

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE 7/14/2011 THROUGH 7/27/2011

Firm name	Address	Date accepted for investigation	Products
August Ninth Analyses, Inc .....	6 Metro Tech Center, Brooklyn, NY 11201.	26-Jul-11	The firm designs, develops, and manufactures novel, simple to use automation and process monitoring products for industrial customers.
Methods Distributors and Manufacturers, Inc.	104 Sayton Road, Fox Lake, IL 60020.	27-Jul-11	The firm manufactures plastic and metal screws and fasteners for pressurized devices, such as fuel or compressed air pumps.
Nursery Supplies, Inc .....	1415 Orchard Drive, Chambersburg, PA 17201.	26-Jul-11	The firm manufactures plastic containers for the wholesale nursery industry, including a broad range of molded and vacuum-formed containers.
Technautic International, Inc., dba Reliant Water Technologies.	141 Robert E. Lee Boulevard. #284, New Orleans, LA 70124.	22-Jul-11	The firm manufactures automated dissolved oxygen monitoring and control systems.
Yoder Lumber Co., Inc .....	4515 Twp. Road—367, Millersburg, OH 44654.	22-Jul-11	The firm manufactures hardwood lumber and wood components.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 7106, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: July 27, 2011.

**Sunni Massey,**  
*Eligibility Certifier.*

[FR Doc. 2011-19508 Filed 8-1-11; 8:45 am]

**BILLING CODE 3510-WH-P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[Order No. 1773]

#### **Grant of Authority for Subzone Status; GEA Bloomington Production Operations, LLC (Refrigerators); Bloomington, IN**

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas*, the Foreign-Trade Zones Act provides for “\* \* \* the establishment \* \* \* of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,” and authorizes the

Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

*Whereas*, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

*Whereas*, the Indianapolis Airport Authority, grantee of Foreign-Trade Zone 72, has made application to the Board for authority to establish a special-purpose subzone at the refrigerator manufacturing facility of GEA Bloomington Production Operations, LLC, located in Bloomington, Indiana (FTZ Docket 67-2010, filed 11-19-2010);

*Whereas*, notice inviting public comment has been given in the **Federal Register** (75 FR 74001-74002, 11-30-2010) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

*Whereas*, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

*Now, therefore*, the Board hereby grants authority for subzone status for activity related to the manufacturing of refrigerators at the GEA Bloomington Production Operations, LLC, facility located in Bloomington, Indiana (Subzone 72T), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC this 26th day of July, 2011.

**Ronald K. Lorentzen,**  
*Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

**Andrew McGilvray,**  
*Executive Secretary.*

[FR Doc. 2011-19565 Filed 8-1-11; 8:45 am]

**BILLING CODE 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 Reviews**

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

**DATES:** Effective Date: August 2, 2011.

**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).<sup>1</sup> We preliminarily determine that the sales made by Guangxi Hengyong Industrial & Commercial Dev., Ltd (Hengyong) were not made below normal value (NV), and that sales made by Zhangzhou Hongda Import & Export Trading Co., Ltd (Hongda), were made below NV. As described below, the period of review (POR) of the NSR for Hengyong is February 1, 2010, through

<sup>1</sup> 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*).

August 31, 2010, and the POR for Hongda is February 1, 2010, through July 31, 2010. If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise during the POR.

**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 19, 1999, the Department published the antidumping duty order on certain preserved mushrooms from the People's Republic of China. 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).

On August 31, 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 Hengyong and Hongda. The Department determined that both of these requests had not been properly filed due to bracketing issues, and therefore returned them on September 23, 2010. On September 24, 2010, both companies resubmitted their requests. Hengyong certified that it was the exporter and Hengyong Industrial & Commercial Dev. Ltd. Hengxian Food Division (Hengxian) was the manufacturer. Hongda certified it was the exporter and Fujian Haishan Foods Co., Ltd. (Haishan) was the manufacturer.

On September 29, 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 62108 (October 7, 2010) (*Initiation Notice*).

On October 4, 2010, the Department issued its standard antidumping questionnaire to both Hengyong and Hongda. They submitted their section A responses on November 2, 2010, and their sections C and D responses on November 16, 2010. On April 12, 2011, and April 15, 2011, the Department

issued supplemental sections A, C, and D questionnaires to Hongda and Hengyong, respectively. Hongda and Hengyong responded to these supplemental questionnaires on April 25, 2011, and April 28, 2011, respectively.

On November 8, 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.

On March 25, 2011, the Department extended the time limit for issuing the preliminary results of review. See *Certain Preserved Mushrooms From the People's Republic of China: Extension of Time Limit for the Preliminary Results of Antidumping Duty New Shipper Reviews*, 76 FR 16727 (March 25, 2011).

##### **Period of Review**

In the initiation notice of these NSRs, we indicated that the POR was February 1, 2010, through July 31, 2010. See *Initiation Notice*, 75 FR at 62108. However, for Hengyong we are extending the POR by one month to capture entries corresponding to Hengyong's sales to the United States during the period February 1, 2010, through July 31, 2010. Therefore, the POR of the NSR of Hengyong is February 1, 2010, through August 31, 2010, and the POR of the NSR of Hongda is February 1, 2010, through July 31, 2010.

##### **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.<sup>2</sup>

<sup>2</sup> On June 19, 2000, the Department affirmed that "marinated," "acidified," or "pickled" mushrooms

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 NV in accordance with section 773(c) of the Act, which applies to NME countries.

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

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*).

The Department's separate-rate status test to determine whether the exporter is independent from government control does not consider, in general, macroeconomic/border-type controls (e.g., export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level.<sup>3</sup>

#### 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, Hengyong and Hongda submitted complete responses to the separate rates section of the Department's questionnaire. The evidence submitted by Hengyong and Hongda includes

government laws and regulations on corporate ownership and control, these companies' individual business licenses, and narrative information regarding the companies' operations and selection of management. In addition, Hengyong and Hongda have placed on the record copies of certain laws and regulations, including the "Company Law of the People's Republic of China," the "Regulations of the People's Republic of China for Controlling the Registration of Enterprises as Legal Persons." The Department has analyzed these PRC laws and found that they establish an absence of *de jure* control. See, e.g., *Honey from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 102, 105 (January 3, 2007), unchanged in *Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 72 FR 37715, 37716 (July 11, 2007). We have no information in this proceeding that would cause us to reconsider this determination.

Thus, we determine that the evidence on the record supports a preliminary finding of an absence of *de jure* government control of Hengyong and Hongda based on an absence of restrictive stipulations associated with the exporter's business license, as well as the legal authority on the record decentralizing control over the respondent. The evidence on the record provided by Hengyong and Hongda supports a preliminary finding of a *de jure* absence of government control over their 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; (2) the government of the PRC has passed legislation decentralizing control of companies. See Hongda's September 24, 2010, submission at exhibits 4, 7, appendix 1 and Hongda's November 2, 2010, submission at section A 1–7, and Hengyong's September 24, 2010, submission at exhibit 4, appendices 1–3 and Hengyong's November 2, 2010, submission at section A 1–7.

#### Absence of De Facto Control

As stated in previous cases, there is evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. See, e.g., *Silicon Carbide*, 59 FR at 22586–87. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining

whether the respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.

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; and (4) has autonomy from the government regarding the selection of management. 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 November 2, 2010, submission, Hengyong 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 owners; (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 Hengyong has established that it qualifies for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers*.

Similarly, in its November 2, 2010, submission, Hongda 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 sales manager with authority to negotiate and bind the company in an agreement; (4) the company's shareholders appoint the general manager, who appoints the senior managers; and (5) there are no

<sup>3</sup> See *Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value*, 62 FR 61754, 61758 (November 19, 1997), and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

restrictions on the company's use of export revenues. Therefore, we preliminarily find that Hongda 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 Hengyong and Hongda 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) (*TTPC*). 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) (*New Donghua*) (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). In *TTPC*, the court also affirmed the Department's decision that "any factor which indicates that the sale under consideration is not likely to be typical of those which the producer will make in the future is relevant," (*TTPC*, 366 F. Supp. 2d at 1250), and found that "the weight given to each factor investigated will depend on the circumstances surrounding the sale." *TTPC*, 366 F. Supp. 2d at 1263. Finally, in *New Donghua*, the CIT affirmed the Department's practice of evaluating the circumstances surrounding a NSR sale, so that a respondent does not unfairly benefit from an atypical sale and obtain a lower dumping margin than the producer's usual commercial practice would dictate.

In examining Hengyong's and Hongda's sales in relation to these factors, the Department observed no evidence that would indicate that these sales were not *bona fide*. For purposes of these preliminary results, we preliminarily find that the new shipper sales made by Hongda and Hengyong during the POR were *bona fide* commercial transactions based on the

totality of circumstances, namely: (1) The prices were comparable to the average unit values reported to CBP for all entries of subject merchandise; (2) The quantities sold were of commercial quantities within the range of normal commercial quantities; (3) neither Hengyong, nor Hongda, nor their customers incurred any extraordinary expenses arising from the transactions; (4) the sales were made between unaffiliated parties at arm's length; and (5) the timing of the sales does not indicate that they were not *bona fide*.

However, we note that the Department will continue to examine all aspects of Hongda's and Hengyong's POR sales including whether it is atypical, and, as such, not indicative of what its future sales may be. Since much of our analysis regarding the evidence of the *bona fides* of the transaction involves business proprietary information, a full discussion of the bases for our preliminary decision is set forth in Memorandum to Richard Weible through Robert James, Program Manager, Import Administration from Scott Hoefke, International Trade Compliance Analyst, Import Administration: *Bona Fide Sales Analysis of Shangdong Guangxi Hengyong Industrial & Commercial Dev., Ltd (Hengyong) in the Antidumping Duty New Shipper Review of Certain Preserved Mushrooms from the People's Republic of China*, dated July 26, 2011; and Memorandum to Richard Weible through Robert James, Program Manager, Import Administration from Fred Baker, International Trade Compliance Analyst, Import Administration: *Bona Fide Sales Analysis of Zhangzhou Hongda Import & Export Trading Co., Ltd. (Hongda) in the Antidumping Duty New Shipper Review of Certain Preserved Mushrooms from the People's Republic of China*, dated July 26, 2011.

Based on our preliminary findings that: (1) Hengyong's and Hongda's sales are *bona fide*; (2) Hengyong and Hongda are each eligible for a separate rate (see the "Separate Rates" section above); (3) Hengyong and Hongda are not affiliated with any exporter or producer that had previously shipped subject merchandise to the United States; and (4), Hengyong's manufacturer of subject merchandise, Hengxian, and Hongda's manufacturer of subject merchandise, Haishan, did not export the subject merchandise to the United States during the period of investigation, we preliminarily determine that Hengyong and Hongda meet the requirements to qualify as new shippers during the POR.

Therefore, for purposes of these preliminary results of review, we are treating Hengyong's and Hongda's sales of subject merchandise to the United States during the POR as appropriate transactions for these NSRs.

### 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. 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) (Policy Bulletin).

As discussed in the "Non-Market Economy Country Status" section above, the Department considers the PRC to be an NME country. Pursuant to section 773(c)(4) of the Act, the Department determined that India, Philippines, Indonesia, Thailand, Ukraine, and Peru are countries comparable to the PRC in terms of economic development.<sup>4</sup> Also in accordance with section 773(c)(4) of the Act, the Department has found that India is a significant producer of comparable merchandise. Specifically, we have selected India because we have found that India is at a level of economic development similar to the PRC, pursuant to section 773(c)(4) of the Act, is a significant producer of comparable merchandise, and we have reliable, publicly available data from

<sup>4</sup> 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 New Shipper Reviews of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China, dated October 22, 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 November 8, 2010 at 1 and Attachment I.

India representing broad-market average.

Furthermore, the Department notes that in the most recently completed proceeding 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 and Final Rescission in Part, of Antidumping Duty New Shipper Reviews*, 76 FR 16604, (March 24, 2011). In the current proceeding, we received no comments regarding surrogate country selection. No information has been provided in this review indicating that the Department should deviate from its selection of India in the most recently completed administrative review of the Order. Given the above facts, the Department has selected India as the appropriate primary surrogate country for this review. The sources of the surrogate factor values are discussed under the "Normal Value" section below and in the Memorandum to Richard Weible, Office Director, and Robert James, Program Manager, from Carole Showers, Office of Policy Director, Subject: Request for a List of Surrogate Countries for New Shipper Reviews of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China (the PRC), dated October 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 Hengyong's and Hongda'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. In accordance with section 772(c) of the Act, when appropriate, we deducted from the starting price (or gross unit price) to the unaffiliated purchaser the expenses for foreign inland freight and foreign brokerage and handling. These services were provided by NME vendors for both Hengyong's and Hongda's U.S. sales. Therefore, we based the deduction of these movement charges on surrogate values.

For both Hengyong and Hongda, we valued foreign inland freight (which consisted of truck freight) using a per-unit, POR-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" (Surrogate Values Memorandum) at Exhibit 7.

We valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in India. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in India that is published in *Doing Business 2010: India*, published by the World Bank. *See* Surrogate Values Memorandum at Exhibit 8.

In their section A responses, both Hengyong and Hongda 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* Hengyong's November 2, 2010, submission at 10; and Hongda's November 2, 2010, submission at 10–11. However, both Hengyong and Hongda in their supplemental questionnaire submissions stated that they had no instances of quantity or price changes after the receipt of the purchase order. *See* Hengyong's April 25, 2011, submission at 2; and Hongda's April 25, 2011, submission at 2. Therefore, we used the purchase order date as the date of sale for both Hengyong and Hongda 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 are subject to change between the purchase order date and the invoice date. The Department concludes that the purchase order date is therefore the date that best represents when Hengyong and Hongda established the final material terms of sale. *See* 19 CFR 351.401(i).

#### 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 calculates NV using each of the FOPs that a respondent consumes in the production of a unit of the subject merchandise 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).

#### 2. Factor Valuations

In selecting the SVs, consistent with our past practice, we considered the quality, specificity, and contemporaneity of the data. *See, e.g., Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 71509 (December 11, 2006), and accompanying Issues and Decision Memorandum at Comment 9. In selecting the "best available information for surrogate values," in accordance with section 773(c)(1) of the Act, 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). *See also* *Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China*, 71 FR 16116 (March 30, 2006), and accompanying Issues and Decision Memorandum at Comment 2.

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 Wholesale Price Index (WPI) as published in *International Financial Statistics* by the International Monetary Fund (IMF). *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 also Surrogate Values Memorandum at Exhibit 2 and the IMF Web site at <http://www.imfstatistics.org/imf>.

In accordance with these guidelines, we calculated surrogate values, except as noted below, from import statistics of the primary selected surrogate country, India, from Global Trade Atlas (GTA), as published by Global Trade Information Services. Our use of GTA import data is in accordance with past practice and satisfies all of our criteria for surrogate values noted above.<sup>5</sup>

Furthermore, 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 it reasonable to infer that all exporters from Indonesia, South Korea and Thailand may have benefitted from these subsidies.<sup>6</sup> 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).

To value the input of wheat straw, we used the wheat straw value from the FY 2006–2007 (April 2006–March 2007) financial statement of the Indian mushroom producer Agro Dutch Industries, Ltd. (Agro Dutch) 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.

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 March 2008. 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 offset Hongda's material costs for revenue generated from the sale of tin scrap. See Surrogate Values Memorandum at 10 and Exhibit 3.

We valued truck freight expenses for inputs using the same surrogate data we used for valuing domestic inland freight for Hengyong and Hongda's U.S. sales (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.

Finally, to value overhead, selling, general, and administrative expenses (SG&A), and profit, we used the 2009–10 financial statements of the Indian mushroom producers Flex Foods Limited and Himalya International Limited. See Surrogate Values Memorandum at Exhibit 9 for our computations.

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 Hengyong and Hongda. 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 Hengyong and Hongda 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 Hengyong's and Hongda'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. This adjustment is in accordance with the decision of the U.S. Court of Appeals for the Federal Circuit in *Sigma Corp. v. United States*, 117 F.3d 1401, 1408 (Fed. Cir. 1997). 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 Hengyong and Hongda. We increased the calculated costs of the FOPs for surrogate general expenses and profit.

<sup>5</sup> See, e.g., *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), unchanged in *Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 74 FR 65520 (December 10, 2009).

<sup>6</sup> 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.



See Surrogate Values Memorandum at Exhibit 9.

For direct labor, indirect labor, and packing labor, previously, the Department used regression-based wages that captured the worldwide relationship between per capita Gross National Income (GNI) and hourly manufacturing wages, pursuant to 19 CFR 351.408(c)(3), to value the respondent's cost of labor. However, on May 14, 2010, the Court of Appeals for the Federal Circuit (Federal Circuit), in *Dorbest Ltd. v. United States*, 604 F.3d 1363, 1372 (Fed. Cir. 2010) (*Dorbest*), invalidated 19 CFR 351.408(c)(3). As a consequence of the Federal Circuit's ruling in *Dorbest*, the Department no longer relies on the regression-based wage rate methodology described in its regulations. On February 18, 2011, the Department published in the **Federal Register** a request for public comment on our interim methodology, and the data sources. See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, Request for Comment*, 76 FR 9544 (Feb. 18, 2011).

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME antidumping proceedings. See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (*Labor Methodologies*). In *Labor Methodologies*, the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (ILO) Yearbook of Labor Statistics (Yearbook).

In these preliminary results, the Department calculated the labor input using the wage method described in *Labor Methodologies*. To value the respondent's labor input, the Department relied on data reported by India to the ILO in Chapter 6A of the Yearbook. The Department further finds the two-digit description under ISIC–Revision 3 (“Manufacture of Food Products and Beverages”) to be the best available information on the record because it is specific to the industry being examined, and is therefore derived from industries that produce comparable merchandise. Accordingly, relying on Chapter 6A of the Yearbook, the Department calculated the labor input using labor data reported by India to the ILO under Sub-Classification 15

of the ISIC–Revision 3 standard, in accordance with section 773(c)(4) of the Act. For these preliminary results, the calculated industry-specific wage rate is \$1.21. A more detailed description of the wage rate calculation methodology is provided in the Surrogate Values Memorandum. As stated above, the Department used India ILO data reported under Chapter 6A of the Yearbook, which reflects all costs related to labor, including wages, benefits, housing, training, *etc.*

For further details regarding the surrogate values used for these preliminary results, see Surrogate Value Memorandum.

#### Currency Conversion

Indian surrogate values were denominated in rupees and were converted to U.S. dollars using the applicable average exchange rate based on exchange rate data from the Department's Web site. We made all currency conversions on the date of the U.S. sale.

#### Preliminary Results of the Review

The Department has determined that the following preliminary dumping margins exist for the period February 1, 2010, through August 31, 2010, for Hengyong, and the period February 1, 2010, through July 31, 2010, for Hongda:

#### CERTAIN PRESERVED MUSHROOMS FROM THE PRC

Exporter/Manufacturer	Weighted-Average margin (percent)
Hengyong (exporter)/Hengxian (manufacturer) .....	0.00
Hongda (exporter)/Haishan (manufacturer) .....	69.43

#### 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

Assessment rates will be based upon the final results of review. 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*.

#### 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 Hengyong or Hongda 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 by Hengxian and exported by Hengyong or manufactured by Haishan and exported by Hongda, the cash-deposit rate will be that established in the final results of this review; (2) for subject merchandise exported by Hengyong or Hongda but not manufactured by Hengxian or Haishan, 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 Hengxian or Haishan, 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 Hengyong or Hongda in the final results is zero or *de minimis*, no zero cash deposit will be required for entries of subject merchandise both produced by Hengxian and Haishan and exported by Hengyong or Hongda, respectively. 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: July 26, 2011.

**Ronald Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 2011-19530 Filed 8-1-11; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-504]

#### Petroleum Wax Candles From the People's Republic of China: Final Results of Request for Comments on the Scope of the Antidumping Duty Order

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

**SUMMARY:** On August 13, 2010, the Department of Commerce ("Department") published in the **Federal Register** the *Preliminary Results*<sup>1</sup> regarding its request for comments on the scope of antidumping duty order on petroleum wax candles from the People's Republic of China ("PRC"),<sup>2</sup> in which we preliminarily determined a new interpretation for analyzing candle scope ruling requests and applied this interpretation to pending scope requests. We gave interested parties an opportunity to present comments and rebuttals on the *Preliminary Results*. Based upon our analysis of the comments and information received, we have changed our interpretation of the scope of the *Order* from the *Preliminary Results*. As discussed in more detail below, the Department intends to apply the interpretation articulated in these final

<sup>1</sup> See *Petroleum Wax Candles from the People's Republic of China: Preliminary Results of Request for Comments on the Scope of the Petroleum Wax Candles from the People's Republic of China Antidumping Duty Order*, 75 FR 49475 (August 13, 2010) ("*Preliminary Results*").

<sup>2</sup> See *Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China*, 51 FR 30686 (August 28, 1986) ("*Order*").

results to all pending and future scope determinations involving the *Order*.

**FOR FURTHER INFORMATION CONTACT:** Tim Lord, AD/CVD Operations, Office 9, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, *telephone:* (202) 482-7425.

#### Case History

The petitioner in the original less-than-fair-value ("LTFV") investigation, the National Candle Association ("NCA") requested that the investigation of petroleum wax candles from the PRC cover:

candles made from petroleum wax {that} contain fiber or paper-cored wicks. They are sold in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars; votives; and various wax-filled containers. These candles may be scented or unscented { \* \* \* } and are generally used by retail consumers in the home or yard for decorative or lighting purposes.<sup>3</sup>

The Department adopted this same language as the scope in its notice of initiation, with the modification that the Department placed "certain" before "petroleum wax candles." This scope language carried forward without change through the eventual antidumping duty order and subsequent segments of this proceeding. Due to the fact that the plain language of the scope contains no specific words of exclusion, throughout the history of the *Order* there has been particular confusion regarding the coverage of certain candle types—particularly "novelty candles." This uncertainty has led to an overabundance of scope ruling requests that has hindered the effective administration of the *Order*.

On August 21, 2009, given the extremely large number of scope determinations requested by outside parties, the Department solicited comments from interested parties on the best method to consider whether novelty candles should or should not be included within the scope of the *Order*. See *Petroleum Wax Candles from the People's Republic of China: Request for Comments on the Scope of the Antidumping Duty Order and the Impact on Scope Determinations*, 74 FR 42230 (August 21, 2009). In that notice, interested parties were presented two options (as well as the opportunity to submit additional options and ideas):

**Option A:** The Department would consider all candle shapes identified in the scope of

<sup>3</sup> See Antidumping Petition Submitted on Behalf of the National Candle Association in the Matter of: Petroleum Wax Candles from the People's Republic of China (September 3, 1985) ("Petition"), at 7.