

**Final Results of Redetermination Pursuant to Court Remand  
Certain Preserved Mushrooms from the People's Republic of China  
*Xiamen Int'l Trade & Indus. Co., Ltd. et al. v. United States*  
Court No. 11-00411, Slip Op. 13-152 (CIT December 20, 2013)**

**~~Business Proprietary Document~~  
PUBLIC VERSION**

**A. Summary**

The Department of Commerce (the Department) prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (CIT or the Court) in *Xiamen Int'l Trade & Indus. Co., Ltd. et al. v. United States*, Court No. 11-00411, Slip Op. 13-152 (December 20, 2013) (*Remand Opinion and Order*). These remand results concern the final results of the administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China covering the period of review February 1, 2009 to January 31, 2010.<sup>1</sup> The CIT remanded the following four aspects of the Department's determination: (1) the surrogate value for Xiamen International Trade & Industrial Co., Ltd.'s (XITIC) lime; (2) the surrogate value for XITIC's mushroom spawn; (3) the surrogate values for XITIC's labor and financial ratios; and (4) the separate rate assigned to two non-individually investigated respondents, Zhejiang Iceman Group Co., Ltd. (Iceman Group) and Fujian Golden Banyan Foodstuffs Industrial Co., Ltd. (Golden Banyan).<sup>2</sup>

As set forth in detail below, pursuant to the CIT's *Remand Opinion and Order*, the Department (1) reconsidered its earlier determination and, instead, used Global Trade Atlas (GTA) import data under Indian HTS 2836.20.00, "Calcium Carbonate," to value XITIC's lime;<sup>3</sup> (2) continued to use GTA import data under Indian HTS 0602.90.10, "Mushroom Spawn," to

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<sup>1</sup> See *Certain Preserved Mushrooms from the People's Republic of China*, 76 FR 56732 (Sept. 14, 2011) (*Final Results*), and the accompanying Issues and Decision Memorandum (IDM), as amended, *Certain Preserved Mushrooms from the People's Republic of China* 76 FR 70112 (Nov. 10, 2011) (*Amended Final Results*).

<sup>2</sup> See *Remand Opinion and Order* at 30-31.

<sup>3</sup> See Memorandum from Fred Baker and Scott Hoefke to The File, Subject: Surrogate Values for the Preliminary Results of Review Certain Preserved Mushrooms from the People's Republic of China at 12-14, dated February 28, 2011, at 2 & n.1.

value XITIC's mushroom spawn; and (3) reconsidered its earlier determination and, instead, applied the Department's revised labor methodology to calculate the surrogate values for XITIC's labor and financial ratios. Consequently, the Department revised these components of XITIC's weighted-average dumping margin calculation. Finally, the Department continued to apply the same methodology it used in the *Final Results* to calculate the separate rate assigned to Iceman Group and Golden Banyan and, consistent with the *Remand Opinion and Order*, explained why that methodology reasonably reflects potential dumping margins. That methodology was the same methodology established in section 735(c)(5)(A) of the Tariff Act of 1930, as amended (the Act), to calculate the "all-others rate" in market-economy cases.<sup>4</sup>

On March 27, 2014, the Department released its draft results of redetermination pursuant to court remand (Draft Remand Results) to interested parties. XITIC, Iceman Group, and Golden Banyan (collectively, plaintiffs) filed comments on April 1, 2014.<sup>5</sup> No other interested party filed comments.

## **B. Remanded Issues**

### **1. Surrogate Values for Certain of XITIC's Factors of Production**

#### **a. Relevant Legal Framework**

In a non-market economy (NME) proceeding, such as in this case, section 773(c)(1) of the Act, instructs the Department to value the factors of production based upon the best available information from a market economy country or countries that the Department considers

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<sup>4</sup> Neither the Act nor the Department's regulations address the establishment of the rate applied to individual companies not selected for individual examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. The Department's practice in cases involving limited individual examination based upon exporters accounting for the largest volumes of imports has been to look to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in a market-economy investigation.

<sup>5</sup> See Comments on Remand Results from Xiamen International Trade & Industrial Co., Ltd., Zhejiang Iceman Group Co., Ltd., and Fujian Golden Banyan Foodstuffs Industrial Co., Ltd., dated April 1, 2014 (Plaintiffs' Comments).

appropriate. When considering what constitutes the best available information, the Department considers several criteria including whether the surrogate value data are contemporaneous, publicly available, tax and duty exclusive, represents a broad market average, and are specific to the input.<sup>6</sup> The Department's preference is to satisfy the breadth of the aforementioned selection criteria.<sup>7</sup> Moreover, it is the Department's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis of valuing the factors of production.<sup>8</sup> The Department must weigh the available information with respect to each input value and make a product-specific and case-specific decision as to what constitutes the "best" available surrogate value for each input.<sup>9</sup>

**b. Surrogate Value for XITIC's Lime**

**Background**

In *Final Results*, the Department calculated the surrogate value for XITIC's lime using import data from GTA under Indian HTS 2522.20.00, "Slaked Lime," because they appeared more specific to the input used by XITIC than did the other record sources.<sup>10</sup> In the *Amended Final Results*, the Department rejected XITIC's argument that the Department committed a

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<sup>6</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079 (Sept. 8, 2006) (*CLPP*), and accompanying Issues and Decision Memorandum at Comment 3.

<sup>7</sup> See, e.g., *Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 51940, 51943 (August 19, 2011), and accompanying Issues and Decisions Memorandum at Comment 2.

<sup>8</sup> See *Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006) (*Mushrooms*), and accompanying Issues and Decisions Memorandum at Comment 1; see also *Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546 (April 22, 2002), and accompanying Issues and Decisions Memorandum at Comment 2.

<sup>9</sup> See, e.g., *Mushrooms*, 71 FR 40477, and accompanying Issues and Decisions Memorandum at Comment 1.

<sup>10</sup> See IDM at 27.

ministerial error in using import data under Indian HTS 2522.20.00, “Slaked Lime,” to value XITIC’s lime.<sup>11</sup>

In litigation, XITIC claimed that the Department’s surrogate value for lime was unsupported by substantial evidence because the record showed that data under Indian HTS 2836.50.00, “Calcium Carbonate,” are the best available information for this input. XITIC also claimed the Department failed to adequately explain why it regarded data under Indian HTS 2522.2000 to be the best available information.

The Court agreed with XITIC and found that the Department’s surrogate value for lime was not supported by substantial evidence.<sup>12</sup> The CIT held that the Department never found that slaked lime could be used in the production of subject merchandise.<sup>13</sup> Moreover, the CIT found that the Department erred in finding the slaked lime data more specific because they contained the word “lime.”<sup>14</sup> Finally, the Court held that XITIC sufficiently articulated to the Department that it used calcium carbonate, and not slaked lime, in its production process.<sup>15</sup> Consequently, the Court remanded this issue to the Department and ordered it to “reconsider its decision to use GTA data for Indian HTS subheading 2522.20 as a surrogate value for lime, and in doing so, must determine whether such surrogate represents the be ‘best available information’ on the record in accordance with 19 USC 1677b(c)(1), as compared with alternative surrogates in the record . . . .”<sup>16</sup>

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<sup>11</sup> See *Amended Final*, 76 FR at 70112-13.

<sup>12</sup> See *Remand Opinion and Order* at 8-9.

<sup>13</sup> *Id.* at 8.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 8-9.

<sup>16</sup> *Id.* at 30.

## Analysis

In accordance with the *Remand Opinion and Order*, and for the reasons set forth below, the Department finds import data under Indian HTS 2836.50.00, “Calcium Carbonate,” rather than data under HTS 2522.20.00, “Slaked Lime,” are the best available information to value XITIC’s lime input.

The record contains two potential sources that may be used to value XITIC’s lime input: (1) GTA import data under Indian HTS 2522.20.00, “Slaked Lime,”<sup>17</sup> and (2) GTA import data under Indian HTS 2836.50.00, “Calcium Carbonate.”<sup>18</sup>

After reconsidering the available information on the record, the Department finds that Indian HTS 2836.50.00, “Calcium Carbonate,” constitutes the best available information on the record to value XITIC’s lime input because it is most specific to the input used by XITIC. XITIC reported in its initial questionnaire response that it used “lime” in its production of subject merchandise and referenced the HTS category applicable to calcium carbonate.<sup>19</sup> XITIC later clarified its answer by stating that it used calcium carbonate in its production of subject merchandise.<sup>20</sup> XITIC made this point again in its administrative case brief.<sup>21</sup> Taken together, the Department finds that XITIC reported using calcium carbonate in its production process and, consequently, that the import data under Indian HTS 2836.50.00 are the most specific to its input. Moreover, the data are contemporaneous with the period of review.<sup>22</sup> Finally, consistent with the Department’s findings in other NME proceedings,<sup>23</sup> the Department also finds that the

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<sup>17</sup> See Surrogate Values for the Preliminary Results of Review at 6, Exhibit 3 (Feb. 28, 2011).

<sup>18</sup> See *id.*

<sup>19</sup> See XITIC’s Section D Questionnaire Response at Exhibit D-5 (July 13, 2010).

<sup>20</sup> See XITIC’s Proposed Surrogate Value Submission at 2, Attach. I (Nov. 22, 2010).

<sup>21</sup> See XITIC’s Case Brief at 2-3 (Apr. 7, 2011).

<sup>22</sup> See Surrogate Values for the Preliminary Results of Review at 6, Exhibit 3 (Feb. 28, 2011).

<sup>23</sup> See, e.g., *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2010-2011*, 78 FR 17350 (Mar. 21, 2013) (*Fish Fillets*), and accompanying Issues and Decision Memorandum at Comment IV.

GTA import data under Indian HTS 2836.50.00 are publicly-available, tax and duty exclusive, and representative of a broad market average.<sup>24</sup>

In contrast, the data under Indian HTS 2522.20.00, “Slaked Lime,” are not specific to the lime used by XITIC in its production process. As stated above, XITIC represented, on multiple occasions, that it uses calcium carbonate, and not slaked lime, in its production of subject merchandise. Consequently, the Department determines that GTA import data under Indian HTS 2522.20.00, “Slaked Lime,” are not the best available information for this input.

Thus, the Department determines that using import data under Indian HTS 2836.50.00, “Calcium Carbonate,” results in a better, input-specific price for XITIC’s lime. Therefore, the Department will use Indian HTS 2836.50.00, “Calcium Carbonate,” to calculate the surrogate value for XITIC’s lime.

**c. Surrogate Value for XITIC’s Mushroom Spawn**

**Background**

In *Final Results*, the Department calculated the surrogate value for XITIC’s mushroom spawn using GTA import data under Indian HTS 0602.90.10, “Mushroom Spawn.”<sup>25</sup> The Department determined that data under this HTS category were the best available information because the surrogate values proposed by XITIC – data derived from a 2004-2005 annual report of Agro Dutch Industries Limited (Agro Dutch) and a 2007-2008 annual report of Himalya International Limited (Himalya) – were not specific, representative of broad market averages, free of taxes and duties, or contemporaneous with the period of review.<sup>26</sup>

In litigation, XITIC argued that the Department’s determination was unsupported by substantial evidence in two ways: (1) the Department erred in focusing exclusively on why

<sup>24</sup> See Surrogate Values for the Preliminary Results of Review at 6, Exhibit 3 (Feb. 28, 2011).

<sup>25</sup> IDM at 28.

<sup>26</sup> *Id.*

XITIC's proffered surrogates were flawed and not on explaining why the GTA data it used were the best available information; and (2) the Department did not support with substantial evidence its determination that XITIC's proffered surrogates were flawed.

The Court agreed with XITIC and found that the Department erred by not explaining why the GTA data were the best available information for valuing mushroom spawn and why those data are superior to competing values.<sup>27</sup> The Court also agreed with XITIC that the Department poorly reasoned its rejection of XITIC's proposed surrogate values, finding that the Department based its rejection of the Agro Dutch and Himalya data on unfounded assumptions centered on XITIC's purported use of "high quality" mushroom spawn.<sup>28</sup> Consequently, the Court ordered the Department to reconsider its decision to use GTA import data under Indian HTS 0602.90.10, "Mushroom Spawn," and specifically directed the Department to answer the following questions: (1) whether the GTA import data are specific to the input reported by XITIC (white button mushroom spawn), given that the GTA data purportedly encompass four types of mushroom spawn and that the GTA data contain a value that is more than double XITIC's competing surrogate values; and (2) whether the Agro Dutch and Himalya figures approximate XITIC's purported "high quality" mushroom spawn.<sup>29</sup>

### Analysis

In accordance with the *Remand Opinion and Order*, and for the reasons set forth below, the Department continues to find that GTA import data under Indian HTS 0602.90.10, "Mushroom Spawn," are the best available information to value XITIC's mushroom spawn.

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<sup>27</sup> See *Remand Opinion and Order* at 11-12. In its opinion, the Court recognized that the Government provided explanations that appeared to address some of its questions, but it declined to consider them as *post-hoc* rationalizations. *Id.* at 12 & n.7.

<sup>28</sup> *Id.* at 12-13. Notably, the Court did not reject the Department's finding that the Agro Dutch and Himalya data were not contemporaneous with the period of review, representative of broad market averages, or free of taxes and duties. *Id.* at 12.

<sup>29</sup> *Id.* at 13, 30-31.

The record contains three potential sources that may be used to value XITIC's mushroom spawn: (1) GTA import data under Indian HTS 0602.90.10, "Mushroom Spawn;"<sup>30</sup> (2) "Spawn" prices in Agro Dutch's 2004-2005 annual report;<sup>31</sup> and (3) "Spawn" prices in Himalya's 2007-2008 annual report.<sup>32</sup> After determining the specific input used by XITIC, the Department will examine each source in turn.

In the underlying review, XITIC reported that it used "mushroom spawn" to produce subject merchandise, referencing HTS 0602.90.10 in its answer.<sup>33</sup> XITIC later clarified that it used "white button" mushroom spawn when it submitted potential surrogate value sources for this input.<sup>34</sup> XITIC reaffirmed this point in its administrative case brief.<sup>35</sup> Taken together, the Department finds that XITIC reported using white button mushroom spawn in its production process.

After reconsidering the available evidence on the record, the Department continues to find that GTA import data under Indian HTS 0602.90.10, "Mushroom Spawn," are the best available information for valuing XITIC's white button mushroom spawn. With respect to specificity, the Department determines that the description of Indian HTS 0602.90.10 covers the type of input reported by XITIC, namely mushroom spawn.<sup>36</sup> While HTS 0602.90.10 does not specifically reference the particular type of mushroom spawn used by XITIC (*i.e.*, white button), any imports of the particular spawn used by XITIC would enter under this HTS category,<sup>37</sup> a point that XITIC acknowledged in its initial questionnaire response.<sup>38</sup> Moreover, the fact that

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<sup>30</sup> See Surrogate Values for the Preliminary Results of Review at 6, Exhibit 3 (Feb. 28, 2011).

<sup>31</sup> See XITIC's Proposed Surrogate Value Submission at 3, Attach. 3 (Nov. 22, 2010).

<sup>32</sup> *Id.* at 3, Attach. 6.

<sup>33</sup> See XITIC's Section D Questionnaire Response at Exhibit D-5 (July 13, 2010).

<sup>34</sup> See XITIC's Proposed Surrogate Value Submission at 3 (Nov. 22, 2010).

<sup>35</sup> See XITIC's Case Brief at 1-2, 5-7 (Apr. 7, 2011).

<sup>36</sup> See Surrogate Values for the Preliminary Results of Review at 6, Exhibit 3 (Feb. 28, 2011).

<sup>37</sup> See *id.*

<sup>38</sup> See XITIC's Section D Questionnaire Response at Exhibit D-5 (July 13, 2010) (referencing HTS 0602.90.10).

HTS 0602.90.10 may contain data on other types of spawn, a point that XITIC did not support with any evidence, does not make the Department's decision unreasonable. As explained below, these other sources either are no more specific to XITIC's input than the GTA data or do not satisfy the other surrogate value criteria.

The Department also finds that the Indian HTS 0602.90.10 data satisfy the remaining surrogate value criteria. Specifically, the data are contemporaneous with the period of review.<sup>39</sup> Moreover, similar to the Department's findings in other NME proceedings,<sup>40</sup> we find the GTA data to be publicly-available, tax and duty exclusive, and representative of a broad market average.<sup>41</sup>

In contrast, the Agro Dutch and Himalya data proffered by XITIC do not constitute the best available information. With respect to specificity, and in response to plaintiffs' comments, the Department acknowledges that Agro Dutch's 2004-2005 financial statements (but not Himalya's 2007-2008 statements) indicate that the company produces white button mushrooms,<sup>42</sup> which is the type of mushroom used by XITIC in its production process. However, no party provided any evidence that the prices for mushroom spawn vary significantly by mushroom type. Further, while, the data on the record indicate that Agro Dutch produced white button mushrooms,<sup>43</sup> the particular line item in the 2004-2005 Agro Dutch data references

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<sup>39</sup> See Surrogate Values for the Preliminary Results of Review at 6, Exhibit 3 (Feb. 28, 2011).

<sup>40</sup> See, e.g., *Fish Fillets*, 78 FR 17350, and accompanying Issues and Decision Memorandum at Comment IV.

<sup>41</sup> See Surrogate Values for the Preliminary Results of Review at 6, Exhibit 3 (Feb. 28, 2011).

<sup>42</sup> See XITIC's Proposed Surrogate Value Submission at Attach. 3 (Nov. 22, 2010) (stating the following on Page 27 of Agro Dutch's 2004-2005 financial statements: "Item 6.a Class of Goods: White Button/P&S Mushrooms Item...6b, Particulars capacity and production ...Class of Goods: White Button/P&S Mushrooms.").

<sup>43</sup> See XITIC's Proposed Surrogate Value Submission at Attach. 3 (Nov. 22, 2010) (stating the following on Page 27 of Agro Dutch's 2004-2005 financial statements: "Item 6.a Class of Goods: White Button/P&S Mushrooms Item...6b, Particulars capacity and production ...Class of Goods: White Button/P&S Mushrooms."); see *id.* at Attach. 4 (stating that in 2009 to 2010 "[t]he principal business of the Agro Dutch Industries Limited is growing and canning of White Button Mushrooms."). Although XITIC did not argue that the Department should use the 2009-2010 Agro Dutch data to value this input, the Department observes that the line item for spawn in that source is not specific to XITIC's reported input because it contains other, non-spawn raw materials. See *id.* (providing line item that includes "spawn," as well as lacquer, copper wire, cow dung, and other unnamed materials).

“spawn” and, thus, does not identify the particular type of spawn used by that company in its production process, and whether other types of spawn could be included in this line item.<sup>44</sup>

Thus, the Department finds that the Agro Dutch data are likely more specific than the GTA data, but we cannot determine whether spawn prices vary significantly by type. Moreover, other record data also support XITIC’s claim that Agro Dutch principally is a white button mushroom producer; however, the specific data pertain to a different time period – 2009 to 2010.<sup>45</sup>

Similarly, the record does not support XITIC’s claim that Himalya principally produced white button mushrooms. Indeed, nothing in the 2007-08 Himalya data states that the company produced, let alone principally produced, white button mushrooms.<sup>46</sup> Moreover, similar to the Agro Dutch data, the particular line item in the Himalya data references “spawn” and, thus, does not identify the particular type of spawn used by that company in its production process.<sup>47</sup> Thus, the Department finds that the Himalya data are no more specific to XITIC’s input than the GTA data.

With respect to the Court’s concern about the different values in the respective sources, the Department finds that these differences do not affect its specificity analysis. In response to plaintiffs’ comments, the Department observes that there is a wide range of prices in the three mushroom spawn sources under consideration: 36.96 Rs./Kg. (uninflated) in the 2007-2008 Himalya statement;<sup>48</sup> 115.38 Rs./Kg. (uninflated) in the 2004-2005 Agro Dutch statement;<sup>49</sup> and 217.38 Rs./Kg. (contemporaneous) in the GTA data.<sup>50</sup> This wide range does not, per se, render any of the values unrepresentative or distortive. The GTA data reflect 2009-2010 pricing data

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<sup>44</sup> See XITIC’s Proposed Surrogate Value Submission at 3, Attach. 3 (Nov. 22, 2010).

<sup>45</sup> *Id.* at Attach. 4 (stating that in 2009 to 2010 “[t]he principal business of the Agro Dutch Industries Limited is growing and canning of White Button Mushrooms.”).

<sup>46</sup> *Id.* at 3, Attach. 6.

<sup>47</sup> *Id.* at Attach. 6.

<sup>48</sup> *Id.* at 3, Attach. 6.

<sup>49</sup> *Id.* at 3, Attach. 3.

<sup>50</sup> See Surrogate Values for the Preliminary Results of Review at 6, Exhibit 3 (Feb. 28, 2011).

compiled at the national level in India and, thus, are representative of a broad market average. In contrast, the Agro Dutch and Himalya data reflect the experience of single companies within India during particular time periods, neither of which is contemporaneous with the period of review. In other words, the GTA data, on the one hand, and the Agro Dutch and Himalya data, on the other, were collected at different levels of comparison and during different periods of time. Thus, it is reasonable to assume that a single company's experience may not be reflective of broader market averages and that prices may vary over time, depending upon market forces.

Turning to the remaining surrogate value criteria, the Department continues to find that the Agro Dutch and Himalya data are not contemporaneous with the period of review.<sup>51</sup> Moreover, the Department continues to find that the record does not contain any evidence that these sources are free of taxes and duties.<sup>52</sup> Finally, the Department continues to find that, because these data reflect only the respective companies' experience in India during the particular time periods, these sources are not representative of broad market averages. Importantly, the Court did not reject these findings.<sup>53</sup>

Finally, the Department acknowledges that XITIC did not report that it used a particular quality of white button mushroom spawn in its production process. Moreover, as explained above, the Agro Dutch and Himalya data do not identify the particular type of spawn used by those companies, let alone the quality of such spawn. Thus, without more information, the Department cannot discern any meaningful conclusions from the record data and, consequently, decided to abandon its position in the *Final Results* that the Agro Dutch and Himalya data do not approximate XITIC's high quality mushroom spawn.

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<sup>51</sup> See XITIC's Proposed Surrogate Value Submission at Attach. 3, Attach. 6 (Nov. 22, 2010).

<sup>52</sup> *Id.*

<sup>53</sup> See *Remand Opinion and Order* at 12.

In sum, the Department determines that GTA import data under Indian HTS 0602.90.10, “Mushroom Spawn” are the best available information with which to value XITIC’s mushroom spawn. Therefore, the Department will continue to use GTA import data under Indian HTS 0602.90.10, “Mushroom Spawn,” to calculate the surrogate value for XITIC’s mushroom spawn.

**d. Surrogate Values for XITIC’s Labor and Financial Ratios**

**Background**

In the *Final Results*, the Department used the interim labor methodology,<sup>54</sup> as opposed to the revised labor methodology,<sup>55</sup> to calculate XITIC’s surrogate values for labor and financial ratios.<sup>56</sup> In the *Amended Final Results*, the Department rejected XITIC’s claim that its decision to use the interim labor methodology constituted a ministerial error.<sup>57</sup>

In litigation, XITIC argued that the Department applied the revised labor methodology in two proceedings with statutory deadlines similar to the underlying review and that, consequently, the Department should have used the revised labor methodology in this review. The Department agreed with XITIC and requested a voluntary remand on this issue, explaining that it would recalculate XITIC’s surrogate labor rate and financial ratios, adjusting the latter if appropriate. The Court granted the Department’s request and ordered it to “employ its revised labor

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<sup>54</sup> See, e.g., *Certain New Pneumatic Off-the-Road-Tires From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 64259 (October 19, 2010); see also *Certain Activated Carbon From the People's Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review*, 75 FR 70208 (November 18, 2010), and accompanying Issues and Decision Memorandum at Comment 4f.

<sup>55</sup> See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (*Revised Labor Methodology*).

<sup>56</sup> See Memorandum from Fred Baker and Scott Hoefke to The File, Subject: Surrogate Values for the Preliminary Results of Review Certain Preserved Mushrooms from the People’s Republic of China, dated February 28, 2011, at 12-14.

<sup>57</sup> See *Amended Final Results*, 76 FR at 70112-13.

methodology to recalculate XITIC's surrogate labor rate and financial ratios and, if appropriate, adjust the financial ratios . . . ."<sup>58</sup>

### Analysis

In accordance with the *Remand Opinion and Order*, the Department used its revised labor methodology to recalculate the surrogate value for XITIC's labor. In applying its revised labor methodology, the Department still must determine which record data source constitutes the best available information to value XITIC's labor.

The Department finds that Chapter 6A of the International Labor Organization's (ILO) 2005 Yearbook of Labour Statistics contains the best available information to value XITIC's labor. The labor data cover all paid employees, wage earners and salaried employees, of both sexes.<sup>59</sup> The Department used the two-digit series most specific to the production of subject merchandise, Sub-Classification 15, which is described as "Manufacture of Food Products and Beverages."<sup>60</sup> Moreover, similar to the Department's determinations in other proceedings,<sup>61</sup> the Department finds that the ILO data are publicly-available, free of taxes and duties, and representative of broad market averages. Finally, because the ILO data are not contemporaneous with the period of review, the Department adjusted the data using the relevant Consumer Price Index (CPI) as reported by the International Monetary Fund's (IMF) International Financial Statistics under series "64..ZF Consumer Prices."<sup>62</sup>

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<sup>58</sup> See *Remand Opinion and Order* at 19-20, 31.

<sup>59</sup> See Memorandum to the File from Scott Hoefke, "Certain Preserved Mushrooms from the People's Republic of China: Draft Results of Redetermination; *XITIC v. U.S.*" (XITIC Calculation Memorandum), dated March 27, 2014 and herein incorporated by reference, at 2-3 and Attachment 5.

<sup>60</sup> *Id.*

<sup>61</sup> See, e.g., *Front Seating Service Valves from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 27954 (May 13, 2013), and accompanying Preliminary Decision Memorandum at 17, unchanged in 78 FR 73825 (Dec. 9, 2013), and accompanying Issues and Decision Memorandum at 30.

<sup>62</sup> See XITIC Calculation Memorandum at 3.

Finally, the Department made certain adjustments to XITIC's financial ratios, as appropriate. Specifically, the Department adjusted certain information from the financial statements of Flex Foods by moving "Contributions to Provident Fund and Other Fund" and "Employees Welfare Expenses" from selling, general and administrative expenses (SG&A) to labor. For a more detailed discussion of these calculations, see the Department's memorandum disclosed concurrently with these final results of redetermination pursuant to court remand.<sup>63</sup>

e. **Results of Changes to XITIC's Weighted-Average Dumping Margin**

In light of these revisions, the Department recalculated XITIC's weighted-average dumping margin. The resulting calculation yields a weighted-average dumping margin of 5.76 percent for XITIC.

2. **Separate Rate Assigned To Iceman Group and Golden Banyan**

**Background**

In the *Final Results*, to calculate the separate rate assigned to Iceman Group and Golden Banyan, the Department used the methodology established in section 735(c)(5)(A) of the Act for market-economy cases to calculate the "all-others rate."<sup>64</sup> Specifically, it weight-averaged the weighted-average dumping margins of the three mandatory respondents in this case.<sup>65</sup> The Department found it reasonable to rely upon this methodology because none of the three mandatory respondents received zero or *de minimis* margins, or rates based entirely upon facts available.<sup>66</sup> After the Department corrected certain ministerial errors, the weighted-average dumping margins for the three mandatory respondents in the review were 2.17 percent for Blue Field (Sichuan) Food Industrial Co., Ltd. (Blue Field); 13.12 percent for XITIC; and 266.13

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<sup>63</sup> *Id.*

<sup>64</sup> *See supra* note 4.

<sup>65</sup> *See Final Results*, 76 FR at 56733.

<sup>66</sup> *See id.*

percent for Guangxi Jisheng Foods, Inc. (Jisheng).<sup>67</sup> The Department calculated Jisheng's weighted-average dumping margin using partial, as opposed to total, adverse facts available (AFA).<sup>68</sup> Using this approach, the Department calculated a separate rate of 76.12 percent for Iceman Group and Golden Banyan.<sup>69</sup>

In litigation, Iceman Group and Golden Banyan argued that the Department unlawfully included the weighted-average dumping margin of Jisheng in the calculation of the separate rate because Jisheng's margin was higher than the rate assigned to the PRC-wide entity. Iceman Group and Golden Banyan also argued that the Department must explain how the separate rate reasonably reflects their commercial activities.

The Court remanded the issue back to the Department, holding that the separate rate assigned to these companies was not supported by substantial evidence. The Court recognized that the section 735(c)(5)(A) of the Act "only requires the exclusion of margins determined 'entirely' under facts available or AFA and is silent with regard to partial AFA rates" and that, consequently, the Department "could have reasonably interpreted the statutory language to allow the inclusion of partial AFA margins in some circumstances."<sup>70</sup>

Nevertheless, the Court found the Department's interpretation unreasonable in the underlying review because (1) Jisheng's 266.13 percent weighted-average dumping margin is "over 250% greater than the rates assigned to Blue Field and XITIC" and "substantially higher than the 198.63% PRC-wide total AFA rate"; (2) the Department would not have included the PRC-wide rate in the separate rate calculation, given that the statute expressly excludes total

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<sup>67</sup> See *Amended Final Results*, 76 FR at 70113.

<sup>68</sup> See IDM at Comments 7 and 8. Notably, the Court recently sustained Commerce's application of partial adverse facts available to Jisheng. See generally *Guangxi Jisheng Foods, Inc. v. United States*, No. 11-00378, 2013 WL 5340770 (Ct. Int'l Trade Aug. 23, 2013).

<sup>69</sup> See *Amended Final Results*, 76 FR at 70113.

<sup>70</sup> See *Remand Opinion and Order* at 28.

AFA margins; and (3) it was unclear “how the inclusion of a figure 67.5% higher than” the PRC-wide rate and “over 250% higher than the rates assigned to other mandatory respondents is less distortional” than a separate rate that was based in part on the PRC-wide entity rate.<sup>71</sup> Because the Department did not address what the Court describes as a “seemingly anomalous result flowing from its separate methodology in this case,” it remanded the issue “for additional investigation or explanation.”<sup>72</sup>

Finally, the Court rejected the Government’s argument that the requirement that the separate rate reasonably reflect potential margins “attaches only when the record yields only zero or *de minimis* rates, or rates based entirely on facts otherwise available.” Although the Court acknowledged the argument to be “correct,” it nonetheless held that the separate rate calculated using the method in section 735(c)(5)(A) of the Act must also meet that standard articulated in section 735(c)(5)(B) of the Act.<sup>73</sup> The Court explained that “where the data used clearly indicates an unexplained anomaly, {the Department} must articulate a reasonable basis for its use of the anomalous result.”<sup>74</sup> Consequently, the Court ordered the Department to explain “why its actions are based on a reasonable reading of the record.”<sup>75</sup>

### **Analysis**

As an initial matter, because the weighted-average dumping margin for XITIC changed, the Department must make the corresponding change to Iceman Group’s and Golden Banyan’s separate rate. Specifically, the Department weight-averaged the weighted-average dumping margins of the three mandatory respondents in this case, including XITIC’s revised weighted-

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<sup>71</sup> *Id.* at 28-29.

<sup>72</sup> *Id.* at 29.

<sup>73</sup> *Id.* at 29-30.

<sup>74</sup> *Id.* at 30.

<sup>75</sup> *Id.*; *see also id.* at 31.

average dumping margin, and calculated a separate rate of 74.14 percent for Iceman Group and Golden Banyan.

Although the Department respectfully disagrees that the statute requires the analysis requested by the Court, the Department continues to find that, based on the evidence on the record, its decision to include Jisheng's weighted-average dumping margin in the calculation of separate rate assigned to Iceman Group and Golden Banyan is reasonable and supported by substantial evidence. As noted above, the Court does not object to the Department's interpretation of section 735(c)(5)(A) of the Act; rather, the Court held that the Department did not buttress its interpretation with substantial evidence on the record. Several record facts support the Department's determination.

First, the Department finds that Jisheng's status as one of the largest exporters of subject merchandise during the period of review means that its weighted-average dumping margin is representative of pricing behavior during the period of review. Apart from information in the separate rate certifications, the record contains no evidence on the commercial activity of Iceman Group and Golden Banyan; instead, it contains sales data only from the mandatory respondents, such as Jisheng. The Department selected Jisheng as a mandatory respondent based upon its status as one of the largest exporters of subject merchandise during the period of review.<sup>76</sup> The Court recently recognized that when the Department limits the number of respondents that it individually examines, such as in the underlying review, the weighted-average dumping margins of the mandatory respondents are "most representative" of pricing behavior during a particular time period because of their largest exporter status.<sup>77</sup> Thus, Jisheng's pricing behavior is

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<sup>76</sup> See Respondent Selection Memorandum at 4 and Attach. (May 17, 2010).

<sup>77</sup> See *Albemarle Corp. v. United States*, 931 F. Supp. 2d 1280, 1292 (Ct. Int'l Trade 2013).

reflective of pricing behavior during the period of review, as is the observed pricing behavior of Blue Field and XITIC.

Second, the subject merchandise that Jisheng exported was similar to the range of products shipped by another mandatory respondent. Specifically, [ ] of the [ ] control numbers (CONNUMs) Jisheng reported having sold in the United States during the period of review are among the [ ] CONNUMs that Blue Field reported selling in the United States.<sup>78</sup> Thus, Jisheng sold meaningful amounts of the same products sold by another respondent during the period of review. The Department does not find any anomaly in the type of products sold by Jisheng.

Third, the quantity of subject merchandise exported by Jisheng is in the range of that exported by the two other mandatory respondents, XITIC and Blue Field. Specifically, the average shipment volume per invoice for Blue Field was [ ] kilograms,<sup>79</sup> the average shipment volume for Jisheng was [ ] kilograms,<sup>80</sup> and the average shipment volume for XITIC was [ ] kilograms.<sup>81</sup> Thus, the record shows that Jisheng sold in normal commercial quantities during the period of review.

Fourth, with respect to the Department's application of partial AFA to Jisheng, the information used to fill gaps in the data provided by Jisheng was Jisheng's own data submitted during the review. Further, the application of partial AFA had only a small effect on that respondent's overall weighted-average dumping margin. In particular, the partial AFA for missing factor of production data assigned to Jisheng affected only [ ] percent of the total

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<sup>78</sup> Compare Revised Jisheng SAS Program at 23 (listing CONNUMs sold to the United States during the period of review), with Revised Blue Field SAS Program at 35 (same). The various combinations of physical characteristics of the subject merchandise are often referred to as "models" and are assigned "CONNUMs" in the database and computer programs that the Department uses to perform the dumping analysis.

<sup>79</sup> See Revised Blue Field SAS Program Output at 1-31.

<sup>80</sup> See Revised Jisheng SAS Program Output at 1-15.

<sup>81</sup> See Revised XITIC SAS Program Output at 1-16.

volume of its U.S. sales, and the partial AFA assigned to Jisheng for missing packing data affected only [ ] percent of the total volume of its U.S. sales.<sup>82</sup> Moreover, to further ascertain the impact of the application of partial AFA to Jisheng's overall weighted-average dumping margin, the Department revised Jisheng's SAS program so as to exclude from the calculation all U.S. sales involving the application of partial AFA for either factor of production or packing data. The Department found that, under this scenario, Jisheng still would have received a weighted-average dumping margin of [ ] percent,<sup>83</sup> a margin [ ] the PRC-wide rate of 198.63 percent. Thus, the application of partial AFA to Jisheng did not have a significant effect on its overall weighted-average dumping margin.

This aspect of the Department's finding is further supported by the broad range of dumping margins attributable to Jisheng's sales of subject merchandise. In particular, the range of margins for sales to which the Department assigned partial AFA due to missing factor of production data was [ ] percent to [ ] percent, whereas the range of margins for sales to which the Department applied no AFA ranged from [ ] percent to [ ] percent.<sup>84</sup> Similarly, the range of margins for sales to which the Department applied partial AFA due to missing packing costs was [ ] percent to [ ] percent, whereas the range of margins for sales to which the Department did not apply partial AFA due to missing packing costs was [ ] percent to [ ] percent.<sup>85</sup> Thus, given the relatively small impact of the Department's application of partial AFA to Jisheng, the Department reasonably relied upon Jisheng's weighted-average dumping margin in its separate rate calculation.

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<sup>82</sup> See Revised Jisheng SAS Program Output at 66.

<sup>83</sup> See Second Jisheng SAS Program Output at 59.

<sup>84</sup> See Revised Jisheng SAS Program Output at 77.

<sup>85</sup> *Id.* at 78.

The Department observes that the subsequent administrative review of the underlying antidumping duty order further demonstrates that Jisheng's weighted-average dumping margin in this review is not anomalous.<sup>86</sup> Specifically, in the administrative review that followed this review, the Department calculated a weighted-average dumping margin (223.74 percent) similar to the margin calculated for Jisheng in this review.<sup>87</sup> Thus, these calculated rates demonstrate that Jisheng's margin in this review reasonably reflects potential dumping margins under the applicable antidumping duty order.

Finally, with respect to plaintiffs' comments on the PRC-wide entity rate, the Department observes that this rate was originally assigned to the entity as an application of total AFA in the original investigation.<sup>88</sup> However, the Department simply continued to apply this rate to entries from companies deemed to be part of the PRC-wide entity in the review, but there was no new determination to apply total AFA to the entity or to change its rate.<sup>89</sup>

Taken together, the Department continues to find that the use of Jisheng's weighted-average dumping margin in the calculation of Iceman Group's and Golden Banyan's separate rate is reasonable and supported by substantial evidence. Consequently, the Department finds that the 74.14 percent rate assigned to Iceman Group and Golden Banyan, which is a weighted-

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<sup>86</sup> The Department recognizes that the Court recently found another margin calculated in that review (*i.e.*, Blue Field's 308.33 percent margin) to be unsupported by substantial evidence. *See generally Blue Field (Sichuan) Food Indus. Co., Ltd. v. United States*, 949 F. Supp. 2d 1311 (2013). The calculations surrounding Blue Field's margin remain subject to litigation.

<sup>87</sup> *See Certain Preserved Mushrooms from the People's Republic of China*, 77 FR 55808, 55809 (Sept. 11, 2012), and accompanying Issues and Decision Memorandum.

<sup>88</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).

<sup>89</sup> *See generally Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Rescission in Part, and Intent To Rescind in Part*, 76 FR 12704 (March 8, 2011), unchanged in *Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission in Part*, 76 FR 56732 (September 14, 2011), as amended *Certain Preserved Mushrooms from the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review*, 76 FR 70112 (Nov. 10, 2011).

average of Blue Field's, XITIC's, and Jisheng's weighted-average dumping margins, reasonably reflects potential dumping margins during the period of review.

### **C. Summary and Analysis of Plaintiffs' Comments on the Draft Remand Results**

As explained above, Plaintiffs submitted comments on the Department's Draft Remand Results on April 1, 2014. Plaintiffs did not comment upon or otherwise contest the Department's determinations with respect to the surrogate values for XITIC's lime, labor, and financial ratios.<sup>90</sup> However, plaintiffs commented upon the Department's selection of the surrogate value for XITIC's mushroom spawn,<sup>91</sup> as well as the Department's calculation of the separate rate assigned to Iceman Group and Golden Banyan.<sup>92</sup>

As explained below, we continue to reach the same conclusions that we reached in the Draft Remand Results. We address plaintiffs' comments and provide our analysis in turn.

#### **Issue 1: Surrogate Value for XITIC's Mushroom Spawn**

##### *Plaintiffs' Comments*

- The Draft Remand Results do not consider, as required by the *Remand Opinion and Order*, that the value derived from the GTA import data is more than twice as high as the proposed surrogate values derived from the Agro Dutch and Flex Foods financial statements.<sup>93</sup>
- The Department's conclusion that the Indian GTA data are more specific to XITIC's input (*i.e.*, white button mushroom spawn) than the data in the 2004-2005 Agro Dutch and 2007-2008 Himalya financial statements is not supported by substantial evidence for

<sup>90</sup> See generally Plaintiffs' Comments.

<sup>91</sup> *Id.* at 2-6.

<sup>92</sup> *Id.* at 6.

<sup>93</sup> In making this comment, plaintiffs erroneously claim that the Court ordered the Department to consider the value for mushroom spawn in the 2009-2010 Flex Foods financial statement. To the contrary, the Court's order focused only on the 2004-2005 Agro Dutch and 2007-2008 Himalya financial statements. See *Remand Opinion and Order* at 13. In any event, there is no line item in the 2009-2010 Flex Foods statements that is specific to mushroom spawn. See generally XITIC's Proposed Surrogate Value Submission Attach. 5 (Nov. 22, 2010).

the following reasons: (1) the GTA value selected by the Department comes from an HTS category that includes multiple types of mushroom spawn and, thus, is not specific to white button mushroom spawn used by XITIC; (2) there is no evidence on the record that either Agro Dutch or Himalya grew or processed any type of mushroom other than white button mushrooms; (3) the Department failed to take the 2009-2010 Agro Dutch and Flex Foods statements into account in its analysis; (4) because the Department rejected Indian GTA data to value cow manure and, instead, selected more specific information on the record, it should follow the same course in valuing XITIC's mushroom spawn; and (5) the decision to use Indian GTA data derived from an HTS basket category is inconsistent with decisions from the CIT in *Downhole Pipe & Equipment, LP v. United States*,<sup>94</sup> *Arch Chemicals, Inc. v. United States*,<sup>95</sup> and *Polyethylene Retail Carrier Bag Committee v. United States*.<sup>96</sup>

*Department's Position:*

The Department continues to find that GTA import data under Indian HTS 0602.90.10, "Mushroom Spawn," are the best available information to value XITIC's mushroom spawn. Plaintiffs' comments focus on (1) the value derived from the Indian GTA data vis-à-vis the values in the 2004-2005 Agro Dutch and 2007-2008 Himalya statements;<sup>97</sup> and (2) the specificity of these sources relative to XITIC's input. As explained below, plaintiffs overlook the Department's findings in the Draft Remand Results and otherwise fail to rebut them.

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<sup>94</sup> See 949 F. Supp. 2d 1288 (Ct. Int'l Trade 2013).

<sup>95</sup> See 33 CIT 954, 972 (2009).

<sup>96</sup> See 29 CIT 1418, 1444 (2005).

<sup>97</sup> While plaintiffs commented upon other statements, such as the 2009-2010 Agro Dutch and Flex Foods statements, they do not argue that Commerce should use the values from those statements to calculate the surrogate value for XITIC's mushroom spawn. See Plaintiffs' Comments at 2-6.

First, we continue to find that the differences in the values derived from the Indian GTA data, the 2004-2005 Agro Dutch statements, and the 2007-2008 Himalya statements do not affect the Department's specificity analysis. As explained above, there is a wide range of prices in the three mushroom spawn sources under consideration: 36.96 Rs./Kg. (uninflated) in the 2007-2008 Himalya statements;<sup>98</sup> 115.38 Rs./Kg. (uninflated) in the 2004-2005 Agro Dutch statements;<sup>99</sup> and 217.38 Rs./Kg. (contemporaneous) in the GTA data.<sup>100</sup> This wide range does not, per se, render any of the values unrepresentative or distortive. Moreover, as the Department explained in the Draft Remand Results,

the GTA data reflect 2009-2010 pricing data compiled at a national level in India and, thus, are representative of broad market averages. In contrast, the Agro Dutch and Himalya data reflect the experience of single companies within India during particular time periods, neither of which are contemporaneous with the period of review. In other words, the GTA data, on the one hand, and the Agro Dutch and Himalya data, on the other, were collected at different levels of comparison and during different periods of time. Thus, it is reasonable to assume that a single company's experience may not be reflective of broader market averages and that prices may vary over time, depending upon market forces.

Plaintiffs do not contest or otherwise rebut these specific findings. Instead, plaintiffs claim that the Department failed to address this aspect of the Court's order. The Draft Remand Results demonstrate otherwise.

Second, with respect to specificity, we continue to find that the Agro Dutch and Himalya statements proffered by plaintiffs are not the best available information to value mushroom spawn. As an initial matter, plaintiffs misunderstand the Department's findings in the Draft Remand Results. The Department did not determine that the GTA data are *more* specific than the data in the 2004-2005 Agro Dutch and 2007-2008 Himalya statements; rather the Department found that (1) the 2004-2005 Agro Dutch and 2007-2008 Himalya statements either are no more

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<sup>98</sup> See XITIC's Proposed Surrogate Value Submission at 3, Attach. 6 (Nov. 22, 2010).

<sup>99</sup> *Id.* at 3, Attach. 3.

<sup>100</sup> See Surrogate Values for the Preliminary Results of Review at 6, Exhibit 3 (Feb. 28, 2011).

specific to XITIC's input than the GTA data or do not satisfy the other surrogate value criteria and (2) the "spawn" line items in these statements did not identify the particular type of spawn used in the respective companies' production processes.

Turning to plaintiffs' arguments, the Department disagrees with plaintiffs that the Indian GTA data are not specific to XITIC's input because the Indian industry cultivates four types of mushrooms. The Department explained in the Draft Remand Results that, even if the GTA data included other species of spawn, use of the GTA import data in this determination would not be unreasonable because (1) any imports of white button mushroom spawn would enter under the HTS category selected by the Department (and not any other HTS category on the record) and (2) the Agro Dutch and Himalya statements do not satisfy several of the Department's surrogate value criteria – *i.e.*, the statements are not contemporaneous with the period of review, free of taxes and duties, or representative of broad market averages. Plaintiffs did not contest or otherwise rebut these specific findings.

As explained above, upon further examination in light of plaintiffs' comments, the Department acknowledges that Agro Dutch's 2004-2005 financial statements (but not Himalya's 2007-2008 statements) indicate that the company produces white button mushrooms, which is the type of mushroom used by XITIC in its production process. However, as we explained above, no party provided any evidence that the prices for mushroom spawn vary significantly by mushroom type. Further, while the data on the record indicate that Agro Dutch produced white button mushrooms, the particular line item in the 2004-2005 Agro Dutch data references "spawn" and, thus, does not identify the particular type of spawn used by that company in its production process, and whether other types of spawn could be included in this line item.

In any event, plaintiffs did not explain how record evidence on the production of “button mushrooms” (in the 2004-2005 Agro Dutch statements) and “white button mushrooms” (in the 2009-2010 Agro Dutch and Flex Foods statements) clarifies the line items on “spawn” in the 2004-2005 Agro Dutch and 2007-2008 Himalya statements, considering that the data pertain to mushrooms, not mushroom spawn.<sup>101</sup> Moreover, the passage cited by plaintiffs in the 2004-2005 Agro Dutch statements does not demonstrate that either Agro Dutch or Himalya grew “button mushrooms” from 2004-2005 or 2007-2008; rather, the passage in the 2004-2005 Agro Dutch statements explains that “seasonal growers” in “Himachal Pradesh, Jammu & Kashmir, hilly regions of Uttar Pradesh, hilly regions of Tamil Nadu and North Eastern hilly regions . . . take 2-3 crops of button mushroom in a year.”<sup>102</sup> Thus, the passage does not identify any particular growers in these regions, let alone indicate that Agro Dutch or Himalya purchased white button mushroom spawn from them. Finally, as the Department explained in the Draft Remand Results, the evidence from the 2009-2010 Agro Dutch statements pertains to a different time period.<sup>103</sup>

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<sup>101</sup> See XITIC’s Proposed Surrogate Value Submission at Attach. 3 (Nov. 22, 2010) (stating in 2004-2005 Agro Dutch statement that “seasonal growers” in certain parts of India “take 2-3 crops of button mushroom in a year”), Attach. 4 (stating in 2009-2010 Agro Dutch statements that “{t}he principal business of the Agro Dutch Industries Limited is growing and canning of White Button Mushrooms”), and Attach. 5 (describing in 2009-2010 Flex Foods statements the global trends in mushroom industry, as well as trends in India). Specifically, the 2009-2010 Flex Foods statements explain in relevant part that

The mushroom industry has a bright future due to increasing world wide mushroom demand. This continues to be centered on the white-button mushroom, which accounts for nearly 40 per cent of world production, with major growers located in the US, France, and China. Large scale white or red button mushroom production is centered in Europe (mainly western part), North America (USA, Canada) and S.E. Asia (China, Korea, Indonesia, Taiwan and India).

India is not a major producer of any of the mushroom varieties, but it is advancing in mushroom cultivation. The variety gaining maximum popularity in India had been the white-button mushroom, which registered the highest growth rate in production terms. The mushroom industry in India is largely an export-oriented one as the domestic demand for mushroom is not significant.

*See id.* Attach. 5 at 4. Thus, similar to the 2004-2005 and 2009-2010 Agro Dutch statements, the 2009-2010 Flex Foods statements do not tie any particular type of mushroom production to any particular type of mushroom spawn.

<sup>102</sup> See XITIC’s Proposed Surrogate Value Submission Attach. 3 at 6 (Nov. 22, 2010).

<sup>103</sup> The Department also explained that the line item in the 2009-2010 Agro Dutch statements was not specific to XITIC’s input. See XITIC’s Proposed Surrogate Value Submission at Attach. 4 (Nov. 22, 2010).

The same is true for the 2009-2010 Flex Foods statements.<sup>104</sup> Thus, contrary to Plaintiffs' comment, the statements do not cause the Department to change its analysis.

The Department also disagrees with plaintiffs regarding the similarities between the calculation of the surrogate value for mushroom spawn and the calculation of the surrogate value for cow manure. Unlike the record data for cow manure, the GTA data used by the Department to value mushroom spawn – Indian HTS 0602.90.10, “Mushroom Spawn,” by their terms could encompass only the input used by XITIC, mushroom spawn.<sup>105</sup> Indeed, mushroom spawn could not be classified elsewhere. By contrast, the proposed GTA data for cow manure – Indian HTS 3101, “Animal or vegetable fertilizers, whether or not mixed together or chemically treated; fertilizers produced by the mixing or chemical treatment of animal or vegetable products,” – by their terms could encompass potentially several products distinct from the input used by XITIC, cow manure.<sup>106</sup> In other words, different evidence can lead to different results. Thus, because of these differences in specificity, the Department did not act unreasonably in reaching different conclusions with respect to the surrogate values for each input.

As to the final point on specificity, plaintiffs' reliance upon certain CIT decisions is misplaced. In *Downhole Pipe & Equipment, LP*, the CIT explained that “Commerce should not rely on a basket tariff category if a more representative surrogate value is available.”<sup>107</sup> In *Downhole Pipe & Equipment, LP*, the CIT upheld Commerce's selection of GTA data derived from an HTS category that covered the input used by the respondent over other, broader HTS categories.<sup>108</sup> Similar to the GTA data used in the determination under review in *Downhole Pipe*

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<sup>104</sup> See generally XITIC's Proposed Surrogate Value Submission Attach. 5 (Nov. 22, 2010).

<sup>105</sup> See Surrogate Values for the Preliminary Results of Review at 6, Exhibit 3 (Feb. 28, 2011).

<sup>106</sup> *Id.* at 5.

<sup>107</sup> 949 F. Supp. 2d at 1293 (citing *Arch Chems., Inc.*, 33 CIT at 972; *Polyethylene Retail Carrier Bag Comm.*, 29 CIT at 1444).

<sup>108</sup> *Id.* at 1293-94.

*& Equipment, LP*, the GTA data for mushroom spawn used by the Department on remand are derived from Indian HTS 0602.90.10, “Mushroom Spawn,” and thus would encompass only mushroom spawn, including the white button mushroom spawn used by XITIC in its production process. Indeed, the Department’s decision on remand is consistent with the CIT’s decisions in *Arch. Chemicals, Inc.* and *Polyethylene Retail Carrier Bag Committee*, wherein the CIT sustained the Department’s selection of specific sources to value certain inputs.<sup>109</sup> Thus, the Department has not acted inconsistently with the CIT decisions cited.

Finally, with regard to the Department’s other findings on the GTA data, plaintiffs do not challenge that the data are contemporaneous with the period of review, free of taxes and duties, representative of broad market averages, and publicly-available. Because the record does not contain any evidence that places those findings in doubt, the Department continues to find that the GTA data satisfy the breadth of the Department’s selection criteria. Therefore, the Department continues to find that the GTA data are the “best available information” and, consequently, will use GTA import data under Indian HTS 0602.90.10, “Mushroom Spawn,” to value XITIC’s mushroom spawn.

## **Issue 2: Separate Rate Assigned to Iceman Group and Golden Banyan**

*Plaintiffs’ comments:*

- The Department’s inclusion of Jisheng’s margin, which is higher than the China-wide rate of 198.63 percent, fails to implement the remand order of the Court.
- The CIT concluded that the inclusion of Jisheng’s margin “undercut the actual purpose behind the statutory subsection and antidumping law generally – that is, to calculate margins as accurately possible.”<sup>110</sup>

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<sup>109</sup> See *Arch Chems., Inc.*, 33 CIT at 972; *Polyethylene Retail Carrier Bag Comm.*, 29 CIT at 1444.

<sup>110</sup> See *Remand Opinion and Order* at 28.

- The Draft Remand Results fail to focus on the anomalous impact of the inclusion of Jisheng's margin in calculation of the separate rate, as required by the Court's order.

*Department's Position:*

The Department continues to find that the inclusion of Jisheng's margin in the separate rate calculation is supported by substantial evidence. Plaintiffs' comments focus on (1) the accuracy of the separate rate and (2) the impact of the inclusion of Jisheng's margin in the calculation of the separate rate. As explained below, plaintiffs misinterpret the Department's findings in the Draft Remand Results and otherwise fail to rebut them.

As an initial matter, the Court did not order the Department to exclude Jisheng's margin in the calculation of the separate rate. Rather, the Court remanded the issue "for additional investigation or explanation."<sup>111</sup>

Moreover, in the Draft Remand Results, the Department provided the additional investigation and explanation sought by the Court, especially with respect to the accuracy of the separate rate and any purported anomaly that might flow from the inclusion of Jisheng's margin in the calculation. Specifically, as explained above, the Department found that (1) due to their status as mandatory respondents, Jisheng's, Blue Field's, and XITIC's respective margins are representative of pricing behavior during the period of review; (2) the subject merchandise that Jisheng exported was similar to the range of products shipped by another mandatory respondent; (3) the quantity of subject merchandise exported by Jisheng is in the range of that exported by the other two mandatory respondents; (4) the application of partial AFA to Jisheng, which utilized the company's own information submitted during the review, had only a small effect on Jisheng's overall weighted-average dumping margin; and (5) a mandatory respondent in a subsequent review of the antidumping duty order received a calculated margin, likewise based on

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<sup>111</sup> *Id.* at 29.

that company's own data, which exceeded the PRC-wide rate. Taken together, these facts indicate that Jisheng's margin was not anomalous or did not otherwise have an anomalous impact on the separate rate calculation. Importantly, plaintiffs did not rebut any of these specific findings made by the Department in the Draft Remand Results.

Finally, as explained above, the PRC-wide entity rate was originally assigned to the entity as an application of total AFA in the original investigation.<sup>112</sup> However, the Department simply continued to apply this rate to entries from companies deemed to be part of the PRC-wide entity in the review, but there was no new determination to apply total AFA to the entity or to change its rate.<sup>113</sup>

In sum, the Department continues to find that substantial evidence supports the inclusion of Jisheng's margin in the calculation of separate rate for Iceman Group and Golden Banyan.

#### **D. Final Results of Redetermination**

We implemented all changes discussed above. As a result of this remand redetermination and as stated above, XITIC's weighted-average dumping margin changed. Specifically, based upon our recalculation of XITIC's surrogate values for lime, labor, and financial ratios, XITIC's weighted-average dumping margin changed from 13.12 percent to 5.76 percent. We will disclose, concurrently with the issuance of this final remand redetermination, materials that show the recalculation of XITIC's weighted-average dumping margin.<sup>114</sup> Moreover, as a result of the change to XITIC's weighted-average dumping margin, the separate rate assigned to Iceman Group and Golden Banyan also changed accordingly from 76.12 percent to 74.14 percent.

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<sup>112</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).

<sup>113</sup> See *Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Rescission in Part, and Intent To Rescind in Part*, 76 FR 12704 (March 8, 2011); unchanged in *Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission in Part*, 76 FR 56732 (September 14, 2011).

<sup>114</sup> See XITIC Calculation Memorandum at 1.

Upon a final and conclusive decision in this case, the Department will instruct U.S. Customs and Border Protection to liquidate XITIC's, Iceman Group's, and Golden Banyan's entries for this period of review consistent with our final results of redetermination.

  
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Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

21 APRIL 2014  
Date