

Manufacturer/exporter	Time period	Margin (percent)
Shandong Huarong Machinery Company Bars/Wedges .....	2/1/01–1/31/02	34.56

The Department will disclose to parties to this proceeding the calculations performed in reaching these preliminary results within 10 days of the date of announcement of these preliminary review results. An interested party may request a hearing within 30 days of publication of the preliminary results. See 19 CFR 351.310(c). Interested parties may submit written comments (case briefs), in accordance with 19 CFR 351.310(c)(1)(ii), and rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs in accordance with 19 CFR 351.309(d). 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. We will issue subsequently a memorandum identifying the date of a hearing, if one is requested, and the deadlines for submitting case and rebuttal briefs.

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by these reviews and for future deposits of estimated duties.

#### Duty Assessment Rates

Upon completion of this administrative review, the Department will determine, and the U.S. Customs Service (Customs) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we will calculate importer-specific per-unit duty assessment rates based on the ratio of the total amount of the dumping duties calculated for the examined sales to the total quantity of those same sales. These importer-specific rates will be assessed uniformly on all entries of each importer that were made during the POR. In accordance with 19 CFR 351.106 (c)(2), we will instruct Customs to liquidate without regard to antidumping duties any entries for which the importer-specific assessment rate is *de minimis*, i.e., less than 0.5 percent *ad valorem*. For all shipments of bars/wedges from the PRC exported by Huarong and imported by entities not identified by Huarong in its

questionnaire response, we will instruct customs to assess antidumping duties at the cash deposit rate in effect on the date of the entry. The Department will issue appraisal instructions directly to Customs upon the completion of the final results of this administrative review.

#### Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of bars and wedges from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for bars and wedges exported by Huarong will be the rate established in the final results of this administrative review; (2) for companies previously found to be entitled to a company-specific rate, the cash deposit rate for bars/wedges will continue to be the company-specific rate published for the most recent period reviewed; (3) for all other PRC exporters of bars/wedges from the PRC, the cash deposit rate will be the following PRC country-wide rate: 47.88 percent; and (4) the cash deposit rate for non-PRC exporters of bars/wedges from the PRC who do not have their own rate will be the rate applicable to the PRC supplier of the exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

#### Notification to Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under § 351.402(f)(2) of the Department's regulations 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.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 28, 2003.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

[FR Doc. 03–5299 Filed 3–5–03; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A–570–851]

#### **Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results and Partial Rescission of Fourth New Shipper Review and Preliminary Results of Third Antidumping Duty Administrative Review**

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

**ACTION:** Notice of preliminary results and partial rescission of fourth new shipper review and preliminary results of third antidumping duty administrative review.

**SUMMARY:** The Department of Commerce is concurrently conducting the fourth new shipper review and third administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China covering the period February 1, 2001, through January 31, 2002. The new shipper review covers three exporters. We have preliminarily determined that one of those exporters has not made sales at less than normal value. For the other two exporters, we have preliminarily determined that one of them failed to demonstrate that its reported sale was a *bona fide* sale, while the other failed to demonstrate its entitlement to a new shipper review. Thus, we are preliminarily rescinding the review with respect to them. The administrative review covers four exporters. We have preliminarily determined that sales have been made below normal value with respect to all of these exporters. If these preliminary results are adopted in our final results of this review, we will instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries.

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

**EFFECTIVE DATE:** March 6, 2003.

**FOR FURTHER INFORMATION CONTACT:** Brian Smith or Davina Hashmi, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-1766 or (202) 482-0984, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On February 19, 1999, the Department published in the **Federal Register** an amended final determination and antidumping duty order on certain preserved mushrooms from the People's Republic of China ("PRC") (64 FR 8308).

On February 1, 2002, the Department published a notice advising of the opportunity to request an administrative review of the antidumping duty order on certain preserved mushrooms from the PRC (67 FR 4945). On February 28, 2002, the Department received timely requests from Gerber Food (Yunnan) Co., Ltd. ("Gerber") and Green Fresh Foods (Zhangzhou) Co., Ltd. ("Green Fresh") for an administrative review pursuant to 19 CFR 351.213(b).

On February 27 and 28, 2002, the Department received timely requests from Guangxi Yulin Oriental Food Co., Ltd. ("Guangxi Yulin"), Shenzhen Qunxingyuan Trading Co., Ltd. ("Shenzhen Qunxingyuan"), and Zhangzhou Jingxiang Foods Co., Ltd. ("Zhangzhou Jingxiang") for a new shipper review in accordance with 19 CFR 351.214(c).

On February 28, 2002, the petitioner<sup>1</sup> requested an administrative review pursuant to 19 CFR 351.213(b) of 7 companies<sup>2</sup> which it claimed were producers and/or exporters of the subject merchandise. Two of these seven companies also requested a review.

From March 6 through 28, 2002, Guangxi Yulin, Shenzhen Qunxingyuan, and Zhangzhou Jingxiang all agreed to waive the time limits applicable to the new shipper review and to permit the Department to conduct the new shipper

review concurrently with the administrative review.

On March 20, 2002, the Department initiated an administrative review covering the companies listed in the petitioner's February 28, 2002, request. (*See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 67 FR 14696, 14698 (March 27, 2002).)

On March 29, 2002, the Department initiated a new shipper review of Guangxi Yulin, Shenzhen Qunxingyuan, and Zhangzhou Jingxiang. (*See Certain Preserved Mushrooms from the People's Republic of China: Initiation of New Shipper Antidumping Duty Review*, 67 FR 16088 (April 4, 2002).)

On April 16, 2002, we issued a questionnaire to each PRC company listed in the above-referenced initiation notices.

On May 2, 2002, the Department provided the parties an opportunity to submit publicly available information ("PAI") for consideration in these preliminary results.

On May 21, 2002, the respondent Compania Envasadora del Atlantico indicated that it had no shipments of the subject merchandise to the United States during the period of review ("POR").

From May 23 through June 7, 2002, China Processed, Gerber, Green Fresh, Shantou Hongda, Shenxian Dongxing, Guangxi Yulin, Shenzhen Qunxingyuan, and Zhangzhou Jingxiang submitted their responses to the Department's antidumping duty questionnaire.

On June 11, 2002, the petitioner requested an extension until July 9, 2002, to withdraw any request for review of companies listed in its February 28, 2002, communication, which the Department granted on June 21, 2002.

From June 14 through August 23, 2002, the petitioner submitted comments on the questionnaire responses provided by Gerber, Green Fresh, Guangxi Yulin, and Shenzhen Qunxingyuan.

From June 28 through July 15, 2002, the Department issued China Processed, Gerber, Guangxi Yulin, and Shenzhen Qunxingyuan a supplemental questionnaire.

On July 9, 2002, the petitioner withdrew its request for an administrative review of China Processed, Compania Envasadora del Atlantico, and Raoping Xingyu. On July 10, 2002, the petitioner requested an extension of time until August 9, 2002, to submit factual information in this case, which the Department granted on July 12, 2002.

From July 23 through July 29, 2002, the Department issued Green Fresh, Shantou Hongda, Shenxian Dongxing, and Zhangzhou Jingxiang a supplemental questionnaire.

From July 23, through August 26, 2002, the respondents submitted their responses to the Department's supplemental questionnaire.

On August 16, 2002, the Department published in the **Federal Register** a notice of postponement of the preliminary results until no later than February 28, 2003 (67 FR 53565).

On August 20, 2002, the Department rescinded the administrative review with respect to China Processed, Compania Envasadora del Atlantico, and Raoping Xingyu. (*See Certain Preserved Mushrooms from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 53914 (August 20, 2002).)

From August 20 through August 23, 2002, the Department issued Gerber, Shenzhen Qunxingyuan, and Zhangzhou Jingxiang a second supplemental questionnaire.

From September 3 through 6, 2002, the Department issued verification outlines to Guangxi Yulin, Shenxian Dongxing, Shenzhen Qunxingyuan, and Zhangzhou Jingxiang.

From September 4 through 11, 2002, Gerber, Shenzhen Qunxingyuan, and Zhangzhou Jingxiang submitted their responses to the Department's second supplemental questionnaire.

On September 6, 2002, Gerber, Green Fresh, Zhangzhou Jingxiang, and the petitioner submitted PAI for use in valuing the factors of production.

The Department conducted verification of the responses of Guangxi Yulin, Shenxian Dongxing, Shenzhen Qunxingyuan, and Zhangzhou Jingxiang during the period September 16, through 25, 2002. From October 21 through November 8, 2002, the Department issued verification reports for these companies.

On November 12, 2002, the Department issued Shantou Hongda a second supplemental questionnaire and received this company's response on November 26, 2002.

On November 22, 2002, the Department issued Gerber a third supplemental questionnaire and Green Fresh a second supplemental questionnaire. Both companies submitted their responses on December 23, 2002.

From December 16, 2002, through January 2, 2003, the Department issued verification outlines to Gerber, Green Fresh, and Shantou Hongda.

<sup>1</sup> The petitioner is the Coalition for Fair Preserved Mushroom Trade which includes the American Mushroom Institute and the following domestic companies: L.K. Bowman, Inc., Modern Mushroom Farms, Inc., Monterey Mushrooms, Inc., Mount Laurel Canning Corp., Mushrooms Canning Company, Southwood Farms, Sunny Dell Foods, Inc., and United Canning Corp.

<sup>2</sup> The petitioner's request included the following companies: (1) China Processed Food Import & Export Company ("China Processed"); (2) Shantou Hongda Industrial General Corporation ("Shantou Hongda"); (3) Shenxian Dongxing Foods Co., Ltd. ("Shenxian Dongxing"); (4) Gerber; (5) Green Fresh; (6) Raoping Xingyu Foods Co., Ltd. ("Raoping Xingyu"); and (7) Compania Envasadora Del Atlantico.

On February 5, 2003, Gerber and Green Fresh submitted comments on the petitioner's September 6, 2002, PAI submission and additional PAI. This PAI submission was untimely filed for consideration in the preliminary results. However, pursuant to 19 CFR 351.301(c)(3)(ii), we will consider the information contained in this submission in the final results.

The Department conducted verification of the responses of Gerber, Green Fresh, and Shantou Hongda during the period January 9, through 25, 2003. From February 12 through 14, 2003, the Department issued the verification reports for these companies.

In February 2003, the petitioner submitted pre-preliminary results comments on the data provided by all respondents in these reviews.

### Scope of Order

The products covered by this order are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis*. "Preserved mushrooms" refer 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. 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.

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.<sup>3</sup>

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<sup>4</sup> ("HTS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

### Period of Reviews

The period of reviews ("POR") is February 1, 2001, through January 31, 2002.

### Verification

As provided in section 782(i)(2) of the Act, we verified information provided by each respondent. We used standard verification procedures, including on-site inspection of the manufacturers' and exporters' facilities, and examination of relevant sales and financial records. Our verification results are outlined in the verification report for each company. (For further discussion, see October 21, 2002, Verification Report for Zhangzhou Jingxiang in the Fourth Antidumping Duty New Shipper Review ("Zhangzhou Jingxiang Verification Report"); October 24, 2002, Verification Report for Shexian Dongxing in the Third Antidumping Duty Administrative Review ("Shexian Dongxing Verification Report"); the November 8, 2002, Verification Reports for Guangxi Yulin and Shenzhen Qunxingyuan in the Fourth Antidumping Duty New Shipper Review ("Guangxi Yulin Verification Report" and "Shenzhen Qunxingyuan Verification Report"); the February 12, 2003, Verification Reports for Gerber and Green Fresh in the Third Antidumping Duty Administrative Review ("Gerber Verification Report" and "Green Fresh Verification Report"); and the February 14, 2003, Verification Report for Shantou Hongda in the Third Antidumping Duty Administrative Review ("Shantou Hongda Verification Report").)

### Partial Rescission of New Shipper Review

For the reasons stated below, we are preliminarily rescinding, in part, the new shipper review with respect to Zhangzhou Jingxiang and Shenzhen Qunxingyuan.

Specifically, we are preliminarily rescinding the new shipper review with respect to Zhangzhou Jingxiang because it failed to provide us with the necessary documentation for

determining which entity or entities own it. Furthermore, Zhangzhou Jingxiang was unable to explain whether or not its owner was affiliated with any PRC exporters or producers of the subject merchandise. Specifically, in its Section A response, Zhangzhou Jingxiang stated that it is an entity wholly owned by a single U.S. citizen. However, our examination at verification of Zhangzhou Jingxiang's bank account records indicated that the entire investment of Zhangzhou Jingxiang's capital was provided to it by two U.S. importers of its merchandise, neither of which was the U.S. citizen which Zhangzhou Jingxiang claimed was its owner. Although Zhangzhou Jingxiang continued to maintain at verification that it was not owned by either U.S. importer, it could not substantiate with certainty which entity(ies) owned it and the affiliations of that entity(ies). Moreover, Zhangzhou Jingxiang was unable to provide documentation from either U.S. importer which showed each entity's ownership holdings, despite the Department's request for this information. (See Zhangzhou Jingxiang Verification Report at 3-5.)

In order to qualify for a new shipper review under 19 CFR 351.214, a company must certify, among other things, that since the investigation was initiated, it has never been affiliated with any exporter or producer who exported the subject merchandise to the United States during the period of investigation, including those not individually examined during the investigation. (See 19 CFR 351.214(2)(iii)(A).) Given that Zhangzhou Jingxiang could not substantiate its affiliations and, thus, its certification (which it provided prior to the initiation of the new shipper review) at verification, it is not entitled to a new shipper review. Therefore, we are preliminarily rescinding this review with respect to Zhangzhou Jingxiang.

In addition, we are preliminarily rescinding the administrative review with respect to Shenzhen Qunxingyuan because we find that it did not have a *bona fide* sale during the POR, as required by 19 CFR 351.214(b)(2)(iv)(C), based on the totality of the facts on the record. Specifically, we find that the price of its single reported sale was aberrationally high relative to the average unit value of all comparable canned mushroom imports from the PRC during the POR and during the month in which the sale was made. Moreover, we find that the price for the can size included in this sale was not within the reasonable range of prices charged by other PRC exporters under

<sup>3</sup> On June 19, 2000, the Department affirmed that "marinated," "acidified," or "pickled" mushrooms containing less than 0.5 percent acetic acid are within the scope of the Antidumping Duty Order. See "Recommendation Memorandum—Final Ruling of Request by Tak Fat, et al. for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China," dated June 19, 2000.

<sup>4</sup> Prior to January 1, 2002, the HTS subheadings were as follows: 2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000.

review for the comparable goods sold during the POR.

We also find that the quantity of the sale was abnormally low when compared to the average size of shipments of comparable goods during the month in which the sale was made and to the range of shipment sizes of other PRC exporters under review for comparable merchandise. In addition, because Shenzhen Qunxingyuan had no other sales of any merchandise, subject or non-subject, during or after the POR and therefore, apparently, had no commercial income during this period, we believe the legitimacy of this company as a viable commercial entity is called into question. In addition, the conflicting information we obtained regarding the address of its U.S. customer and other information regarding another respondent relating to this customer's reported address, leads us to question the legitimacy of the U.S. customer, and as a result, the bona fides of the reported sale itself. For all of these reasons, the Department preliminarily finds Shenzhen Qunxingyuan's sole U.S. sale during the POR was not a *bona fide* commercial transaction. (See February 28, 2003, memorandum from Office Director to the Acting Deputy Assistant Secretary for further discussion.)

#### Relationship Between Two Respondents

Two respondents in this review, Gerber and Green Fresh, revealed to the Department on the record that they had a business relationship during the POR. The Department finds that this relationship resulted in evasion of antidumping cash deposits during the POR. (See February 28, 2003, memorandum from Office Director to the Acting Deputy Assistant Secretary for further discussion.)

As stated in *Tung Mung Development v. United States*, 219 F. Supp. 2d 1333 (CIT August 22, 2002), *appeal entered* ("*Tung Mung v. United States*"), the Department has a duty to apply its law in a manner as to prevent the evasion of antidumping duties: "The ITA has been vested with authority to administer the antidumping laws in accordance with the legislative intent. To this end, the ITA has a certain amount of discretion [to act] \* \* \* with the purpose in mind of preventing the intentional evasion or circumvention of the antidumping duty law. *Mitsubishi Elec. Corp. v. United States*, 12 C.I.T. 1025, 1046, 700 F. Supp. 538, 555 (1988), *aff'd* 898 F.2d 1577 (Fed. Cir. 1990)." The Department has preliminarily calculated an individual margin for each of these respondents

based on the data reported by each of them, adjusted to reflect verification findings, which it will also use to calculate importer-specific assessment rates. However, because the Department is concerned that antidumping duty cash deposits may be evaded again in subsequent PORs, as they were in this POR, the Department has determined it appropriate to assign to each of these respondents for future cash deposit purposes the higher of the rates calculated for each of them in this review.

#### Facts Available

For the reasons stated below, we have preliminarily applied partial adverse facts available to Shenxian Dongxing.

Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested (subject to sections 782(c)(1) and 782(e) of the Act), significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination.

In this review, the Department issued Shenxian Dongxing a supplemental questionnaire, requesting it to address discrepancies in data provided in its original questionnaire response and to provide secondary worksheets which demonstrated how it derived the numerical data contained in its response. As a result of conducting verification of the data submitted by Shenxian Dongxing, we discovered at verification that Shenxian Dongxing provided the Department with erroneous quantity (*i.e.*, drained weight and packed weight) data for *all* of its U.S. sales during the POR which were reported in its U.S. sales listing contained in its Section C response. At verification, Shenxian Dongxing acknowledged these errors and explained that they were data processing errors. (See Shenxian Dongxing Verification Report at 3, and 15 through 17.)

The sales and packed quantity figures reported for each U.S. sale are derived from data contained in the sales invoice (*i.e.*, number of cartons, number of cans, and per-unit drained weight) and packing list (*e.g.*, net per-unit weight). The sales quantity data is critical for purposes of calculating the weighted-average dumping margin, and the packed weight quantity is important for purposes of calculating the respondent's U.S. movement expenses (which are

deducted from the U.S. price for margin calculation purposes). While the erroneous quantity figures at issue cannot be fixed using accurate, verified information on the record, the U.S. gross unit price data reported by this respondent is reliable and can be used for purposes of calculating sales-specific margins for the respondent.

Furthermore, the errors at issue are isolated in nature and not so egregious that the Department is unable to use the rest of Shenxian Dongxing's reported U.S. sales data, after adjustments per verification findings, for purposes of calculating a margin. However, to do so, we must resort to facts available because we are unable to calculate a weighted-average margin by using this data. We therefore find that, pursuant to section 776(a)(2)(D) of the Act, the use of facts available is warranted in this segment of the proceeding with respect to Shenxian Dongxing.

Section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of that party as facts otherwise available. Section 776(b) of the Act further provides that, in selecting from among the facts available, the Department may employ adverse inferences against an interested party if that party failed to cooperate by not acting to the best of its ability to comply with requests for information. *See also* "Statement of Administrative Action" accompanying the URAA, H. Rep. No. 103-316, 870 (1994) ("SAA"). As stated above, Shenxian Dongxing had the ability to report accurate quantity information for each of its U.S. sales reported in its response, and it admitted that it failed to do so. We therefore find that Shenxian Dongxing failed to cooperate to the best of its ability in this segment of the proceeding. As a result, pursuant to section 776(b) of the Act, we have made an adverse inference with respect to Shenxian Dongxing.

In this segment of the proceeding, in accordance with Department practice (*see, e.g., Brake Rotors from the People's Republic of China: Preliminary Results and Preliminary Partial Rescission of the Fifth Antidumping Duty Administrative Review and Preliminary Results of the Seventh New Shipper Review*, 68 FR 1031, 1033 (January 8, 2003)), as adverse facts available, we have assigned to exports of the subject merchandise by Shenxian Dongxing a rate of 68.45 percent, which is the highest rate calculated for any of its U.S. sales transactions. The Department's

practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce a respondent to provide the Department with complete and accurate information in a timely manner." (See *Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932, (February 23, 1998). We believe that the rate assigned is appropriate in this regard. Furthermore, we are not applying total adverse facts available because, pursuant to section 782(e) of the Act, we believe that we may derive from the record sufficient information to calculate an appropriate adverse facts available margin. Thus, we are applying as partial adverse facts available, a rate of 68.45 percent to Shenxian Dongxing.

### Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate (*i.e.*, a PRC-wide rate). One respondent in these reviews, Gerber, is wholly owned by persons located outside the PRC. Thus, for Gerber, because we have no evidence indicating that it is under the control of the PRC government, a separate rates analysis is not necessary to determine whether it is independent from government control. (See *Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of Fifth New Shipper Review*, 66 FR 44331 (August 23, 2001), which cites to *Brake Rotors from the People's Republic of China: Preliminary Results and Partial Rescission of the Fifth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review*, 66 FR 29080 (May 29, 2001) (where the respondent was wholly owned by a U.S. registered company); *Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review*, 66 FR 27063 (May 16, 2001), which cites to *Brake Rotors from the People's Republic of China: Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review*, 66 FR 1303, 1306 (January 8, 2001) (where the respondent was wholly owned by a company located in Hong Kong); *Notice of Final Determination of Sales at Less*

*Than Fair Value: Creatine Monohydrate from the People's Republic of China*, 64 FR 71104, 71105 (December 20, 1999) (where the respondent was wholly owned by persons located in Hong Kong.)

Three respondents, Green Fresh, Guangxi Yulin, and Shenxian Dongxing are joint ventures of PRC entities. The other respondent, Shantou Hongda, is owned by all of the people. Thus, a separate-rates analysis is necessary to determine whether each of these four exporters is independent from government control. (See *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China ("Bicycles")*, 61 FR 56570 (April 30, 1996).) To establish whether a firm is sufficiently independent in its export activities from government control to be entitled to a separate rate, the Department utilizes a test arising from 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*"), and amplified in the *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*"). Under the separate-rates criteria, the Department assigns separate rates in NME cases only if the respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

#### 1. De Jure Control

Green Fresh, Guangxi Yulin, Shantou Hongda, and Shenxian Dongxing have placed on the administrative record the following document to demonstrate absence of *de jure* control: the 1994 "Foreign Trade Law of the People's Republic of China." In other cases involving products from the PRC, respondents have submitted the following additional documents to demonstrate absence of *de jure* control, and the Department has placed these additional documents on the record as well: the "Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People," adopted on April 13, 1988 ("the Industrial Enterprises Law"); "The Enterprise Legal Person Registration Administrative Regulations," promulgated on June 13, 1988; the 1990 "Regulation Governing Rural Collectively-Owned Enterprises of PRC"; and the 1992 "Regulations for Transformation of Operational Mechanisms of State-Owned Industrial Enterprises" ("Business Operation Provisions"). (See February 28, 2003,

memorandum to the file which places the above-referenced laws on the record of this proceeding.)

As in prior cases, we have analyzed these laws and have found them to establish sufficiently an absence of *de jure* control of joint ventures and companies owned by "all of the people" absent proof on the record to the contrary. (See, *e.g.*, *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China ("Furfuryl Alcohol")* 60 FR 22544 (May 8, 1995), and *Preliminary Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides With Rollers From the People's Republic of China*, 60 FR 29571 (June 5, 1995).)

#### 2. De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. (See *Silicon Carbide*, 59 FR at 22587, and *Furfuryl Alcohol*, 60 FR at 22544.) 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 governmental control which would preclude the Department from assigning separate rates.

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by, or subject to the approval of, a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses. (See *Silicon Carbide*, 59 at 22587 and *Furfuryl Alcohol*, 60 FR at 22545.)

Green Fresh, Guangxi Yulin, Shantou Hongda, and Shenxian Dongxing each has asserted the following: (1) Each establishes its own export prices; (2) each negotiates contracts without guidance from any governmental entities or organizations; (3) each makes its own personnel decisions; and (4) each retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. Additionally, each respondent's questionnaire responses indicate that its

pricing during the POR does not suggest coordination among exporters. Based on our verification findings, there is a sufficient basis to preliminarily determine that each of these respondents has demonstrated a *de facto* absence of government control of its export functions and is entitled to a separate rate. Consequently, we have preliminarily determined that each of these respondents has met the criteria for the application of separate rates.

#### Fair Value Comparisons

To determine whether sales of the subject merchandise by each respondent to the United States were made at less-than-fair-value ("LTFV"), we compared the export price to the normal value, as described in the "Export Price" and "Normal Value" sections of this notice, below.

#### Export Price

We used export price methodology in accordance with section 772(a) of the Act because the subject merchandise was sold by the exporter outside the United States directly to an unaffiliated purchaser in the United States prior to importation and constructed export price was not otherwise indicated. We made the following company-specific adjustments:

##### A. Gerber

For Gerber, we calculated export price based on packed, delivered prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight and international freight (which included ocean freight), foreign and U.S. brokerage and handling expenses, and U.S. duty expenses in accordance with section 772(c) of the Act. Because foreign inland freight, foreign brokerage, and handling charges were provided by PRC service providers or paid for in renminbi, we based these charges on surrogate rates from India. (See "Surrogate Country" section below for further discussion of our surrogate country selection). To value foreign inland trucking charges, we used a November 1999 average truck freight value based on price quotes from Indian trucking companies. (See *Brake Rotors from the People's Republic of China: Preliminary Results and Preliminary Partial Rescission of Fifth Antidumping Duty Administrative Review and Preliminary Results of the Seventh New Shipper Review*, 68 FR 1031, 1035 (January 8, 2003).) To value foreign brokerage and handling expenses, we relied on public information reported in the 1998–1999 antidumping duty

administrative and new shipper reviews of stainless steel bar from India. Because international freight for all U.S. sales was provided by a market-economy service provider and paid for in U.S. dollars, we used the data reported by Gerber for this charge, adjusted to reflect verification findings. Also, as a result of our verification findings, we revised the reported U.S. brokerage and handling expenses, and added an amount for harbor maintenance fees and merchandise processing fees to the reported U.S. duty expense amounts. (See Gerber Verification Report at 3, and 11–15.)

##### B. Green Fresh

For Green Fresh, we calculated export price based on packed, CNF foreign port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight, brokerage, and handling charges in the PRC, and international freight in accordance with section 772(c) of the Act. (See discussion above for further details.) Because foreign inland freight, foreign brokerage, and handling charges were provided by PRC service providers or paid for in a renminbi, we based those charges on surrogate rates from India. Because international freight for all U.S. sales was provided by a market-economy service provider and paid for in U.S. dollars, we used Green Fresh's reported data for this charge. Based on our verification findings, we revised the reported distance from Green Fresh's supplier factory, Zhangzhou Longhai Lu Bao Food Co., Ltd. ("Lu Bao"), to the port of exportation. (See Green Fresh Verification Report at 13.)

##### C. Guangxi Yulin

For Guangxi Yulin, we calculated export price based on packed, FOB foreign port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight, brokerage, and handling charges in accordance with section 772(c) of the Act. Because foreign inland freight, brokerage and, handling charges were provided by PRC service providers or paid for in renminbi, we based these charges on surrogate rates from India. (See discussion above for further details.) Based on our verification findings, we revised the reported distance from Yulin to the port of exportation and the per-unit packed weight amount used to calculate foreign inland freight and brokerage and

handling charges. (See Guangxi Yulin Verification Report at 11, 12.)

##### D. Shantou Hongda

For Shantou Hongda, we calculated export price based on packed, FOB foreign port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight, brokerage, and handling expenses in accordance with section 772(c) of the Act. Because foreign inland freight, brokerage, and handling charges were provided by PRC service providers or paid for in renminbi, we based these charges on surrogate rates from India. (See discussion above for further details.) Because Shantou Hongda reported its U.S. prices net of ocean freight (which was separately invoiced and paid in full by its U.S. customers), we did not deduct an amount for this expense from the starting price. Based on our verification findings, we revised (1) the gross unit prices reported for certain transactions as explained further below; (2) the reported distance from Shantou Hongda's supplier factory, Lixi Cannery ("Lixi"), to the port of exportation; and (3) the reported per-unit packed weight based on data contained in the Shantou Hongda's response.

Our verification findings revealed that the gross unit prices reported for numerous sales examined at verification (*i.e.*, 15 of 43 examined sales observations) were incorrect. Therefore, we corrected these prices to reflect the actual prices verified. In so doing, we found that certain prices were under-reported and other prices were over-reported. Because Shantou Hongda did not explain at verification the nature of these price reporting errors, and given the number of transactions in our verification sample we found to be affected by price reporting errors, we determined that it is appropriate, pursuant to section 776(a)(2)(D) of the Act, to apply facts available to the prices of the remaining U.S. transactions. Without reliable price information on the record, the Department cannot accurately calculate an antidumping rate for Shantou Hongda. Thus, the Department must apply facts available. Because Shantou Hongda did not provide the Department with an accurate list of U.S. prices, it did not cooperate to the best of its ability in responding to the Department's request for information. Thus, pursuant to 776(b) of the Act, the Department is instructed to apply an inference which is adverse to the uncooperative party. Accordingly, as partial adverse facts

available, we have adjusted the reported U.S. gross prices of the sales we did not examine at verification by deducting an amount equal to the weighted-average difference between the over-reported and actual prices for the sales we did examine at verification. (See Shantou Hongda Verification Report at 13, 15.)

#### E. Shenxian Dongxing

For Shenxian Dongxing, we calculated export price based on packed, FOB foreign port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight, brokerage, and handling expenses in accordance with section 772(c) of the Act. Because foreign inland freight, brokerage, and handling expenses were provided by PRC service providers or paid for in renminbi, we based these charges on surrogate rates from India. (See discussion above for further details.) Because Shenxian Dongxing reported its U.S. prices net of ocean freight (which was separately invoiced and paid in full by its U.S. customers), we did not deduct an amount for this expense from the starting price. Based on our verification findings, we revised (1) the gross unit prices reported for certain U.S. sales transactions; and (2) the reported per-unit packed weight based on data contained in the record. (See Shenxian Dongxing Verification Report at 14–17.) The error in the reported per-unit packed weight for each U.S. sales transaction was a result of inaccurate application of Shenxian Dongxing's packed weight calculation methodology. As stated in the "Facts Available" section above, without reliable packing weight information on the record, the Department cannot accurately calculate actual U.S. movement expenses for each reported U.S. sales transaction. Thus, the Department, pursuant to section 776(a)(2)(D) of the Act, must apply facts available. Because Shenxian Dongxing did not provide the Department with accurate per-unit packed weights for each of its U.S. sales, it did not cooperate to the best of its ability in responding to the Department's request for information. Thus, pursuant to 776(b) of the Act, the Department is instructed to apply an inference which is adverse to the uncooperative party. Accordingly, as partial adverse facts available, we have used the highest reported per-unit packed weight figure reported for Shenxian Dongxing's smallest can size to calculate the U.S. movement expenses for all its sales of the subject merchandise. (See Shenxian

Dongxing Verification Report at 14 through 17.)

#### Normal Value

##### A. Non-Market Economy Status

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to 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 *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003).) None of the parties to this proceeding has contested such treatment. Accordingly, we calculated normal value in accordance with section 773(c) of the Act, which applies to NME countries.

##### B. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value an NME producer's factors of production, to the extent possible, in one or more market economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. India is among the countries comparable to the PRC in terms of overall economic development. (See April 30, 2002, Memorandum from the Office of Policy to the Team Leader.) In addition, based on publicly available information placed on the record, India is a significant producer of the subject merchandise. Accordingly, we selected India as the surrogate country for purposes of valuing the factors of production because it meets the Department's criteria for surrogate country selection.

##### C. Factors of Production

In accordance with section 773(c) of the Act, we calculated normal value based on the factors of production which included, but were not limited to: (A) Hours of labor required; (B) quantities of raw materials employed; (C) amounts of energy and other utilities consumed; and (D) representative capital costs, including depreciation. We used the factors reported by the five respondents which produced the subject merchandise they exported to the United States during the POR. To calculate normal value, we multiplied the reported unit factor quantities by publicly available Indian values.

Certain respondents failed to provide the Department with requested information. Gerber purchased its cow manure and straw from multiple suppliers, but did not report a weighted-average distance for those two inputs although such information was expressly requested by the Department. Green Fresh purchased its labels from multiple suppliers, but failed to report a weighted-average distance for those labels, again, despite the Department's request for such information. For certain inputs (*i.e.*, salt and brined mushrooms), Shantou Hongda made errors in reporting the total consumption of these inputs and failed to state any reason for those errors. In addition, Shantou Hongda did not report the distance for brined and fresh mushrooms which it purchased from suppliers during the POR.

In each of these instances, the respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, or to explain the reason for the missing information, within the meaning of section 776(b) of the Act. Without the requested information, the Department must use facts available on the record, pursuant to section 776(a)(2)(D) of the Act. Because the Department finds that these parties did not act to the best of their abilities in providing us with the necessary information, section 776(b) of the Act directs us to apply an adverse inference in these reviews. Accordingly, for Gerber, we have used the furthest distance reported for any supplier of cow manure and straw to value freight for these inputs, respectively. For Green Fresh, we used the furthest distance reported for labels to value freight. For Shantou Hongda, we increased the reported per-unit factor amounts for brined mushrooms and salt by the percentage difference between the reported and verified consumption amounts for each input. In addition, we have used the furthest distance reported for any of its suppliers of brined/fresh mushrooms to value freight.

Based on our verification findings at Gerber, we also revised the following data in Gerber's response: (1) The reported per-unit can, lid, label, and processing labor amount for 4-ounce cans; (2) the reported per-unit lid and processing labor amount for 68-ounce cans; and (3) the distances from Gerber to its coal supplier. In addition, we valued the freight for salt and citric based on the supplier distances we obtained for those inputs at verification. (See Gerber Verification Report at 20, 22, and 24, and February 28, 2003, Memorandum from Case Analyst to the

File re: Calculation Memorandum for the Preliminary Results.)

Based on our verification findings at Green Fresh, we also revised the following data in Green Fresh's response: (1) The reported per-unit fresh mushroom, coal (used for growing mushrooms), salt, and processing labor amounts for all can sizes; (2) the per-unit amounts for four materials reported for one canned mushroom product code; and (3) the per-unit amounts for two materials reported for another canned mushroom product code. (See Green Fresh Verification Report at 3, 20, and 23, and February 28, 2003, Memorandum from Case Analyst to the File re: Calculation Memorandum for the Preliminary Results.)

Based on our verification findings at Shantou Hongda, we also revised the following data in Shantou Hongda's response: (1) The salt, straw, and labor factors used to preserve the mushrooms at the farm; (2) the reported per-unit coal amount for 4, 8, and 16-ounce cans; (3) the reported per-unit label and can/lid amounts for 16-ounce cans; and (4) the distances from Shantou Hongda's supplier, Lixi, to its suppliers for coal, spawn, citric acid, and labels. (See Shantou Hongda Verification Report at 7–13, and February 28, 2003, Memorandum from Case Analyst to the File re: Calculation Memorandum for the Preliminary Results.)

Based on our verification findings at Guangxi Yulin, we revised the following data in Guangxi Yulin's response: (1) The reported per-unit factor amounts for all material, energy, and labor inputs based on revisions to the total POR mushroom production quantity figure;<sup>5</sup> and (2) the distances from Guangxi Yulin to its coal, tin plate, citric acid, salt, label suppliers. (See Guangxi Yulin Verification Report at 1, 11, and 26, and February 28, 2003, Memorandum from Case Analyst to the File re: Calculation Memorandum for the Preliminary Results.)

Based on our verification findings at Shenxian Dongxing, we also revised the following data in Shenxian Dongxing's response: (1) The reported per-unit potassium super, calcium carbonate, electricity, direct and packing labor amounts for all can sizes; (2) the reported per-unit copper wire amounts for 4- and 16-ounce cans; (3) the reported per-unit tin plate amount for 8-ounce cans; (4) the reported per-unit copper wire, tin plate, and glue amounts for 62- and 68-ounce cans; (5) the

reported per-unit label amounts for 4- and 68-ounce cans; (6) the distances from Shenxian Dongxing to 10 of its suppliers situated in three locations. (See Shenxian Dongxing Verification Report at 21–23 and 25–26, and February 28, 2003, Memorandum from Case Analyst to the File re: Calculation Memorandum for the Preliminary Results.)

The Department's selection of the surrogate values applied in this determination was based on the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices to make them delivered prices. For those values not contemporaneous with the POR and quoted in a foreign currency or in U.S. dollars, we adjusted for inflation using wholesale price indices ("WPIs") published in the International Monetary Fund's *International Financial Statistics*.

To value fresh mushrooms, we used an average price based on data contained in the 2000–2001 financial report of Premier Explosives Ltd. ("Premier"). For those respondents which purchased brined mushrooms, we also used the fresh mushroom price to value brined mushrooms because we were unable to obtain publicly available information which contained a price for brined mushrooms.

To value manure, spawn, and straw, we used an average price based on data contained in the 2000–2001 financial report of Flex Foods Ltd. ("Flex Foods") and the 2001–2002 financial report of Agro Dutch Foods, Ltd. ("Agro Dutch") (i.e., two Indian producers of the subject merchandise). For those respondents which used mother spawn, we also used the average spawn price to value mother spawn because we were unable to obtain publicly available information which contained a price for mother spawn. To value grain and super phosphate, we used price data contained in Flex Foods' 2000–2001 financial report because no such data was available from the other financial reports on the record. To value tin cans and lids, we used price data from the May 21, 2001, public version response submitted by Agro Dutch in the 2nd antidumping duty administrative review of certain preserved mushrooms from India, and derived per-unit can-size-specific prices using the petitioner's methodology contained in its September 6, 2002, PAI submission. To value salt, we used price data contained in the 1998–1999 financial report of Weikfield Agro Products Ltd. (i.e., another Indian producer of the subject merchandise) because no such data was available from the other financial reports on the record. To value citric acid, boric acid,

magnesium sulfate, calcium carbonate, and formaldehyde, we used an average price based on April 2001–December 2001 data contained in *Monthly Statistics of the Foreign Trade of India* ("Monthly Statistics") and February 2001–January 2002 data contained in *Chemical Weekly*. For those prices obtained from *Chemical Weekly*, where appropriate, we also deducted an amount for excise taxes based on the methodology applied to values from the same source in a prior review involving the subject merchandise from the PRC. (See page 4 of the May 31, 2001, *Preliminary Results Valuation Memorandum for the Preliminary Results of New Shipper Review: Certain Preserved Mushrooms from the People's Republic of China*, 66 FR 30695 (June 7, 2001) which has been placed on the record of this proceeding.) To value calcium phosphate, we used a December 1999 value from *Chemical Market Reporter*. Although the value from *Chemical Market Reporter* was in U.S. dollars, it was not contemporaneous with the POR. Therefore, we inflated this value to the POR using WPIs.

To value gypsum, we used an average price based on April 2001–December 2001 data contained in *Monthly Statistics* and data contained in Flex Foods' 2000–2001 financial report. To value potassium super, we used an average price based on February 2001–January 2002 data contained in *Chemical Weekly*. To value carbamide (i.e., urea), we used an average price based on February 2001–January 2002 data contained in *Chemical Weekly* and data contained in Flex Foods' 2000–2001 financial report. To value cotton, tin plate scrap, copper conducting wire, and copper wire scrap, can and lid scrap, and coal, we used April 2001–December 2001 average import values from *Monthly Statistics*. We also added an amount for loading and additional transportation charges associated with delivering coal to the factory based on June 1999 Indian price data contained in the periodical *Business Line*. To value tin plate, we used an average price based on April 2001–December 2001 data contained in *Monthly Statistics* and data contained in Agro Dutch's 2001–2002 financial report.

We did not value water separately because, consistent with our methodology used in prior reviews of the subject merchandise, we believe that the costs for water are included as factory overhead in the Indian financial statements used to calculate factory overhead, selling, general, and administrative ("SG&A") expenses, and profit. (See *Certain Preserved Mushrooms from the People's Republic*

<sup>5</sup> In order to derive the per-unit consumption amount for each factor of production as reported in the Section D response, the respondent divided the total POR factor consumption of that input over the total POR production weight.

of China: Final Results of Third New Shipper Review and Final Results and Partial Rescission of Second Antidumping Duty Administrative Review, 67 FR 46173 (July 12, 2002) and accompanying Issues and Decision Memorandum at Comment 6.)

To value electricity, we used the 2000–2001 “revised estimate” average rate for industrial consumption as published in the *Annual Report (2001–02) on the Working of State Electricity Boards & Electricity Departments* by the Government of India’s Planning Commission (Power & Energy Division).

We valued labor based on a regression-based wage rate, in accordance with 19 CFR 351.408(c)(3).

To value factory overhead, selling, general, and administrative (“SG&A”) expenses, and profit, we used the audited 2001–2002 financial data of Agro Dutch and the audited 2000–2001 financial data of Flex Foods and Himalya International Ltd. (“Himalya”), all Indian producers of the subject merchandise. In addition, we did not use two other Indian sources of data: the 2000–2001 fiscal data obtained for Premier or the 1999–2000 fiscal data obtained for Hindustan Lever Limited, because although each company produces the subject merchandise, the subject merchandise is but one of several products which they produce and is not the major product produced by either company.

Where appropriate, we did not include in the surrogate overhead and SG&A calculations the excise duty amount listed in the financial reports. We made certain adjustments to the ratios calculated as a result of reclassifying certain expenses contained in the financial reports. For a further discussion of the adjustments made, see the Preliminary Results Valuation Memorandum.

All inputs were shipped by truck. Therefore, to value PRC inland freight, we used a November 1999 average truck freight value based on price quotes from Indian trucking companies.

In accordance with the decision of the Court of Appeals for the Federal Circuit in *Sigma Corp. v. United States*, 117 F. 3d 1401 (Fed. Cir. 1997), we revised our methodology for calculating source-to-factory surrogate freight for those material inputs that are valued based on CIF import values in the surrogate country. Therefore, we have added to CIF surrogate values from India a surrogate freight cost using the shorter of the reported distances from either the closest PRC port of importation to the factory, or from the domestic supplier to the factory on an input-specific basis.

To value corrugated cartons, labels, paper, separators, tape, and glue we used April 2001–December 2001 average import values from *Monthly Statistics*.

#### Preliminary Results of the Review

We preliminarily determine that the following margins exist for the following exporters under review during the period February 1, 2001, through January 31, 2002:

Manufacturer/producer/ exporter	Margin percent
Gerber Food (Yunnan) Co., Ltd .....	* 46.41
Green Fresh Foods (Zhangzhou) Co., Ltd. ....	* 46.41
Guangxi Yulin Oriental Food Co., Ltd (“Guangxi Yulin”) ..	0.00
Guangxi Yulin / all others .....	198.63
Shantou Hongda Industrial General Corporation .....	118.51
Shenxian Dongxing Foods Co., Ltd .....	** 68.45
PRC-Wide Rate .....	198.63

\* The margin calculated for Gerber is 1.17 percent and that calculated for Green Fresh is 46.41 percent. However, for cash deposit purposes, as explained above, we have assigned to Gerber and Green Fresh the higher of the rates calculated for each of them during the POR. For assessment purposes, we intend to calculate importer-specific duty assessment rates based on the data provided by these two companies, as adjusted to reflect verification findings.

\*\* For assessment purposes, we intend to instruct the Customs Service to apply Shenxian Dongxing’s margin to the entered value of the subject merchandise from Shenxian Dongxing during the POR, irrespective of importer, because we were not able to rely on its reported quantity amounts in order to calculate importer-specific assessment rates on a per-unit basis, as indicated in the “Assessment Rates” section below. (See “Facts Available” section above for further discussion.)

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication of this notice. If requested, a hearing will be held 44 days after the date of publication of this notice, or the first work day thereafter.

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, Room B–099, within 30 days of the date 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 case briefs and

rebuttal briefs. Case briefs from interested parties may be submitted not later than March 31, 2003, pursuant to 19 CFR 351.309(c). Rebuttal briefs, limited to issues raised in the case briefs, will be due not later than April 7, 2003, pursuant to 19 CFR 351.309(d). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will issue the final results of these administrative and new shipper reviews, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

#### Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. For assessment purposes, we do not have the actual entered value for any respondent (with the exception of Gerber) for which we calculated a margin because they are not the importers of record for the subject merchandise. For these respondents for which we do not have entered value information, we intend to calculate individual customer-specific assessment rates by aggregating the dumping margins calculated for all of the U.S. sales examined and dividing that amount by the total quantity of the sales examined.

Although Gerber was the importer of record, it did not provide entered value data for each of its reported U.S. sales. Therefore, because we do not have entered value information for all of its U.S. sales, we will also calculate for this respondent importer-specific duty assessment rates for the subject merchandise by aggregating the dumping margins calculated for the examined sales and dividing this amount by the total entered quantity of the sales examined. To determine whether the duty assessment rates were *de minimis* (i.e., less than 0.50 percent), in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we will calculate importer-or customer-specific *ad valorem* ratios based on export prices.

The Department will issue appropriate appraisal instructions directly to the Customs Service upon completion of these reviews. We will instruct the Customs Service to assess antidumping duties on all appropriate

entries covered by this review if any importer- or customer-specific assessment rate calculated in the final results of these reviews is above *de minimis* (i.e., at or above 0.50 percent). See 19 CFR 351.106(c)(1). For entries of the subject merchandise during the POR from companies not subject to these reviews, we will instruct the Customs Service to liquidate them at the cash deposit rate in effect at the time of entry. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of these reviews and for future deposits of estimated duties, where applicable.

#### Cash Deposit Requirements

Bonding will no longer be permitted to fulfill security requirements for shipments from Guangxi Yulin of certain preserved mushrooms from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of the new shipper review. Furthermore, the following cash deposit requirements will be effective upon publication of the final results of the new shipper review for all shipments from Guangxi Yulin of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date: (1) For subject merchandise manufactured and exported by Guangxi Yulin, we will require a cash deposit at the rate established in the final results; and (2) for subject merchandise exported by Guangxi Yulin but not manufactured by it, the cash deposit will be the PRC countrywide rate (i.e., 198.63 percent).

The following deposit requirements will be effective upon publication of the final results of the antidumping administrative review for all shipments of certain preserved mushrooms from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for each respondent listed above will be the rate established in the final results; (2) the cash deposit rate for PRC exporters who received a separate rate in a prior segment of the proceeding and for whom there was no request for administrative review (e.g., China Processed and Raoping Xingyu) will continue to be the rate assigned in that segment of the proceeding; (3) the cash deposit rate for the PRC NME entity (including Shenzhen Qunxingyuan and Zhangzhou Jingxiang) will continue to be 198.63 percent; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC

supplier of that exporter. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

#### 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 administrative and new shipper reviews and notice are in accordance with sections 751(a)(1), 751(a)(2)(B), and 777(i)(1) of the Act and 19 CFR 351.221(b).

Dated: February 28, 2003.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

[FR Doc. 03-5301 Filed 3-5-03; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 022603D]

#### Marine Mammals; Notice of Intent to Prepare an Environmental Impact Statement for Issuing Annual Gray Whale Subsistence Quotas to the Makah Indian Tribe for the years 2003 through 2007

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of intent to prepare an Environmental Impact Statement (EIS); request for written comments.

**SUMMARY:** NMFS announces its intention to prepare an EIS, in accordance with the National Environmental Policy Act, to assess the impacts of issuing annual subsistence quotas for gray whales to the Makah Tribe for the years 2003 through 2007. NMFS solicits comments and information to facilitate this analysis.

**DATES:** Comments and information must be postmarked by April 21, 2003.

**ADDRESSES:** Written comments should be sent to Chief, Marine Mammal Division (F/PR2), Office of Protected

Resources, National Marine Fisheries Service, 13th Floor, 1315 East-West Hwy, Silver Spring, MD 20910. Please mark the outside of the envelope with "Comments on Gray Whale Analysis." Comments will not be accepted if submitted via e-mail or internet.

#### FOR FURTHER INFORMATION CONTACT:

Chris Yates, 301-713-2322.

**SUPPLEMENTARY INFORMATION:** At its 2002 annual meeting, the International Whaling Commission (IWC) approved a quota of 620 gray whales for an aboriginal subsistence harvest for the years 2003 through 2007. The basis for the quota was a joint request by the Russian Federation (for a total of 600 whales) and the United States (for a total of 20 whales). The subsistence and ceremonial needs of the Makah Indian Tribe were the foundation of the United States' request to the IWC.

On December 20, 2002, the Ninth Circuit Court of Appeals reversed a district court ruling that upheld NMFS' issuance of a quota to the Makah Tribe to hunt a limited number of gray whales for aboriginal subsistence purposes in 2001 and 2002. See *Anderson v. Evans*, 314 F.3d 1006 (9th Cir. 2002). The Federal Government is currently considering whether to request rehearing of *Anderson v. Evans*. Subject to the outcome of a possible rehearing, NMFS is preparing an EIS on the issuance of annual quotas to the Makah Tribe for a subsistence hunt on gray whales for the years 2003 through 2007. NMFS is evaluating the following four alternatives:

Alternative 1 - Grant the Makah Tribe a quota of 5 whales per year over 5 years though annual quotas with restrictions that would allow a limited hunt on the gray whale summer feeding aggregation and limit the harvest to 20 landed whales over 5 years.

Alternative 2 - Grant the Makah Tribe a quota of 5 whales per year over 5 years through annual quotas with restrictions to target the hunt on migrating whales and limit the harvest to 20 landed whales over 5 years.

Alternative 3 - Grant the Makah Tribe a quota of 5 whales per year over 5 years through annual quotas without time or area restrictions. The hunt would be limited to 20 landed whales over 5 years.

Alternative 4 - (No Action) - Do not grant the Makah Tribe a quota.

#### Information Solicited

To ensure that the review is comprehensive and based on the best available information, NMFS is soliciting information and comments from any interested party concerning