

warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(2)(C) of the Act: (1) The cash-deposit rate for Palini will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not covered by this review, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered by this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash-deposit rate will be 7.85 percent, the all-others rate established in the LTFV. *See Amended Final and Orders.* These cash-deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402.(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 28, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-851]

Certain Preserved Mushrooms from the People's Republic of China: Partial Rescission and Preliminary Results of the Sixth Administrative Review

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

SUMMARY: The Department of Commerce ("the Department") is currently

conducting the sixth administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China ("PRC") covering the period February 1, 2004, through January 31, 2005. This review covers imports of subject merchandise from four manufacturers/exporters: Raoping Yucun Canned Foods Factory ("Raoping Yucun"), Primera Harvest (Xiangfan) Incorporated ("PHX"), Gerber Food (Yunnan) Co., Ltd. ("Gerber") and Guangxi Yulin Oriental Food Co., Ltd. ("Guangxi Yulin"). We are preliminarily rescinding the review with respect to Green Fresh Foods (Zhangzhou) Co., Ltd. ("Green Fresh").

We preliminarily find that Yucun sold subject merchandise at less than normal value ("NV") during the period of review ("POR"). In addition, we find that adverse facts available ("AFA") are appropriate for PHX, Gerber and Guangxi Yulin. If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries in accordance with these results. We invite interested parties to comment on these preliminary review results and will issue the final review results no later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: March 6, 2006.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva or Paul Walker, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3208 or 202 482-0413, respectively.

SUPPLEMENTARY INFORMATION:

Case History

General

On February 19, 1999, the Department published in the **Federal Register** the antidumping duty order on certain preserved mushrooms from the PRC. *See Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms From the People's Republic of China*, 64 FR 8308 (February 19, 1999) ("Mushrooms Order").

In response to requests from the Coalition for Fair Preserved Mushroom Trade (the "Petitioner"), PHX, Raoping Yucun, Gerber and Green Fresh, and in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the "Act"), and section 351.214(c) of the Department's regulations, on March 23, 2005, the Department initiated the sixth

administrative review of certain preserved mushrooms from the PRC on 30 companies. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 70 FR 14643 (March 23, 2005). On June 29, 2005, the Petitioner filed a timely letter withdrawing its request for review for 25 of the 30 companies. On July 21, 2005, the Department rescinded the review with respect to these 25 companies.¹ *See Certain Preserved Mushrooms from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 42038 (July 21, 2005).

On March 30, 2005, the Department issued antidumping duty questionnaires to Raoping Yucun, PHX, Gerber, Guangxi Yulin and Green Fresh.

On April 13, 2005, the Department provided all interested parties the opportunity to submit information pertinent to selecting a surrogate country and valuing factors of production for this administrative review.

On October 6, 2005, the Department extended the time limit for the preliminary results of this administrative review from October 31, 2005 to February 28, 2006. *See Notice of Extension of the Preliminary Results of the Administrative Antidumping Duty Review: Certain Preserved Mushrooms from the People's Republic of China*, 70 FR 58381 (October 6, 2005).

Gerber

On March 25, 2005, Gerber stated that it had no shipments of subject merchandise during the POR. However, the Department obtained information from CBP that indicated Gerber may have had shipments during the POR and on October 5, 2005, the Department sent Gerber a letter asking for clarification of its no shipment response given the CBP data obtained by the Department. On October 30, 2005, Gerber notified the Department that it would no longer participate in this review.

Green Fresh

On May 6, 2005, Green Fresh requested clarification from the Department regarding its one shipment of subject merchandise to the United States during the POR. Specifically, Green Fresh requested whether one shipment which did not enter during the POR was subject to this administrative review. On May 18, 2005, the Department notified Green

¹ The list of the 30 companies initiated for an administrative review is available at 70 FR 14647 (March 23, 2005).

Fresh that, because Green Fresh's single shipment of subject merchandise entered the United States after the POR and that the sale of this single shipment was made to the first unaffiliated U.S. customer after the POR, this shipment would be properly reviewed in the next administrative review in accordance with section 351.213(e)(1) of the Department's regulations. See the Department's May 18, 2005, letter to Green Fresh.

Guangxi Yulin

On June 30, 2005, Guangxi Yulin notified the Department that it would no longer participate in this review.

PHX

On May 27, 2005, PHX submitted its response to the Department's antidumping duty questionnaire.² On June 3, 2005, the Department notified PHX that it had omitted electronic versions of the sales and factors of production ("FOP") databases. The Department requested that PHX file the omitted databases by June 8, 2005. See *Memorandum to the File from Amber Musser, Case Analyst, 6th Administrative Review of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China: Regarding Telephone Call with Ms. Lizbeth Levinson of Garvey Schubert Barer*, dated June 6, 2005. On August 5, 2005, PHX submitted its response to the Department's first supplemental sections A, C & D questionnaire. Additionally, PHX submitted several exhibits on August 10, 2005, which PHX omitted from its August 5, 2005, response. On November 14, 2005, PHX submitted its response to the Department's second supplemental section A questionnaire. On November 21, 2005, PHX submitted its response to the Department's second supplemental sections C & D questionnaire. Additionally, on November 22, 2005, PHX submitted exhibits which it had omitted from its November 21, 2005, response. On November 29, 2005, PHX filed a revised FOP database corresponding to the questionnaire response dated November 21, 2005.

On November 30, 2005, the Department issued a third supplemental sections A, C & D questionnaire regarding deficiencies in PHX's previous supplemental responses. PHX did not submit a response to this supplemental questionnaire. On

December 5, 2005, the Department issued a letter to PHX discussing various continued deficiencies in PHX's responses, providing an opportunity for PHX to correct these deficiencies by December 9, 2005. On December 9, 2005, PHX requested an extension to correct its deficiencies, which the Department granted for a new deadline of December 12, 2005. On December 12, 2005, PHX advised the Department by telephone that it would not submit corrections or any other response to the letter dated December 5, 2005. Furthermore, PHX stated that it was withdrawing from the instant proceeding. See *Memorandum to the File from Irene Gorelik, Case Analyst, 6th Administrative Review of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China: Regarding Telephone Call with Counsel to Primera Harvest (Xiangfan) Inc. ("PHX")*, dated December 12, 2005. On December 13, 2005, PHX filed a letter withdrawing its request for an administrative review.

Raoping Yucun

On May 18, 2005, Raoping Yucun submitted its response to the Department's antidumping duty questionnaire. On August 16, 2005, Raoping Yucun submitted its response to the Department's supplemental sections A, C & D questionnaire. On October 28, 2005, Raoping Yucun submitted its response to the Department's supplemental sections A, C & D questionnaire. On November 17, 2005, Raoping Yucun submitted its response to the Department's request for FOPs and market economy purchases. On January 13, 2006, Raoping Yucun submitted its response to the Department's supplemental Section D questionnaire.

Period of Review

The POR covers February 1, 2004, through January 31, 2005.

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 bitorquus*. "Certain Preserved Mushrooms" refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including, but not limited to, cans or glass jars in a suitable liquid medium, including, but not limited to, water, brine, butter or butter sauce.

Certain preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

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

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

Partial Rescission of Administrative Review

In accordance with 19 CFR 351.213(d)(3), we are preliminarily rescinding this review with respect to Green Fresh, which reported that it did not have any entries of merchandise subject to the antidumping duty order on certain preserved mushrooms during the POR. No party has placed evidence on the record to indicate that Green Fresh had entries of subject merchandise during the POR. In addition, we examined CBP shipment data and are satisfied that the record does not indicate that there were U.S. entries of subject merchandise from Green Fresh during the POR. See the Department's May 18, 2005, letter to Green Fresh.

PHX's Request for Withdrawal of Administrative Review

As noted above, PHX submitted a letter to the Department withdrawing its

³ 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, this decision was upheld by the United States Court of Appeals for the Federal Circuit. See *Tak Fat v. United States*, 39C F.3d 1378 (Fed. Cir. 2005).

² Sections A (Organization, Accounting Practices, Markets and Merchandise), C (Sales to the United States), D (Factors of Production), E (Cost of Further Manufacturing Performed in the United States) and Sales and Factors of Production Reconciliations.

request for an administrative review on December 13, 2005. Pursuant to 19 CFR 351.213(d)(1), “the Secretary will rescind an administrative review under this section, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. The Secretary may extend this time limit if the Secretary decides that it is reasonable to do so.” The 90-day deadline for withdrawing from this administrative review passed on June 21, 2005. However, the Department extended the deadline to withdraw an administrative review request, per the Petitioner’s request, to July 5, 2005. Therefore, PHX’s request to withdraw from the administrative review was submitted 161 days after the deadline established by the Department.

During the course of these 161 days, the Department reviewed PHX’s submissions and prepared and sent questionnaires to PHX. As a result of PHX’s deficient and/or incomplete questionnaire responses, the Department repeatedly attempted to gather necessary information from PHX. On November 30, 2005, the Department sent PHX a supplemental questionnaire requesting additional information. To date, the Department has not received PHX’s response to this questionnaire. On December 5, 2005 the Department sent PHX a letter enumerating outstanding deficiencies in PHX’s responses and requesting that these be remedied. Instead, PHX submitted its late request for withdrawal from the administrative review. In this case, because the Department expended considerable effort and resources in our analysis of PHX, prior to its late withdrawal during an advanced stage of the review, we have not rescinded the review of the order on certain preserved mushrooms from the PRC with respect to PHX. This is consistent with past Department practice. See *Antifriction Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom: Preliminary Results of Antidumping Duty Administrative Reviews, Partial Rescission of Administrative Reviews, Notice of Intent to Rescind Administrative Reviews, And Notice of Intent to Revoke Order in Part*, 69 FR 5949, (February 9, 2004), (“Although we have accepted untimely withdrawals of requests for review elsewhere, the circumstances surrounding the review of INA are different from other situations...we had expended effort and resources in our analysis of INA prior to the untimely withdrawal such that we were quite advanced in the review”).

Adverse Facts Available

Section 776(a)(2) of the Act provides that, if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Furthermore, section 776(b) of the Act states that if the Department “finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information,” the Department, “in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.” See also Statement of Administrative Action (“SAA”) accompanying the Uruguay Round Agreements Act (“URAA”), H.R. Rep. No. 103-316 at 870 (1994).

PHX

(A) Facts Available

As noted above, section 776(a)(2) of the Act provides that, if an interested party withholds information requested by the Department, fails to provide such information by the deadline or in the form or manner requested, significantly impedes a proceeding, or provides information which cannot be verified, the Department shall use facts otherwise available in reaching the appropriate determination. As stated above, PHX has withheld information requested by the Department by not submitting a response to the Department’s questionnaire dated November 30, 2005. The information requested in the November 30, 2005, questionnaire is critical and necessary to calculate PHX’s margin. Additionally, PHX has also failed to provide information in the manner requested. For details regarding PHX’s outstanding questionnaires, please see *Memo to the File, from Irene Gorelik, Case Analyst, through Alex Villanueva, Program Manager, 6th Administrative Review of Certain Preserved Mushrooms from the People’s Republic of China: Regarding Outstanding Responses from Primera Harvest (Xiangfan) Inc. (“PHX”)*, dated February 28, 2006. Finally, PHX’s actions have impeded the administrative review procedures such that a verification of PHX’s sales and

cost information could not be performed. Therefore, the Department has no choice but to rely on the facts otherwise available in order to determine a margin for PHX, pursuant to section 776(a)(2) of the Act. See *Stainless Steel Sheet and Strip in Coils From Japan: Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 18369 (April 11, 2005), (“because this company refused to participate in this administrative review, we find that,...the use of total facts available is appropriate”) and See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances: Wax and Wax/Resin Thermal Transfer Ribbons From Japan*, 68 FR 71072 (December 22, 2003), (“Since UC and DNP withheld information requested by the Department, the Department has no choice but to rely on the facts otherwise available in order to determine a margin for these parties”).

(B) Adverse Inference

In applying facts otherwise available, section 776(b) of the Act states that if an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the International Trade Commission, the administering authority or the Commission, in reaching the applicable determination under section 776(b) of the Act, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. In the instant proceeding, we find it appropriate to use an inference that is adverse to the interests of PHX in selecting from among the facts otherwise available. In the instant proceeding, we find it appropriate to use an inference that is adverse to the interests of PHX in selecting from among the facts otherwise available. By withdrawing from this administrative review 161 days after the Department’s established deadline rather than submitting a response to the Department’s November 30, 2005, supplemental questionnaire or the Department’s December 5, 2005, letter, PHX has failed to cooperate to the best of its ability in this proceeding. Accordingly, we find that an adverse inference is warranted.

By applying AFA, we ensure that the companies that fail to cooperate will not obtain a more favorable result than those companies that complied fully with the Department’s requests in this review. Because of PHX’s withdrawal from the instant proceeding, the Department was unable to verify PHX’s separate rates information due to its withdrawal from the administrative review. Thus, the Department could not determine whether PHX is eligible for a separate rate. Accordingly, we are not

granting PHX a separate rate and are applying the PRC-wide rate to PHX. See the "Corroboration" section below for a discussion of the probative value of the PRC-wide 198.63 percent rate.

Gerber and Guangxi Yulin

(A) Facts Available

As stated above in the "Case History" section, Gerber and Guangxi Yulin did not respond to the Department's antidumping questionnaire. Rather, as noted above, Gerber and Guangxi Yulin informed the Department that they would no longer participate in this proceeding, and failed to respond to the Department's request for information. Because of their failure to participate in the instant review, Gerber and Guangxi Yulin withheld requested information from the Department and impeded this proceeding. Consistent with section 776(a) of the Act, the Department has determined to apply total facts available to Gerber and Guangxi Yulin in the preliminary results.

(B) Adverse Inference

The Department further finds that by failing to participate in this administrative review, Gerber and Guangxi Yulin have failed to cooperate to the best of their ability in this proceeding. Therefore, pursuant to section 776(b) of the Act, we find it appropriate to use an inference that is adverse to the interests of Gerber and Guangxi Yulin in selecting from among the facts otherwise available. By doing so, we ensure that the companies that fail to cooperate will not obtain a more favorable result than those companies that complied fully with the Department's requests in this review. Because Gerber and Guangxi Yulin failed to respond to our request for information, the Department could not determine whether these companies are eligible for a separate rate. Accordingly, we are applying the PRC-wide rate to Gerber and Guangxi Yulin. See the "Corroboration" section below for a discussion of the probative value of the PRC-wide 198.63 percent rate.

Corroboration of AFA rate for PHX, Gerber and Guanxi Yulin

Section 776(c) of the Act requires that the Department corroborate, to the extent practicable, a figure which it applies as facts available. To be considered corroborated, information must be found to be both reliable and relevant. We are applying as AFA the PRC-wide rate, which is the highest rate from any segment of this administrative proceeding, and is a rate from the less-than-fair-value ("LTFV") investigation. See *Mushrooms Order* at 8310.

The information upon which the AFA rate is based in the current review (the PRC-wide rate of 198.63 percent) being assigned to PHX, Gerber and Guangxi Yulin was the highest rate from the petition in the LTFV investigation. This AFA rate has not changed since the original LTFV determination. For purposes of corroboration, the Department will consider whether that margin is both reliable and relevant. The AFA rate we are applying for the current review was corroborated in reviews subsequent to the LTFV investigation to the extent that the Department referred to the history of corroboration, as well as in the most recently completed review. See *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) ("*5th Review Results*") (to corroborate the AFA margin of 198.63 percent, in the 5th review the Department compared the AFA margin to calculated margins for certain respondents and found that 198.63 percent was within the margins for individual sales of identical and/or similar products). Furthermore, no information has been presented in the current review that calls into question the reliability of this information.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to "facts available") because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited. See *D&L Supply Co. v. United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated). The information used in calculating this margin was based on sales and production data submitted by the respondents in the LTFV investigation, together with the most appropriate surrogate value information available to the Department chosen from submissions by the parties in the LTFV

investigation, as well as gathered by the Department itself. Furthermore, the calculation of this margin was subject to comment from interested parties in the proceeding. Moreover, as there is no information on the record of this review that demonstrates that this rate is not appropriately used as AFA, we determine that this rate has relevance.

Based on our analysis as described above, we find that the margin of 198.63 percent is reliable and has relevance. As the rate is both reliable and relevant, we determine that it has probative value. Accordingly, we determine that the calculated rate of 198.63 percent, which is the current PRC-wide rate, is in accordance with the requirement of section 776(c) of the Act that secondary information be corroborated (that it have probative value). Consequently, we have assigned this AFA rate to exports of the subject merchandise from all companies subject to the PRC-wide rate, including PHX, Gerber and Guangxi Yulin.

Separate Rates

The Department has treated the PRC as a non-market economy ("NME") country in all previous antidumping cases. See *Brake Rotors From the People's Republic of China: Final Results of the Twelfth New Shipper Review*, 71 FR 4112 (January 25, 2006). In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is a NME country shall remain in effect until revoked by the administering authority. We have no evidence suggesting that this determination should be changed. Therefore, we treated the PRC as a NME country for purposes of this review and calculated NV by valuing the FOPs in a surrogate country.

It is the Department's policy to assign all exporters of the merchandise subject to review that are located in NME countries a single antidumping duty rate unless an exporter can demonstrate an absence of governmental control, both in law (*de jure*) and in fact (*de facto*), with respect to its export activities. To establish whether an exporter is sufficiently independent of governmental control to be entitled to a separate rate, the Department analyzes the exporter using the criteria established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). Under the separate rates criteria established in these cases, the

Department assigns separate rates to NME exporters only if they can demonstrate the absence of both *de jure* and *de facto* governmental control over their export activities.

Absence of De Jure Control

Evidence supporting, though not requiring, a finding of absence of *de jure* government control over export activities includes: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. See *Sparklers* at 20589.

In the instant review, Yucun submitted complete responses to the separate rates section of the Department's questionnaire. The evidence submitted in the instant review by Yucun includes government laws and regulations on corporate ownership, business licenses, and narrative information regarding the companies' operations and selection of management. The evidence provided by Yucun supports a finding of an absence of *de jure* governmental control over its export activities because: (1) there are no controls on exports of subject merchandise, such as quotas applied to, or licenses required for, exports of the subject merchandise to the United States; and (2) the subject merchandise does not appear on any government list regarding export provisions or export licensing.

Absence of De Facto Control

The absence of *de facto* governmental control over exports is based on whether the respondent: (1) Sets its own export prices independent of the government and other exporters; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other agreements; and (4) has autonomy from the government regarding the selection of management. See *Silicon Carbide* at 22587; *Sparklers* at 20589; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

In its questionnaire responses, Yucun submitted evidence indicating an absence of *de facto* governmental control over its export activities. Specifically, this evidence indicates that: (1) Yucun sets its own export prices independent of the government

and without the approval of a government authority; (2) Yucun retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) Yucun has a director with the authority to negotiate and bind the company in an agreement; (4) the director is the owner of Yucun and appoints the deputy managers and the manager of each department; and (5) there is no restriction on Yucun's use of export revenues. Therefore, the Department has preliminarily found that Yucun has established *prima facie* that it qualifies for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers*.

Surrogate Country

When the Department is investigating imports from a NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's FOPs, valued in a surrogate market—economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of factors of production in one or more market—economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate values we have used in this investigation are discussed under the "Normal Value" section below.

The Department determined that India, Indonesia, Sri Lanka, the Philippines, and Egypt are countries comparable to the PRC in terms of economic development. See *Memorandum from Ron Lorentzen, Office of Policy, Acting Director, to Brian C. Smith, Program Manager: Antidumping Administrative Review of Certain Preserved Mushrooms from the People's Republic of China: Regarding Request for a List of Surrogate Countries*, dated April 7, 2005. We selected an appropriate surrogate country based on the availability and reliability of data from the countries. See *Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process ("Policy Bulletin")*, dated March 1, 2004. In this case, we have found that India is a significant producer of comparable merchandise and is at a similar level of economic development pursuant to section 773(c)(4) of the Act. See *Memorandum from Irene Gorelik, Case Analyst, through Alex Villanueva, Program Manager, Office 9 and James C. Doyle, Office Director, Office 9, to The*

File, 6th Antidumping Duty Administrative Review of Certain Preserved Mushrooms from the People's Republic of China: Regarding Selection of a Surrogate Country, dated February 28, 2006 ("*Surrogate Country Memo*").

Normal Value

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by Yucun for the POR. To calculate NV, we valued the reported FOP by multiplying the per-unit factor quantities by publicly available Indian surrogate values. In selecting surrogate values, we considered the quality, specificity, contemporaneity to the POR, as well as excluded taxes of the available values. As appropriate, we adjusted the value of material inputs to account for delivery costs. Where appropriate, we increased Indian surrogate values by surrogate inland freight costs. We calculated these inland freight costs using the shorter of the reported distances from the PRC port to the PRC factory, or from the domestic supplier to the factory. This adjustment is in accordance with the United States Court of Appeals for the Federal Circuit's ("CAFC") decision in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1407–1408 (Fed.Cir. 1997). For those values not contemporaneous with the POR, we adjusted for inflation or deflation using data published in *International Financial Statistics*. We excluded imports from Korea, Thailand, and Indonesia from the surrogate country import data used in our calculations due to generally available export subsidies. See *China Nat'l Mach. Import & Export Corp. v. United States*, CIT 01–1114, 293 F. Supp. 2d 1334 (CIT 2003), aff'd 104 Fed. Appx. 183 (Fed. Cir. 2004) and *Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 12651 (March 15, 2005) and accompanying Issues and Decision Memorandum at Comment 4. Furthermore, we disregarded prices from NME countries. We converted the surrogate values to U.S. dollars as appropriate, using the official exchange rate recorded on the dates of sale of subject merchandise in this case, obtained from Import Administration's Web site at: <http://www.ia.ita.doc.gov/exchange/index.html>. For further detail, see *Surrogate Values Memo*.

U.S. Price

In accordance with section 772(a) of the Act, the Department calculated an export price ("EP") for Yucun's sale to the United States because the first sale

to an unaffiliated party was made before the date of importation and the use of constructed EP ("CEP") was not otherwise warranted. We calculated EP based on the price to an unaffiliated purchaser in the United States. In accordance with section 772(c) of the Act, as appropriate, we deducted from the starting price to the unaffiliated purchaser foreign inland freight and brokerage & handling. Each of these services was either provided by a NME

vendor or paid for in NME currency. Thus, we based the deduction for these movement charges on surrogate values. See Memorandum from Paul Walker, Case Analyst, through Alex Villanueva, Program Manager, Office 9 and James C. Doyle, Office Director, Office 9, to The File, 6th Antidumping Duty Administrative Review of Certain Preserved Mushrooms from the People's Republic of China: Regarding Surrogate Values for the Preliminary Results,

dated February 28, 2006, ("Surrogate Values Memo") for details regarding the surrogate values for other movement expenses.

Preliminary Results of Review

We preliminarily determine that the following margin exists during the period February 1, 2004, through January 31, 2005:

CERTAIN PRESERVED MUSHROOMS FROM THE PRC

Manufacturer/Exporter	Weighted-Average Margin (Percent)
Raoping Yucun Canned Foods Factory	123.42
PRC-wide Entity (including Primera Harvest (Xiangfan) Inc., Gerber Food (Yunnan) Co., Ltd. and Guangxi Yulin Oriental Food Co., Ltd.)	198.63

Public Comment

The Department will disclose to parties to this proceeding the calculation performed in reaching the preliminary results within ten days of the date of announcement of the preliminary results. An interested party may request a hearing within 30 days of publication of the preliminary results. See 19 CFR 351.310(c). Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, within five days after the time limit for filing case briefs. See 19 CFR 351.309(c)(1)(ii) and 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a diskette containing the public version of those comments. Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days of publication of the preliminary results. The assessment of antidumping duties on entries of merchandise covered by this review and future deposits of estimated duties shall be based on the final results of this review.

Assessment Rates

Upon issuing the final results of the review, the Department shall determine, and CBP shall assess, antidumping

duties on all appropriate entries. The Department will issue appropriate appraisal instructions for the companies subject to this review directly to CBP within 15 days of publication of the final results of this review. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific ad valorem duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis*.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each of the reviewed companies that received a separate rate in this review will be the rate listed in the final results of review (except that if the rate for a particular company is *de minimis*, less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated or reviewed companies not listed above that have separate rates, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV

investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters (including PHX, Gerber and Guangxi Yulin) will continue to be the "PRC-wide" rate of 198.63 percent, which was established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 28, 2006.

David M. Spooner,
Assistant Secretary for Import Administration.
[FR Doc. E6-3125 Filed 3-3-06; 8:45 am]

Billing Code: 3510-DS-S