

Notices

Federal Register

Vol. 74, No. 190

Friday, October 2, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arkansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Arkansas Advisory Committee to the Commission will convene by conference call at 2:30 p.m. and adjourn at approximately 3:30 p.m. on Thursday, October 29, 2009. The purpose of this meeting is to plan activities for future SAC project.

This meeting is available to the public through the following toll-free call-in number: (866) 364-7584, conference call access code number 29889655. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1-800-977-8339 and providing the Service with the conference call number and contact name Farella E. Robinson.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Corrine Sanders of the Central Regional Office and TTY/TDD telephone number, by 4 p.m. on October 23, 2009.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by November 13, 2009. The address is U.S. Commission on Civil Rights, 400 State Avenue, Suite 908, Kansas City, Kansas 66101. Comments may be e-mailed to

frobinson@usccr.gov. Records generated by this meeting may be inspected and reproduced at the Central Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, <http://www.usccr.gov>, or to contact the Central Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Peter Minarik,

*Acting Chief, Regional Programs
Coordination Unit.*

[FR Doc. E9-23799 Filed 10-1-09; 8:45 am]

BILLING CODE 6335-01-P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Oklahoma Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Oklahoma Advisory Committee to the Commission will convene by conference call at 1:30 p.m. and adjourn at approximately 2:30 p.m. on Thursday, October 15, 2009. The purpose of this meeting is to plan activities for a future SAC project.

This meeting is available to the public through the following toll-free call-in number: (866) 364-7584, conference call access code number 30354990. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1-800-977-8339 and providing the Service with the conference call number and contact name Farella E. Robinson.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to

register by contacting Corrine Sanders of the Central Regional Office and TTY/TDD telephone number, by 4 p.m. on October 12, 2009.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by November 30, 2009. The address is U.S. Commission on Civil Rights, 400 State Avenue, Suite 908, Kansas City, Kansas 66101. Comments may be e-mailed to frobinson@usccr.gov. Records generated by this meeting may be inspected and reproduced at the Central Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, <http://www.usccr.gov>, or to contact the Central Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Peter Minarik,

*Acting Chief, Regional Programs
Coordination Unit.*

[FR Doc. E9-23801 Filed 10-1-09; 8:45 am]

BILLING CODE 6335-01-P

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 Review

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

DATES: *Effective Date:* October 2, 2009.

SUMMARY: The Department of Commerce (the Department) is currently conducting a new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (PRC) covering the period February 1, 2008, through January 31, 2009. We preliminarily determine that the sale made by Linyi City Kangfa Foodstuff Drinkable Co., Ltd. (Kangfa), and its affiliated supplier Linyi City Kangfa Foodstuff Drinkable Co., Ltd., Pingyi Branch (Pingyi Branch)

(collectively “Kangfa”), was not made below normal value (NV). If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (CBP) to liquidate entries of merchandise exported by Kangfa during the POR without regard to antidumping duties.

FOR FURTHER INFORMATION CONTACT: Fred Baker 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 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 19, 1999, the Department published in the **Federal Register** an amended final determination and antidumping duty order on certain preserved mushrooms from the PRC. See *Notice of Amendment of Final Determination of Sales at Less than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms from the People's Republic of China*, 64 FR 8308 (February 19, 1999) (*Order*). On February 26, 2009, we received a timely new shipper review request in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(c), from exporter and producer Kangfa. The Department determined that this request contained certain deficiencies, and requested that Kangfa correct the submission. See March 12, 2009, and March 20, 2009, letters from Robert James, Program Manager, to Kangfa. In accordance with the Department's requests, Kangfa corrected the deficiencies in its submission dated March 26, 2009. On April 7, 2009, the Department published a notice in the **Federal Register** initiating a new shipper review for Kangfa. See *Certain Preserved Mushrooms from the People's Republic of China: Notice of Initiation of Antidumping Duty New Shipper Review*, 74 FR 15698 (April 7, 2009) (*Initiation Notice*).

We issued the standard antidumping duty questionnaire, along with the standard importer questionnaire for new shipper reviews, on April 3, 2009, and received responses in May and June 2009. We issued supplemental questionnaires covering sections A, C, and D of the original questionnaire on May 22, 2009, June 19, 2009, July 20, 2009, and August 10, 2009, and received timely responses to those questionnaires.

Period of Review

The POR covers February 1, 2008, through January 31, 2009.

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.¹

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.

Bona Fide Analysis

Consistent with the Department's practice, we investigated the *bona fide* nature of the sale made by Kangfa for

this new shipper review. In evaluating whether a single sale in a new shipper review is commercially reasonable, and therefore *bona fide*, the Department considers, *inter alia*, such factors as: (1) The timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was made on an arm's-length basis. See *Tianjin Tiancheng Pharm. Co., Ltd. v. 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 speak to the commercial realities surrounding an alleged sale of subject merchandise.” See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1342 (CIT 2005) (citing *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002) and accompanying Issues and Decision Memorandum).

We preliminarily find the U.S. sale made by Kangfa during the POR was made on a *bona fide* basis. Specifically, we find: (1) The timing of the sale does not indicate the sale might not be *bona fide*; (2) the quantity of the sale was within the range of the quantities of other entries of subject merchandise from the PRC into the United States during the POR, based upon the Department's review of data obtained from CBP; (3) Kangfa and its customer did not incur any extraordinary expenses arising from the transaction; (4) the sale was resold at a profit; and (5) the sale was made between unaffiliated parties at arm's-length. However, we also note that the price of this sale was not within the range of other entries of subject merchandise during the POR. Nevertheless, we have determined that Kangfa's selling price, alone, does not raise any concerns with respect to bona fides. For a complete review of our *bona fides* analysis, see Memorandum from Fred Baker, International Trade Compliance Analyst, to The File via Robert James, Program Manager, Office 7, “*Bona Fide Sales Analysis of Linyi City Kangfa Foodstuff Drinkable Co., Ltd. (Kangfa), and Linyi City Kangfa Foodstuff Drinkable Co., Ltd., Pingyi Branch (Pingyi Branch) (collectively ‘Kangfa’)* in the Antidumping Duty New Shipper Review of Certain Preserved Mushrooms from the People's Republic of China,” dated concurrently with this notice.

Based on our review of the record evidence concerning the *bona fide* nature of this sale, as well as Kangfa's eligibility for a separate rate (see

¹ 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).

“Separate Rates Determination” section, below) and the Department’s determination that Kangfa was not affiliated with any exporter or producer that had previously shipped subject merchandise to the United States, we preliminarily determine that Kangfa has met the requirements to qualify as a new shipper during the POR. Therefore, for purposes of these preliminary results, we are treating the sale of subject merchandise to the United States as an appropriate transaction for this new shipper review.

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 Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding have contested such treatment. Accordingly, we calculated 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 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, Kangfa submitted a complete response to the separate rates section of the Department’s questionnaire. The evidence submitted in the instant review by Kangfa 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 company’s operations and selection of management. The evidence Kangfa provided 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 Kangfa’s March 24, 2009 submission at Appendix 2, and its April 22 submission at 4.

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 April 22, 2009, submission, Kangfa 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, in the absence of either *de jure* or *de facto* government control over Kangfa’s export activities, we preliminarily find that Kangfa has established *prima facie* that it qualifies for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers*.

Surrogate Country

When the Department investigates 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 at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate values we have used in this new shipper review are discussed under the “Normal Value” section, below. On May 13, 2009, the Department determined that India, the Philippines, Indonesia, Colombia, Thailand and Peru are countries comparable to the PRC in terms of economic development, and requested comments from interested parties on selecting the appropriate surrogate country for this review. See Letter to All Interested Parties, RE: New Shipper Review of Certain Preserved Mushrooms from the People’s Republic of China: Linyi City Kangfa Foodstuff Drinkable Co., Ltd., dated May 18, 2009, at Attachment 1. No party submitted surrogate country selection comments.

The Department has examined the export levels² of subject merchandise from the above-mentioned countries and found that India and Indonesia are significant producers of comparable merchandise. See Memorandum from Fred Baker, International Trade Compliance Analyst, to Richard Weible, Office Director, “Antidumping Duty New Shipper Review of Certain Preserved Mushrooms from the People’s Republic of China: Selection of a

² The Department was unable to find world production data for subject merchandise and relied on export data as a substitute for overall production.

Surrogate Country,” dated concurrently with this notice (Surrogate Country Memorandum) at 4. During the POR India had exports in both of the HTS subheadings identified for subject merchandise, while Indonesia had exports under only one of the HTS subheadings. Accordingly, we find that the Indian export data are more comprehensive and representative of subject merchandise than Indonesian export data. *Id.* at 5.

In selecting the appropriate surrogate country, the Department examines the availability and reliability of data from the countries deemed to be economically comparable and significant producers of subject merchandise. For a description of our practice, see Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004). India has been the primary surrogate country in numerous past segments for this proceeding. In those past segments, the Department found India’s import statistics to be an available and reliable source for surrogate values. See Surrogate Country Memorandum at 4. Therefore, because India: (1) Is a significant producer of comparable merchandise; (2) is at a similar level of economic development as the PRC; (3) has publicly available and reliable data, which the Department has previously relied upon for numerous segments of this proceeding; and, (4) has more comprehensive and more representative data regarding the subject merchandise than the data provided for Indonesia, the Department has selected India as the surrogate country, pursuant to section 773(c)(4) of the Act. See Surrogate Country Memorandum at 5.

Fair Value Comparisons

To determine whether Kangfa’s sale of subject merchandise to the United States was made at a price below NV, we compared its U.S. price to NV, as described in the “U.S. Price” and “Normal Value” sections of this notice, below.

U.S. Price

In its section A response Kangfa stated that it 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 Kangfa’s April 22, 2009 section A submission at 14. Later, in its submission of June 3, 2009, Kangfa attempted to show that the terms of sale sometimes change after the contract date. Kangfa’s evidence consisted of a contract and invoice for a shipment of non-subject fruit it had made to the German market during the

POR which showed that the quantity invoiced to the customer differed from the quantity indicated on the contract. See Kangfa’s June 3, 2009, submission at 1 and Exhibit 1. However, we note that the quantity and price of its U.S. sale did not change from the contract date to the invoice date, and the change in quantity of non-subject fruit, which respondent relied upon to justify the use of invoice date, was within the tolerance level specified on the contract. Therefore, we do not consider this to be a change to the material terms of sale relevant for purposes of determining date of sale. Thus, we used the contract date as the date of sale because there were no changes to either the price or quantity of Kangfa’s U.S. sale after this date, and there is no record evidence that the material terms of sale changed following the contract date for any of Kangfa’s other sales during the POR. The contract date is therefore the date that best represents when Kangfa established the material terms of sale. See 19 CFR 351.401(i).

In accordance with section 772(a) of the Act, we based U.S. price on the export price (EP) of the sale to the United States by Kangfa because the first sale to an unaffiliated party was 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. For this EP sale, 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 Act. For Kangfa’s U.S. sale, each of these services was provided by an NME vendor. Thus, we based the deduction of these movement charges on surrogate values.

We valued truck freight expenses using a per-unit average rate calculated from 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. We used data from this Web site for six months of the POR for which the Web site contained data. See Memorandum from Fred Baker, International Trade Compliance Analyst, through Robert James, Program Manager, to the File, “New Shipper Review of Certain Preserved Mushrooms from the People’s Republic of China: Surrogate Values for the Preliminary Results” (Surrogate Values Memorandum) at Exhibit 6.

We valued brokerage and handling using a simple average of the brokerage and handling costs reported in public

submissions filed in three antidumping duty cases. Specifically, we averaged the public brokerage and handling expenses reported by Navneet Publications (India) Ltd. in the 2007–2008 administrative review of certain lined paper products from India, Essar Steel Limited in the 2006–2007 antidumping duty administrative review of hot-rolled carbon steel flat products from India, and Himalaya International Ltd. in the 2005–2006 administrative review of certain preserved mushrooms from India. The Department adjusted the average brokerage and handling rate for inflation. See Surrogate Value Memorandum at Exhibit 8.

Normal Value

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 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 *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 together 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 that Kangfa reported 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 Kangfa. 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 offset Kangfa's material costs for revenue generated from the sale of copper wire scrap and tin scrap. See Surrogate Values Memorandum at Exhibit 8.

We also increased the calculated costs of the FOPs for surrogate general expenses and profit. See Surrogate Values Memorandum at Exhibit 9.

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 wholesale price index (WPI) as published in *International Financial Statistics* by the International Monetary Fund. See Surrogate Values Memorandum at Exhibit 1.

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 (mushroom spawn, wheat straw, and manure) using the financial statements of Agro Dutch, an Indian producer of mushrooms and vegetables, as follows. To value the input of mushroom spawn, we used data from Agro Dutch's FY 2004–2005 (April 2004–March 2005) financial statement because Agro Dutch's mushroom spawn value is specific to the species *Agaricus bisporus*, which is the species used to produce subject merchandise. To value the input of wheat straw, we used the wheat straw value from Agro Dutch's FY 2006–2007 (April 2006–March 2007) financial statement because this value is specific to the input. To value the input of manure, we used the manure value from Agro Dutch's FY 2004–2005 financial statement because this value is specific to the input. See Surrogate Values Memorandum at Exhibit 2. We adjusted these values for inflation. See Surrogate Values Memorandum at Exhibit 1.

We valued processing and canning material inputs (super calcium phosphate, calcium carbonate, salt, citric acid, tin plate, copper wire, and sealing glue) using weighted-average

Indian import values derived from the World Trade Atlas online (WTA), for the period February 2008 through January 2009. See Surrogate Values Memorandum at Exhibits 2 and 3. In addition, we valued packing material inputs (cartons, labels, hard paper board, and glue) with weighted-average Indian import values derived from the WTA for the period February 2008 through January 2009. *Id.* at Exhibit 5. 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 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>.

To value land rent, the Department used data from the 2001 *Punjab State Development Report*, administered by the Planning Commission of the Government of India. Since the value of land rent was not contemporaneous with the POR, the Department adjusted the value for inflation. See Surrogate Values Memorandum at Exhibit 2.

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. As the rates listed in this source became effective on a variety of different dates, we are not adjusting the average value for inflation. See Surrogate Value Memorandum at Exhibit 4.

To value water, the Department used the revised Maharashtra Industrial Development Corporation water rates, which are available at <http://www.midcindia.com/water-supply>. The Department found this source 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 Surrogate Values Memorandum at Exhibit 4.

We valued coal using weighted-average Indian import values derived from the WTA for the period February 2008 through January 2009. See

Surrogate Values Memorandum at Exhibit 4.

We valued truck freight expenses for inputs using the same surrogate data we used for valuing domestic inland freight for Kangfa's U.S. sale (*i.e.*, we used data from the Web site <http://www.infobanc.com/logistics/logtruck.htm>, which contains inland freight truck rates between many large Indian cities). See Surrogate Values Memorandum at Exhibit 6.

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 Web site. See the IA Web site: <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 Limited (Flex Foods). Agro Dutch is a producer of mushrooms, and Flex Foods is a producer of mushrooms and other vegetable products. Agro Dutch's and Flex Foods' financial ratios for OH and SG&A are comparable to Kangfa's financial ratios because Agro Dutch's and Flex Foods' production experience is comparable to Kangfa's production experience by virtue of each company's production of subject merchandise. Moreover, an average of the financial statements of Agro Dutch and Flex Foods represents a broader spectrum of the Indian mushroom industry than does the financial statement of a single mushroom producer. See Surrogate Values Memorandum at Exhibit 9.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. These exchange rates can be accessed at the Web site of Import Administration at <http://ia.ita.doc.gov/exchange/index.html>.

Preliminary Results of Review

We preliminarily determine that the following dumping margin exists during the period February 1, 2008, through January 31, 2009:

Manufacturer/exporter	Margin (percent)
Linyi City Kangfa Foodstuff Drinkable Co., Ltd. (Kangfa)	0.00

Public Comment

In accordance with 19 CFR 351.224(b), the Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of publication of these preliminary results. 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 case or rebuttal briefs: (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 this new shipper review, including the results of our analysis of the issues raised by the parties in their comments, within 90 days of publication of these preliminary results.

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 duties 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 this review 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 Kangfa 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 Kangfa, the cash-deposit rate will be that established in the final results of this review; (2) for subject merchandise exported by Kangfa but not manufactured by Kangfa, the cash deposit rate will continue to be the PRC-wide rate (*i.e.*, 198.63 percent); and (3) for subject merchandise manufactured by Kangfa but exported by any other party, the cash deposit rate will be the rate applicable to the exporter. If the cash deposit rate calculated for Kangfa in the final results is zero or *de minimis*, a cash deposit will be not be required for entries of subject merchandise both produced and exported by Kangfa. 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 Act and 19 CFR 351.214(i).

Dated: September 28, 2009.

John M. Andersen,

*Acting Deputy Assistant Secretary for
Antidumping and Countervailing Duty
Operations.*

[FR Doc. E9-23833 Filed 10-1-09; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-831]

Fresh Garlic from the People's Republic of China: Final Results and Final Rescission, In Part, of New Shipper Reviews

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

SUMMARY: The Department of Commerce (Department) is conducting the new shipper reviews (NSRs) of the antidumping duty order on fresh garlic from the People's Republic of China (PRC) covering the periods of review (PORs) of November 1, 2007 through April 30, 2008 and November 1, 2007 through June 9, 2008.¹ As discussed below, we determine that sales have been made in the United States at prices below normal value (NV) with respect to two exporters who participated fully and have demonstrated their eligibility for separate rates in the NSR: Chengwu County Yuanxiang Industry & Commerce, Ltd. (Yuanxiang) and Jinxiang Hejia Co., Ltd. (Hejia). In the preliminary results of this review, we found Yuanxiang's and Hejia's POR sales were made on a bona fide basis. *See Fresh Garlic From the People's Republic of China: Preliminary Results of New Shipper Reviews*, 74 FR 20452 (May 4, 2009) (*Preliminary Results*). We are continuing to find Yuanxiang's and Hejia's sales to be bona fide for the final results of this review. In addition, we are rescinding the NSRs for four companies: Weifang Chenglong Import & Export Co., Ltd. (Chenglong), Jinxiang Tianheng Trade Co., Ltd. (Tianheng), Jinxiang Zhengyang Import & Export Co., Ltd. (Zhengyang), and Juye Homestead Fruits and Vegetables Co., Ltd. (Juye). We intend to instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on entries of subject merchandise during the POR for which importer-specific assessment rates are above *de minimis*.

EFFECTIVE DATE: October 2, 2009.

FOR FURTHER INFORMATION CONTACT: Toni Page, Scott Lindsay, or Summer Avery, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1398, (202) 482-0780, or (202) 482-4052, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 4, 2009, the Department published in the **Federal Register** the preliminary results of the NSRs of the antidumping duty order on fresh garlic from the PRC. *See Preliminary Results*. Since the *Preliminary Results*, the following events have occurred.

Hejia filed surrogate value (SV) information for its single-clove garlic on May 19, 2009. On May 22, 2009, we extended the deadline for all interested parties to submit publicly available information to value factors of production until June 9, 2009. Chenglong and Tianheng filed SV information on June 9, 2009. On June 19, 2009, Fresh Garlic Producers Association (FGPA) and its individual members (Christopher Ranch L.L.C., the Garlic Company, Valley Garlic, and Vessey and Company, Inc.) (collectively, Petitioners), filed factual information intended to rebut SV information filed by Chenglong and Tianheng.

On May 27, 2009, the Department issued a supplemental questionnaire to Shandong Zhengyang with a due date of June 10, 2009. On June 4, 2009, counsel for Zhengyang notified the Department that it was withdrawing its representation of the company and advised the Department to contact Zhengyang directly. On June 12, 2009, the Department sent a letter to Zhengyang stating that we had not received its supplemental questionnaire response and that we had canceled verification. Zhengyang did not respond to the Department's letter.

On May 27, 2009, the Department sent a supplemental questionnaire to Hejia. The Department received Hejia's timely response on June 2, 2009. On June 2, 2009, the Department was notified by Juye that it was withdrawing from the NSR.

On June 4, 2009, we extended the time limit for the completion of the final results of these reviews. *See Fresh Garlic From the People's Republic of China: Extension of Time Limit for the Final Results of New Shipper Reviews*, 74 FR 26839 (June 4, 2009).

The Department conducted verification of the NSR respondents Chenglong, Hejia, and Yuanxiang from June 22, 2009 through June 30, 2009. On

July 30 and 31, 2009, the Department issued its verification reports.

On July 30, 2009, the Department preliminarily found Tianheng's sale to be not *bona fide*. *See Memorandum From Barbara E. Tillman, Office Director, Office 6, Re: Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China ("PRC")*: Amended Intent to Preliminarily Rescind Jinxiang Tianheng Trade Co.'s New Shipper Review, July 30, 2009 (*Amended Memorandum*). We continue to find Tianheng's sale to be not *bona fide* for these final results.

In response to requests filed by Petitioners and the NSR respondents, the Department extended the due date for case briefs until August 17, 2009. The Department received timely filed case briefs from Petitioners, Hejia, Yuanxiang, Chenglong, and Tianheng. On August 21, 2009, the Department advised Hejia and Tianheng that each company's brief contained new factual information and instructed both Hejia and Tianheng to re-file their case briefs. Hejia and Tianheng complied with the Department's request and re-filed their case briefs on August 28, 2009 and September 9, 2009, respectively. In response to requests filed by Petitioners and the NSR respondents, the Department extended the deadline for rebuttal briefs to August 24, 2009, for arguments regarding everything except Hejia-related issues, and to August 28, 2009, for Hejia-specific matters. The Department received timely filed rebuttal briefs from all interested parties on August 24 and 28, 2009.

Scope of the Order

The products covered by this Order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay. The scope of this order does not include the following: (a) garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed. The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090,

¹ We extended the end of the period of review (POR) from April 30, 2007 to June 9, 2008, to capture entries for three respondents. *See the "Expansion of the POR" section in the Preliminary Results.*