

August 3, 2007

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results of the
2005-2006 Administrative Review of Certain Preserved
Mushrooms from the People's Republic of China

Summary

With the exception of the COFCO entity,¹ no other party participating in the 2005-2006 review of the antidumping duty order of certain preserved mushrooms from the People's Republic of China ("PRC") submitted a case brief. Moreover, no party submitted rebuttal briefs or requested a hearing in this review. We have analyzed the case brief submitted by the COFCO entity. As a result of our analysis, we have made changes in the margin calculation for the final results. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this review for which we received comments from the COFCO entity:

Comment 1: Selection of Fresh Mushroom Value

Comment 2: Selection of Glass Jar Value

Comment 3: Selection of Spawn Value

¹ In the preliminary results, we determined it appropriate to treat China Processed Food Import & Export Company and its affiliates, China National Cereals, Oils & Foodstuffs Import & Export Corporation, COFCO (Zhangzhou) Food Industrial Co., Ltd., Xiamen Jiahua Import & Export Trading Co. and Fujian Yu Xing Fruits & Vegetable Foodstuff Development Co. ("Yu Xing") (hereinafter collectively referred to as "the COFCO entity"), as one entity for margin calculation purposes because they met the regulatory criteria for collapsing. See October 31, 2006, Memorandum from the Team to The File, entitled "Certain Preserved Mushrooms from the People's Republic of China: Whether to Continue to Collapse COFCO with Some or All of Its Affiliates" ("Collapsing Memo"), and Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 71 FR 64930 (November 6, 2006) ("Preliminary Results"). No party objected to this preliminary finding. Therefore, we have continued to treat these affiliated companies as one entity in the final results.

Comment 4: Selection of Brokerage and Handling Value

Comment 5: Selection of Financial Statements

Comment 6: Reclassification and Adjustments to Certain Financial Data

Comment 7: Method for Adjusting U.S. Prices for Glass Jars/Caps Provided Free-of-Charge

Background

On November 6, 2006, the Department of Commerce (“the Department”) published the preliminary results in the 2005-2006 antidumping duty administrative review of certain preserved mushrooms from the PRC. See Preliminary Results, 71 FR at 64930. The products covered by this review are certain preserved mushrooms. The period of review (“POR”) is February 1, 2005, through January 31, 2006. We invited interested parties to comment on the Preliminary Results.

On January 29, 2007, we partially extended the time limit for the final results in this review until August 3, 2007. See Notice of Partial Extension of Time Limit for Final Results of Antidumping Duty Administrative Review: Certain Preserved Mushrooms from the People’s Republic of China, 72 FR 5268 (February 5, 2007).

On February 5, 2007, the Department placed on the record a revised non-market-economy (“NME”) wage rate applicable to the PRC for consideration in the final results.²

On March 19, 2007, the Department placed on the record an additional brokerage and handling surrogate value for consideration in the final results.³

On March 30, 2007, the COFCO entity submitted publicly available information (“PAI”) for consideration in the final results. No other party submitted PAI.

The COFCO entity filed a case brief on April 13, 2007. No other party submitted a case brief and no party submitted a rebuttal brief. Moreover, no party requested a hearing.

² See Memorandum from Brian Smith, Team Leader, to The File, entitled “Antidumping Duty Administrative Review on Certain Preserved Mushrooms from the People’s Republic of China: Revised Non-Market-Economy Wage Rate Applicable to the PRC,” dated February 5, 2007.

³ See Memorandum from Brian Smith, Team Leader, to The File, entitled “Antidumping Duty Administrative Review on Certain Preserved Mushrooms from the People’s Republic of China: Additional Brokerage and Handling Surrogate Value Placed on the Record,” dated March 19, 2007.

On June 29, 2007, the Department placed on the record data obtained from the website of an Indian producer of the subject merchandise and provided an opportunity for the parties to comment on that data.⁴

Based on our analysis of the comments received, we have changed the weighted-average margin applicable to the COFCO entity and the two Section A Respondents⁵ from the Preliminary Results.

Margin Calculations

We calculated export price and normal value (“NV”) for the COFCO entity using the same methodology described in the Preliminary Results, except as follows below:

1. We used the COFCO entity’s January 26, 2007, revised factors-of-production (“FOPs”) database in our margin calculations.
2. To value fresh mushrooms, we used data contained in the 2005-2006 financial report of Agro Dutch Industries Limited (“Agro Dutch”). See Comment 1 for further discussion.
3. To value spawn, we used data contained in the 2004-2005 financial report of Agro Dutch. See Comment 3 for further discussion.

⁴ See Memorandum from Brian Smith, Team Leader, to The File, entitled “Antidumping Duty Administrative Review on Certain Preserved Mushrooms from the People’s Republic of China: Additional Data Placed on the Record for Comment,” dated June 29, 2007.

⁵ Because it was not practicable for the Department to individually examine all of the companies covered by the review, the Department limited its examination to the largest producers/exporters that could reasonably be examined, accounting for the greatest possible export volume, pursuant to section 777A(c)(2)(B) of the Tariff Act of 1930, as amended (“the Act”). Therefore, the Department selected the COFCO entity and Guangxi Hengxian Pro-Light Foods, Inc. (“Guangxi Hengxian”) as the mandatory respondents in this review and designated Guangxi Eastwing Trading Co., Ltd. (“Guangxi Eastwing”) and Primera Harvest (Xiangfan) Co., Ltd. (“Primera Harvest”) as Section A Respondents. See Memorandum from Irene Darzenta Tzafolias, Acting Office Director, to Stephen Claeys, Deputy Assistant Secretary, entitled “2005-2006 Antidumping Duty Administrative Review of Certain Preserved Mushrooms from the People’s Republic of China: Selection of Respondents,” dated June 8, 2006; and Preliminary Results, 71 FR at 64930.

In the Preliminary Results, we assigned Guangxi Eastwing and Primera Harvest a weighted-average dumping margin based on the calculated margins of the mandatory respondents which were not *de minimis* or based on adverse facts available (“AFA”), in accordance with Department practice. See Preliminary Results, 71 FR at 64937. Accordingly, because we found that the COFCO entity was the only mandatory respondent entitled to a separate rate, we assigned the two Section A Respondents the dumping margin calculated for the COFCO entity. See id. For the final results, we have continued to treat Guangxi Eastwing and Primera Harvest as Section A Respondents and have assigned them the dumping margin calculated for the COFCO entity.

4. To value foreign brokerage and handling, we used Agro Dutch's publicly summarized data submitted in the 2004-2005 administrative review of certain preserved mushrooms from India. See Comment 4 for further discussion.
5. We calculated average surrogate percentages for factory overhead, selling, general, and administrative ("SG&A") expenses, and profit using the 2005-2006 financial reports of Agro Dutch and Flex Foods Limited ("Flex Foods"). See Comment 5 for further discussion.
6. We used the most recently calculated NME wage rate for the PRC of 0.83 U.S. dollars per hour in our NV calculations in accordance with Department practice (see, e.g., Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 19174 (April 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2).
7. Consistent with our regression-based PRC wage rate calculation, we have treated the bonuses and gratuity line items noted in the surrogate producers' financial reports as part of direct labor and included these expense items in the calculation of the denominator⁶ used to derive the factory overhead ratio.

See Memorandum from Brian Smith, Senior Case Analyst, to The File, entitled "7th Antidumping Duty Administrative Review of Certain Preserved Mushrooms from the People's Republic of China: Surrogate Values for the Final Results," dated August 3, 2007, for further details.

Discussion of the Issues

Comment 1: Selection of Fresh Mushroom Value

For the Preliminary Results, the Department used a February 2005-January 2006 average Indian import value for fresh mushrooms from World Trade Atlas ("WTA") and relied on data from Harmonized Tariff Schedule ("HTS") subheading 0709.51.00⁷ to value this input reported by Fujian Zishan Group, Co., Ltd. ("Fujian Zishan").⁸ On March 30, 2007, the COFCO entity placed on the record a fresh mushroom average price based on sales data from the 2005-2006 financial report of Agro Dutch for consideration in the final results.

⁶ The denominator includes costs for direct materials, labor, energy and material freight costs.

⁷ The description for HTS subheading 0709.51.00 is "Mushrooms Fresh or Chilled."

⁸ For this review, we have treated Fujian Zishan as an unaffiliated supplier of subject merchandise to the COFCO entity. See Collapsing Memo for further discussion.

The COFCO entity argues that the 2005-2006 Agro Dutch value is the best available information on the record for valuing fresh mushrooms because it is a non-export value, tax-exclusive, and contemporaneous with the POR in accordance with the Department's practice when selecting surrogate values.⁹ More importantly, the COFCO entity maintains that, unlike the WTA data used in the Preliminary Results, the Agro Dutch value is the only surrogate value on this record that is specific to the fresh mushrooms of the species *agaricus bisporus* that are used by its unaffiliated supplier Fujian Zishan to produce the subject merchandise.

Given that Agro Dutch is an Indian exporter and producer of the subject merchandise whose exports of canned mushrooms are subject to an antidumping duty order,¹⁰ and who has participated in many administrative reviews conducted by the Department, the COFCO entity claims that the Agro Dutch mushroom value is the only appropriate surrogate value to use in this review because record evidence¹¹ shows that the only mushrooms Agro Dutch grows and sells are of the *agaricus bisporus* species used by COFCO's supplier to produce the subject merchandise. In addition, the COFCO entity maintains that the fresh mushroom price from Agro Dutch's 2005-2006 financial report is not aberrational when one compares that price to the fresh mushroom price contained in Agro Dutch's 2004-2005 financial report.

The COFCO entity also argues that the Department should not use an Indian import price to value fresh mushrooms in this review because Fujian Zishan does not consume the same fresh mushrooms reflected in the WTA import data and no Indian preserved mushroom producers consume imported fresh mushrooms of the *agaricus bisporus* variety to produce the subject merchandise. To support its claim, the COFCO entity contends that the Infodrive India data provided in its PAI submission show that the entries included in HTS subheading 0709.51.00 during the POR were not fresh mushrooms of the variety *agaricus bisporus*. Rather, the COFCO entity maintains that entries included in this HTS subheading during the POR consisted only of mushrooms which its supplier, Fujian Zishan, did not use to produce the subject merchandise.¹² Therefore, the COFCO entity asserts that inclusion of these non-fresh and non-species-specific

⁹ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China, 69 FR 20594 (April 16, 2004) ("CTVs from the PRC"), and accompanying Issues and Decision Memorandum at Comment 9.

¹⁰ See Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms from India, 64 FR 8311 (February 19, 1999).

¹¹ See Exhibit 19 of the COFCO entity's March 31, 2007, PAI submission (which includes excerpts detailing Agro Dutch's growing, harvesting, and processing operations for fresh mushrooms as submitted in public version responses from prior administrative reviews involving certain preserved mushrooms from India).

¹² The Infodrive India data included in Exhibit 4 of the COFCO entity's PAI submission list Indian imports of the following mushroom varieties during the POR: black mushrooms, dried black mushrooms, dried thin mushrooms, dried tube mushrooms, straw mushrooms, east mushrooms, black trumpet mushrooms, black chanterelle mushrooms, girole mushrooms, bolete mushrooms, cloud ear mushrooms, morels, porcino mushrooms, and forest mushrooms.

mushrooms in the HTS subheading produces a distortive effect when valuing fresh mushrooms and renders the WTA import data for this HTS subheading unusable.

To support its contention that when selecting surrogate values the Department must consider whether there is a reason to believe that the industry in question would use imported inputs, the COFCO entity cites to four U.S. Court of International Trade (“CIT”) decisions.¹³ Specifically, the COFCO entity claims that the CIT’s decision in Dorbest v. United States notes that the Department’s use of surrogate import values may not be reasonable if it is unlikely that the domestic industry would use imported inputs and domestic data are available on the record. Moreover, the COFCO entity claims that the CIT’s decision in Hebei Metals v. United States indicates that it may be more appropriate to select, when available, a domestic surrogate value rather than an import value if the domestic industry might choose to source its factor inputs domestically, particularly if the imported price is markedly higher than the domestic price for the same input. In this review, the COFCO entity notes that no domestic industry in either India or the PRC uses imported fresh mushrooms to produce the subject merchandise, and there are other appropriate surrogate data available (*i.e.*, a domestic value) which the Department can use to value this input.

Moreover, the COFCO entity contends that the fresh mushrooms value used by the Department in the Preliminary Results is based on a quantity of imports that is commercially insignificant. Even if the Department disagrees with its contention that the Infodrive India data demonstrate that all of the imports included in the fresh mushrooms HTS subheading are not of the *agaricus bisporus* species, then the COFCO entity argues that the 517 kilogram import quantity obtained from the fresh mushrooms HTS subheading is a commercially insignificant volume compared to the quantity consumed by Fujian Zishan to produce the subject merchandise during the POR. Therefore, the COFCO entity claims that the Department cannot rely on the WTA import data to value this input because they are not representative of prices for fresh mushrooms in India during the POR. In support of its argument that the Department may only use Indian import statistics which are based on commercially and statistically significant quantities to derive a surrogate value, the COFCO entity cites to two CIT decisions.¹⁴ The COFCO entity also notes that because India did not import commercially significant quantities of fresh mushrooms during the POR, the Agro Dutch value is a more representative price for fresh mushrooms during the POR because Agro Dutch produced the same species of fresh mushrooms as Fujian Zishan used in the production of subject merchandise during the POR.

¹³ See Dorbest Ltd. v. United States, Slip Op. 06-160 at 35 (CIT October 31, 2006); Hebei Metals & Minerals Imp. & Exp. Corp. v. United States, Slip Op. 04-88 at 22 (CIT July 19, 2004); Yantai Oriental Juice Co. v. United States, 26 CIT 605, 617 (2002); and Wuhan Bee Healthy Co. v. United States, 374 F. Supp. 2d 1299, 1310 (CIT 2005).

¹⁴ See Polyethylene Retail Carrier Bag Committee, et. al. v. United States, Slip Op. 05-157 at 43 (CIT December 13, 2005); and Shanghai Foreign Trade Enter. Co. v. United States, 318 F. Supp. 2d 1339, 1353 (CIT 2004).

Furthermore, the COFCO entity argues that the fresh mushroom value used by the Department in the Preliminary Results is aberrationally high when compared to other fresh mushroom prices the COFCO entity provided in its PAI submission. For purposes of demonstrating that the WTA price data are aberrationally high, the COFCO entity provided mushroom pricing data from the Agricultural Marketing Information Network of India (“Agmarknet”). The COFCO entity claims that the Agmarknet data provide tax-inclusive prices for a multitude of mushroom varieties and that the price range is substantially lower than the mushroom price derived from WTA data. The COFCO entity alleges that the specific mushroom variety used by Fujian Zishan (*i.e.*, *agaricus bisporus*) is among the least expensive varieties and could be no more costly than the prices obtained from the Agmarknet data.

Finally, the COFCO entity argues that the fresh mushroom value used by the Department in the Preliminary Results created widely disparate margin results. Specifically, the COFCO entity contends that the Department’s use of WTA data to value fresh mushrooms has resulted in an extremely high overall margin even though its U.S. sales of Fujian Zishan-produced subject merchandise represent a small fraction of its reported U.S. sales. Moreover, when compared to the costs assigned to U.S. sales of the same product produced by its affiliated producer Yu Xing, which grows its own fresh mushrooms, the COFCO entity contends that the margins assigned to Yu Xing’s product are zero but the margins assigned to Fujian Zishan’s product were all extremely high as a result of using the WTA data to value fresh mushrooms.

Department’s Position:

In valuing the FOPs, section 773(c)(1) of the Act instructs the Department to use “the best available information” from the appropriate market-economy country. The Department’s criteria for selecting surrogate value information are based on the use of PAI and the Department considers several factors when choosing the most appropriate PAI, including the quality, specificity, and contemporaneity of the data. See, e.g., 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 (September 8, 2006), and accompanying Issues and Decision Memorandum at Comment 3 (“Certain Lined Paper Products from the PRC”). Moreover, it is the Department’s practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis of valuing the FOPs on a case-by-case basis. See Certain Preserved Mushrooms from the People’s Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review, 71 FR 40477 (July 17, 2006), and accompanying Issues and Decision Memorandum at Comment 1. As there is no hierarchy for applying the above-mentioned principles, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the “best” surrogate value is for each input.

In this review, the respondent has provided sufficient documentation showing that product specificity (*i.e.*, the species of mushroom) is crucial for valuing the mushrooms used by its supplier to produce the subject merchandise. Moreover, because the scope of this antidumping duty order covers only two types of mushroom species (*i.e.*, *agaricus bisporus* and *bitorquis*)

within the same genus of mushroom (*i.e.*, *agaricus*), product specificity is critical to the Department's determination as to the best available information on this record to value this input. As the HTS subheading for mushrooms (*i.e.*, "fresh or chilled") is too broad for this purpose (because it necessarily includes both fresh and frozen mushrooms of all species types), we agree with the respondent that it would be inappropriate to continue using the WTA data to value this input in the final results given that there is more product-specific surrogate value information for this input in an Indian mushroom producer's financial report, which is on the record of this review.

Specifically, Agro Dutch's 2005-2006 financial report contains the data necessary to derive a surrogate value for fresh mushrooms. Data contained in Agro Dutch's financial report clearly indicate that this company is a producer of fresh mushrooms (in addition to being a producer/exporter of the subject merchandise). Additional information placed on the record by the Department on June 29, 2007, notes that Agro Dutch produces fresh mushrooms of the species *agaricus bisporus*, which is one of two species of mushrooms covered by the scope of this order. Therefore, we find that Agro Dutch produces the same species of mushrooms which Fujian Zishan used to produce the subject merchandise during the POR. While the Department recognizes that the Agro Dutch fresh mushroom value is not representative of a broad market average, this value is the best available data on this record as it is publicly available, contemporaneous with the POR, product-specific, and tax-exclusive. For these reasons, the Department has used the fresh mushroom value from Agro Dutch's 2005-2006 financial report in the final results.

Comment 2: *Selection of Glass Jar Value*

For the Preliminary Results, the Department used a February 2005-January 2006 average Indian import value for glass jars from WTA and relied on data from HTS subheading 7010.90¹⁵ to value this input reported by COFCO's affiliated supplier Yu Xing. On March 30, 2007, the COFCO entity placed on the record a glass jar average price based on sales data from the 2005-2006 financial report of Jagatjit Industries Limited ("Jagatjit") for consideration in the final results.¹⁶

The COFCO entity argues that the 2005-2006 Jagatjit glass jar value is the best available information on the record for valuing glass jars because this value, unlike the WTA price data used in the Preliminary Results, reflects the glass jars actually consumed by Yu Xing. The COFCO entity maintains that the WTA price data for glass jars are inappropriate to use in the final results because the HTS subheading is overly broad and includes a wide range of glass jars which bear no similarities to the ordinary glass jars used by Yu Xing in the production of the

¹⁵ The description for HTS subheading 7010.90 is "Glass Articles for Conveyance/Packing of Goods."

¹⁶ See Exhibit 17 of the COFCO entity's PAI submission.

subject merchandise.¹⁷ Specifically, the COFCO entity asserts that based on the general description of HTS heading 7010,¹⁸ the HTS subheading used to value glass jars in the Preliminary Results is a basket category which includes not only glass jars but also many other items which do not have a separate HTS subheading such as carboys, bottles, flasks, pots, phials, and other glass containers. Therefore, the COFCO entity contends that the WTA data used to value glass jars in the Preliminary Results are unreliable.

To support its claim that the Indian import value for glass jars obtained from HTS subheading 7010.90 is overly broad and unreliable, the COFCO entity explains that the Infodrive India data in its PAI submission¹⁹ show that the entries included in this HTS subheading during the POR consisted primarily of only non-glass and glass products²⁰ which Yu Xing did not use to produce the subject merchandise. Therefore, the COFCO entity argues that the Department should use the Jagatjit glass jar value because it, unlike the WTA data, is more appropriate and representative of the prices of glass jars used by Yu Xing during the POR.

To support its position that in prior NME cases the Department has recognized that import statistics based on a basket tariff category are inappropriate if a more representative alternative surrogate value is available, the COFCO entity cites Notice of Preliminary Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol from the People's Republic of China, 69 FR 3887, 3892 (January 27, 2004); and Freshwater Crawfish Tailmeat from the People's Republic of China: Final Results of New Shipper Review, 64 FR 27961, 27962 (May 24, 1999). In this review, the COFCO entity claims that the 2005-2006 Jagatjit glass value is a more representative alternative surrogate value because: (1) Jagatjit is an Indian producer of glass jars and bottles; and (2) the Jagatjit glass value is an average non-export price which is product-specific, tax-exclusive, and contemporaneous with the POR. Therefore, the COFCO entity claims that the Jagatjit value is more appropriate to use for the valuation of glass jars in accordance with the Department's practice.²¹ Alternatively, if the Department disagrees that the Jagatjit glass value is inappropriate to use in this review, then the COFCO entity contends that the Department should use the India Infodrive data on imports from Belgium to calculate the

¹⁷ Yu Xing used ordinary glass jars with volume sizes ranging from 110 to 284 milliliters and an additional volume size of 1000 milliliters (see page 14 of the COFCO entity's April 13, 2007, case brief).

¹⁸ The description for HTS subheading 7010 is "Carboys, Bottles, Flasks, Jars, Pots, Phials, Ampoules, and Other Containers, of Glass, of a Kind Used for the Conveyance or Packing of Goods; Preserving Jars of Glass; Stoppers, Lids and Other Closures, of Glass."

¹⁹ See Exhibit 11 of the COFCO entity's PAI submission.

²⁰ The Infodrive India data included in Exhibit 11 of the COFCO entity's PAI submission list Indian imports of the following products during the POR: Bordelaise glass bottles, flower vases, flasks, flower pots, mania jars, antibiotique glass, coffeemaker parts, candle holders, and other glass products which are not used to pack food products.

²¹ See, e.g., CTVs from the PRC at Comment 9.

glass jar surrogate value because all but three of the 657 entries included in these import data are for glass jars which are similar to the glass jars (i.e., same size range in terms of volume) used by Yu Xing during the POR.

Finally, the COFCO entity argues that the glass jar value used by the Department in the Preliminary Results also created widely disparate margin results. Specifically, the COFCO entity contends that the Department's use of WTA data to value glass jars has resulted in an extremely high overall margin based on the effect the glass jar value has on the NV calculation for U.S. sales of the Yu Xing product produced in glass jars when compared to the NV calculation for U.S. sales of the Yu Xing product produced in cans.

Department's Position:

For the reasons noted below, we have continued to use the WTA data from the Preliminary Results to value glass jars in the final results of this review.

As noted above in Comment 1, the Department does not prefer an overly broad HTS category where a more product-specific surrogate value is available. However, in the instant review, the Department finds that the more specific, available, and reliable surrogate value for glass jars is the WTA data used in the Preliminary Results. Specifically, the best available data for valuing this input is the WTA information for an "other" HTS category labeled "Glass Articles for Conveyance/Packing of Goods," which the Department acknowledges may also include glass items not identical to the specific input in question. Although this HTS category is a basket category which may include glass articles besides glass jars, it nevertheless includes glass jars, and therefore, is a reliable surrogate value source. Moreover, the WTA data used in the Preliminary Results are contemporaneous, publicly available, and representative of a broad market average.

With respect to the respondent's claim that the glass jar value from the 2005-2006 Jagatjit financial report is the best available information on the record for valuing glass jars because it is more representative of the glass jars it used during the POR, we disagree. To the contrary, we do not find the glass jar value from Jagatjit's financial report to be reliable, as it is not specific to the glass jars used by the respondent in this review. Specifically, data contained in Jagatjit's financial report indicate that this Indian company's main business is the sale of alcoholic beverages; consequently, the glass container value obtained from its financial report is non-specific for purposes of valuing the input in question. Furthermore, where product-specificity is not a critical factor in the Department's surrogate value determination, the Department has shown a general preference for WTA data over company financial statements because WTA data are contemporaneous, publicly available, and representative of a broad market average. See Polyvinyl Alcohol From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 27991 (May 15, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

Furthermore, the respondent in this case has relied on India Infodrive data as the basis for claiming that the WTA data used in the Preliminary Results are not specific to the glass jars it used during the POR and suggests we use selective Infodrive India data to value glass jars if we do not use the Jagatjit financial report. However, the Department's normal practice is not to use Infodrive India to analyze which portion of the WTA data included in the HTS subheading is specific to the input at issue, given that the Infodrive India data do not account for all of the Indian imports which fall under a particular HTS subheading. See, e.g., Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China, 71 FR 29303 (May 22, 2006), and accompanying Issues and Decision Memorandum at Comment 11. Therefore, for these final results, to value glass jars, we have continued to use the WTA data from the HTS subheading "Glass Articles for Conveyance/Packing of Goods," as no other usable information is available on the record which is more specific to the glass jars used by the respondent.

Comment 3: Selection of Spawn Value

For the Preliminary Results, the Department used a February 2005-January 2006 average Indian import value for spawn from WTA and relied on data from HTS subheading 0602.90.10²² to value this input reported by its affiliated supplier Yu Xing. On March 30, 2007, the COFCO entity placed on the record a spawn average price based on purchase data from the 2004-2005 financial report of Agro Dutch for consideration in the final results.²³

The COFCO entity argues that the Agro Dutch spawn value is the best available information on the record for valuing spawn because this value, unlike the WTA price data used in the Preliminary Results, reflects the specific type of *agaricus bisporus* spawn used by Yu Xing to grow fresh mushrooms during the POR. Moreover, the COFCO entity maintains that the Agro Dutch spawn value is more appropriate to use in the final results because it is an average non-export value contemporaneous with the POR.

To support its claim that the WTA spawn value obtained from HTS subheading 0602.90.10 is based in large measure on imports of non-*agaricus bisporus* spawn into India during the POR, the COFCO entity provided India Infodrive data in its PAI submission which it claims show that just two of 34 entries included in the WTA data relate to *agaricus bisporus* spawn. On the other hand, the COFCO entity maintains that the spawn Agro Dutch uses to produce *agaricus bisporus* mushrooms has to be *agaricus bisporus* spawn. Moreover, the COFCO entity claims that like

²² The description for HTS subheading 0602.90.10 is "Mushroom Spawn."

²³ Although the COFCO entity stated that the Department should use the spawn price derived from data contained in Agro Dutch's 2005-2006 financial report in the final results, no such data appear in Agro Dutch's 2005-2006 financial report for this purpose (i.e., the spawn value is combined with the tin plate value in the 2005-2006 financial report). However, Agro Dutch's 2004-2005 financial report does contain the necessary data for deriving a mushroom spawn value. See Exhibit 1 of the COFCO entity's PAI submission.

Agro Dutch, Yu Xing also used *agaricus bisporus* spawn to produce *agaricus bisporus* mushrooms during the POR. Therefore, the COFCO entity argues that the Department should use the Agro Dutch spawn value because it, unlike the WTA data, is more appropriate and representative of the *agaricus bisporus* spawn used by Yu Xing during the POR.

Department's Position:

With respect to the respondent's claims concerning the HTS subheading used to value spawn in the Preliminary Results, we find that the HTS subheading description (*i.e.*, mushroom spawn) necessarily contains more than the specific species of mushroom spawn used by the respondent in this review. Therefore, we agree with the respondent that using POR data from this HTS subheading to value this input would be inappropriate if there is other information available on this record which is more specific to the input (*i.e.*, the same species of mushroom spawn used by the respondent) at issue. As in the case of fresh mushrooms, we also find that the respondent in this review has provided sufficient documentation showing that product specificity (*i.e.*, the species of mushroom spawn) is crucial for valuing the spawn used by it to produce the subject merchandise. Moreover, because the scope of this antidumping duty order covers only two mushroom species within the same genus (*i.e.*, *agaricus bisporus* and *bitorquis*), product specificity is critical to the Department's determination as to the best available information on this record to value this input. As the HTS subheading for mushroom spawn is too broad for this purpose (because it necessarily includes all types of spawn used to produce different species of mushrooms), we agree with the respondent that it would be inappropriate to continue using the WTA data to value this input in the final results, given that there is more appropriate data on this record to value this input (*i.e.*, the spawn value data contained in Agro Dutch's 2004-2005 financial report).

As noted above in the Department's position to Comment 1, information on this record establishes that the Indian producer, Agro Dutch, produces fresh mushrooms of the species *agaricus bisporus*, one of the two species of mushrooms covered by this antidumping duty order and the species of mushrooms produced by Yu Xing during the POR. Moreover, Agro Dutch's 2004-2005 financial report indicates that it purchases spawn to produce its fresh mushrooms and also contains data which may be used to derive a mushroom spawn value. Therefore, we find that the Agro Dutch spawn value is more specific to the species of spawn used by Yu Xing to grow the fresh mushrooms it used to produce the subject merchandise during the POR than that derived from WTA data. Therefore, for the final results of this review, we have used data contained in Agro Dutch's 2004-2005 financial report to value this input.

Comment 4: Selection of Brokerage & Handling Value

For the Preliminary Results, the Department used a simple average of the publicly summarized version of the average value for brokerage and handling expenses reported in the U.S. sales listings in Essar Steel Ltd.'s ("Essar Steel's") February 28, 2005, submission in the antidumping duty review of Certain Hot-Rolled Carbon Steel Flat Products from India, and the March 9, 2004, submission from Pidilite Industries Ltd. ("Pidilite") in the antidumping duty investigation of

Carbazole Violet Pigment 23 from India to value this expense. On March 19, 2007, the Department placed on the record a publicly summarized version of the brokerage and handling expense reported in Agro Dutch's May 24, 2005, submission in the antidumping duty review of Certain Preserved Mushrooms from India for consideration in the final results.²⁴

The COFCO entity argues that the Department should use only the Agro Dutch brokerage and handling expense in the final results because, unlike the Pidilite and Essar Steel surrogate expenses, the Agro Dutch surrogate expense is the most contemporaneous with the POR.²⁵ Moreover, the COFCO entity argues that the Department should use only the Agro Dutch surrogate expense because that expense is the only one among the three which is specific to certain preserved mushrooms.

Department's Position:

We agree with the respondent. As noted above in the Department's position to Comment 1, Agro Dutch is an Indian producer of the subject merchandise. Therefore, in this review it is more appropriate, where possible, to use the costs and expenses of an Indian producer of the subject merchandise when deriving surrogate costs and expenses for the respondent. Because Agro Dutch's publicly summarized brokerage and handling expenses are available for use in this review and those expenses are more contemporaneous with the POR than the other surrogate brokerage and handling expenses on the record, we have used Agro Dutch's publicly summarized expense data to value the respondent's brokerage and handling expenses in the final results of this review.

Comment 5: Selection of Financial Statements

In the Preliminary Results, the Department derived the surrogate ratios for factory overhead, SG&A expenses, and profit using Agro Dutch's 2004-2005 and 2005-2006 financial reports and Flex Foods' 2004-2005 and 2005-2006 financial reports.

The COFCO entity claims that the Department should use only the 2005-2006 financial reports of Agro Dutch and Flex Foods to derive the surrogate financial ratios because the 2005-2006 financial reports for these two companies are more contemporaneous with the POR. Specifically, the COFCO entity notes that the 2005-2006 financial reports cover ten months of the POR whereas the 2004-2005 financial reports only cover two months of the POR. The COFCO entity

²⁴ See Memorandum from Brian Smith, Team Leader, to The File, entitled "Antidumping Duty Administrative Review on Certain Preserved Mushrooms from the People's Republic of China: Additional Brokerage and Handling Surrogate Value Placed on the Record," dated March 19, 2007.

²⁵ As previously noted, the POR in this review is February 1, 2005-January 31, 2006. The Agro Dutch surrogate expense covers the period February 2004-January 2005. The Essar Steel surrogate expense covers the period December 2003-November 2004. The Pidilite surrogate expense covers the period November 2002-September 2003.

contends that use of the 2004-2005 financial report data from these companies in the surrogate financial ratio calculations render the surrogate financial ratios less contemporaneous as a result of including financial results that precede the POR by ten months. Therefore, the COFCO entity argues that using the 2004-2005 financial reports is not necessary in this review because it is the Department's practice to use more contemporaneous data over less contemporaneous data.²⁶

Finally, the COFCO entity contends that the Department should not use the pre-POR financial data of both Indian companies when it has the POR financial data of both Indian companies on the record in this review, consistent with the Department's practice in past segments of this proceeding. The COFCO entity points out that the Department has always used the financial data of each company from only one fiscal period in every review prior to this review. Therefore, the COFCO entity argues that to also use the 2004-2005 financial data of these companies in the surrogate financial ratio calculations in this review would depart from the Department's practice.

Department's Position:

Pursuant to section 773(c)(1) of the Act, it is the Department's practice to use the best available information to derive surrogate financial ratios. To determine the best available information, the Department considers several factors, including the quality, specificity, and contemporaneity of the source information.²⁷ For these final results, the Department has determined that simply using Agro Dutch's and Flex Foods' 2005-2006 financial reports rather than also using these two Indian companies' 2004-2005 financial reports to derive the surrogate financial ratios is more consistent with the Department's practice in this respect. Specifically, because the 2005-2006 financial data of these two Indian companies cover all but two months of the POR, using the 2004-2005 financial data as well unnecessarily elongate the data averaging period to include ten months of pre-POR data. Therefore, the Department finds that the 2005-2006 financial reports are the most appropriate (contemporaneous) financial reports available on the record of this review from which to derive surrogate financial ratios.

Comment 6: Reclassification and Adjustments to Certain Financial Data

In the Preliminary Results, the Department used the financial reports of two Indian producers of the subject merchandise, Agro Dutch and Flex Foods, to derive the surrogate financial ratios.²⁸ For purposes of deriving the factory overhead ratio using Agro Dutch's financial data, we

²⁶ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Barium Carbonate From the People's Republic of China, 68 FR 46577, 46578 (August 6, 2003), and accompanying Issues and Decision Memorandum at Comment 6.

²⁷ See, e.g., Certain Lined Paper Products from the PRC.

²⁸ The surrogate financial ratios include ratios for factory overhead, SG&A expenses, and profit.

included material handling charges reported in the Agro Dutch financial report²⁹ in the overhead expense calculation.³⁰ For purposes of deriving the SG&A ratio using Agro Dutch's financial data, the Department did not offset Agro Dutch's SG&A expense by an amount for interest income.³¹

The COFCO entity claims that the Department's practice is to exclude material-related charges from overhead expenses, and instead include such expenses in the denominator used to derive the surrogate factory overhead ratio because they are related to material acquisition costs. In support of its argument, the COFCO entity cites to Brake Rotors from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Administrative Review, 63 FR 51895, 51897 (September 29, 1998) ("Brake Rotors NSR1"), and Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China, 62 FR 61964, 61974 (November 20, 1997), at Comment 7 ("Carbon Steel Plate"). Therefore, the COFCO entity contends that the Department should exclude material handling charges when deriving Agro Dutch's overhead ratio in the final results.

The COFCO entity also claims that when deriving Agro Dutch's SG&A ratio in the final results, the Department should offset Agro Dutch's SG&A expense by an amount for short-term interest income in accordance with the Department's practice. In support of its argument, the COFCO entity cites to CTVs from the PRC and accompanying Issues and Decision Memorandum at Comment 17.

Department's Position:

We have not adjusted Agro Dutch's overhead or SG&A ratios as requested by the respondent for the reasons stated below.

We have not treated material handling charges differently in the final results because there is no indication in Agro Dutch's 2005-2006 financial report that the material handling charges line item relates to material acquisition costs. Unlike in Carbon Steel Plate, Agro Dutch's financial report does not indicate whether the material handling charges line item also includes freight. Therefore, this line item expense may in fact only include charges associated with moving materials within the factory. Furthermore, we find the respondent's reference to Brake Rotors NSR1 not to be on point. In Brake Rotors NSR1, the Department indicated that it used Indian surrogate values to value all foreign inland freight and handling fees provided by NME suppliers and deducted those expenses from gross unit price. The Department's reference to handling fees in that case clearly related to brokerage and handling fees and, therefore, is not relevant to the

²⁹ Agro Dutch treats its "Material Handling Charges" as part of an expenditure category called "Manufacturing Expenses" in its profit and loss statement.

³⁰ Flex Foods' financial report does not contain an expense line item for material handling charges.

³¹ Flex Foods' financial report does not contain an income line item for "other interest income."

issue raised by the respondent in this review of whether or not material handling charges should be included in the overhead calculation.

We agree with the respondent that it is the Department's current practice to offset SG&A expenses by an amount for interest income if that income is short-term in nature (see, e.g., CTVs from the PRC at Comment 17). However, if the Department is unable to determine from the financial report data whether the income amount reported therein is short-term in nature, it is the Department's practice not to grant an interest income offset to the SG&A expenses. See, e.g., Wooden Bedroom Furniture from the People's Republic of China: Final Results of the 2004-2005 Semi-Annual New Shipper Reviews, 71 FR 70739 (December 6, 2006), and accompanying Issues and Decision Memorandum at Comment 8. In this review, we find that the Agro Dutch 2005-2006 financial report does not indicate whether the "other income" line item includes short-term interest income. Therefore, unlike in CTVs from the PRC, the Department in this review is not able to determine whether Agro Dutch earned short-term interest income based on the data contained in Agro Dutch's 2005-2006 financial report. Even if the Department inferred from data in the cash balance section of Agro Dutch's financial report that this company may have received short-term interest income, there is no indication in that report as to how much short-term interest income it actually received.

Comment 7: Method for Adjusting U.S. Price for Glass Jars and Caps Provided Free-of-Charge

In its questionnaire response, the COFCO entity substantiated its claim that Yu Xing received glass jars and caps free-of-charge from certain U.S. customers during the POR. Notwithstanding this fact, in the Preliminary Results, the Department included the costs of these free inputs in the NV calculation in accordance with section 773(c)(3) of the Act and consistent with its normal practice. However, because the COFCO entity demonstrated that it received the glass jars and caps free-of-charge, the Department also increased the U.S. prices for COFCO's sales of subject merchandise by the same per-unit Indian import values for glass jars and caps used in the NV calculation as a surrogate for COFCO's U.S. customers' expenditures for these items.

The COFCO entity states that although the Department's approach, to some extent, offsets the inclusion of the free items when calculating NV, it contends that there is a disparity between the manner in which the Department treated the free items in the NV and U.S. price calculations. Specifically, the COFCO entity claims that by including the values for glass jars and caps in the direct material costs prior to deriving the overhead, SG&A, and profit amounts in the NV calculation, the Department should have also increased the glass jars and caps amount by an additional amount for overhead, SG&A, and profit when including them in the U.S. price calculation. Although it recognizes that the Department has treated free-of-charge inputs in the same manner as described above in other NME cases,³² the COFCO entity claims that in this case

³² See, e.g., 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 (November 18, 2005).

there is no record evidence to suggest that Yu Xing or COFCO earned any profit by using the glass jars and caps their U.S. customers provided to them free-of-charge. Therefore, the COFCO entity argues that, like the NV calculation, the Department should also include in the U.S. price calculation an additional amount that corresponds to the increase in NV due to the surrogate profit ratio.

Department's Position:

Following our prior practice, we added the surrogate value for glass jars and lids provided free-of-charge to direct materials in the NV calculation, in accordance with section 773(c)(1) of the Act. See, e.g., Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 71509 (December 11, 2006), and accompanying Issues and Decision Memorandum at Comment 6 ("Folding Metal Tables"); and Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review, 70 FR 54361 (September 14, 2005), and accompanying Issues and Decision Memorandum at Comment 13. Consistent with the Department's treatment of free-of-charge inputs in prior cases, we also adjusted the U.S. price by adding the same per-unit values as calculated in the NV build-up for the customer-provided glass jars and lids. As noted in Folding Metal Tables, we employed the above-mentioned methodology to ensure that: (1) we follow the statute by including these FOPs in the NV; (2) we properly account for the non-inclusion of the customer-provided inputs in the U.S. price; and (3) we add the same amount to both the NV and U.S. price.

Therefore, consistent with Folding Metal Tables, we have not modified this methodology per the respondent's request because all inputs into the production process are being valued prior to the calculation of overhead, SG&A, and profit amounts, which are calculated based on ratios derived from the surrogate companies' financial reports. As such, the adjustment requested by the respondent is not contemplated under section 773(c)(3) of the Act and, thus, the Department is unable to make the requested adjustment.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review and the final weighted-average dumping margins for the reviewed firms in the Federal Register.

Agree ____

Disagree _____

David M. Spooner
Assistant Secretary
for Import Administration

(Date)