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MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Certain Preserved Mushrooms from the People's Republic of
China: Decision Memorandum for the Preliminary Results and
Rescission in Part of the 2012-2013 Antidumping Duty
Administrative Review

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) February 1, 2012 through January 31, 2013. We preliminarily determine that the lone mandatory respondent, Blue Field (Sichuan) Food Industrial Co., Ltd. (Blue Field), has failed to establish that it is separate from the PRC-wide entity. As a result, the PRC-wide entity, which includes Blue Field, is under review. Moreover, we have preliminarily applied facts otherwise available with an adverse inference (AFA) to the PRC-wide entity because an element of that entity, Blue Field, failed to act to the best of its ability in complying with the Department's request for information in this review and, consequently, significantly impeded the proceeding. We also preliminarily find that Xiamen International Trade & Industrial Co., Ltd. (XITIC) and Zhangzhou Hongda Import & Export Trading Co., Ltd. (Zhangzhou Hongda) made no shipments of subject merchandise during the POR. Finally, we are rescinding this administrative review in part with respect to six exporters that are not part of the PRC-wide entity for which all review requests have been withdrawn.

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 within 120 days after the date of publication of the preliminary results in the *Federal Register*, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).



INTERNATIONAL
TRADE
ADMINISTRATION

Background

On February 19, 1999, the Department published in the *Federal Register* the antidumping duty order on certain preserved mushrooms from the PRC.¹ On February 1, 2013, 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.²

On February 28, 2013, Blue Field filed a request for an administrative review of its entries made during the POR.³ Also, on February 28, 2013, Monterey Mushrooms, Inc. (Petitioner) requested that the Department conduct an administrative review of the following 32 exporters:⁴ (1) Ayecue (Liaocheng) Foodstuff 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) Dujiangyan Xingda Foodstuff Co., Ltd. (Xingda); (6) Fujian Golden Banyan Foodstuffs Industrial Co., Ltd. (Golden Banyan);⁵ (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) Shandong Yinfeng Rare Fungus Corporation, Ltd. (Shandong Yinfeng); (20) Sun Wave Trading Co., Ltd. (Sun Wave Trading); (21) Xiamen Greenland Import & Export Co., Ltd. (Xiamen Greenland); (22) Xiamen Gulong Import & Export Co., Ltd. (Xiamen Gulong); (23) XITIC; (24) Xiamen Jiahua Import & Export Trading Co., Ltd. (Xiamen Jiahua); (25) Xiamen Longhuai Import & Export Co., Ltd. (Xiamen Longhuai); (26) Zhangzhou Gangchang Canned Foods Co., Ltd. (aka Zhangzhou Gangchang Canned Foods Co., Ltd., Fujian) (Zhangzhou Gangchang);⁶ (27) Zhangzhou Golden Banyan; (28) Zhangzhou Hongda;

¹ 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).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 78 FR 7397 (February 1, 2013).

³ See Letter from Blue Field to the Department, "Certain Preserved Mushrooms from the People's Republic of China: Request for Administrative Review," dated February 28, 2013.

⁴ See Letter from Petitioner to the Department, "Fourteenth Administrative Review of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China – Petitioner's Request for Annual Administrative Review," dated February 28, 2013.

⁵ The Department considers Golden Banyan to be distinct from another company with a similar name for which a review was requested, Zhangzhou Golden Banyan Foodstuffs Industrial Co., Ltd. (Zhangzhou Golden Banyan). In the administrative review covering the period February 1, 2010 through January 31, 2011, 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) (*2010-2011 Final Results*). The record of this review does not contain any evidence that suggests these two companies should be considered a single entity.

⁶ 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 in *Certain Preserved Mushrooms from the People's Republic of*

(29) Zhangzhou Long Mountain Foods Co., Ltd. (Zhangzhou Long Mountain); (30) Zhangzhou Tongfa Foods Industry Co., Ltd. (Zhangzhou Tongfa); (31) Zhejiang Iceman Food Co., Ltd. (Iceman Food);⁷ and (32) Zhejiang Iceman Group Co., Ltd. (Iceman Group).

On March 29, 2013, the Department published in the *Federal Register* the notice of initiation for the antidumping duty administrative review of certain preserved mushrooms from the PRC for the period February 1, 2012 through January 31, 2013 with respect to the 32 companies named in the review requests specified above.⁸

On April 1, 2013, Zhangzhou Hongda and its supplier, Fujian Haishan Foods Co., Ltd., submitted a certification of no shipments during the POR.⁹ On May 16, 2013, Jisheng filed a no-shipment certification.¹⁰ On May 28, 2013, Golden Banyan and XITIC submitted no-shipment certifications.¹¹

On May 28, 2013, Guangxi Hengyong, Kangfa, Zhangzhou Gangchang, and Zhangzhou Tongfa submitted separate rate certifications.¹²

On June 27, 2013, Petitioner timely filed a letter withdrawing its request for administrative review for the following 29 exporters: (1) Ayecue; (2) China National; (3) China Processed; (4) Xingda; (5) Golden Banyan; (6) Fujian Pinghe; (7) Fujian Yuxing; (8) Fujian Zishan; (9) Guangxi Eastwing; (10) Guangxi Hengyong; (11) Jisheng; (12) Inter-Foods; (13) Kangfa; (14) Longhai Guangfa; (15) Primera Harvest; (16) Shandong Fengyu; (17) Shandong Jiufa; (18) Shandong Yinfeng; (19) Sun Wave Trading; (20) Xiamen Greenland; (21) Xiamen Gulong; (22)

China: Final Results of Antidumping Duty New Shipper Reviews 74 FR 28882 (June 18, 2009). The record of this review does not contain any evidence that contradicts this finding.

⁷ The Department has found that 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). The record of this review does not contain any evidence that contradicts this finding.

⁸ *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 78 FR 19197 (March 29, 2013) (*Initiation Notice*).

⁹ *See* Letter from Zhangzhou Hongda to the Department, "Certain Preserved Mushroom {sic} from the People's Republic of China," dated April 1, 2013.

¹⁰ *See* Letter from Jisheng to the Department, "Certain Preserved Mushrooms from the People's Republic of China Entry of Appearance and No Shipment Certification," dated May 15, 2013.

¹¹ *See* Letter from Golden Banyan to the Department, "Certain Preserved Mushrooms from China; No Shipments Statement of Fujian Golden Banyan Foodstuffs Industrial Co., Ltd.," dated May 28, 2013; Letter from XITIC to the Department, "Certain Preserved Mushrooms from China; No Shipments Statement of Xiamen International Trade & Investment Co., Ltd.," dated May 28, 2013; *see also* Letter from XITIC to the Department, "Certain Preserved Mushrooms from China; Corrected No Shipment Certification of Xiamen International Trade & Industrial Co., Ltd.," dated June 13, 2013.

¹² *See* Letter from Guangxi Hengyong to the Department, "Certain Preserved Mushrooms from China; Separate Rate Certification Of Guangxi Hengyong Industrial & Commercial Dev. Ltd.," dated May 28, 2013; Letter from Kangfa to the Department, "Certain Preserved Mushrooms from China; Separate Rate Certification Of Linyi City Kangfa Foodstuff Drinkable Co., Ltd.," dated May 28, 2013; Letter from Zhangzhou Gangchang to the Department, "Certain Preserved Mushrooms from China; Separate Rate Certification Of Zhangzhou Gangchang Canned Foods Co., Ltd.," dated May 28, 2013; Letter from Zhangzhou Tongfa to the Department, "Certain Preserved Mushrooms from China; Separate Rate Certification Of Zhangzhou Tongfa Foods Industry Co., Ltd.," dated May 28, 2013; *see also* Letter from Kangfa to the Department, "Certain Preserved Mushrooms from China; Corrected Separate Rate Certification Of Linyi City Kangfa Foodstuff Drinkable Co., Ltd.," dated June 14, 2013.

Xiamen Jiahua; (23) Xiamen Longhuai; (24) Zhangzhou Gangchang; (25) Zhangzhou Golden Banyan; (26) Zhangzhou Long Mountain; (27) Zhangzhou Tongfa; (28) Iceman Food; and (29) Iceman Group.¹³ As a result, only three exporters remain subject to this administrative review: Blue Field, XITIC, and Zhangzhou Hongda.

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, 2013 through October 16, 2013.¹⁴ Therefore, all deadlines in this segment of the proceeding have been extended by 16 days. If the new deadline falls on a non-business day, in accordance with the Department's practice, the deadline will become the next business day. The revised deadline for the preliminary results of this review is now November 18, 2013.

Respondent Selection

Section 777A(c)(1) of 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 calculate individual weighted-average dumping margins because of the large number of exporters or producers involved in the review.

On April 12, 2013, 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 on the CBP data for use in respondent selection.¹⁵ The Department received comments from Petitioner on April 24, 2013 and from Blue Field on April 26, 2013.¹⁶

After considering the large number of exporters for which a review was initiated and our available resources, we determined that it was not practicable to individually examine all 32 exporters. Accordingly, on May 8, 2013, we issued a memorandum indicating that we could reasonably examine no more than two exporters of subject merchandise.¹⁷ 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, Blue Field and Xingda.¹⁸ As a consequence, we issued antidumping questionnaires to Blue Field and Xingda on May 17, 2013.¹⁹

¹³ See Letter from Petitioner to the Department, "14th Administrative Review of Certain Preserved Mushrooms from the People's Republic of China – Petitioner's Partial Withdrawal of Request for Review," dated June 27, 2013.

¹⁴ See Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government," dated October 18, 2013.

¹⁵ See Letter from the Department to All Interested Parties, dated April 12, 2013.

¹⁶ See Letter from Petitioner to the Department, "14th Administrative Review of the Antidumping Order on Certain Preserved Mushrooms from the People's Republic of China – Petitioner's Comments on Respondent Selection and CBP Entry Data," dated April 24, 2013; Letter from Blue Field to the Department, "Certain Preserved Mushroom {sic} from the People's Republic of China," dated April 26, 2013.

¹⁷ See Memorandum to Richard Weible through Robert James from Deborah Scott, "Administrative Review of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China: Respondent Selection Memorandum," dated May 8, 2013 (Respondent Selection Memorandum).

¹⁸ See *id.*

¹⁹ See Letter from the Department to Blue Field, dated May 17, 2013 (Blue Field Questionnaire) and Letter from the Department to Xingda, dated May 17, 2013.

On May 29, 2013, Blue Field filed a letter stating that further active participation in this administrative review was no longer possible and, therefore, it would not respond to the Department's requests for information.²⁰ Xingda did not respond to section A of the Department's antidumping questionnaire.

On June 11, 2013, Petitioner submitted a letter requesting that the Department select additional mandatory respondents in light of Blue Field's decision to cease active participation in this administrative review and Xingda's failure to respond.²¹ As noted in the "Background" section of this memorandum, on June 27, 2013, Petitioner timely withdrew its request for an administrative review of all exporters except Blue Field, XITIC, and Zhangzhou Hongda. Because Blue Field notified the Department that it would not be participating further in this administrative review and XITIC and Zhangzhou Hongda filed no-shipment certifications, no companies remained for the Department to select as mandatory respondents for individual examination.

Scope of the Order

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

Excluded from the scope of this order are the following: (1) all other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including "refrigerated" or "quick blanched mushrooms;" (3) dried mushrooms; (4) frozen mushrooms; and (5) "marinated," "acidified," or "pickled" mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.²²

²⁰ See Letter from Blue Field to the Department, "Certain Preserved Mushroom {sic} from the People's Republic of China: Notice of Withdrawal of Further Participation in Administrative Review," dated May 29, 2013 (Blue Field's May 29, 2013 Letter).

²¹ See Letter from Petitioner to the Department, "14th Administrative Review of the Antidumping Order on Certain Preserved Mushrooms from the People's Republic of China – Petitioner's Request for Selection of Additional Mandatory Respondents," dated June 11, 2013.

²² 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).

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.

Partial Rescission of Review

For those exporters named in the *Initiation Notice* that are not part of the PRC-wide entity and for whom all review requests have been timely withdrawn, we are rescinding this administrative review, in accordance with 19 CFR 351.213(d)(1). The exporters for which we are rescinding this review are Golden Banyan, Guangxi Hengyong, Jisheng, Kangfa, Zhangzhou Gangchang, and Zhangzhou Tongfa.

With regard to this partial rescission of review, the Department will instruct CBP to assess antidumping duties on all appropriate entries. Because Golden Banyan, Guangxi Hengyong, Jisheng, Kangfa, Zhangzhou Gangchang, and Zhangzhou Tongfa all have separate rates from prior segments of this proceeding, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(2). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the accompanying *Federal Register* notice.

Intent Not To Rescind Review In Part

We have received withdrawal of review requests for the following exporters that remain a part of the PRC-wide entity, which is currently under review: (1) Ayecue; (2) China National; (3) China Processed; (4) Xingda; (5) Fujian Pinghe; (6) Fujian Yuxing; (7) Fujian Zishan; (8) Guangxi Eastwing; (9) Inter-Foods; (10) Longhai Guangfa; (11) Primera Harvest; (12) Shandong Fengyu; (13) Shandong Jiufa; (14) Shandong Yinfeng; (15) Sun Wave Trading; (16) Xiamen Greenland; (17) Xiamen Gulong; (18) Xiamen Jiahua; (19) Xiamen Longhuai; (20) Zhangzhou Golden Banyan; (21) Zhangzhou Long Mountain; (22) Iceman Food; and (23) Iceman Group.

For those exporters 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 exporters at this time.²³ As explained above, requests for review of several exporters belonging to the PRC-wide entity were timely withdrawn. While the requests for review were timely withdrawn, these exporters 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 exporters belonging to the PRC-wide entity for which a request for review has been withdrawn.

²³ See, e.g., *Small Diameter Graphite Electrodes From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 55680, 55681 (September 11, 2013).

Preliminary Determination of No Shipments

The following exporters timely submitted certifications of no shipments, entries, or sales of subject merchandise during the POR: Golden Banyan, Jisheng, XITIC, and Zhangzhou Hongda.

As noted in the “Partial Rescission of Review” section of this memorandum, because all review requests have been withdrawn for Golden Banyan and Jisheng and these entities are not part of the PRC-wide entity, we are rescinding this administrative review as to those exporters, in accordance with 19 CFR 351.213(d)(1).

With respect to XITIC and Zhangzhou Hongda, on August 6, 2013, we notified CBP that we were in receipt of no-shipment certifications from these entities and requested that CBP report any contrary information within 10 days. CBP did not provide any evidence that contradicts XITIC’s and Zhangzhou Hongda’s claims of no shipments.²⁴

Based on the no-shipment certifications and our analysis of the CBP information, we preliminarily determine that XITIC and Zhangzhou Hongda did not have any reviewable transactions during the POR. Consistent with its practice, the Department finds that it is not appropriate to rescind the review with respect to XITIC and Zhangzhou Hongda, but rather to complete the review of XITIC and Zhangzhou Hongda and issue appropriate instructions to CBP based on the final results of the review.²⁵

DISCUSSION OF THE METHODOLOGY

Non-Market Economy Country Status

The Department considers the PRC to be an NME country.²⁶ 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. Therefore, we continue to treat the PRC as an NME country for purposes of these preliminary results.

²⁴ In addition, on June 21, 2013, the Department requested entry documentation for a certain entry. *See* Memorandum from Richard Weible to Michael Walsh, “Request for U.S. Entry Documents - Certain Preserved Mushrooms from the People’s Republic of China (A-570-851),” dated June 21, 2013. For the information which CBP provided in response to this request, which is proprietary, see Memorandum from Deborah Scott to the File, “Certain Preserved Mushrooms from the People’s Republic of China (A-570-851); U.S. Entry Documents Provided by U.S. Customs and Border Protection in Response to June 21, 2013 Request,” dated July 22, 2013.

²⁵ *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).

²⁶ *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).

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.²⁷ In the *Initiation Notice*, the Department notified parties of the application process by which exporters may obtain separate rates.²⁸ 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 its exports. To establish whether an exporter is sufficiently independent to be entitled to a separate, exporter-specific rate, the Department analyzes each exporting entity in an NME country under the test established in *Sparklers* and further clarified in *Silicon Carbide*.²⁹ However, if the Department determines that an exporter is wholly foreign-owned or located in a market economy, then a separate rate analysis is not necessary to determine whether it is independent from government control.³⁰

In this administrative review, the Department received complete separate rate certifications from Guangxi Hengyong, Kangfa, Zhangzhou Gangchang, and Zhangzhou Tongfa. However, the Department has rescinded the review of these exporters due to Petitioner's timely withdrawal of the request for review of these exporters. Consequently, the Department need not consider separate rate treatment for these exporters in this review.

The PRC-Wide Entity

As noted in the "Respondent Selection" section of this memorandum, we issued the antidumping questionnaire to Blue Field on May 17, 2013.³¹ Blue Field subsequently informed the Department that it would not be responding to the Department's requests for information.³² Therefore, Blue Field did not comply with the Department's request for information and demonstrate that during this review period it qualifies for a separate rate. Accordingly, Blue Field has become part of the PRC-wide entity and the PRC-wide entity is, therefore, under review.

In addition, even though requests for review of the following exporters were timely withdrawn, these exporters are part of the PRC-wide entity and, thus, are subject to the results of this review: (1) Ayecue; (2) China National; (3) China Processed; (4) Xingda; (5) Fujian Pinghe; (6) Fujian Yuxing; (7) Fujian Zishan; (8) Guangxi Eastwing; (9) Inter-Foods; (10) Longhai Guangfa; (11)

²⁷ See, e.g., *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 24892, 24899 (May 6, 2010), unchanged in *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 59217 (September 27, 2010).

²⁸ See *Initiation Notice*, 78 FR at 19198.

²⁹ 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*); *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*).

³⁰ 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).

³¹ See Blue Field Questionnaire.

³² See Blue Field's May 29, 2013 Letter.

Primera Harvest; (12) Shandong Fengyu; (13) Shandong Jiufa; (14) Shandong Yinfeng; (15) Sun Wave Trading; (16) Xiamen Greenland; (17) Xiamen Gulong; (18) Xiamen Jiahua; (19) Xiamen Longhuai; (20) Zhangzhou Golden Banyan; (21) Zhangzhou Long Mountain; (22) Iceman Food; and (23) Iceman Group.

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 available 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 is adverse to the interests of that party in selecting from among the facts otherwise available.”³³ 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.”³⁴ 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.³⁵

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 does 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.”³⁶ The Department preliminarily determines that it must rely on facts otherwise available to assign a dumping margin to the PRC-wide entity in accordance with sections 776(a)(2)(A) and (C) of the Act because the PRC-wide entity, which includes Blue Field, has withheld information that was requested and, by not providing requested information, significantly impeded the proceeding. Further, the Department preliminarily finds that the PRC-wide entity’s failure to provide the requested information constitutes circumstances under which the Department concludes that the PRC-wide entity has not acted to the best of its ability to comply with the Department’s request for information. Hence, pursuant to section 776(b) of the Act, the Department has preliminarily determined that the PRC-wide entity has failed to cooperate by not acting to the best of its ability and,

³³ See also *Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Doc. No. 103-316, at 870 (1994) (SAA).

³⁴ See *id.*

³⁵ See section 776(b) of the Act.

³⁶ See *Initiation Notice*, 77 FR at 19208 n.5.

accordingly, 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)-(2) 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.³⁷ The United States Court of International Trade and the United States Court of Appeals for the Federal Circuit have affirmed decisions to select the highest margin from any prior segment of the proceeding as the AFA rate on numerous occasions.³⁸ The Department's practice is to select an AFA rate that is sufficiently adverse as to effectuate the purpose of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.³⁹ The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."⁴⁰

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."⁴¹

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, which includes Blue Field and the following exporters subject to this review: (1) Ayecue; (2) China National; (3) China Processed; (4) Xingda; (5) Fujian Pinghe; (6) Fujian Yuxing; (7) Fujian Zishan; (8) Guangxi Eastwing; (9)

³⁷ See, e.g., *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.")

³⁸ 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).

³⁹ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

⁴⁰ See SAA at 870.

⁴¹ See *KYD*, 607 F.3d at 766 (citing *Rhone Poulenc*, 899 F.2d at 1190).

Inter-Foods; (10) Longhai Guangfa; (11) Primera Harvest; (12) Shandong Fengyu; (13) Shandong Jiufa; (14) Shandong Yinfeng; (15) Sun Wave Trading; (16) Xiamen Greenland; (17) Xiamen Gulong; (18) Xiamen Jiahua; (19) Xiamen Longhuai; (20) Zhangzhou Golden Banyan; (21) Zhangzhou Long Mountain; (22) Iceman Food; and (23) Iceman Group. This margin is the highest rate on the record of any segment of this proceeding and the rate currently applicable to the PRC-wide entity.⁴²

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 reasonably 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.”⁴³ To corroborate means to determine that the information used has probative value.⁴⁴ The Department has determined that to have probative value, information must be both reliable and relevant.⁴⁵ 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.⁴⁶ Unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated margins. Thus, in an administrative review, if the Department chooses, as AFA, a calculated dumping margin from a prior segment of the proceeding, as we have done here, it is not necessary to question the reliability of the margin.⁴⁷

The Department previously has corroborated the 308.33 percent rate, the highest rate on the record of any segment of this proceeding, with respect to the PRC-wide entity. The Department notes this *ad valorem* rate was calculated for the final results of the 2010-2011 POR⁴⁸ and applied in the final results of the 2011-2012 POR as the PRC-wide entity rate.⁴⁹ In the 2011-2012 POR, the Department found the 308.33 percent rate to be both reliable and relevant with

⁴² See *Certain Preserved Mushrooms From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 34037, 34038 (June 6, 2013) (*2011-2012 Final Results*).

⁴³ See SAA at 870.

⁴⁴ See *id.*

⁴⁵ See, e.g., *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).

⁴⁶ See SAA at 870.

⁴⁷ See *Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People’s Republic of China: Final Results of Antidumping Duty Administrative Reviews, Final Partial Rescission of Antidumping Duty Administrative Reviews, and Determination Not To Revoke in Part*, 69 FR 55581 (September 15, 2004), and accompanying Issues and Decision Memorandum at Comment 18.

⁴⁸ See *2010-2011 Final Results*, 77 FR at 55809.

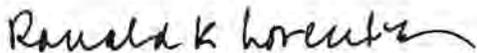
⁴⁹ See *2011-2012 Final Results*, 78 FR at 34038.

respect to the PRC-wide entity; consequently, we determined it was probative of the commercial behavior of exporters belonging to the PRC-wide entity and, thus, corroborated to the extent practicable, in accordance with section 776(c) of the Act.⁵⁰ There is nothing on the record of the instant review that calls into question our earlier corroboration of the 308.33 percent rate with respect to the PRC-wide entity. As a result, and consistent with our practice, we find that the 308.33 percent rate remains corroborated with respect to the PRC-wide entity to the extent practicable, and we will continue to assign this rate to the PRC-wide entity in this segment of the proceeding.⁵¹

Conclusion

We recommend following the above methodology for these preliminary results.

Agree Disagree



Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

November 15, 2013

Date

⁵⁰ See *Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 78 FR 15683 (March 12, 2013), and accompanying Preliminary Decision Memorandum at 10-11, unchanged in *2011-2012 Final Results*, 78 FR 34037.

⁵¹ See, e.g., *Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011*, 78 FR 35249 (June 12, 2013), and accompanying Issues and Decision Memorandum at 9-10 & n.46; see also *KYD*, 607 F.3d at 767; *Watanabe Group v. United States*, 2010 CIT LEXIS 144, at *14-17 (CIT December 22, 2010); *Peer Bearing Co.- Changshan v. United States*, 587 F. Supp. 2d 1317, 1327 (CIT 2008); *Harvest Wholesale, Inc. v. United States*, 26 CIT 358, 370 n.21 (2002).