

calculated the financial expense ratio based on the highest level of audited fiscal year financial statements prepared by Weikfield.

- As Agro Dutch had no comparison market during the POR, and its constructed value selling expenses and profit rate were based on the weighted-average selling and profit amounts incurred on home market sales by Himalya and Weikfield, we revised the selling expenses and profit used to calculate Agro Dutch's constructed value to account for the revisions to the Weikfield margin calculation outlined above. For a discussion of these changes, see the "Margin Calculations" section of the Decision Memo and the various comments discussed in the Decision Memo.

**Final Results of Review**

We determine that the following weighted-average margin percentages exist:

Manufacturer/Exporter	Margin (percent)
Agro Dutch Foods Ltd/Agro Dutch Industries Ltd .....	1.02
Himalya International Ltd ( <i>de minimis</i> ) .....	0.08
Weikfield Agro Products Ltd .....	34.66

**Assessment**

The Department shall determine, and the U.S. Bureau of Customs and Border Protection (BCBP) shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to BCBP within 15 days of publication of these final results of review. In accordance with 19 CFR 351.106(c)(1), we will instruct BCBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis* (i.e., less than 0.50 percent). For assessment purposes, we do not have the actual entered value for Agro Dutch and Weikfield because these respondents are not the importers of record for the subject merchandise. Accordingly, we have calculated customer-specific assessment rates by aggregating the dumping margins calculated for all of Agro Dutch's and Weikfield's U.S. sales examined and dividing the respective amounts by the total quantity of the sales examined for each producer. With respect to Himalya, we calculated importer-specific assessment rates for the subject merchandise from Himalya by aggregating the dumping margins

calculated for all of Himalya's U.S. sales examined and dividing this amount by the total entered value of the sales examined. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated customer-or importer-specific *ad valorem* ratios based on export prices.

**Cash Deposit Requirements**

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be those established in the final results of this review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 11.30 percent. This rate is the "All Others" rate from the LTFV investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) 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 doubled antidumping duties.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/

destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: July 7, 2003.

**Jeffrey May,**

*Acting Assistant Secretary for Grant Aldonas, Under Secretary.*

**Appendix—List of Issues**

*Company-Specific Comments:*

Agro Dutch

Comment 1: Calculation of the Work-in-Process Offset

Comment 2: Application of Adverse Facts Available

Weikfield

Comment 3: Home Market Quantity Discounts

Comment 4: Affiliated Party Commissions

Comment 5: Home Market Indirect Selling Expenses

Comment 6: U.S. Indirect Selling Expenses for Commission Offset

Comment 7: Calculation of U.S. Credit Expense

Comment 8: CESS for Observation 33

Comment 9: Offset to Direct Materials Cost

Comment 10: Depreciation of Idle Assets

Comment 11: Addition of WPCL General and Administrative Expenses

Comment 12: Weikfield General and Administrative Expense Calculation

Comment 13: Gain on Debt Restructuring as Offset to Financial Expenses

Comment 14: Interest Expenses from ICICI Loan

Comment 15: Cost of Goods Sold for the Financial Expense Ratio

Comment 16: Offsetting Positive Margins with Negative Margins

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**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[A-570-851]

**Certain Preserved Mushrooms From the People's Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review**

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

**ACTION:** Notice of final results and partial rescission of the new shipper review and final results and partial

rescission of the third antidumping duty administrative review.

**SUMMARY:** On March 6, 2003, the Department of Commerce published the preliminary results and partial rescission of the new shipper review and the third antidumping duty administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China. See *Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of New Shipper Review and Preliminary Results and Partial Rescission of Third Antidumping Duty Administrative Review*, 68 FR 10694 (March 6, 2003) (*Preliminary Results*). The new shipper review covers three exporters and the administrative review covers four exporters (see "Background" section below for further discussion). The period of review is February 1, 2001, through January 31, 2002.<sup>1</sup> We gave interested parties an opportunity to comment on our preliminary results.

Based on the additional publicly available information used in these final results and the comments received from the interested parties, we have made changes in the margin calculations for certain respondents in these reviews. The final weighted-average dumping margins for the reviewed firms in these reviews are listed below in the section entitled "Final Results of Reviews."

**EFFECTIVE DATE:** July 11, 2003.

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

**SUPPLEMENTARY INFORMATION:**

### Background

While the Department initiated an administrative review of 7 companies,<sup>2</sup> based on a request by the petitioners<sup>3</sup>

<sup>1</sup> The POR for both the new shipper and administrative review is the same.

<sup>2</sup> The petitioners' request for review 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 Food Yunnan Co., Ltd. ("Gerber"); (5) Green Fresh Foods (Zhangzhou) Co., Ltd. ("Green Fresh"); (6) Raoping Xingyu Foods Factory Co., Ltd. ("Raoping Xingyu"); (7) Compania Envasador Del Atlantico ("Compania Envasador").

<sup>3</sup> The petitioners are 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.

and certain exporters, this administrative review now covers only the following four exporters: (1) Gerber; (2) Green Fresh; (3) Shantou Hongda; and (4) Shenxian Dongxing (see "Partial Rescission of Administrative Review" section below of this notice for further discussion).

On March 6, 2002, the Department published in the **Federal Register** the preliminary results of the new shipper review and the third antidumping duty administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China ("PRC") (see *Preliminary Results*, 67 FR at 10128).

On March 7, 2003, after determining that the 2001-2002 financial report submitted for one Indian producer contained in Gerber's February 5, 2003, submission was incomplete, we requested that Gerber provide the complete financial report for that Indian producer in order to further consider the data for the final results. In response to our request, the petitioners provided this data on April 18, 2003, for the Department's consideration in the final results.

On March 10, 2003, the petitioners placed information on the record indicating that one of Guangxi Yulin's owners may have made shipments of subject merchandise during the period of investigation ("POI")<sup>4</sup> and therefore may not be eligible for a new shipper review. On March 20, 2003, Guangxi Yulin submitted rebuttal comments. On April 15, 2003, we placed on the record the results of our data query on this matter (see April 15, 2003, Memorandum from Sophie Castro, Case Analyst to the File, entitled "Results of Data Queries Conducted in Response to Allegations and Information Submitted in March of 2003 Regarding Guangxi Yulin Oriental Food Co., Ltd.").

On March 31, 2003, in accordance with 19 CFR 351.301(c)(3), we received additional publicly available information from two respondents, Gerber and Green Fresh.

On April 25, 2003, we placed on the record additional publicly available information on truck freight rates for consideration in the final results.

The petitioners and three respondents, Gerber, Guangxi Yulin and Shenzhen Qunxingyuan Trading Co., Ltd. ("Shenzhen Qunxingyuan") submitted their case briefs on April 30, 2003. On May 7, 2003, the petitioners and two respondents, Gerber and Guangxi Yulin, submitted rebuttal briefs. The other respondents

participating in these reviews did not submit case or rebuttal briefs.

On May 7, 2003, we determined that the petitioner and Shenzhen Qunxingyuan had submitted new factual information in their case briefs in violation of the regulatory requirement provided in 19 CFR 351.301(c)(3)(ii), and requested these parties to remove this data and resubmit their case briefs. On May 19, 2003, we determined that the petitioner had also submitted new factual information in its rebuttal brief and requested the petitioner to remove this data as well and resubmit its rebuttal brief. Also, on May 19, 2003, the petitioner requested a meeting with the Department to discuss the relationship between Gerber and Green Fresh during the period of review ("POR") as discussed in its case brief. On May 22, 2003, Gerber and Green Fresh requested a similar meeting. On June 11, and June 27, 2003, we held *ex-parte* meetings with the petitioners' and respondents' counsels, respectively, to discuss the relationship between Gerber and Green Fresh during the POR and the new shipper claims made by Shenzhen Qunxingyuan and Guangxi Yulin (see *ex-parte* memoranda to the file dated June 12, and June 30, 2003).

On June 5, 2003, we placed on the record additional publicly available price information on copper wire scrap, water, and the components included in laterite, and additional public financial data from an Indian producer submitted in this review for consideration in the final results of this review. On June 19, 2003, Gerber and Green Fresh submitted comments on the publicly available information we had placed on the record on June 5, 2003.

No party requested a hearing, as specified under 19 CFR 351.310(c).

The Department has conducted these reviews in accordance with section 751 of the Act.

### Scope of the Order

The products covered by this order are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The 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,

<sup>4</sup> The POI covers the period of July 1, 1997 through December 31, 1997.

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>5</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>6</sup> ("HTS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

#### Partial Rescission of Administrative Review

We have rescinded this review with respect to China Processed, Compania Envasador, and Raoping Xingyu pursuant to 19 CFR 351.213(d)(1), because the petitioners withdrew their request for review and no other interested party requested a review of these companies. 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).

#### Facts Available—Shenxian Dongxing

In the *Preliminary Results*, 67 FR at 10697, the Department determined that the use of adverse facts available was warranted in accordance with section 776(b) of the Tariff Act of 1930, as amended ("the Act"), to calculate the dumping margin for Shenxian Dongxing. Because Shenxian Dongxing failed to provide usable transaction-specific sales quantities for purposes of

calculating its weighted-average dumping margin, we determined that Shenxian Dongxing did not cooperate to the best of its ability. Since the preliminary results, nothing has changed to reverse our preliminary decision regarding Shenxian Dongxing and Shenxian Dongxing has filed no comments on the record addressing the Department's calculation. Therefore, pursuant to section 776(b) of the Act, we have continued to make an adverse inference with respect to Shenxian Dongxing by assigning to its exports of the subject merchandise a rate of 61.37 percent, which is the highest rate calculated for any of its U.S. sales transactions based on the use of additional publicly available information and the comments received from the interested parties since the preliminary results (see "Changes Since the Preliminary Results" section below for further discussion).

#### Facts Available—Gerber/Green Fresh

In the *Preliminary Results*, 67 FR at 10697, the Department determined that the business relationship which existed between Gerber and Green Fresh resulted in evasion of antidumping cash deposits during the POR. (See February 28, 2003, memorandum from Office Director to the Acting Deputy Assistant Secretary entitled "Cash Deposit Rate for Gerber Food (Yunnan) Co., Ltd. and Green Fresh Foods (Zhangzhou) Co., Ltd." ("Gerber-Green Fresh memo") for further discussion). Consequently, as adverse facts available, the Department preliminarily assigned to each of these respondents for future cash deposit purposes the higher of the rates calculated for each of them in this review.<sup>7</sup> The preliminary calculated margins for Gerber and Green Fresh were 1.17 percent and 46.41 percent, respectively. However, as adverse facts available for cash deposit purposes, we assigned both companies Green Fresh's calculated margin of 46.41 percent. We invited comments on our preliminary results.

After considering the comments submitted by the parties on this matter, we find that our preliminary decision with respect to Gerber and Green Fresh did not sufficiently address the fact that both companies withheld crucial information prior to verification and actively colluded to circumvent the cash deposit rates in effect during the POR. After a re-examination of the facts on the record of this review, we find that

the use of total adverse facts available is warranted in this case with respect to determining Gerber's and Green Fresh's cash deposit and assessment rates for the reasons stated below.

With respect to Gerber, we find that Gerber continually misrepresented in its questionnaire responses the true nature of its relationship with Green Fresh during the POR. In its questionnaire responses, which were accompanied by a certification from Gerber officials attesting to the validity and truthfulness of these responses, Gerber claimed that Green Fresh acted as an agent on its behalf by arranging for the shipment on some of its reported U.S. sales of self-produced subject merchandise during the POR (see May 23, 2003, Section A response at A-11). Moreover, Gerber indicated that Green Fresh acted as its agent from September 2001 to May 2002 and Gerber paid it a commission for each container of Gerber-produced merchandise which Green Fresh shipped to the U.S. market on Gerber's behalf (see September 11, 2002, submission at 6).

Based on this information, the Department was led to believe prior to verification that Gerber's business with Green Fresh was at arms-length, and constituted a *bona fide* business arrangement under which Green Fresh did, in fact, operate as the exporter of the merchandise. However, an examination of sales and export documentation at verification revealed that Gerber in fact arranged shipment of all of its sales of subject merchandise and paid Green Fresh a fee to use Green Fresh's sales invoices for this purpose in order to take advantage of Green Fresh's comparatively low cash deposit rate during the POR (see February 12, 2003, Gerber verification report at 5-7 and exhibits 4D through 4K). Absent verification, the Department would never have discovered that Gerber used Green Fresh's sales invoices in order to benefit from Green Fresh's lower cash deposit rate.

Gerber's misrepresentations were highly material to the Department's analysis and call into question the veracity of other responses provided by Gerber. Despite Gerber's pre-verification claims to the contrary, Green Fresh never acted as Gerber's agent for most of the Gerber/Green Fresh reported transactions. Green Fresh had at most negligible commercial involvement with the specific transactions involving the export of Gerber's merchandise to the United States from the PRC using its invoices. Although the nature of this relationship came to light at verification, the Department deems it critical to the resolution of this issue the

<sup>5</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>6</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.

<sup>7</sup> For assessment purposes, we preliminarily stated that we intended to calculate importer-specific duty assessment rates based on the data provided by these two companies, as adjusted, to reflect verification findings.

fact that Gerber certified as truthful false information it provided to the Department, in numerous questionnaire responses.

Under these circumstances, section 776(a)(2) of the Act states that the Department may use "facts available" if an interested party (A) withholds information that has been requested by the Department, (C) significantly impedes a proceeding under this title or (D) provides such information but the information cannot be verified. All of these provisions apply in this case. Because the Department relies on original sales invoices to verify the accuracy of the sales listing, the information Gerber mis-characterized and withheld was fundamental and material to the Department's analysis. Gerber's actions now lead us to question our verification findings which were predicated on the reliability of Gerber's own information and records. Gerber's consistent mis-characterization of the facts on the record impeded a proper review of Gerber's transactions. This is particularly true, given that the vast majority of Gerber's reported U.S. sales were made using Green Fresh's sales invoices. Without the necessary information pertaining to these transactions, the Department could not realistically conduct an accurate review of Gerber. Clearly in this case, Gerber did not act to the best of its ability by providing the Department with incorrect and misleading mis-characterizations of its agreement with Green Fresh and misusing Green Fresh's invoices to evade the payment of cash deposits during the POR.

For these reasons, the Department has determined that it will apply total adverse facts available to Gerber in this case. Thus, as adverse facts available, in light of record evidence of material misrepresentations by Gerber as noted above and the potential for future misconduct, the assignment of a cash deposit and assessment rate equal to the PRC-wide rate of 198.63 percent is appropriate. The application of this cash deposit rate reflects the Department's best estimate as to what the company's ultimate assessed duty liability would be in the next stage of the proceeding, given the uncertainty created by the misconduct that has characterized the parties' behavior to date. The Department considers the assignment of this rate to Gerber sufficient to encourage it to cooperate with the Department in future reviews, and to ensure that Gerber cannot undermine the efficacy of the antidumping duty law by posting insufficient and improper deposits.

With respect to Green Fresh, its misrepresentations on the record significantly impeded this proceeding as well. Like Gerber, Green Fresh also stated in its questionnaire responses that it acted as an agent for sales made and produced by Gerber, whereby it received a commission for exporting that merchandise on Gerber's behalf to the U.S. market during the POR (see May 23, 2002, submission at 11). In describing its role as Gerber's agent, Green Fresh indicated that it provided Gerber with specific export documents (i.e., an invoice, PRC Customs and quarantine inspection form, packing list, VAT refund form, and PRC Customs declaration form) for only a portion of Gerber's sales transactions during the POR (see December 23, 2003, submissions at 1 and 2). Moreover, Green Fresh indicated that it had the data for these affected sales transactions and separately reported them in its supplemental response (see December 23, 2002, submission at 3). With respect to these affected sales transactions which it claimed it acted as Gerber's shipping agent, Green Fresh did not reveal to the Department until verification that it merely provided Gerber with blank sales invoices for purposes of enabling Gerber to ship its merchandise to the U.S. market during the POR at a lower cash deposit rate. Furthermore, although Green Fresh claimed that it actually arranged for the shipment of Gerber-produced merchandise included in these affected sales transactions (which were reported by both companies in their respective Section C sales listings), Green Fresh was unable to provide complete documentation for all of the affected sales transactions to support its claim that it served as a *bona fide* shipping agent on behalf of Gerber with respect to these sales (see February 12, 2003, Green Fresh verification report at 6-7 and exhibit 6P). Because these affected sales transactions were documented with invoices issued by Green Fresh and not by Gerber but could not be tied to records prepared by Green Fresh in the ordinary course of business, we were unable to verify the extent of Green Fresh's involvement with respect to these sales or to corroborate Green Fresh's statements. Therefore, given the fact that the sales in question were made using Green Fresh's invoices and that Green Fresh was unable to provide its own supporting documentation for all but one of these sales transactions, we question the reliability of Green Fresh's reported sales data, its sales documentation, and the additional data it provided at verification.

Furthermore, the willingness of Green Fresh to assist another company to evade the payment of legally required cash deposits, as well as its consistent mis-characterization of the facts on the record (despite its representatives' certification of the facts contained in multiple submissions to the Department as truthful when they were not), leads us again to question the validity of the books and records examined by the Department at verification. Thus, consistent with our analysis for Gerber, we do not believe that Green Fresh's reported information can be relied upon by the Department in calculating an antidumping duty margin and cash deposit/assessment rates. Consequently, pursuant to sections 776(a)(2)(A), (C) and (D) of the Act, the Department is applying total facts available to Green Fresh. Furthermore, pursuant to section 776(b) of the Act, an adverse inference is warranted because Green Fresh's sale of invoices for purposes of aiding Gerber to evade cash deposits, as well as its mis-characterization of the facts in this case, clearly demonstrate that Green Fresh did not act to the best of its ability during this administrative review.

Thus, as adverse facts available, in light of record evidence of material misrepresentations by Green Fresh as noted above and the potential for future misconduct, the assignment of a cash deposit and assessment rate equal to the PRC-wide rate of 198.63 percent is appropriate. (See Issues and Decision Memorandum ("Decision Memo") from Jeffrey May, Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration at Comment 1 for further discussion).

#### Corroboration of Facts Available

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action, H.R. Doc. 103-316 ("SAA"), states that "corroborate" means to determine that the information used has probative value. See SAA at 870. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.

In this segment of the proceeding, in accordance with Department practice, as adverse facts available, we have assigned to exports of the subject merchandise by Gerber and Green Fresh the PRC-wide rate of 198.63 percent, a

rate that was calculated based on information contained in the petition. When using a previously calculated margin as facts available, for purposes of corroboration the Department will consider, in the context of the current review, whether that margin is both reliable and relevant. With respect to the relevancy aspect of corroboration, the Department stated in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) ("TRBs"), that it will "consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin." See also *Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (disregarding the highest margin in the case as best information available because the margin was based on another company's uncharacteristic business expense resulting in an extremely high margin).

We corroborated the petition information, and found that we had not received any information that warranted revisiting the issue. See *Notice of Preliminary Determination of Sales at Less-Than-Fair-Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 41794, 417988 (August 5, 1998). Similarly, no information has been presented in the current review that calls into question the reliability or the relevance of the information contained in the petition. Therefore, we have applied, as adverse facts available, the PRC-wide rate from prior administrative reviews of this order and have satisfied the corroboration requirements under section 776 of the Act. See *Persulfates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 66 FR 18439, 18441 (April 9, 2001) (employing a petition rate used as adverse facts available in a previous segment as the adverse facts available in the current review). We have determined that this rate has probative value and, therefore, is an appropriate rate to be applied in this review to exports of subject merchandise by

Gerber and Green Fresh as facts otherwise available.

#### Partial Rescission of New Shipper Review

##### A. Zhangzhou Jingxiang

We have rescinded this 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 and because it was unable to explain whether or not its owner was affiliated with any PRC exporters or producers of the subject merchandise (see *Preliminary Results*, 67 FR at 10696).

##### B. Shenzhen Qunxingyuan

In the preliminary results, we determined that the sole U.S. sale of subject merchandise made by Shenzhen Qunxingyuan during the POR was not *bona fide* primarily because it was made at an aberrationally high price and an unreasonably low quantity relative to other commercial transactions involving comparable merchandise during the POR. In addition, Shenzhen Qunxingyuan did not have any other business activity or income beyond this sale during the POR or after the POR (at least until the date of verification). We also noted other questionable factors with respect to Shenzhen Qunxingyuan's customer. Based on the totality of the circumstances, we found that the quantity and value reported by Shenzhen Qunxingyuan did not provide a reasonable or reliable basis for the Department to calculate a dumping margin and we rescinded the new shipper review with respect to Shenzhen Qunxingyuan. See Memorandum from Louis Apple, Office Director, to Susan Kuhbach, Acting Deputy Assistant Secretary for Import Administration, Fourth New Shipper Review of Certain Preserved Mushrooms from the People's Republic of China: Whether the Sale Made by Shenzhen Qunxingyuan Trading Co., Ltd. Is *Bona Fide* (February 28, 2003) ("Preliminary Price and Quantity Analysis Memorandum").

We are also rescinding the new shipper review with respect to Shenzhen Qunxingyuan because we find that it did not have a *bona fide* U.S. 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. In determining whether a sale was *bona fide*, the Department normally considers factors such as, *inter alia*:(1) The timing of the sale, (2) the sale price and quantity, (3) the expenses arising from the sales transaction, (4) whether the

sale was sold to the customer at a loss, and (5) whether the sales transaction between the exporter and importer was executed on an arm's-length basis. See *American Silicon Technologies v. United States*, 110 F. Supp. 2d 992, 996 (CIT 2000); see also *Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 31204 (June 11, 2001) and the accompanying issues and decision memorandum. An examination of whether a sale is a *bona fide* transaction may be extensive and thus, may include a variety of these factors and others given the nature and circumstances of each company and its corresponding sales practices. In Shenzhen Qunxingyuan's case, we focused on the commercial income and viability of the company, the profitability of the sale in question, and its sale price relative to AUVs.

In this case, we find that the price of its single reported sale was aberrationally high relative to the average unit value of all U.S. imports of comparable canned mushroom imports during the POR. More importantly, with respect to the commercial legitimacy of the one reported U.S. sale, we continue to find that Shenzhen Qunxingyuan had no other sales of any merchandise, subject or non-subject, during or after the POR and therefore, had no commercial income during this period. In addition, it appears that Shenzhen Qunxingyuan's reported U.S. sale incurred a loss. Therefore, we determine that the record evidence does not support a finding that this company is a *bona fide* commercial entity. Consequently, for the reasons discussed above, the Department finds that Shenzhen Qunxingyuan's sole U.S. sale during the POR was *not a bona fide* commercial transaction and does not provide a reasonable or reliable basis for the Department to calculate a dumping margin. See *Decision Memo* at Comment 2 for additional discussion.

#### Non-Adverse Facts Available

For the final results of these reviews, we have determined it appropriate to treat water as a factor of production separate from factory overhead consistent with the Department's current practice (see *Fresh Garlic From the People's Republic of China: Final Results of Antidumping New Shipper Review*, 67 FR 72139 (December 4, 2002) and accompanying Issues and Decision Memorandum at Comment 7 ("Garlic")).

Shantou Hongda and Shenxian Dongxing reported water consumption data which appeared to be erroneous

when compared to the amount reported by Guangxi Yulin and verified by the Department. With respect to Shenxian Dongxing, because originally we did not consider its reported water consumption factor to be necessary for valuation purposes, we did not examine its water consumption data at verification. In the case of Shantou Hongda, we examined its water consumption at verification but it contained errors which rendered this data unreliable (see exhibit 12 of the Department's February 14, 2002, verification report for Shantou Hongda).

Because Shantou Hongda and Shenxian Dongxing provided the Department with incomplete and/or unreliable information which could not be verified, use of facts available is appropriate pursuant to section 776(a)(2)(D) of the Act. We believe that Shantou Hongda and Shenxian Dongxing were unaware at the time the Department requested this information that it would be necessary to use the water consumption data in its margin calculation because the Department had not separately valued this input in any prior segment of this proceeding. Thus, in order to account for water consumption usage by each of these respondents in the final results, as non-adverse facts available, we have used the water factor reported by Guangxi Yulin, the only other respondent under review (for which we are calculating a margin in the final results) which reported a correct and complete water factor (as verified by the Department), and valued water for the other respondents using Guangxi Yulin's reported water factor. See *Decision Memo* at Comment 5.

#### Analysis of Comments Received

All issues raised in the case briefs are addressed in the *Decision Memo*, which is hereby adopted by this notice. A list of the issues raised, all of which are in the *Decision Memo*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in the briefs and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B-099 of the main Department building. In addition, a complete version of the *Decision Memo* can be accessed directly on the Web at <http://ia.ita.doc.gov>. The paper copy and electronic version of the *Decision Memo* are identical in content.

#### Changes Since the Preliminary Results

Based on the use of additional publicly available information and the comments received from the interested parties, we have made changes in the margin calculation for each respondent.

For a discussion of these changes, see the "Margin Calculations" section of the *Decision Memo*.

For the final results, we calculated average surrogate percentages for factory overhead, SG&A expenses, and profit using the 2001–2002 financial reports of Agro Dutch Foods Ltd. ("Agro Dutch") and Flex Foods Ltd. ("Flex Foods"). See *Decision Memo* at Comment 4.

We used freight rates published in the February 2002–June 2002 issues of *Chemical Weekly* and obtained distances between cities from the following Web sites: <http://www.infreight.com> and <http://www.sitaindia.com/Packages/CityDistance.php>.

We treated water as a separate factor of production. To value water, we used 1995–1996 and 1996–1997 data from the *Second Water Utilities Data Book*. Since this value was not contemporaneous with the POR, we adjusted this value for inflation based on wholesale price indices published in the International Monetary Fund's *International Financial Statistics*. As discussed above, two respondents (*i.e.*, Shantou Hongda and Shenxian Dongxing) did not provide the Department with complete and/or reliable water consumption information which could be verified. Therefore, as facts available, we have used the amount reported by Guangxi Yulin, the only respondent under review which reported a correct and complete water factor (as verified by the Department), and applied it to the surrogate value for water for the two respondents at issue. See "Non-Adverse Facts Available" section above and *Decision Memo* at Comment 5.

To value tin can sets (*i.e.*, the can with the lid) for the respondents which produced their cans during the POR (*i.e.*, Guangxi Yulin and Shenxian Dongxing), we used 2001–2002 actual can-size-specific price data submitted by Agro Dutch in the 3rd antidumping duty administrative review of certain preserved mushrooms from India. However, for the respondents which only purchased their cans during the POR (*i.e.*, Shantou Hongda), we continued to use 2000–2001 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 relied on the petitioners' methodology contained in its September 6, 2002, publicly available information submission for purposes of deriving per-unit, can-size-specific prices. See *Decision Memo* at Comment 6.

To value urea (carbamide), we used data in the 2001–2002 financial report

of Flex Foods and February 2001–January 2002 data in *Chemical Weekly*.

To value super phosphate and grain, we used data in the 2001–2002 financial report of Flex Foods.

To value spawn, cow manure and straw, we used price data contained in the 2001–2002 financial reports of Flex Foods and Agro Dutch.

To value gypsum, we used the 2001–2002 financial report of Flex Foods and April 2001–December 2001 data from *Monthly Statistics of the Foreign Trade of India* ("Monthly Statistics").

To value copper wire scrap, we used April 2001–December 2001 data from *Monthly Statistics* because this value is more specific to the product than the value used in the preliminary results. See *Decision Memo* at Comment 8.

We corrected a programming error by including Guangxi Yulin's tape cost only in its total packing costs (and not in its material costs).

We corrected a calculation error by including the total surrogate cost for seal glue in Guangxi Yulin's total material costs.

#### Final Results of Reviews

We determine that the following weighted-average margin percentages exist for the period February 1, 2001, through January 31, 2002:

Exporter	Margin (percent)
Gerber Food (Yunnan) Co., Ltd	198.63
Green Fresh Foods (Zhangzhou) Co., Ltd .....	198.63
Guangxi Yulin Oriental Food Co., Ltd. ("Guangxi Yulin") ...	0.00
Guangxi Yulin/All Others .....	198.63
Shantou Hongda Industrial General Corporation .....	122.07
Shenxian Dongxing Foods Co., Ltd .....	61.37
PRC-Wide Rate .....	198.63

#### Assessment Rates

The Department shall determine, and the U.S. Bureau of Customs and Border Protection ("BCBP") shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions for the companies subject to these reviews directly to the BCBP within 15 days of publication of the final results of these reviews. For assessment purposes, we do not have the actual entered value for any of the respondents for which we calculated a margin because it is not the importer of record for the subject merchandise. Therefore, we have calculated individual importer- or 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. For Shenxian Dongxing, however, because we find that its quantity data is unreliable, we will instruct the BCBP to apply Shenxian Dongxing's margin to the entered value of its subject merchandise as reported to the BCBP during the POR. To determine whether the duty assessment rates are *de minimis* (i.e., less than 0.50 percent), in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we have calculated importer- or customer-specific *ad valorem* ratios based on export prices. We will instruct the BCBP to assess antidumping duties on all appropriate entries covered by these reviews if any importer or customer-specific assessment rate calculated in the final results of these reviews is above *de minimis*. For entries of the subject merchandise during the POR from companies not subject to these reviews, we will instruct the BCBP to liquidate them at the cash deposit in effect at the time of entry.

#### Cash Deposit Requirements

Bonding will no longer be permitted to fulfill security requirements for shipments from Guangxi Yulin, Shenzhen Qunxingyuan, or Zhangzhou Jingxiang of certain preserved mushrooms from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results.

The following deposit rates shall be required for merchandise subject to the order entered or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a)(1) and 751(a)(2)(B) of the Act: (1) The cash deposit rates for Gerber, Green Fresh, Guangxi Yulin (i.e., for subject merchandise both manufactured and exported by Guangxi Yulin), Shantou Hongda, and Shenxian Dongxing will be the rates indicated above; (2) the cash deposit rate for PRC exporters for whom the Department has rescinded the review or for which a review was not requested (e.g., China Processed, Compania Envasador, and Raoping Xingyu) will continue to be the rate assigned in an earlier segment of the proceeding or the PRC-wide rate of 198.63 percent, whichever applicable; (3) the cash deposit rate for the PRC NME entity (including Shenzhen Qunxingyuan and Zhangzhou Jingxiang) and for subject merchandise exported but not manufactured by Guangxi Yulin will continue to be the PRC-wide rate of 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 deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final 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 doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these determinations and notice in accordance with sections 751(a)(1), 751(a)(2)(B), and 777(i) of the Act and 19 CFR 351.213 and 351.214.

Dated: July 3, 2003.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Grant Aldonas,  
Under Secretary.*

#### Appendix—Issues in Decision Memo Comments

1. The Application of Facts Available to Gerber and Green Fresh.
2. The *Bona Fides* of Shenzhen Qunxingyuan's U.S. Sale.
3. The Rescission of the New Shipper Review for Guangxi Yulin.
4. The Use of Himalya's Financial Data to Derive Surrogate Percentages.
5. The Valuation of Water.
6. Surrogate Value for Cans.
7. The Treatment of Tin Scrap as an Offset.
8. Surrogate Value for Copper Wire Scrap.

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#### DEPARTMENT OF COMMERCE International Trade Administration

[C-507-501]

#### Certain In-Shell Pistachios From the Islamic Republic of Iran: Final Results of Countervailing Duty Administrative Review

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

**ACTION:** Notice of final results of countervailing duty administrative review.

**SUMMARY:** On April 4, 2003, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results in the countervailing duty (CVD) administrative review of certain in-shell pistachios from Iran. *See Certain In-shell Pistachios from the Islamic Republic of Iran: Preliminary Results of Countervailing Duty Administrative Review*, 68 FR 16473 (April 4, 2003) (*Preliminary Results*). The Department has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Based on our analysis of the comments received, the Department has revised the net subsidy rate for the Rafsanjan Pistachios Producers Cooperative (RPPC). The revised final net subsidy rate for the reviewed company is listed below in the "Final Results of Review" section of this notice.

**EFFECTIVE DATE:** July 11, 2003.

**FOR FURTHER INFORMATION CONTACT:** Darla Brown or Eric B. Greynolds, AD/CVD Enforcement, Office VI, Group II, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-2849 or (202) 482-6071, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On March 11, 1986, the Department published in the **Federal Register** the countervailing duty order on certain in-shell pistachios from Iran. *See Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: In-shell Pistachios from Iran*, 51 FR 8344 (March 11, 1986) (*In-shell Pistachios*).

We published the *Preliminary Results* of the instant administrative review in the **Federal Register** on April 4, 2003 (68 FR 16473). We invited interested parties to comment on the results. On