

which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to section 351.303(f)(3)(ii) of the regulations.

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. *See also* the Import Administration web site at <http://ia.ita.doc.gov>.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Operations, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(1)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of April 2009. If the Department does not receive, by the last day of April 2009, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: March 19, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-851]

Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Reviews

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

EFFECTIVE DATE: April 1, 2009.

SUMMARY: The Department of Commerce (the Department) is currently conducting new shipper reviews (NSRs) of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (PRC)¹ covering the period of review February 1, 2008, through July 31, 2008. We preliminarily determine that the sales made by Zhangzhou Gangchang Canned Foods Co., Ltd., Fujian (Zhangzhou Gangchang)² and by Zhejiang Iceman Group Co., Ltd. (Zhejiang Iceman), were not made below normal value (NV). If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on entries of subject merchandise during the period of review (POR) for any importer-specific assessment rates that are above *de minimis*.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade

¹ See *Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms From the People's Republic of China*, 64 FR 8308 (February 19, 1999).

² Based on the name by which Zhangzhou Gangchang identified itself in its request for new shipper review, the Department initiated the review for this company under the name Zhangzhou Gangchang Canned Foods Co., Ltd. See *Certain Preserved Mushrooms from the People's Republic of China: Notice of Initiation of Antidumping Duty New Shipper Reviews*, 73 FR 57333 (October 2, 2008). However, Zhangzhou Gangchang subsequently stated that its name is actually Zhangzhou Gangchang Canned Foods Co., Ltd., Fujian. See Zhangzhou Gangchang's January 16, 2009, submission at 8. Record evidence supports Zhangzhou Gangchang's contention. See Zhangzhou Gangchang's November 6, 2008, submission at Exhibit A-4. Therefore in this and subsequent notices we refer to Zhangzhou Gangchang by its correct name.

Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2924 or (202) 482-0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 21, 2008, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the Tariff Act), and 19 CFR 351.214(c), the Department received a NSR request from Zhejiang Iceman. On August 22, 2008, we received a NSR request from Zhangzhou Gangchang, also pursuant to 751(a)(2)(B)(i) of the Tariff Act the 19 CFR 351.214(c). The Department determined that both of these requests had not been properly filed, and therefore returned them on August 26, 2008. On August 29, 2008, both companies resubmitted their requests. They both certified that they are the producers and exporters of the subject merchandise upon which the requests were based.

On October 2, 2008, the Department initiated antidumping duty NSRs on certain preserved mushrooms from the PRC covering the two companies. See *Certain Preserved Mushrooms from the People's Republic of China: Notice of Initiation of Antidumping Duty New Shipper Reviews*, 73 FR 57333 (October 2, 2008) (*Initiation Notice*).

On October 8, 2008, the Department issued its standard antidumping questionnaire to both Zhejiang Iceman and Zhangzhou Gangchang. Between November 2008 and February 2009, Zhejiang Iceman and Zhangzhou Gangchang submitted responses to the original sections A, C, and D questionnaires and supplemental sections A, C, and D questionnaires.

On November 3, 2008, the Department sent interested parties a letter requesting comments on surrogate country selection and information pertaining to valuing factors of production (FOP). On February 17, 2009, Zhejiang Iceman and Zhangzhou Gangchang submitted surrogate value data. No other party submitted surrogate country or surrogate value data.

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.³

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.

Non-Market Economy Country Status

In every case conducted by the Department involving the PRC, we have treated the PRC as a non-market economy (NME) country. In accordance with section 771(18)(C)(i) of the Tariff Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review*, 71 FR 66304 (November 14, 2006). None of the parties to this proceeding have contested such treatment. Accordingly, we calculated normal value (NV) in accordance with

section 773(c) of the Tariff Act, which applies to NME countries.

Affiliation

Section 771(33) the Tariff Act provides that the following persons shall be considered to be "affiliated" or "affiliated persons": (A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants; (B) Any officer or director of an organization and such organization; (C) Partners; (D) Employer and employee; (E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization; (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; or (G) Any person who controls any other person and such other person. The Act further provides that "a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person." Id.

The Statement of Administrative Action (SAA) to the Uruguay Round Agreements Act states the following: the traditional focus on control through stock ownership fails to address adequately modern business arrangements, which often find one firm "operationally in a position to exercise restraint or direction" over another even in the absence of an equity relationship. A company may be in a position to exercise restraint or direction, for example, through corporate or family groupings, franchises or joint venture agreements, debt financing, or close supplier relationships in which the supplier or buyer becomes reliant upon the other.⁴

Section 351.102(b)(3) of the Department's regulations defines affiliated persons and affiliated parties as having the same meaning as in section 771(33) of the Act and states that: "In determining whether control over another person exists, within the meaning of section 771(33) of the Act, the Secretary will consider the following factors, among others: corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. The Secretary will not find that control exists on the basis of these factors unless the relationship has the potential to impact decisions concerning the production, pricing, or

cost of the subject merchandise or foreign like product. The Secretary will consider the temporal aspect of a relationship in determining whether control exists; normally, temporary circumstances will not suffice as evidence of control."

To the extent that section 771(33) of the Tariff Act does not conflict with the Department's application of separate rates and enforcement of the non-market economy provision, pursuant to section 773(c) of the Tariff Act, the Department will determine that exporters and/or producers are affiliated if the facts of the case support such a finding. For the reasons discussed below, we find that this condition has not prevented us from examining whether certain producers are affiliated with Zhejiang Iceman in this administrative review.

The record of this NSR demonstrates that Zhejiang Iceman Group Co. Ltd. (Zhejiang Iceman) and Dangshan Xincheng Foods Co. Ltd. (Dangshan) are affiliated, pursuant to section 771(33)(E) of the Act. *See Memorandum from Robert James, Program Manager, to Richard Weible, Office Director, entitled "Certain Preserved Mushrooms from the People's Republic of China: Affiliation and Collapsing of Zhejiang Iceman Group Co. Ltd. and Dangshan Xincheng Foods Co., Ltd.," dated March 25, 2009 (Collapsing Memorandum).* Zhejiang Iceman directly owns greater than 5 percent of the voting shares of Dangshan. *See Collapsing Memorandum at pages 3 and 4.* Also, both of Zhejiang Iceman's owners, Mr. Shen Ronglu, and his wife, Mrs. Xiang Ping, collectively own 100 percent of the shares of Zhejiang Iceman, and directly own greater than 5 percent of the voting shares of Dangshan. Id. Record evidence also shows Zhejiang Iceman and Dangshan are under the common control of Mr. Shen Ronglu, and are, therefore affiliated under section 771(33)(F) of the Tariff act. Id. Zhejiang Iceman also claims it is controlled by its owner, Mr. Shen Ronglu, who is also the general manager of Zhejiang Iceman. Id. Zhejiang Iceman also claims Shen Ronglu has sole authority to bind both Zhejiang Iceman and Dangshan in agreements. Id. Further, record evidence shows that both Mr. Shen Ronglu, and his wife, Mrs. Xiang Ping, are affiliated as members of a family under section 771(33)(A) of the Tariff Act. Id.

Based on our analysis, we preliminarily find that, during the POR, producer/exporter Zhejiang Iceman and Dangshan were, in fact, affiliated through the common ownership and control of Zhejiang Iceman's and Dangshan's joint owners (who are

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, 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).

⁴ *See SAA, H.R. Doc. 103-316, vol. 1 at 838 (1994).*

affiliated as family members under 771(33)(A)) and pursuant to sections 771(33)(E) and (F) of the Tariff Act. For further discussion on this matter, *see* Collapsing Memorandum.

Collapsing

Pursuant to 19 CFR 351.401(f), the Department will collapse producers and treat them as a single entity where (1) those producers are affiliated, (2) the producers have production facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (3) there is a significant potential for manipulation of price or production.

To the extent that this provision does not conflict with the Department's application of separate rates and enforcement of the NME provision, section 773(c) of the Tariff Act, the Department will collapse two or more affiliated entities in a case involving an NME country if the facts of the case warrant such treatment. Furthermore, we note the factors listed in 19 CFR 351.401(f)(2) are not exhaustive, and in the context of an NME investigation or administrative review, other factors unique to the relationship of business entities within the NME may lead the Department to determine that collapsing is either warranted or unwarranted, depending on the facts of the case. *See Hontex Enterprises, Inc. v. United States*, 248 F. Supp. 2d 1323, 1342 (CIT 2003) (noting that the application of collapsing in the NME context may differ from the standard factors listed in the regulation).

In summary, if there is evidence of significant potential for manipulation between or among affiliates which produce and/or export similar or identical merchandise, whether or not all such merchandise is exported to the United States, the Department may find such evidence sufficient to apply the collapsing criteria in an NME context in order to determine whether all or some of those affiliates should be treated as one entity (*see Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China, Preliminary Determination of Sales at Less Than Fair Value*, 66 FR 22183 (May 3, 2001); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China*, 66 FR 49632 (September 28, 2001) (*Certain Hot-Rolled Carbon Steel Flat Products*); and *Anshan Iron & Steel Co. v. United States*, 27 C.I.T. 1234, 1246–47 (CIT 2003) (*Anshan*)).

The decision of whether to collapse two or more affiliated companies is

specific to the facts presented in the proceeding and is based on several considerations, including the structure of the collapsed entity, the level of control between and among affiliates, and the level of participation by each affiliate in the proceeding. Given the unique relationships which arise in NMEs between individual companies and the government, a separate rate will be granted to the collapsed entity only if the facts, taken as a whole, support such a finding (*see* "Separate Rates" section below for further discussion).

We find that the first and second collapsing criteria are met with respect to Zhejiang Icemen and Dangshan because these producers are (1) affiliated under sections 771(33)(A), 771(33)(E), and 771(33)(F) of the Tariff Act, and (2) have production facilities for producing similar or identical products, such that no retooling at either of the three facilities would be required in order to restructure manufacturing priorities. Evidence on the record shows Zhejiang Icemen and Dangshan have production facilities which were suitable for producing the type of merchandise under consideration during the POR. Both Zhejiang Icemen and Dangshan did, in fact, produce the merchandise under consideration at these facilities during the POR. *See* Collapsing Memorandum at pages 4 and 5.

We find the third collapsing criterion is also met with respect to Zhejiang Icemen and Dangshan because a significant potential for manipulation of prices or production exists. In identifying a significant potential for the manipulation of price or production, the factors the Secretary may consider include: (i) the level of common ownership; (ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; (iii) and whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers. *See* 19 CFR 351.401(f)(2).

With regard to the criteria enumerated in 19 CFR 351.401(f)(2), there is common ownership and control of Zhejiang Icemen and Dangshan by both Mr. Shen Ronglu and Mrs. Xiang Ping. Because the individuals who collectively own and control Zhejiang Icemen also collectively own and control Dangshan, we can preliminarily collapse these affiliated producers. Additionally, Mr. Shen Ronglu is the executive director and general manager of Zhejiang Icemen and has sole

authority to bind both Zhejiang Icemen and Dangshan in agreements and, as a result, can manipulate prices and production. For these reasons, we find there is significant potential for manipulation of prices or production and, therefore, collapsing of Zhejiang Icemen and Dangshan is appropriate.

Based on the reasons explained fully in the Collapsing Memorandum and pursuant to 19 CFR 351.401(f), we have preliminarily collapsed Zhejiang Icemen and Dangshan because they are affiliated producers of the merchandise under consideration, and because there is a significant potential for manipulation of prices and production decisions between these parties. For all relevant purposes, all subsequent references in this notice to Zhejiang Icemen will be to the collapsed entity that includes Dangshan.

This decision is specific to the facts presented in this review and is based on several considerations, including the structure of the collapsed entity, the level of control between and among affiliates, and the level of participation by each affiliate in the proceeding. Given the unique relationships which arise in NMEs between individual companies and the government, a separate rate will be granted to the collapsed entity only if the facts, taken as a whole, support such a finding (*see* "Separate Rates" section below for further discussion).

Separate Rates Determination

A designation of a country as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Tariff Act. Accordingly, there is a rebuttable presumption that all companies within the PRC are subject to government control, and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in 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 by the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

Absence of De Jure Control

Evidence supporting, though not requiring, a finding of *de jure* absence of 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*, 56 FR at 20589. In this new shipper review, Zhejiang Iceman and Zhangzhou Gangchang submitted complete responses to the separate rates section of the Department's questionnaire. The evidence submitted in the instant review by Zhejiang Iceman and Zhangzhou Gangchang includes government laws and regulations on corporate ownership and control (*i.e.*, the Company Law and the Foreign Trade Law of the People's Republic of China), individual business licenses, and narrative information regarding the companies' operations and selection of management. The evidence provided by Zhejiang Iceman and Zhangzhou Gangchang supports a preliminary finding of a *de jure* absence of government 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 government of the PRC has passed legislation decentralizing control of companies. *See* Zhejiang Iceman's November 6, 2008, submission at pages 2–10 and Exhibit A–4; Zhejiang Iceman's January 13, 2009, submission at pages 4–5; and Zhangzhou Gangchang's November 6, 2008, submission at pages 6–10 and Exhibit A–2.

Absence of De Facto Control

The absence of *de facto* government control over exports generally 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*, 59 FR at 22586–87; *Sparklers*, 56 FR at 20589; and *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 November 6, 2008, submission, Zhangzhou Gangchang submitted evidence demonstrating an absence of *de facto* government control over its export activities. Specifically, this evidence indicates: (1) the company sets its own export prices independent of the government and without the approval of a government authority; (2) the company retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) the company has a general manager and a sales manager with the authority to negotiate and bind the company in an agreement; (4) the general manager is selected by the board of directors, and the general manager appoints the manager of each department; and (5) there is no restriction on the company's use of export revenues. Therefore, we preliminarily find that Zhangzhou Gangchang has established *prima facie* that it qualifies for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers*.

Similarly, in its November 6, 2008, January 13, 2009, and February 17, 2009 submissions, Zhejiang Iceman also submitted evidence demonstrating an absence of *de facto* government control over its export activities. Specifically, this evidence indicates: (1) the company sets its own export prices independent of the government and without the approval of a government authority; (2) the company retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) the company has an executive director who is also the general manager and who has the authority to negotiate and bind the company in an agreement; (4) the executive director and general manager and his wife collectively own all of the shares of company, and are self-appointed; (5) the executive director and general manager appoint all of the managers of the company; and (6) there is no restriction on the company's use of export revenues. Therefore, we preliminarily find that Zhejiang Iceman has established *prima facie* that it qualifies for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers*.

Bona Fide Analysis

Consistent with the Department's practice, we investigated the *bona fide* nature of the sales made by Zhejiang Iceman and Zhangzhou Gangchang for these NSRs. We found the new shipper sales by Zhejiang Iceman and Zhangzhou Gangchang were made on a *bona fide* basis. Based on our investigation into the *bona fide* nature

of the sales and the questionnaire responses submitted by Zhejiang Iceman and Zhangzhou Gangchang, as well as the companies' eligibility for separate rates (*see* "Separate Rates Determination" section (above)), we preliminarily determine that Zhejiang Iceman and Zhangzhou Gangchang have met the requirements to qualify as new shippers during this POR. Therefore, for purposes of these preliminary results of review, we are treating Zhejiang Iceman's and Zhangzhou Gangchang's sales of subject merchandise to the United States as appropriate transactions for these NSRs.⁵

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Tariff Act directs it to base NV, in most circumstances, on the NME producer's factors of production (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 Tariff Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.

The Department determined that India, Philippines, Colombia, Thailand, and Indonesia are countries comparable to the PRC in terms of economic development.⁶ Moreover, it is the Department's practice to select 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 (March 1, 2004) (Surrogate Country Policy Bulletin). Since the less-than-fair-value investigation, we have determined that India is comparable to the PRC in terms of economic development and has surrogate value data that are available and reliable. In this proceeding, we received no comments regarding surrogate country selection. Since no information has been

⁵ For more detailed discussion of this issue, please see Memoranda to Richard Weible, Office Director, "Bona Fide Sales Analysis for Zhangzhou Gangchang Canned Foods Co., Ltd., Fujian" and "Bona Fide Sales Analysis for Zhejiang Iceman Group Co., Ltd.," both dated March 25, 2009.

⁶ *See* Memorandum from Carole Showers, Acting Director, Office of Policy, to Richard Weible, Director, Office 7; Subject: Request for a List of Surrogate Countries for a 2008 New Shipper Review of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China, dated October 16, 2008.

provided in this review that would warrant a change in the Department's selection of India from prior segments of this proceeding, we continue to find that India is the appropriate surrogate country here because it is at a similar level of economic development pursuant to section 773(c)(4) of the Tariff Act, is a significant producer of comparable merchandise, and has reliable, publicly available data representing a broad-market average. See Memorandum to the File, through Richard Weible, Office Director, and Robert James, Program manager, from Fred Baker, Analyst, Subject: Antidumping Duty New Shipper Review of Certain Preserved Mushrooms from the People's Republic of China: Selection of a Surrogate Country, dated March 25, 2009.

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in a new shipper review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results.

U.S. Price

In accordance with section 772(a) of the Tariff Act, we based U.S. prices on the export prices (EP) of the sales to the United States by Zhejiang Iceman and Zhangzhou Gangchang because their first sales to an unaffiliated party were made before the date of importation and the use of constructed export price was not otherwise warranted. We calculated EP based on the free-on-board (FOB) price to the first unaffiliated purchaser in the United States. We deducted foreign inland freight and foreign brokerage and handling from the starting price (or gross unit price), in accordance with section 772(c) of the Tariff Act. Both of these services were provided by NME vendors for both Zhejiang Iceman's and Zhangzhou Gangchang's U.S. sales. Therefore, we based the deduction of these movement charges on surrogate values.

We valued foreign inland freight (which consisted of truck freight) using a per-unit average rate calculated from data on the following website: <http://www.infobanc.com/logistics/logtruck.htm>. The logistics section of this web site contains inland freight truck rates between many large Indian cities. Since this value is not contemporaneous with the POR, we deflated the rate using the wholesale price index (WPI). See Memoranda to the File, "New Shipper Review of Certain Preserved Mushroom from the People's Republic of China: Surrogate Values for the Preliminary Results" (Zhangzhou Gangchang Surrogate

Values Memorandum) at Exhibit 7, and "New Shipper Review of Certain Preserved Mushroom from the People's Republic of China: Surrogate Values for the Preliminary Results" (Zhejiang Iceman Surrogate Values Memorandum) at Exhibit X.

We valued foreign brokerage and handling with the publicly summarized brokerage and handling expense reported in the U.S. sales listing of Indian mushroom producer, Agro Dutch Industries, Ltd. (Agro Dutch), in the 2004–2005 administrative review of Certain Preserved Mushrooms from India. See Zhangzhou Gangchang Surrogate Values Memorandum at Exhibit 8 and Zhejiang Iceman Surrogate Values Memorandum at Exhibit XI.

Normal Value

1. Methodology

Section 773(c)(1)(B) of the Tariff Act provides that the Department shall determine the NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Tariff Act. The Department bases NV on FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies. See *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part*, 70 FR 39744 (July 11, 2005), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2003–2004 Administrative Review and Partial Rescission of Review*, 71 FR 2517 (January 17, 2006).

We calculated NV by adding the value of the FOPs, general expenses, profit, and packing costs. The FOPs for subject merchandise include: (1) quantities of raw materials employed; (2) hours of labor required; (3) amounts of energy and other utilities consumed; (4) representative capital and selling costs; and (5) packing materials. We used the FOPs reported by Zhejiang Iceman and Zhangzhou Gangchang for materials, energy, labor, and packing, and valued those FOPs by multiplying the amount of the factor consumed in producing subject merchandise by the average unit surrogate value of the factor.

In addition, we added freight costs to the surrogate costs that we calculated for material inputs. We calculated freight costs by multiplying surrogate freight rates by the shorter of the reported distance from the domestic supplier to the factory that produced the subject merchandise or the distance from the nearest seaport to the factory that produced the subject merchandise, as appropriate. Where there were multiple domestic suppliers of a material input, we calculated a weighted-average distance after limiting each supplier's distance to no more than the distance from the nearest seaport to Zhejiang Iceman and Zhangzhou Gangchang. This adjustment is in accordance with the decision by the Court of Appeals for the Federal Circuit in *Sigma Corp. v. United States*, 117 F.3d 1401, 1407–1408 (Fed. Cir. 1997). We increased the calculated costs of the FOPs for surrogate general expenses and profit. See Zhangzhou Gangchang Surrogate Values Memorandum at Exhibit 8 and Zhejiang Iceman Surrogate Values Memorandum at Exhibit XII.

2. Selection of Surrogate Values

In selecting surrogate values, we followed, to the extent practicable, the Department's practice of choosing public values which are non-export averages, representative of a range of prices in effect during the POR, or over a period as close as possible in time to the POR, product-specific, and tax-exclusive. See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004). We also considered the quality of the source of surrogate information in selecting surrogate values. See *Manganese Metal From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 63 FR 12440 (March 13, 1998). Where we could obtain only surrogate values that were not contemporaneous with the POR, we inflated (or deflated) the surrogate values using, where appropriate, the Indian WPI as published in International Financial Statistics by the International Monetary Fund. See Zhangzhou Gangchang Surrogate Values Memorandum at

Exhibit 2 and Zhejiang Iceman Surrogate Values Memorandum at Exhibit III.

In calculating surrogate values from import statistics, in accordance with the Department's practice, we disregarded statistics for imports from NME countries and countries deemed to maintain broadly available, non-industry-specific subsidies which may benefit all exporters to all export markets (e.g., Indonesia, South Korea, and Thailand). *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From The People's Republic of China*, 67 FR 6482 (February 12, 2002) and accompanying Issues and Decision Memorandum at Comment 1. *See also Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 68 FR 66800, 66808 (November 28, 2003), unchanged in *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). Additionally, we excluded from our calculations imports that were labeled as originating from an unspecified country because we could not determine whether they were from an NME country.

We valued production material inputs of mushroom spawn, rice straw, and manure using the financial statements of Agro Dutch or Flex Foods Ltd. (Flex Foods), Indian producers of mushrooms and vegetables, as follows. To value the input of mushroom spawn, we used data from the fiscal year (FY) 2004–2005 financial statement of Agro Dutch because Agro Dutch's mushroom spawn value is specific to the species *Agaricus bisporous*, which is the species used to produce subject merchandise. To value the input of rice straw, we used the straw value from the FY 2006–2007 financial statement of Flex Foods because this value is specific to the input. To value the input of purchased mushrooms, we used the FY 2006–07 financial statement of Agro Dutch because the value is specific to the input. Similarly, to value the input of manure, we used the manure value from the FY 2004–2005 financial statement of Agro Dutch because this value is specific to the input. *See* Zhangzhou Gangchang Surrogate Values Memorandum at Exhibits 3 and 4 and

Zhejiang Iceman Surrogate Values Memorandum at Exhibit V. We valued super calcium phosphate (another production input) using weighted-average Indian import values derived from the World Trade Atlas online (WTA), for the period February 2008 through July 2008.

We valued processing and canning material inputs (salt, citric acid, lime, and cans) using weighted-average Indian import values derived from the World Trade Atlas online (WTA), for the period February 2008 through July 2008. *See* Zhangzhou Gangchang Surrogate Values Memorandum at Exhibit 4 and Zhejiang Iceman Surrogate Values Memorandum at Exhibit II. In addition, we valued packing material inputs (cardboard cartons, labels, packing tape, and glue) using weighted-average Indian import values derived from the WTA for the period February 2008 through July 2008. *See* Zhangzhou Gangchang Surrogate Values Memorandum at Exhibit 6 and Zhejiang Iceman Surrogate Values Memorandum at Exhibit II. The Indian import statistics obtained from the WTA were published by the Indian Directorate General of Commercial Intelligence and Statistics, Ministry of Commerce of India and are contemporaneous with the POR. As the Indian surrogate values were denominated in rupees, in accordance with section 773A(a) of the Tariff Act, we converted them to U.S. dollars using the official exchange rate for India recorded on the date of sale of subject merchandise in this case. *See* <http://www.ia.ita.doc.gov/exchange/index.html>.

We valued electricity using price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India in its publication titled *Electricity Tariff & Duty and Average Rates of Electricity Supply in India*, dated July 2006. These electricity rates represent actual country-wide publicly-available information on tax-exclusive electricity rates charged to industries in India. Since the rates are not contemporaneous with the POR, we inflated the values using the WPI. *See* Zhangzhou Gangchang Surrogate Values Memorandum at Exhibit 5 and Zhejiang Iceman Surrogate Values Memorandum at Exhibit VII.

To value water, the Department used data from the Maharashtra Industrial Development Corporation (www.midcindia.org) for June 2003, which we found to be the best available information since it includes a wide range of industrial water rates. Since the water rates were not contemporaneous with the POR, the Department adjusted

the value for inflation. *See* Zhangzhou Gangchang Surrogate Values Memorandum at Exhibit 5 and Zhejiang Iceman Surrogate Values Memorandum at Exhibit VIII.

We valued coal using weighted-average Indian import values derived from the WTA for the period February 2008 through July 2008. *See* Zhangzhou Gangchang Surrogate Values Memorandum at Exhibit 5 and Zhejiang Iceman Surrogate Values Memorandum at Exhibit II.

We valued steam as 14.52 percent of the value of natural gas. To value natural gas, we used a value reported in the May 2005 issue of the Indian publication *Financial Express*. Since this value is not contemporaneous with the POR, we inflated it using the WPI. For details of our calculation, *see* the Zhejiang Iceman Surrogate Values Memorandum at Exhibit IX.

We valued truck freight expenses for inputs using the same surrogate data we used for valuing domestic inland freight for Zhejiang Iceman and Zhangzhou Gangchang's U.S. sale as described above (*i.e.*, we used data from the website <http://www.infobanc.com/logistics/logtruck.htm>, which contains inland freight truck rates between many large Indian cities). Since these values are not contemporaneous with the POR, we deflated the rate using the WPI. *See* Zhangzhou Gangchang Surrogate Values Memorandum at Exhibit 7 and Zhejiang Iceman Surrogate Values Memorandum at Exhibit X.

The Department's regulations require the use of a regression-based wage rate. *See* 19 CFR 351.408(c)(3). Therefore, to value labor, the Department used the regression-based wage rate for the PRC published on the Import Administration website. *See* the IA website: <http://ia.ita.doc.gov/wages/05wages/05wages-041608.html>, and *see* *Corrected 2007 Calculation of Expected Non-Market Economy Wages*, 73 FR 27795 (May 14, 2008).

To value the surrogate financial ratios for factory overhead (OH), selling, general & administrative (SG&A) expenses, and profit, the Department used the 2006–2007 financial statements of Agro Dutch and Flex Foods. The Department notes that Agro Dutch is a producer of mushrooms, and Flex Foods is a producer of mushrooms and vegetable products. Therefore, Agro Dutch's and Flex Foods' financial ratios for OH and SG&A are comparable to Zhejiang Iceman's and Zhangzhou Gangchang's financial ratios by virtue of their production of the merchandise under consideration. Moreover, an average of the financial statements of Agro Dutch and Flex Foods represents

a broader spectrum of the Indian mushroom industry than the financial statement of a single mushroom producer. See Zhangzhou Gangchang Surrogate Values Memorandum at Exhibit 8 and Zhejiang Iceman Surrogate Values Memorandum at Exhibit XII.

Preliminary Results of the Review

The Department has determined that the following preliminary dumping margins exist for the period February 1, 2008, through July 31, 2008:

CERTAIN PRESERVED MUSHROOMS FROM THE PRC

Manufacturer/Exporter	Weighted-Average Margin (Percent)
Zhejiang Iceman	0.00
Zhangzhou Gangchang	0.00

Public Comment

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results. See 19 CFR 351.224(b). Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs. See 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1). Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs. 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.

Any interested party may request a hearing within 30 days of publication of this notice. See 19 CFR 351.310(c). Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration within 30 days of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. See 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in the briefs.

Unless the deadline is extended pursuant to section 751(a)(2)(B)(iv) of

the Tariff Act, the Department will issue the final results of these NSRs, including the results of our analysis of the issues raised by the parties in their comments, within 90 days after issuance of these preliminary results.

Deadline for Submission of Publicly Available Surrogate Value Information

In accordance with 19 CFR 351.301(c)(3), the deadline for submission of publicly available information to value factors of production under 19 CFR 351.408(c) is 20 days after the date of publication of the preliminary determination. In accordance with 19 CFR 351.301(c)(1), if an interested party submits factual information less than ten days before, on, or after (if the Department has extended the deadline), the applicable deadline for submission of such factual information, an interested party has ten days to submit factual information to rebut, clarify, or correct the factual information no later than ten days after such factual information is served on the interested party. However, the Department notes that 19 CFR 351.301(c)(1), permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. See *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2. Furthermore, the Department generally will not accept business proprietary information in either the surrogate value submissions or the rebuttals thereto, as the regulation regarding the submission of surrogate values allows only for the submission of publicly available information.

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 intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of 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. However, the final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of these reviews and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements, when imposed, will be effective upon publication of the final results of this new shipper review for all shipments of subject merchandise exported by Zhejiang Iceman or Zhangzhou Gangchang and entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Tariff Act: (1) for subject merchandise manufactured and exported by Zhejiang Iceman or manufactured and exported by Zhangzhou Gangchang, the cash-deposit rate will be that established in the final results of this review; (2) for subject merchandise exported by Zhejiang Iceman or Zhangzhou Gangchang but not manufactured by Zhejiang Iceman or Zhangzhou Gangchang, respectively, the cash deposit rate will continue to be the PRC-wide rate (*i.e.*, 198.63 percent); and (3) for subject merchandise manufactured by Zhejiang Iceman or Zhangzhou Gangchang, but exported by any other party, the cash deposit rate will be the rate applicable to the exporter. If the cash deposit rates calculated for Zhejiang Iceman or Zhangzhou Gangchang in the final results is zero or *de minimis*, a zero cash deposit will be required for entries of subject merchandise both produced and exported by Zhejiang Iceman or Zhangzhou Gangchang. These cash deposit requirements, when imposed, shall remain in effect until further notice.

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.

This new shipper review and notice are in accordance with sections 751(a)(2)(B) and 777(i) of the Tariff Act and 19 CFR 351.214(i).

Dated: March 25, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9-7290 Filed 3-31-09; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Alaska Region Permit Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before June 1, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden, 907-586-7008 or patsy.bearden@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

Under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, (Section 303(b)(1) specifically recognizes the need for permit issuance), fishermen and processors wishing to participate in groundfish fisheries in the Exclusive Economic Zone off the coast of Alaska must obtain a Federal Fisheries Permit, a Federal Processor Permit, or an Exempted Fishing Permit. The application information is used to identify participants and expected activity levels in the fishery and to aid enforcement of fishery regulations. The information from this collection-of-information is used to monitor and manage groundfish fisheries by NMFS, Alaska Region.

II. Method of Collection

Respondents have a choice of either electronic or paper forms. Methods of submittal include e-mail of electronic forms, and mail and facsimile transmission of paper forms.

III. Data

OMB Control Number: 0648-0206.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations, individuals or households, and not-for-profit institutions.

Estimated Number of Respondents: 886.

Estimated Time Per Response: 21 minutes for Federal Fisheries Permit application; 21 minutes for Federal Processor Permit application; and 35 hours for Exempted Fisheries Permit application.

Estimated Total Annual Burden Hours: 378.

Estimated Total Annual Cost to Public: \$1,335.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information;

(c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 26, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9-7219 Filed 3-31-09; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Programs and National Estuarine Research Reserves

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Office of Ocean and Coastal Resource Management, National Ocean Service, Commerce.

ACTION: Notice of Intent to Evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Tijuana River (California), North Carolina, and Kachemak Bay (Alaska) National Estuarine Research Reserves.

The National Estuarine Research Reserve evaluations will be conducted pursuant to sections 312 and 315 of the CZMA and regulations at 15 CFR Part 921, Subpart E and Part 923, Subpart L. Evaluation of National Estuarine Research Reserves requires findings concerning the extent to which a state has met the national objectives, adhered to its Reserve final management plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

Each evaluation will include a site visit, consideration of public comments, and consultations with interested Federal, state, and local agencies. A public meeting will be held as part of the site visit. Notice is hereby given of the dates of the site visits for the listed evaluations, and the dates, local times, and locations of the public meetings during the site visits.

DATES AND TIMES: The Tijuana River (California) National Estuarine Research Reserve evaluation site visit will be held April 13-17, 2009. One public meeting will be held during the week. The public meeting will be held on Wednesday, April 15, 2009, at 7 p.m. at the Tijuana River National Estuarine Research Reserve, Tijuana Estuary Visitor Center, 301 Caspian Way, Imperial Beach, California.

The North Carolina National Estuarine Research Reserve evaluation site visit will be held April 20-24, 2009. Two public meetings will be held during the week. The first public meeting will be held on Tuesday, April 21, 2009, at 7 p.m., at the University of North Carolina-Wilmington, Center for Marine Science Auditorium, 5600 Marvin K. Moss Lane, Wilmington, North Carolina. The second public