

States and abroad that they should cease dealing with the Respondents in export transactions involving items subject to the EAR.

It is therefore ordered:

First, that, Orion Air, S.L., Canada Real de Merinas, 7 Edificio 5, 3'A, Eisenhower business center, 28042 Madrid, Spain, and Ad. de las Cortes Valencianas no 37, Esc.A Puerta 4546015 Valencia, Spain, and when acting for or on its behalf, any of its successors, assigns, agents, or employees; and Syrian Pearl Airlines, Damascus International Airport, Damascus, Syria, and when acting on its behalf, any of its successors, assigns, agents, or employees (each a "Denied Person" and collectively the "Denied Persons") may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Export Administration Regulations ("EAR"), or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or re-export to or on behalf of any Denied Person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by any Denied Person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby any Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from any Denied Person of any item subject to the EAR that has been exported from the United States;

D. Obtain from any Denied Person in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by any Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by any Denied Person if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to any of the Respondents by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, re-export, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

In accordance with the provisions of Section 766.24(e) of the EAR, the Respondents may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202-4022.

BIS may seek renewal of this Order by filing a written request with the Assistant Secretary of Commerce for Export Enforcement in accordance with the provisions of Section 766.24(d) of the Regulations, which currently provides that such a written renewal request must be submitted not later than 20 days before the expiration date. The Respondents may oppose a request to renew this Order by doing so in accordance with Section 766.24(d), including filing a written submission with the Assistant Secretary for Export Enforcement, supported by appropriate evidence. Any opposition ordinarily must be received not later than seven days before the expiration date of the Order.

Notice of the issuance of this Order shall be given to Respondents in accordance with Sections 766.5(b). This Order also shall be published in the **Federal Register**.

This Order is effective upon issuance and shall remain in effect for 180 days.

Issued this 22nd day of October 2010.

David W. Mills,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2010-27351 Filed 10-28-10; 8:45 am]

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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.

DATES: *Effective Date:* October 29, 2010.

SUMMARY: The Department of Commerce (the Department) is currently conducting two 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 (POR) February 1, 2009, through January 31, 2010. We preliminarily determine that the sales made by Shandong Fengyu Edible Fungus Co., Ltd. (Fengyu) and by Zhangzhou Tongfa Foods Industry Co., Ltd. (Tongfa), 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 liquidate entries of merchandise exported by Fengyu and Tongfa during the POR without regard to antidumping duties.

FOR FURTHER INFORMATION CONTACT: Fred Baker, Scott Hoefke, or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-2924, (202) 482-4947 or (202) 482-0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 26, 2010, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the "Act"), and 19 CFR 351.214(c), the Department received NSR requests from Fengyu and Tongfa. The Department determined

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), (the "Order").

that both of these requests had not been properly filed due to bracketing issues, and therefore returned them on March 19, 2008. On March 23, 2010, 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 March 31, 2010, 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*, 75 FR 16075 (March 31, 2010) (*Initiation Notice*).

On April 5, 2010, the Department issued its standard antidumping questionnaire to both Fengyu and Tongfa. Between April 2010 and June 2010, Fengyu and Tongfa submitted responses to the original sections A, C, and D questionnaires and supplemental sections A, C, and D questionnaires.

On July 13, 2010, the Department sent interested parties a letter requesting comments on surrogate country selection and information pertaining to valuing factors of production (FOP) in a surrogate market economy country. No 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.²

²On 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,"

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. See, e.g., *Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 76336 (December 16, 2008); and *Frontseating Service Valves from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 74 FR 10886 (March 12, 2009). In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. See, e.g., *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 Act, which applies to NME countries.

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 Act. Accordingly, there is a rebuttable presumption that all companies within the PRC are subject to government control, and thus should be

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).

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

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (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 NSR, Fengyu and Tongfa submitted complete responses to the separate rates section of the Department's questionnaire. The evidence submitted by Fengyu and Tongfa 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), these companies' individual business licenses, and narrative information regarding the companies' operations and selection of management. The evidence provided by Fengyu and Tongfa supports a preliminary finding of a *de jure* absence of government control over its export activities based on the record: (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; (2) the government of the PRC has passed legislation decentralizing control of companies; and (3) there are other formal measures by the government decentralizing control of companies. See Fengyu's March 23, 2010, submission at appendix 2 and April 30, 2010, submission at 3 and Tongfa's March 18, 2010, submission at appendix 1 and April 30, 2010, submission at 3.

Absence of De Facto Control

The absence of *de facto* government control over exports is based on whether the company: (1) Sets its own export prices independent of the government and without the approval of a government authority; (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; (4) has autonomy from the government regarding the selection of management; and (5). *See Silicon Carbide*, 59 FR at 22587; *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 April 30, 2010, submission, Fengyu submitted evidence demonstrating an absence of *de facto* government control over its export activities. Specifically, this evidence indicates that: (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 with the authority to negotiate and bind the company in an agreement; (4) the general manager is selected by the owner; (5) the general manager appoints the manager of each department; and (6) there are no restrictions on the company's use of export revenues. Therefore, we preliminarily find that Fengyu has established that it qualifies for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers*.

Similarly, in its April 30, 2010, submission, Tongfa also submitted evidence demonstrating an absence of *de facto* government control over its export activities. Specifically, this evidence indicates that: (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 with authority to negotiate and bind the company in an agreement; (4) company's board of directors appoints the general manager, who appoints the senior managers; and (5) there are no restrictions on the company's use of

export revenues. Therefore, we preliminarily find that Tongfa has established 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 Fengyu and Tongfa for these NSRs. In evaluating whether a single sale in a NSR is commercially reasonable, and therefore *bona fide*, the Department considers, *inter alia*, such factors as: (1) Timing of the sales; (2) price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were sold at a profit; and (5) whether the transaction was made on an arms-length basis. *See Tianjin Tiancheng Pharmaceutical Co. v. the United States*, 366 F. Supp. 2d 1246, 1250 (CIT 2005). Accordingly, the Department considers a number of factors in its *bona fide* analysis, "all of which may be specific to the commercial realities surrounding an alleged sale of subject merchandise." *See Hebei New Donghua Amino Acid Co. v. the United States*, 374 F. Supp. 2d 1333, 1342 (CIT 2005). In examining Tongfa's sales in relation to these factors, the Department observed no evidence that would indicate that this sale was not *bona fide*. With respect to Fengyu, there remain some unresolved discrepancies regarding the Customs Form 7501 that it submitted to the record. We will continue to investigate these discrepancies and issue a final *bona fides* determination along with the final results of this review. Nevertheless, for purposes of these preliminary results, we find the new shipper sales by Tongfa and Fengyu were made on a *bona fide* basis. *See Memorandum to Richard Weible through Robert James, Program Manager, Important Administration from Scott Hoefke, International Trade Compliance Analyst, Import Administration: Bona Fide Sales Analysis of Shandong Fengyu Edible Fungus Co., Ltd. (Fengyu) in the Antidumping Duty New Shipper Review of Certain Preserved Mushrooms from the People's Republic of China, dated September 22, 2010; and Memorandum to Richard Weible through Robert James, Program Manager, Important Administration from Fred Baker, International Trade Compliance Analyst, Import Administration: Bona Fide Sales Analysis of Zhangzhou Tongfa Foods Industry Co., Ltd. (Tongfa) in the Antidumping Duty New Shipper Review of Certain Preserved Mushrooms*

from the People's Republic of China, dated September 22, 2010.

Based on our investigation into the *bona fide* nature of the sales and the questionnaire responses submitted by Fengyu and Tongfa, as well as the companies' eligibility for separate rates (*see* "Separate Rates Determination" section (above)), we preliminarily determine that Fengyu and Tongfa have met the requirements to qualify as new shippers during this POR. Therefore, for purposes of these preliminary results of review, we are treating Fengyu's and Tongfa's sales of subject merchandise to the United States as appropriate transactions for these NSRs.³

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the 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 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, Indonesia, Thailand, Ukraine, and Peru are countries comparable to the PRC in terms of economic development.⁴ 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)*. In the most recently completed proceeding

³ For more detailed discussion of this issue, please see Memoranda to Richard Weible, Office Director, "Bona Fide Sales Analysis for Shandong Fengyu Edible Fungus Co., Ltd." and "Bona Fide Sales Analysis for Zhangzhou Tongfa Foods Industry Co., Ltd." both dated September 22, 2010.

⁴ *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 2010 New Shipper Review of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China, dated June 25, 2010.* The Department notes that these six countries are part of a non-exhaustive list of countries that are at a level of economic development comparable to the PRC. *See the Department's letter to "All Interested Parties; First Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Deadlines for Surrogate Country and Surrogate Value Comments," dated March 25, 2010 at 1 and Attachment I ("Surrogate Country List").*

involving the Order, we determined that India is comparable to the PRC in terms of economic development and has surrogate value data that are available and reliable. *See Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 74 FR 65520, (December 10, 2009). In the current proceeding, we received no comments regarding surrogate country selection. Since no information has been provided in these NSRs indicating that the Department should deviate from its selection of India in the most recently completed administrative review of the Order, we continue to find that India is the appropriate surrogate country. Specifically, we have selected India because it is at a level of economic development similar to the PRC, it is a significant producer of comparable merchandise, and we have reliable, publicly available data from India representing broad-market average. *See* 773(c)(4) of the Act; *See also* 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 September 22, 2010.

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in a NSR, 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 Act, we based Fengyu's and Tongfa's U.S. prices on export prices (EP), because their first sales to an unaffiliated purchaser were made before the date of importation and the use of constructed export price was not otherwise warranted by the facts on the record. As appropriate, we deducted foreign inland freight and foreign brokerage and handling from the starting price (or gross unit price), in accordance with section 772(c)(2) of the Act. These services were provided by NME vendors for both Fengyu's and Tongfa's U.S. sales. Therefore, we based the deduction of these movement charges on surrogate values.

For both Fengyu and Tongfa, we valued foreign inland freight (which consisted of truck freight) using a per-unit, period of review wide, average rate calculated from Indian data on the following Web site: <http://www.infobanc.com/logistics/logtruck.htm>. The logistics section of

this Web site contains inland freight truck rates between many large Indian cities. *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" (Fengyu 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" (Tongfa Surrogate Values Memorandum) at Exhibit 7.

We valued foreign brokerage and handling using 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, which we then inflated to be contemporaneous with the POR. *See* Fengyu Surrogate Values Memorandum at Exhibit 8; and Tongfa Surrogate Values Memorandum at Exhibit 8.

In their section A responses, both Fengyu and Tongfa stated that they intended to use the invoice date as the date of sale, stating that this was the date that best represented when the terms of sale are fixed. *See* Fengyu's April 30, 2010, submission at 12; and Tongfa's April 30, 2010, submission at 12–13. However, both Fengyu and Tongfa in their supplemental questionnaire submissions stated that they had no instances of quantity or price changes after the receipt of purchase order. *See* Fengyu's June 30, 2010, submission at 3; and Tongfa's June 30, 2010, submission at 2. Therefore, we used the contract date as the date of sale for both Fengyu and Tongfa because there were no changes to either the prices or quantities of either companies' sales after this date, and there is no record evidence that the material terms of sale changed in anyway following the contract date for any of Fengyu's and Tongfa's other sales during the POR. The Department concludes that the contract date is therefore the date that best represents when Fengyu and Tongfa established the material terms of sale. *See* 19 CFR 351.401(j).

1. Methodology

Section 773(c)(1)(B) of the Act provides that the Department shall determine the NV using an FOP methodology if the merchandise under review 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 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, e.g., 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).

In past cases, it has been the Department's practice to value various FOPs using import statistics of the primary selected surrogate country from World Trade Atlas (WTA), as published by Global Trade Information Services (GTIS). *See Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review*, 74 FR 50946, 50950 (October 2, 2009). However, in October 2009, the Department learned that the data reported in the Global Trade Atlas (GTA) software, published by GTIS, is reported to the nearest digit and thus there is not a loss of data by rounding, as there is with the data reported by the WTA software. Consequently, the Department will now obtain import statistics from GTA for valuing various FOPs.

2. Selection of Surrogate Values

In selecting the "best available information for surrogate values," *see* Section 773(c)(1) of the Act, consistent with the Department's practice, we considered whether the information was: Publicly available; product-specific; representative of broad market average prices; contemporaneous with the POR; and free of taxes. *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). Where we could obtain only surrogate values that were not contemporaneous with the POR consistent with our practice, we

inflated the surrogate values using, where appropriate, the Indian WPI as published in *International Financial Statistics* by the International Monetary Fund. See e.g., *Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 74 FR 65520 (December 10, 2009). See Fengyu Surrogate Values Memorandum at Exhibit 2 and Tongfa Surrogate Values Memorandum at Exhibit 2.

In accordance with the legislative history of the Omnibus Trade and Competitiveness Act of 1988, see Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) (OTCA 1988) at 590, the Department continues to apply its long-standing practice of disregarding surrogate values if it has a reason to believe or suspect the source data may be subsidized. In this regard, the Department has previously found that it is appropriate to disregard such prices from Indonesia, South Korea and Thailand because we have determined that these countries maintain broadly available, non-industry specific export subsidies. Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters from Indonesia, South Korea and Thailand may have benefitted from these subsidies.⁵ Additionally, we disregarded prices from NME countries. Finally, imports that were labeled as originating from an "unspecified" country were excluded from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies. See *Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China: Notice of Preliminary Results of the New Shipper Review*, 75 FR 47270 (August 5, 2010) and *Drill Pipe From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, and Postponement of*

Final Determination, 75 FR 51004 (August 18, 2010).

In accordance with section 773(c) of the Act, we calculated NV by adding the value of the FOPs, general expenses, profit, and packing costs reported by Fengyu and Tongfa. 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 Fengyu and Tongfa 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 derived from the Indian surrogate values selected for their NSRs.

To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available Indian surrogate values. As appropriate we added freight costs to the surrogate values that we calculated for Fengyu's and Tongfa's material inputs to make these prices delivered prices. We calculated these 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 Fengyu and Tongfa. 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 Fengyu Surrogate Values Memorandum at Exhibit 9 and Tongfa Surrogate Values Memorandum at Exhibit 9.

Indian surrogate values were denominated in Rupees and were converted to USD using the applicable average exchange rate based on exchange rate data from the Department's Web site. For further details regarding the surrogate values used for these preliminary results, see Fengyu's Surrogate Value Memo and Tongfa's Surrogate Value Memo.

On May 14, 2010, the Court of Appeals for the Federal Circuit ("CAFC") in *Dorbest Ltd. v. United States*, 604 F.3d 1363, 1372 (CAFC 2010) ("*Dorbest IV*"), found that the

"{regression-based} method for calculating wage rates {as stipulated by 19 CFR 351.408(c)(3)} uses data not permitted by {the statutory requirements laid out in section 773 of the Act (i.e., 19 U.S.C. 1677b(c))}." The Department is continuing to evaluate options for determining labor values in light of the recent CAFC decision. However, for these preliminary results, we have calculated an hourly wage rate to use in valuing respondents' reported labor input by averaging industry-specific earnings and/or wages in countries that are economically comparable to the PRC and that are significant producers of comparable merchandise.

For the preliminary results of this administrative review, the Department is valuing labor using a simple average industry-specific wage rate using earnings or wage data reported under Chapter 5B by the International Labor Organization ("ILO"). To achieve an industry-specific labor value, we relied on industry-specific labor data from the countries we determined to be both economically comparable to the PRC, and significant producers of comparable merchandise. A full description of the industry-specific wage rate calculation methodology is provided in the *Prelim Surrogate Value Memo*. The Department calculated a simple average industry-specific wage rate of \$1.36 for these preliminary results. Specifically, for this review, the Department has calculated the wage rate using a simple average of the data provided to the ILO under Sub-Classification 15 of the ISIC-Revision 3 standard by countries determined to be both economically comparable to the PRC and significant producers of comparable merchandise. The Department finds the two-digit description under ISIC-Revision 3 ("Manufacture of Food Products and Beverages") to be the best available wage rate surrogate value on the record because it is specific and derived from industries that produce merchandise comparable to the subject merchandise. Consequently, we averaged the ILO industry-specific wage rate data or earnings data available from the following countries found to be economically comparable to the PRC and are significant producers of comparable merchandise: Ecuador, Egypt, Indonesia, Jordan, Peru, Philippines, Thailand, and Ukraine. For further information on the calculation of the wage rate, see *Prelim Surrogate Values Memo*.

Preliminary Results of the Review

The Department has determined that the following preliminary dumping

⁵ See, e.g., *Expedited Sunset Review of the Countervailing Duty Order on Certain Cut-to-Length Carbon Quality Steel Plate from Indonesia*, 70 FR 45692 (August 8, 2005) and accompanying Issues and Decision Memorandum at page 4; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009) and accompanying Issues and Decision Memorandum at Comment 1, pages 17, 19–20; and *Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Countervailing Duty Determination*, 66 FR 50410 (October 3, 2001) and accompanying Issues and Decision Memorandum at Comment 1.

margins exist for the period February 1, 2009 through January 31, 2010:

**CERTAIN PRESERVED MUSHROOMS
FROM THE PRC**

Manufacturer/exporter	Weighted-average margin (percent)
Fengyu	0.00
Tongfa	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 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, e.g., *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 these NSRs for all shipments of subject merchandise exported by Fengyu or Tongfa and entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise manufactured and exported by Fengyu or manufactured and exported by Tongfa, the cash-deposit rate will be that established in the final results of this review; (2) for subject merchandise exported by Fengyu or Tongfa but not manufactured by Fengyu or Tongfa, 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 Fengyu or Tongfa, 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 Fengyu or Tongfa 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 Fengyu or Tongfa. 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.

These NSRs and notice are in accordance with sections 751(a)(2)(B) and 777(i) of the Act and 19 CFR 351.214(i).

Dated: October 22, 2010.

Ronald Lorentzen,
Deputy Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 101006483-0483-02]

Proposed Voluntary Product Standard PS 2-10, Structural Plywood

AGENCY: National Institute of Standards and Technology, Commerce.