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Date: June 1, 2015

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: Issues and Decision Memorandum for the Final Results in
the 2013/2014 New Shipper Review

SUMMARY:

The Department of Commerce (the Department) analyzed a case brief submitted by Dezhou Kaihang Agricultural Science Technology Co., Ltd. (Dezhou Kaihang) and a rebuttal brief submitted by petitioner Monterey Mushrooms, Inc. (Petitioner) in the 2013/2014 new shipper review of the antidumping duty order covering certain preserved mushrooms from the People's Republic of China. Following the Preliminary Results,¹ and our analysis of the comments received, we made changes to the margin calculations for these final results (Final Results). We recommend that you approve the positions described in the "Discussion of the Issues" section of this Issues and Decision Memorandum.

BACKGROUND:

The Department published the Preliminary Results on January 22, 2015.² On March 13, 2015, the Department extended the deadline for issuing the Final Results by 60 days.³ On February 23, 2015, Dezhou Kaihang submitted its case brief.⁴ On March 19, 2015, Petitioner submitted a rebuttal brief.⁵

¹ See Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review; 2013/2014, 80 FR 3216, (January 22, 2015) (Preliminary Results).

² See Preliminary Results.

³ See Memorandum dated March 13, 2015 from Michael J. Heaney to Christian Marsh Re: Certain Preserved Mushrooms from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty New Shipper Review: 2013-2014.

⁴ See February 23, 2015 letter from Dezhou Kaihang to Secretary of Commerce Re: Certain Preserved Mushrooms from the People's Republic of China; Submission of Case Brief (Dezhou Kaihang Case Brief).

⁵ See March 19, 2015 letter from Monterey Mushrooms to Secretary of Commerce from Monterey Mushrooms (Petitioner Rebuttal Brief).



Scope of the Order

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The certain preserved mushrooms covered under this order are the species Agaricus bisporus and Agaricus bitorquis. “Certain Preserved Mushrooms” refers to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including, but not limited to, cans or glass jars in a suitable liquid medium, including, but not limited to, water, brine, butter or butter sauce. Certain preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are “brined” mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.⁶

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

The merchandise subject to this order is classifiable under subheadings: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153, and 0711.51.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of this order is dispositive.

Discussion of the Issues

Comment 1: Metal Cans

Dezhou Kaihang contends that the Department incorrectly valued cans in the Preliminary Results. Dezhou Kaihang asserts that in its factors of production (FOP) response, it reported can usage on a per-piece basis (i.e., the number of cans needed to produce one kilogram of drained mushrooms). However, Dezhou Kaihang argues that the Department erroneously utilized a per-kilogram (i.e., the number of kilograms of cans needed to produce one kilogram of drained mushrooms) Global Trade Atlas (GTA) value for this production input in its normal value (NV) calculation.⁷

Petitioner objects to using a per-piece method to represent the surrogate value of cans. Petitioner argues that a per-piece Colombian GTA value represents “the simple average of the number of

⁶ 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).

⁷ See Dezhou Kaihang Case Brief at 2-3.

cans imported into Colombia during the POR and their reported value.’⁸ Petitioner further argues that such a per-piece valuation is not specific to the actual can weight which was utilized by Dezhou Kaihang. For that reason, Petitioner argues that the Department’s practice has been to value factors on a per-kilogram basis, and has only used per piece pricing data if the data were specific to the size of the can (i.e., it only contained pricing data for a 68 ounce can). Consistent with this practice, Petitioner asserts that the Department’s NV calculation should account for the actual weight of the cans which Dezhou Kaihang utilized, which would require use of a per-kilogram consumption rate.

Based upon the data provided in Dezhou Kaihang’s June 16, 2014 Section C Response, Petitioner believes that there is a way to extrapolate a per-kilogram usage amount. In particular, Petitioner estimates the internal content weight of Dezhou Kaihang’s can to be 2.925 kilograms. Petitioner further notes that the number of cans utilized by Dezhou Kaihang was reported by Dezhou Kaihang in its May 23, 2014 Section A Response, as was the total can weight. Petitioner asserts that in lieu of accepting a per-piece value for can usage, the Department should use the data submitted by Dezhou Kaihang in its Sections A and C responses to estimate a per-kilogram usage amount for Dezhou Kaihang’s usage of cans.⁹ Specifically, using data from Dezhou Kaihang’s shipment and packing documentation, Petitioner claims that it is possible to subtract from the total weight the weight of the mushrooms and the soup content. The remaining amount, according to Petitioner, relates to the can and lid material and can be used to derive a per-kilogram consumption rate. This rate can in turn be valued using GTA data also reported on a per-kilogram basis.

Department’s Position

We agree in part with both Dezhou Kaihang and Petitioner. We agree with Petitioner that, in valuing can usage, our customary and preferred methodology is to base the calculation on a per-kilogram consumption amount. This allows us to value cans of different sizes in a consistent manner.

However, Dezhou Kaihang has reported can usage only on a per-piece basis, and we did not ask the company to report on a per-kilogram basis. As such, there are no specific per-kilogram consumption amounts for cans on the record of this review.¹⁰ In the absence of this information, Petitioner has attempted to construct a per-kilogram usage amount for Dezhou Kaihang. However, it is unclear from where Petitioner derives support for some of the assumptions upon which Petitioner’s calculations are based and, therefore, whether Petitioner’s attempt to estimate a per-kilogram consumption amount for cans accurately represents the can weight employed by Dezhou Kaihang. Specifically, we are unable to determine whether the weight amount that Petitioner utilized to represent the “soup” contained in the can, does indeed capture the soup weight of the merchandise shipped by Dezhou Kaihang.¹¹ Furthermore, it does not appear that

⁸ See Petitioner Rebuttal Brief at 1.

⁹ *Id.* at 5, citing Dezhou Kaihang June 16, 2014 Section C Response at C-8 and Dezhou Kaihang May 23, 2014 Section A Response at Exhibit A-4.

¹⁰ See letter from Dezhou Kaihang to Secretary of Commerce: Re: “Certain Preserved Mushrooms from China: Submission of Dezhou Kaihang’s Section C and D Response,” dated June 16, 2014 (Dezhou Kaihang Section C and D Response) at Exhibit D-4 at exhibit S-6.

¹¹ See Petitioner Rebuttal Brief at 5, citing Dezhou Kaihang June 16, 2014 Section C Response at C-8 and Dezhou Kaihang May 23, 2014 Section A Response at Exhibit A-4.

we have sufficient information on the record to reliably construct a per-kilogram consumption rate on our own. Given these circumstances, in this review we have utilized the per-piece consumption amount reported by Dezhou Kaihang in these Final Results.¹² In a change from the Preliminary Results, we have also used the per-piece surrogate value that Dezhou Kaihang placed on the record of this review, as we agree that it is distortive to use a per-kilogram surrogate value to value a piece-based consumption rate.¹³

Comment 2: Coal

Dezhou Kaihang asserts that the record establishes that it used steam coal in production of the subject merchandise.¹⁴ Dezhou Kaihang notes that in its FOP database, it identified Chinese HTS item 2701.11 as the HTS number under which its steam coal was properly classified, and it placed Colombian import statistics for that same HTS subheading on the record of this new shipper review. Dezhou Kaihang maintains that this surrogate value, corresponding to anthracite coal, is more specific to the steam coal input that it utilizes than the Colombian HTS value surrogate value for bituminous coal used in the Preliminary Results. Dezhou Kaihang submits that there is no basis in the administrative record for assigning its steam coal input a value associated with bituminous coal, as bituminous coal is not mentioned anywhere in the record. Dezhou Kaihang contends that the Department should revise its Final Results to reflect the anthracite coal utilized by Dezhou Kaihang in production of the subject merchandise.

Dezhou Kaihang further asserts that the administrative record establishes that it utilized steam coal with a useful heat value of 5,000 degrees or less in the production process. Dezhou Kaihang cites to Longkou Haimang, Zhengzhou Harmoni, Hebei Metal, and Taian Ziyang as precedent that establish the importance of choosing surrogate values that are specific to the input in question.¹⁵ Dezhou Kaihang further argues that the value for bituminous coal is “aberrational” because it reflects “a miniscule import volume that is both statistically and commercially insignificant.”¹⁶ Dezhou Kaihang also argues that the Department can only rely on GTA values after it has concluded that the import statistics reflect “commercially and statistically significant quantities.”¹⁷ In this case, Dezhou Kaihang asserts that the 2521 kilograms of bituminous coal that entered under Colombian HTS 2701.12 during the 13 months that comprise this POR

¹² See Memorandum to the File from Michael J. Heaney “Analysis of Data Submitted by Dezhou Kaihang Agricultural Science Technology Co., Ltd (Dezhou Kaihang) in the Final Results of New Shipper Review of the Antidumping Duty Order on Certain Preserved Mushrooms from the People’s Republic of China (PRC)” dated June 1, 2015 at 2 (Dezhou Kaihang Final Analysis Memorandum)

¹³ Id.

¹⁴ See Dezhou Kaihang Case Brief at 4 citing its June 23, 2014 Section D Response at Exhibit 2.

¹⁵ See Longkou Haimeng Mach. Co. v. United States, 581 F. Supp. 2d 1344, 1363 (CIT 2008) (Longkou Haimeng); see also Zhenzhou Harmoni Spice Co., Ltd. v. United States, 617 F. Supp. 2d 1281, 1297 (CIT 2009) (Zhengzhou Harmoni); see also Hebei Metal & Minerals Imp. & Exp. Corp. v. United States, 366 F. Supp. 2d 1264, 1193 and n3 (CIT 2004) (Hebei Metal); see also Taian Ziyang Food Company, Ltd. v. United States, 783 F. Supp. 2d 1292, 1330 (CIT 2011) (Taian Ziyang).

¹⁶ See Dezhou Kaihang Case Brief at 6.

¹⁷ Id. at 6-7 citing to Shanghai Foreign Trade Enterprises Co., Ltd. v. United States, 318 F. Supp. 2d. 1339, 1352 (CIT 2004) and to Xinjiaimei Furniture (Zhangzhou) Co., Ltd. v. United States, 37 CIT Slip. Op. 13-30 (March 12, 2013).

constitute a small and commercially insignificant amount when compared to the amount of coal consumed by Dezhou Kaihang's grower and processor, a small company in rural China.¹⁸

Petitioner asserts that Department precedent supports continued use of bituminous coal. Petitioner cites to Activated Carbon, wherein the Department determined that steam coal having a useful life of 4,500 kcal (as Dezhou Kaihang reported) had properties that made steam coal analogous to bituminous coal.¹⁹

Department's Position

We agree with Dezhou Kaihang that based upon information that is on the record of this review, and pursuant to section 773(c)(1) the Act, GTA data for anthracite coal represents the best available information for valuing its steam coal input. The Department's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, surrogate values (SVs) which are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.²⁰

We consider both sets of data on the record (for anthracite coal, GTA data for Colombian HTS item 2701.11, and for bituminous coal, GTA data for Colombian HTS item 2701.12) to be equally representative of broad market averages, publicly available, contemporaneous with the POR, and exclusive of taxes and duties. However, based on the record presently before the Department, we agree with Dezhou Kaihang that information on the record does not demonstrate that Dezhou Kaihang's steam coal input is comparable to bituminous coal. Although Petitioner cites Activated Carbon as support for continuing to value steam coal using a SV for bituminous coal, the specific facts underlying the Department's decision in that case are not on the record of this case, and the source used to value steam coal in Activated Carbon was not GTA data.²¹ Further, we note that Dezhou Kaihang has submitted an FOP database that expressly references HTS 2701.12 (an HTS item for anthracite coal) as the HTS subheading applicable to its steam coal input,²² and both Petitioner and Dezhou Kaihang submitted surrogate values for anthracite coal. In these circumstances, we find it appropriate to value Dezhou Kaihang's steam coal input using a SV for anthracite coal. We have revised our Final Results calculation accordingly.²³

Comment 3: Labor Cost

Dezhou Kaihang notes that in the Preliminary Results, the Department used the International Labor Organization (ILO) Chapter 6A sub-classification 15 ("manufacture of food products and

¹⁸ Id. at 7.

¹⁹ See Petitioner Rebuttal Brief at 8 citing First Administrative Review of Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review 74 FR 57955 (November 10, 2009) and Accompanying Issues and Decision Memorandum at Comment 18 (Activated Carbon).

²⁰ See, e.g., Fuwei Films (Shandong) Co. v. United States, 837 F. Supp. 2d 1347, 1350-51 (CIT 2012) (citing Certain Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 40485 (July 15, 2008), and accompanying Issues and Decision Memorandum at Comment 10); Electrolytic Manganese Dioxide from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 48195 (August 18, 2008), and accompanying Issues and Decision Memorandum at Comment 2).

²¹ See Activated Carbon, and accompanying Issues and Decision Memorandum at Comment 18.

²² Dezhou Kaihang June 16, 2014 Section D Response at Exhibit D-5.

²³ See Dezhou Kaihang Final Analysis Memorandum at 2.

beverages”) to represent labor expenses. While Dezhou Kaihang believes that this rate may be appropriate for valuing labor FOPs related to the processing of fresh mushrooms and packing of preserved mushrooms for shipment, Dezhou Kaihang asserts that this same rate is inappropriate for use in valuing labor associated with the cultivation of fresh mushrooms. In lieu of sub-classification 15, Dezhou Kaihang asserts that the Department should use data from Chapter 5A of the ILO Statistics (“monthly wages for workers employed in the agricultural, hunting, and fishing sector”) to value the labor employed in cultivating fresh mushrooms.²⁴ Dezhou Kaihang argues that these data are more specific to the direct and indirect labor FOPs reported by Dezhou Kaihang for mushroom cultivation, and it is capable of being applied to the POR. Accordingly, Dezhou Kaihang asserts that the Department should use the Chapter 5A data that it provided in its December 15, 2014 surrogate value submission, to value the labor component that is attributable to growing fresh mushrooms.²⁵ Dezhou Kaihang asserts that using these data is particularly important because the labor incurred in the growing stage greatly exceeds the labor incurred in the canning and processing stage.²⁶

Because labor devoted to cultivation of mushrooms exceeds that devoted to canning and processing mushrooms, Dezhou Kaihang asserts that use of the sub-classification 15 data is “distortive.”²⁷ Dezhou Kaihang further asserts that the Department could derive separate amounts for the labor incurred in the cultivation of mushrooms as opposed to the labor incurred in the canning and processing of mushrooms.²⁸ Dezhou Kaihang asserts that the Department should use these data to assign a separate surrogate value to the labor incurred in the cultivation of fresh mushrooms.

Petitioner argues that Dezhou Kaihang has failed to separately quantify the factor usage rate for growing fresh mushrooms and for processing mushrooms.²⁹ Petitioner further asserts that Dezhou Kaihang has “simply reported total direct and indirect labor hours for all activities (i.e., fresh mushroom production and the subsequent canning operations.”³⁰ Additionally, on “substantive grounds” Petitioner disputes Dezhou Kaihang’s contention that Chapter 5A data are more specific to Dezhou Kaihang’s labor usage than are Chapter 6A data.³¹ Petitioner notes that Dezhou Kaihang’s supplier (Shandong Fengyu Edible Fungus Co., Ltd. (Shandong Fengyu)) is engaged in food production. As such, Petitioner argues that:

{W}age rates proposed by Dezhou Kaihang—reflecting wages paid to field workers, hunters, and fishers—are not appropriately specific to the activities performed by Shandong Fengyu’s workers, who are engaged in the mass production of edible mushrooms, a food stuff whether sold and consumed fresh or preserved.³²

²⁴ See Dezhou Kaihang Case Brief at 9.

²⁵ Id. at 9 citing Dezhou Kaihang December 15, 2014 Surrogate Value submission at Exhibit 8.

²⁶ Id. at 9-10.

²⁷ Id. at 10.

²⁸ Id. at 9

²⁹ See Petitioner Rebuttal Brief at 8-9.

³⁰ Id. at 9.

³¹ Id.

³² Id. at 8.

Indeed, Petitioner submits that the production of fresh mushrooms in growing sheds shares many common traits with traditional manufacturing operations and is distinct from agricultural operations. While Dezhou Kaihang asserts that the agricultural activities covered under Chapter 5A are more similar to the cultivation of fresh mushrooms, Petitioner asserts that Dezhou Kaihang ultimately has provided no evidence to support this claim nor has it engaged in any comparative analysis of the types of activities covered in Chapters 5A and 6A. Accordingly, there is no basis for finding Chapter 5A data to be more specific.

Petitioner further argues that use of Chapter 5A data poses other problems in valuing labor inputs. Citing Labor Methodologies, Petitioner contends that Chapter 5A data fail to include many employee costs (e.g., workers' meals, housing, social security expenditures, taxes on labor costs, etc.).³³ Petitioner asserts that such employee benefits which are reflected in Chapter 6A data but not in Chapter 5A data "poses a particular problem" in situations like the instant case where wages and benefits form a large component of total labor cost and where worker benefits cannot be separated from the labor wage rates included in surrogate financial statements.³⁴

Department's Position

We continue to maintain that Chapter 6A data represent the best available information for valuing labor pursuant to section 773(c)(1) of the Act. Under the Department's current labor methodology, it is the Department's preference to value labor using industry-specific data reported by the ILO under Chapter 6A, which reflects all costs related to labor (i.e., wages, benefits, housing, training, etc.), based on the rebuttable presumption that ILO Chapter 6A data better accounts for all direct and indirect labor costs.³⁵

Here, we have Chapter 6A data on the record for labor described as "Manufacture of Food Products and Beverages."³⁶ We also have Chapter 5A data on the record, which covers labor activities related to "Agriculture Hunting and Forestry."³⁷ The record contains no other information regarding the contents of these sources.

We do not consider the Chapter 5A data proffered by Dezhou Kaihang to be a better source than our preferred labor valuation source, Chapter 6A data. First, we note that Dezhou Kaihang cites no evidence to support their bare assertion that Chapter 5A data present a better surrogate value source to value growing labor than the Chapter 6A data. Dezhou Kaihang has not meaningfully engaged in any comparative analysis of the types of activity covered under both data sources, nor has Dezhou Kaihang explained or cited any evidence to support a conclusion that their growing operations more closely parallel those covered under the Chapter 5A data (i.e., "Agriculture, Hunting and Forestry" activities) than the Chapter 6A data (i.e., "Manufacture of Food Products and Beverages"). The manufacturing operations described by Dezhou Kaihang in its Section D response comprise both growing and industrial processing, and in the Department's view, this

³³ Id. at 10 citing Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor; Request for Comment, 76 FR 9544, 9545 (February 18, 2011) (Labor Methodologies).

³⁴ Id.

³⁵ See Labor Methodologies, 76 FR at 9545.

³⁶ See July 17, 2014 letter from Monterrey Mushrooms to Secretary of Commerce Re: 2013/2014 New Shipper Review of Certain Preserved Mushrooms from the People's Republic of China at exhibit 18.

³⁷ See December 15, 2014 letter from Dezhou Kaihang to Secretary of Commerce Re: Certain Preserved Mushrooms at Exhibit 8.

process in its entirety constitutes the “manufacture of food products.” We note additionally that Dezhou Kaihang does not dispute that Chapter 6A data are an appropriate valuation source for at least a portion of its labor FOP.

Moreover, Dezhou Kaihang has provided no means in its Section D response for segregating out the labor for growing distinct from that of processing.³⁸ Specifically, while Dezhou Kaihang has separately reported labor consumption rates for growing mushrooms and processing mushrooms,³⁹ those are mere categorizations and the data proffered by Dezhou Kaihang do not establish a breakdown, supported by record evidence, of what amount, if any, of Dezhou Kaihang’s “growing” labor would be assigned a surrogate value for “agricultural” related labor functions as opposed to “industrial” labor functions.

Accordingly, we find that nothing on the record rebuts the presumption that ILO Chapter 6A data better accounts for all direct and indirect labor costs and constitutes the best available information on the record for valuing Dezhou Kaihang’s labor FOP. Thus, in these Final Results, we have continued to use Chapter 6A data to value Dezhou Kaihang’s labor expense.

Comment 4: Surrogate Financial Ratios

Dezhou Kaihang asserts that the financial statement of Setas Colombianas S.A. “is insufficiently detailed to enable the Department to accurately calculate the surrogate financial ratios.”⁴⁰ Dezhou Kaihang argues that because note 19 to that statement (which relates to the cost of goods sold) has only one line item that addresses the manufacture of preserved mushrooms, it is impossible for the Department to adequately distinguish between raw material, labor and energy production costs on one hand and overhead costs on the other.⁴¹ Dezhou Kaihang further contends that note 20 to the financial statement (which details operating costs under administrative selling expenses) is also insufficiently detailed to distinguish Setas Colombianas S.A.’s production expenses from overhead and SG&A expenses.⁴²

Dezhou Kaihang further asserts that if the Department continues to rely on the financial statement of Setas Colombianas, it must 1) classify the “fee” reported under “Administrative Expenses” in the financial statement as an administrative expense rather than an overhead expense, 2) exclude taxation expenses reported under “Administrative Expenses” in the financial statement from the pool of SG&A expenses, 3) exclude “services” reported under “Administrative Expenses” from manufacturing overhead expenses based upon Respondents’ assertion that these services most likely relate to payment of freight-in expenses and should be classified as a manufacturing labor and energy (MLE) expense, 4) exclude “leases” reported under “Administrative Expenses” from the pool of manufacturing overhead expenses and instead classify these as an SG&A expense, 5) remove “depreciation” reported under “Administrative Expenses” as an element of overhead expenses (because Respondents contend that depreciation of plant and equipment has already been taken into account, depreciation of administrative assets should be reported as an SG&A depreciation expense), 6) assign the “various” expenses reflected

³⁸ See Dezhou Kaihang Section C and D Response at exhibit D-1.

³⁹ Id. at exhibit S-5.

⁴⁰ See Dezhou Kaihang Case Brief at 10.

⁴¹ Id.

⁴² Id.

under “Administrative Expenses” only once to SG&A expense rather than both as an MLE expense and overhead, and 7) altogether exclude from the financial ratios “services” as an element of SG&A expenses based upon the size of the “services” expense and Respondents’ assertion that these expenses likely relate to freight charges.⁴³

Petitioner contends that the financial statement of Setas Colombianas remains an appropriate source of surrogate values. Petitioner notes that in past reviews, the Department utilized (without receiving any objection from Respondents) the financial statements of Setas Colombianas.⁴⁴ Petitioner further argues that note 19 to Setas Colombianas’ financial statement is only a part of the company’s report that provides information on the company’s cost of goods sold (COGs). Petitioner further argues that note 19 reports the costs for “agricultural inputs such as spawn, calcium, casing soil, etc.”⁴⁵ With respect to labor costs, Petitioner further argues Petitioner further argues note 20 to Setas Colombianas S.A.’s financial statement combined with the social report section establishes that the company sustained 10,394,000 Colombian pesos in total labor costs during the year and spent 1,500,174 and 2,347,245 Colombian pesos on administrative and sales staff, respectively. As a result, the balance, 7,956,754 Colombian pesos, must relate to factory employee costs, which is another element of COGs.⁴⁶ Petitioner also notes that Setas Colombianas S.A.’s cash flow statement and note 20 to the financial statement establishes that the company had total annual depreciation costs of 2,939,736 Colombian pesos during the year, of which 36,641 and 49,556 Colombian pesos related to depreciation on administrative assets and sales/marketing asserts. As a result, the balance, 2,855,539 pesos, relates to COGs and this proportion of the total remaining COGs relate to production overhead.⁴⁷

Regarding Dezhou Kaihang’s proposed adjustment to administrative “fees,” “leases” and “various” charges, Petitioner has no objection to classifying these specific expenses as SG&A rather than overhead expenses. Petitioner also agrees that “various” administrative expenses should not be treated as manufacturing labor and energy (MLE) expense.⁴⁸ However, Petitioner opposes recalculation of Setas Colombianas’s tax expense. Petitioner cites to 2006-2007 Chlorinated Isocyanurates,⁴⁹ wherein the Department determined that many taxes should be included in calculating surrogate financial ratios except income taxes, value-added taxes (VAT), or excise taxes. Petitioner further argues that the tax expense in question is reported separately from Setas Colombianas’ income taxes in the financial statement.⁵⁰ And because there is no evidence suggesting that the taxes in question relate to “excise taxes or VAT,” the Department should continue to include the line item related to taxes in the SG&A numerator.⁵¹

⁴³ Id. at 11-12.

⁴⁴ See Certain Preserved Mushrooms From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012 78 FR 15833, (March 12, 2013) unchanged in Certain Preserved Mushrooms From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012 78 FR 34037 (June 6, 2013) (2011-2012 Mushroom Review).

⁴⁵ See Petitioner Rebuttal Brief at 12.

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ Id. at 13-14.

⁴⁹ See Chlorinated Isocyanurates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review 2006-2007 and Accompanying Issues and Decision Memorandum at Comment 12 73 FR 52645 (September 10, 2008) (2006-2007 Chlorinated Isocyanurates)

⁵⁰ See Petitioner Rebuttal Brief at 15.

⁵¹ Id.

Regarding whether to treat services as an MLE expense (third proposed correction above), Petitioner asserts that there exists no record evidence suggesting that these expenses represent freight-in expenses of purchased raw material pertaining to the “production of goods sold.”⁵² Citing Activated Carbon, Petitioner notes that rules of accounting dictate that “raw materials inventory on a company’s balance sheet is to be valued at a cost that includes all necessary expenditures to acquire such materials and bring them to the desired condition and location for use in the manufacturing process,” and the valuation “includes not only the purchase price of the raw material,” but also freight-in expenses.⁵³ As such, there is no reason to consider “Administrative Services” as reflective of freight-in expenses, given that freight-in expenses are already reflected in the raw materials inventory.

Regarding “selling services” (seventh proposed correction above), Petitioner again argues that there is no evidence identifying that these expenses are related to freight. Petitioner argues that it is “more reasonable” to assume that such expenses relate to the purchase of varied support services for Setas Colombianas S.A.’s sales and marketing offices.⁵⁴ Based upon Setas Colombianas S.A.’s “broad” classification of these expenses, Petitioner asserts that these expenses are appropriately included as an element of SG&A expenses.⁵⁵ According to Petitioner, the Department does not reclassify or “go behind” an expense reported by the surrogate company absent specific information enumerating the components of an expense (citing Activated Carbon).

Department’s Position

We continue to find that the financial statements of Setas Colombianas S.A. represent the “best available information” on the record for valuing surrogate financial ratios within the meaning of section 773(c)(1) the Act. The Department’s preference is to rely on surrogate financial statements from the preferred surrogate country that are from a producer of identical or comparable merchandise, contemporaneous with the POR, and publicly available.⁵⁶ Consistent with this practice, we find that the financial statement of Setas Colombianas S.A. is reflective of the product in question (because Setas Colombianas S.A. is itself a mushroom producer, and thus a producer of identical merchandise), publicly available, and contemporaneous with the POR.⁵⁷ Moreover, we note that the Department has used the financial statements of Setas Colombianas S.A. to calculate surrogate financial ratios in both the 2011-2012 Mushroom Review and the 2010-2011 Mushroom Review of this proceeding.⁵⁸ While Respondents claim that the financial

⁵² Id. at 15-16.

⁵³ Id. citing Certain Activated Carbon From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 70163 (November 25, 2014) and Accompanying Issues and Decision Memorandum at Comment 5 (Activated Carbon).

⁵⁴ Id. at 16.

⁵⁵ Id. at 17 citing Activated Carbon at Comment 5

⁵⁶ See Certain Steel Nails From the People’s Republic of China: Final Results of the Fourth Antidumping Duty Administrative Review, 79 FR 19316 (April 8, 2014), and accompanying Issues and Decision Memorandum at Comment 2.

⁵⁷ See, e.g., First Administrative Review of Certain Polyester Staple Fiber From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 75 FR 1336 (January 11, 2010), and accompanying Issues and Decision Memorandum at Comment 1.

⁵⁸ See 2011-2012 Mushroom Review Preliminary Results Issues and Decision Memorandum at 15 (unchanged in the Final Results); see also Certain Preserved Mushrooms From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission in Part; 77 FR 13264, 13269 (March 6, 2012) (unchanged

statement is insufficiently detailed, we disagree and in any event note that neither Respondents nor any other party has put any additional financial statement data on the record of this review which could serve as an alternative source of surrogate financial ratio data. Accordingly, we have continued to utilize the Setas Colombianas S.A. financial statement data in these Final Results.

Regarding, the reclassification of certain financial expenses proposed by Respondents, we agree that Setas Colombianas S.A.'s "fees," "leases," and "various" expenses should be classified as SG&A expenses rather than overhead expenses. Because each of these expenses relate to the general expenses of Setas Colombianas S.A. rather than to overhead expenses, we have reclassified the line items relating to "fees," "leases," and "various" as SG&A expenses in these Final Results.⁵⁹ Additionally, we also agree with Respondents that there is nothing in Setas Colombianas S.A.'s "various" expenses that would tie these expenses to Setas Colombianas S.A.'s MLE expense. Therefore, we have removed these "various" expenses from the pool of MLE expenses used to calculate surrogate financial ratios employed in the Final Results.⁶⁰

However, in these Final Results we disagree with Respondents' assertion that taxes should be removed from the pool of administrative expenses incurred by Setas Colombianas S.A. As noted in 2006-2007 Chlorinated Isocyanurates, and consistent with the position taken in Polyethylene Retail Carrier Bags, it is the Department's "practice to include rates and taxes in the surrogate ratio for SG&A expenses unless the taxes are related to the income or VAT category."⁶¹ Though our general practice is to select surrogate values on a tax neutral basis to create a tax neutral comparison, financial statements represent the overall operations of a company, which can include tax liabilities in the normal course of operation. Therefore, we have determined that inclusion of these taxes when not related to income, VAT, or excise taxes accurately reflects the financial experience of a surrogate company.

From our review of Setas Colombianas S.A.'s financial statements, we find that income taxes are clearly accounted for elsewhere in the financial statement, and we find nothing in the line item for taxation included within administrative expenses that individually itemizes the taxes in question or that ties the amount for taxes to income, VAT, or excise taxes. Moreover, Respondents have provided no additional information to support their speculation that the taxes that they incurred should be removed from the financial ratio analysis employed by the Department, nor do Respondents cite any evidence that the line item for "taxes" in the financial statements is inclusive of income, VAT, or excise taxes. Accordingly, in these Final Results, we have treated the tax item in question in the same manner that was employed in our Preliminary Results.

in 2010-2011 Mushroom Review).

⁵⁹ See Dezhou Kaihang Final Analysis Memorandum at Attachment 1.

⁶⁰ Id.

⁶¹ See 2006-2007 Chlorinated Isocyanurates and Accompanying Issues and Decision Memorandum at Comment 5 citing Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of the Administrative Review and Partial Rescission of Review, 73 FR 14216 (March 17, 2008) and Accompanying Issues and Decision Memorandum at Comment 2 (Polyethylene Retail Carrier Bags); see also Certain Tissue Paper Products From the People's Republic of China: Final Results and Partial Rescission of the 2007-2008 Antidumping Duty Administrative Review and Determination Not to Revoke in Part, 74 FR 52176 (October 9, 2009) and Accompanying Issues and Decision Memorandum at Comment 6.

We also disagree with Respondents' claims that the "services" expenses reported under "Selling Expenses" and "Administrative Expenses" should be removed from the SG&A calculation and the manufacturing overhead calculation, respectively. There is no evidence in this review that would tie any of these "services" to freight-in or to other freight-related expenses, and Respondents have cited no support for their contrary propositions. Moreover, with respect to "services" classified under "Administrative Expenses," we agree with Petitioner that general accounting practice dictates that raw materials inventory on a company's balance sheet are generally "valued at a cost that includes all necessary expenditures to acquire such materials and bring them to the desired condition and location for use in the manufacturing process," and the valuation "includes not only the purchase price of the raw material," but also freight-in expenses.⁶² Accordingly, there is no reason to consider "services" classified under "Administrative Expenses" to reflect freight-in expenses. We thus find without merit Respondents' assertion that these "services" expense were "double counted" by virtue of their inclusion in the pool of Setas Colombianas S.A.'s SG&A expenses.

Finally, we also disagree with the reclassification of depreciation expense proposed by Respondents. Based upon the nature of the depreciation expense at issue here, we find it reasonable to assign both the 2,855,539 and 34,641 depreciation amounts to overhead. As Petitioner has noted, Setas Colombianas S.A.'s cash flow statement and note 20 to the financial statement establish that the company had total annual depreciation costs of 2,939,736 Colombian pesos during the year, of which 34,641 and 49,556 Colombian pesos, respectively, related to depreciation on administrative assets and sales/marketing assets. Moreover, the remaining pool of depreciation expense is not listed as elements of either COGs or SG&A. Additionally, there is no evidence that the 34,641 depreciation expense which is listed in note 20 as "Operating Expense" depreciation expense comes from the same pool of expenses as the 2,855,539 amount of expense that is included within manufacturing overhead. Thus, we maintain that depreciation expenses not reported as operational costs or traceable to sales or direct manufacturing activities are classified within overhead. We therefore continue to find it reasonable to assign to overhead both the 2,855,539 amount and the 34,641 depreciation amount included in note 20 to Setas Colombianas' financial statements.

⁶² See Activated Carbon, at Accompanying Issues and Decision Memorandum at Comment 5.

Recommendation:

Based on our analysis of the comment received, we recommend adopting the positions set forth in the "Department's Position" section, above. If this recommendation is accepted, we will publish these Final Results, including the final dumping margins for all companies subject to this review, in the Federal Register.

Agree _____ Disagree _____

Ronald K Lorentzen
Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

June 1, 2015
Date