ Additionally, we disregarded prices from NME countries. Finally, we excluded imports that were labeled as originating from an “unspecified” country 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.⁶²

On June 21, 2011, the Department announced its new methodology to value the cost of labor in NME countries.⁶³ In Labor Methodologies, the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization Yearbook of Labor Statistics (ILO Yearbook).

As announced above, the Department’s methodology is to use data reported under Chapter 6A by the ILO. In keeping with the Department’s preference to used industry-specific wage data, we filtered the ILO data for sub-classification 15 “Manufacture of Food products and Beverages” in Chapter 6A of the ILO Yearbook. We inflated the 2005 amounts to POR values using the Colombian Wholesale Price Index. This results in a calculated labor rate of 12,047.48 Colombian pesos per hour.⁶⁴ Based on the reporting of financial ratios in this review, we find that the facts and information on the record of this review, we find that the facts and information on the record do not warrant or permit an adjustment to the surrogate financial ratios.⁶⁵ Accordingly, we made no offset to the surrogate financial statements in this review.⁶⁶

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the 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 are available on the Import Administration Web site at <http://ia.ita.doc.gov/exchange/index.html>.

⁶¹ See, e.g., Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review, 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum at 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 17, 19-20; and Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order, 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at 4-5.

⁶² See Fresh Garlic from the People’s Republic of China: Preliminary Results of New Shipper Review, 75 FR 24578, 24582 (May 5, 2010), unchanged in Fresh Garlic From the People’s Republic of China: Final Results of New Shipper Review, 75 FR 61130 (October 4, 2010).

⁶³ See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, 76 FR 36092 (June 21, 2011) (Labor Methodologies). This notice followed the Federal Circuit in Dorbest Ltd. v. United States, 604 F.3d 1363, 1372 (Fed. Cir. 2010), 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 of the Act (i.e., 19 U.S.C. § 1677b(c))}.”

⁶⁴ See Surrogate Values Memorandum, at 4.

⁶⁵ See Labor Methodologies, 76 FR at 36094.

⁶⁶ See Factors Valuation Memorandum, for a more detailed description of the wage rate calculation.

Conclusion

We recommend the above methodology for these preliminary results.

Agree ✓ Disagree _____

Paul Piquado
Paul Piquado
Assistant Secretary
for Import Administration

4 MARCH 2013
Date