

C	Mn	P	S	Si	Cr	Cu	Ni	Nb	Ca	Al
0.15% Max	1.40% Max.	0.025% Max.	0.010% Max.	0.50% Max.	1.00% Max.	0.50% Max.	0.20% Max.	0.005% Max.	Treated ...	0.01–0.07%.

Width = 39.37 inches; Thickness = 0.181 inches maximum; Yield Strength = 70,000 psi minimum for thickness ≤ 0.148 inches and 65,000 psi minimum for “thicknesses” > 0.148 inches; account for 64 FR 38650; Tensile Strength = 80,000 psi minimum.

Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by silicon by either (i) tensile strength between 540 N/mm² and 640 N/mm² and an elongation percentage > 26 percent account for 64 FR 38650, for thickness of 2 mm and above, or (ii) a tensile strength between 590 N/mm² and 640 N/mm² and an elongation percentage ≥ 25 percent for thickness of 2 mm and above.

Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.

Grade ASTM A570–50 hot-rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (0.119 nominal), mill edge and skin passed, with a minimum copper content of 0.20 percent.

The covered merchandise is classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) as subheadings:

The merchandise subject to this sunset review is classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.00.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered by this sunset review including: vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00.

Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the covered merchandise is dispositive.

[FR Doc. E4–2103 Filed 9–8–04; 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: Final Results of Sixth Antidumping Duty New Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review

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

ACTION: Notice of final results of sixth antidumping duty new shipper review and final results and partial rescission of the fourth antidumping duty administrative review.

SUMMARY: On March 5, 2004, the Department of Commerce published the preliminary results of the sixth new shipper review and the fourth administrative review of the antidumping duty order on certain preserved mushrooms from the People’s Republic of China (“PRC”). The new shipper review covers one exporter, Primera Harvest (Xiangfan) Co., Ltd. (“Primera Harvest”), and the administrative review covers six exporters (see “Background” section below for further discussion). The period of review is February 1, 2002, through January 31, 2003.¹ 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: September 9, 2004.

FOR FURTHER INFORMATION CONTACT: Brian C. Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–1766.

¹ The period of review (“POR”) for both the new shipper review and administrative review is the same.

SUPPLEMENTARY INFORMATION:

Background

While the Department initiated an administrative review of 11 companies,² based on a request by the petitioner³ and certain exporters, this administrative review now covers only the following six exporters: (1) COFCO; (2) Gerber; (3) Green Fresh; (4) Guangxi Yulin; (5) Shantou Hongda; and (6) Shenxian Dongxing (see “Partial Rescission of Administrative Review” section of this notice for further discussion).

On March 5, 2002, the Department published in the **Federal Register** the preliminary results of the sixth new shipper review and the fourth administrative review of the antidumping duty order on certain preserved mushrooms from the People’s Republic of China (“PRC”) (see *Certain Preserved Mushrooms from the People’s Republic of China: Preliminary Results of Sixth Shipper Review and Preliminary Results and Partial Rescission of Fourth Antidumping Duty Administrative Review*, 69 FR 10410 (March 5, 2004) (“*Preliminary Results*”). Also on March 5, 2004, we issued COFCO another supplemental questionnaire to which it responded on March 31, 2004.

On March 10, 2004, COFCO requested an extension of the deadline to submit publicly available information in the administrative review until April 30, 2004, which we granted to all interested parties in both reviews on March 12, 2004.

² The petitioner’s request for review included the following companies: (1) China Processed Food Import & Export Company (“COFCO”); (2) Gerber Food Yunnan Co., Ltd. (“Gerber”); (3) Green Fresh Foods (Zhangzhou) Co., Ltd. (“Green Fresh”); (4) Guangxi Yulin Oriental Food Co., Ltd. (“Guangxi Yulin”); (5) Raoping Xingyu Foods Co., Ltd. (“Raoping Xingyu”); (6) Shantou Hongda Industrial General Corporation (“Shantou Hongda”); (7) Shenxian Dongxing Foods Co., Ltd. (“Shenxian Dongxing”); (8) Shenzhen Qunxingyuan Trading Co., Ltd. (“Shenzhen Qunxingyuan”), (9) Xiamen Zhongjia Imp. & Exp. Co., Ltd. (“Zhongjia”); (10) Zhangzhou Jingxiang Foods Co., Ltd. (“Zhangzhou Jingxiang”); and (11) Zhangzhou Longhai Minhui Industry and Trade Co., Ltd. (“Minhui”).

³ 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 Delling Company, Southwood Farms, Sunny Dell Foods, Inc., and United Canning Corp.

On March 18, 2004, we issued Guangxi Yulin a supplemental questionnaire to clarify certain issues raised by the petitioner in its February 12, 2004, submission.

On March 22, 2004, the petitioner requested a hearing in these reviews.

On March 25, 2004, in accordance with 19 CFR 351.301(c)(3), we received additional publicly available information for soil and rice hulls from Primera Harvest.

On April 12, 2004, Guangxi Yulin submitted its response to the Department's March 18, 2004, request for additional clarification.

On April 15, 2004, COFCO requested an additional extension of the deadline to submit publicly available information in the administrative review until May 31, 2004, which we granted to all interested parties in both reviews on April 16, 2004.

On May 3, 2004, the Department published in the **Federal Register** a notice of postponement of the final results until no later than September 1, 2004 (69 FR 24132).

On May 12, 2004, we issued COFCO a supplemental questionnaire which requested information to determine whether its affiliates China National Cereals, Oils, & Foodstuffs Import & Export Corporation ("China National"), COFCO (Zhangzhou) Food Industrial Co., Ltd. ("COFCO Zhangzhou"), Fujian Zishan Group Co. ("Fujian Zishan"), Xiamen Jiahua Import & Export Trading Co., Ltd. ("Xiamen Jiahua"), and Fujian Yu Xing Fruit & Vegetable Foodstuff Development Co. ("Yu Xing") (hereafter referred to as "affiliates") were entitled to a separate rate. On May 26, 2004, COFCO and its affiliates submitted their response to the Department's May 12, 2004, supplemental questionnaire.

On May 20, 2004, the Department issued verification outlines to COFCO and its affiliates. The Department conducted verification of the responses of COFCO and its affiliates during the period May 31, through June 16, 2004. On June 30 and July 6, 2004, the Department issued the verification reports for COFCO and its affiliates.

On June 1, 2004, we received additional publicly available information from COFCO. On June 14, 2004, the petitioner submitted rebuttal comments.

On June 17, 2004, Gerber and Green Fresh submitted unsolicited new factual information with respect to their relationship during the period of this review.

On June 24, 2004, COFCO and Guangxi Yulin requested that the Department return the additional publicly available information

submitted in the petitioner's June 14, 2004, submission. On July 1, 2004, the petitioner responded to COFCO and Guangxi Yulin's June 24, 2004, letter.

On June 30, 2004, we provided the petitioner with an opportunity to comment on the information contained in Gerber and Green Fresh's June 17, 2004, letter, to which the petitioner responded on July 12, 2004.

On July 6, 2004, we issued Guangxi Yulin a supplemental questionnaire to address certain comments submitted by the petitioner on May 11, 2004. Guangxi Yulin submitted its response to that supplemental questionnaire on July 12, 2004.

The petitioner and three respondents, COFCO, Guangxi Yulin, and Primera Harvest, submitted their case briefs on July 21, 2004. On July 29, 2004, the petitioner and five respondents, COFCO, Gerber, Green Fresh, Guangxi Yulin, and Primera Harvest, submitted rebuttal briefs. The other respondents participating in these reviews did not submit case or rebuttal briefs.

On July 29, 2004, we placed on the record publicly available information on land lease costs for consideration in the final results and provided all interested parties until August 5, 2004, to submit comments on this data.

On August 3, 2004, the petitioner withdrew its request for a hearing in these reviews. No other party requested a hearing, as specified under 19 CFR 351.310(c).

On August 4, 2004, we determined that Gerber and Green Fresh had submitted new arguments in their rebuttal brief in violation of 19 CFR 351.309(d)(2), and requested these parties to remove this information and resubmit their rebuttal brief. On August 6, 2004, Gerber and Green Fresh resubmitted their rebuttal brief accordingly.

On August 5, 2004, COFCO, Gerber, and Green Fresh submitted comments on the publicly available information we had placed on the record on July 29, 2004. On August 16, 2004, the petitioner submitted rebuttal publicly available information and comments on the land lease value comments submitted by certain respondents on August 5, 2004.

The Department has conducted these reviews in accordance with section 751 of the Tariff Act of 1930, as amended ("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, 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.⁴

The merchandise subject to this order is currently classifiable under subheadings: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153 and 0711.51.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Period of Reviews

The POR is February 1, 2002, through January 31, 2003.

Verification

As provided in section 782(i)(2) of the Act, we verified information provided by COFCO and its affiliates. 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 June 30, 2004, verification report for COFCO

⁴ 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. This decision is currently on appeal.

Zhangzhou in the fourth antidumping duty administrative review (“COFCO Zhangzhou verification report”); June 30, 2004, verification report for Fujian Zishan in the fourth antidumping duty administrative review (“Fujian Zishan verification report”); June 30, 2004, verification report for Xiamen Jiahua in the fourth antidumping duty administrative review (“Xiamen Jiahua verification report”); June 30, 2004, verification report for Yu Xing in the fourth antidumping duty administrative review (“Yu Xing verification report”); and July 6, 2004, verification report for China National and COFCO in the fourth antidumping duty administrative review (“China National/COFCO verification report”).

Duty Absorption

On March 5, 2004, the petitioner reiterated its request that the Department determine whether antidumping duties had been absorbed during the POR. Section 751(a)(4) of the Act provides for the Department, if requested, to determine during an administrative review initiated two or four years after the publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. None of the respondents in the administrative review reported that they sold subject merchandise through an affiliated importer during the POR, and only one respondent (*i.e.*, Gerber) reported that it acted as importer of record for all its U.S. sales during the POR. Because the administrative review was initiated four years after the publication of the order, and Gerber acted as importer of record for all of its U.S. sales, we must make a duty absorption determination in this segment of the proceeding within the meaning of section 751(a)(4) of the Act.

On March 8, 2004, the Department requested evidence from the respondents that unaffiliated purchasers will ultimately pay the antidumping duties to be assessed on entries during the review period. In determining whether the antidumping duties have been absorbed by the respondents during the POR on sales for which they were the importer of record, we presume that the duties will be absorbed for those sales that have been made at less than normal value (NV). This presumption can be rebutted with evidence (*e.g.*, an agreement between the respondent/importer and unaffiliated purchaser) that the unaffiliated purchaser will pay the full duty ultimately assessed on the subject merchandise. Although Shenxian

Dongxing responded to the Department’s request for information, the data it provided indicates that Shenxian Dongxing was not the importer of record for its U.S. sales of subject merchandise during the POR. None of the other respondents in the administrative review, including Gerber, responded to the Department’s request for information. Accordingly, based on the record, we cannot conclude that the unaffiliated purchaser in the United States will pay the full duty ultimately assessed. Therefore, we find that antidumping duties have been absorbed by the foreign producer or exporter during the POR on those sales for which Gerber was the importer of record.

Partial Rescission of Administrative Review

We rescinded this review with respect to Minhui and Zhongjia pursuant to 19 CFR 351.213(d)(1), because the petitioner withdrew its request for review and these companies did not request a review of these companies in a timely manner in accordance with section 751(a)(1) of the Act. *See Certain Preserved Mushrooms from the People’s Republic of China: Notice of Partial Rescission of Fourth Antidumping Duty Administrative Review*, 68 FR 63065 (November 7, 2003) (“*Rescission Notice*”). We also rescinded this review with respect to Raoping Xingyu and Shenzhen Qunmingyuan pursuant to 19 CFR 351.213(d)(3), because the shipment data we examined did not show U.S. entries of the subject merchandise during the POR from these companies (*see also Rescission Notice*, 68 FR at 63065).

We are also rescinding this review with respect to Zhangzhou Jingxiang pursuant to 19 CFR 351.213(d)(3), because the shipment data we examined did not show U.S. entries of the subject merchandise during the POR from this company (*see Preliminary Results*, 69 FR at 10412).

Facts Available—Shantou Hongda

In the *Preliminary Results*, 69 FR at 10417, the Department determined that the use of adverse facts available (“AFA”) was warranted in accordance with sections 776(a) and 776(b) of the Act, with respect to Shantou Hongda. 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, (B) fails to provide information in the time and manner requested, (C) significantly impedes a proceeding under this title or (D) provides such information but the information cannot be verified.

Furthermore, pursuant to section 776(b) of the Act, the Department may apply an adverse inference if it finds a respondent has not acted to the best of its ability in the conduct of the administrative review. Because Shantou Hongda refused to allow the Department to conduct verification of its submitted information, we determined that Shantou Hongda did not cooperate to the best of its ability. Since the preliminary results, nothing has changed to reverse our preliminary decision regarding Shantou Hongda and Shantou Hongda has filed no comments on the record addressing the Department’s preliminary results. Therefore, pursuant to sections 776(a) and 776(b) of the Act, we have continued to make an adverse inference with respect to Shantou Hongda by assigning to its exports of the subject merchandise a rate of 198.63 percent, which is the PRC-wide rate.

Facts Available—Gerber

In the *Preliminary Results*, 69 FR at 10415–10416, the Department determined that the use of AFA was also warranted in accordance with sections 776(a) and 776(b) of the Act with respect to Gerber. This determination was based on the Department’s finding that Gerber participated in an agreement/scheme with another respondent Green Fresh during the prior POR which extended into the current POR, and which resulted in the circumvention of the antidumping duty order and the evasion of payment of the appropriate level of cash deposits. Specifically, the Department found that Gerber used the invoices of Green Fresh (which had a substantially lower cash deposit rate), rather than its own invoices, for numerous transactions during this POR. As a result, Gerber did not submit to U.S. Customs and Border Protection (“CBP”) the appropriate cash deposits for these transactions. Furthermore, the Department also found that Gerber did not act to the best of its ability in its reporting of information to the U.S. government, both at the time of entry of the merchandise and in its previous submissions to the Department, relating to the agreement between Gerber and Green Fresh which directly pertained to the transactions under review in this POR.

As explained in *Certain Preserved Mushrooms in the People’s Republic of China: Final Results and Partial Rescission of New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 68 FR 41304 (July 11, 2003), and accompanying Issues and Decision Memorandum at

Comment 1 (“*Third Administrative Review*”), the Department has discretion to administer the law in a manner that prevents evasion of the order. (See *Tung Mung Development v. United States*, 219 F. Supp. 2d 1333, 1343 (CIT 2002), appeal entered (“*Tung Mung v. United States*”).) Moreover, as the Court noted in *Tung Mung v. United States*, citing *Mitsubishi Electric*, the Department has a responsibility to apply its law in a manner that prevents 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).” *Id.* See also *Queen’s Flowers De Colombia v. United States*, 981 F. Supp. 617, 621 (CIT 1997) (determining that the Department’s decision to define the term “company” to include several closely related companies was a permissible application of the statute, given its “responsibility to prevent circumvention of the antidumping law”); and *Hontex Enterprises, Inc., et al. v. United States*, 248 F. Supp. 1323, 1343 (CIT 2003) (finding that the Department’s decision to increase the scope of its analysis to include non-market economy (“NME”) exporters was reasonable in light of its “responsibility to prevent circumvention of the antidumping law”).

Accordingly, in the *Preliminary Results*, the Department exercised its discretion to administer the law in a manner that prevents evasion of the order by assigning Gerber the PRC-wide rate of 198.63 percent as total AFA. Since the preliminary results, nothing has changed to reverse our preliminary decision regarding Gerber. Therefore, pursuant to section 776(b) of the Act, we have continued to make an adverse inference with respect to Gerber by assigning to its exports of the subject merchandise a rate of 198.63 percent, which is the PRC-wide rate.

Facts Available—Green Fresh

In the *Preliminary Results*, 69 FR at 10416–10417, the Department determined that the use of partial AFA was warranted, in accordance with sections 776(a) and 776(b) of the Act, with respect to Green Fresh because the Department held that Green Fresh did not act to the best of its ability in proving to the Department that it did not assist Gerber in the continuation of

the scheme to circumvent the antidumping duty order during the POR. As explained in the *Third Administrative Review* (69 FR at 41306), Green Fresh’s business relationship with Gerber, which began in the prior POR, allowed Gerber to circumvent the antidumping duty order and to evade the proper payment of cash deposits. Although Green Fresh claimed in its questionnaire responses that it did not provide Gerber with any of its sales invoices during this POR and that it believed that its business relationship with Gerber was terminated during the prior POR, the terms of the agreement between Green Fresh and Gerber stated that the relationship ran through this POR, and the general manager of Green Fresh indicated that he was aware Gerber disputed that the agreement was no longer in place (see page 7 of the February 12, 2003, Green Fresh verification report from the prior administrative review which was placed on the record of this review on February 13, 2004). Furthermore, Green Fresh provided no evidence on the record that it took measures to prevent Gerber from continuing to use its invoices in this POR and from actively circumventing the antidumping duty order and evading the payment of cash deposits during the POR. Accordingly, because (1) Green Fresh’s arrangement with Gerber allowed Gerber to circumvent the antidumping duty order and payment of cash deposits; (2) Green Fresh was aware that Gerber believed the agreement still permitted use of Green Fresh’s invoices; and (3) Green Fresh provided no evidence on the record that it attempted to prevent the use of its invoices by Gerber during this POR, the Department has determined that Green Fresh did not act to the best of its ability, pursuant to section 776(b) of the Act, in overcoming a presumption that Green Fresh aided in the circumvention of the antidumping duty order during the POR.

Accordingly, in order to protect the integrity of its administrative proceeding, the Department found that the application of partial AFA pursuant to sections 776(a) and 776(b) of the Act was warranted for Green Fresh with respect to the Gerber-Green Fresh transactions. As facts available, we determined that because certain Gerber transactions identified Green Fresh as the exporter and because those transactions used Green Fresh’s invoices, these specific transactions should be attributed to Green Fresh in our calculations. The Department determined it was appropriate to use those transactions in Green Fresh’s

calculation for two reasons: (1) Because those transactions were reported to the U.S. government as Green Fresh’s sales upon importation; and (2) even if Gerber’s claims were truthful about not affirmatively knowing that its invoices continued to be used by Gerber in this POR, its silent allowance of Gerber to use its invoices in circumventing the antidumping duty law, and failure to demand return of all unused invoices, was no different in its effect than its active assistance to further the contractual scheme in the previous POR. Thus, as partial AFA, the Department applied the PRC-wide rate of 198.63 percent to those sales made by Gerber using Green Fresh’s invoices.

Since the preliminary results, Gerber and Green Fresh submitted email correspondence between them and their counsel which stated that Gerber continued to use Green Fresh’s invoices during this POR without Green Fresh’s prior knowledge (see June 17, 2004, submission from Gerber and Green Fresh). We do not consider the undated email correspondence submitted by Gerber and Green Fresh on this matter after the *Preliminary Results* to constitute evidence that Green Fresh attempted to stop Gerber from using its invoices to actively circumvent the antidumping duty order during the POR. Therefore, pursuant to section 776(b) of the Act, we have continued to make an adverse inference with respect to Green Fresh by applying the PRC-wide rate of 198.63 percent to those sales made by Gerber using Green Fresh’s invoices.

Corroboration of Facts Available

Section 776(c) of the Act requires that the Department corroborate, to the extent practicable, a figure based on secondary information which it applies as AFA. To be considered corroborated, the information must be found to be both reliable and relevant, and thus determined to have probative value. For the reasons explained above, we are applying as AFA the highest rate from any segment of this proceeding, 198.63 percent, which is the current PRC-wide rate originally calculated in the less-than-fair-value (“LTFV”) investigation. (See *Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms from the People’s Republic of China*, 64 FR 8308, 8310 (February 19, 1999).) For the reasons stated in the *Preliminary Results*, 69 FR at 10417, the Department finds this rate to be both reliable and relevant, and, therefore, to have probative value in accordance with the Statement of Administrative Action,

H.R. Doc. 103-316 ("SAA"). See SAA at 870. No party has challenged the Department's preliminary corroboration analysis for purposes of the final results. Therefore, we have continued to assign to exports of the subject merchandise by both Gerber and Shantou Hongda, and for certain sales made with Green Fresh's invoices which Green Fresh did not report in its questionnaire response, the rate of 198.63 percent.

Collapsing—COFCO and Affiliates

In the *Preliminary Results*, 69 FR at 10413, we collapsed the respondent exporter COFCO with three affiliated producers of subject merchandise (only one of which provided COFCO with preserved mushrooms for export to the United States during the POR). We emphasized in the *Preliminary Results* that we would consider collapsing affiliated producers in the NME context on a case-by-case basis as long as it did not conflict with our NME methodology or separate rates test. While we also determined that COFCO was affiliated with two other exporters (neither of which exported preserved mushrooms to the United States during the POR), we did not include these companies in our collapsing decision. Moreover, we assigned the resulting margin only to COFCO, not the collapsed entity, in accordance with our normal NME practice to assign separate rates only to respondent exporters. We did not specifically address the issue of whether COFCO's rate should be applied to its affiliates because we needed to obtain information from its affiliates in order to make a separate rates determination in relation to the entity as a whole. Since the *Preliminary Results*, we issued all of COFCO's affiliates a separate rate questionnaire and verified the data reported.

After reconsideration of the record facts and based on our verification findings, we determined it appropriate to collapse COFCO with five of its affiliates—three producers (*i.e.*, Yu Xing, COFCO Zhangzhou and Fujian Zishan) and two exporters (*i.e.*, China National and Xiamen Jiahua)—in accordance with section 771(33) of the Act and the criteria enumerated in 19 CFR 351.401(f), for purposes of the final results. We note that our rationale for collapsing, *i.e.*, to prevent manipulation of price and/or production, applies to both producers and exporters, if the facts indicate that producers of like merchandise are affiliated as a result of their mutual relationship with an exporter. Furthermore, we applied the "collapsed" rate to COFCO and all of the above-mentioned affiliates comprising the collapsed entity because

we determined that the entity as a whole is entitled to a separate rate (see "Separate Rates" section below). This determination is specific to the facts presented in this review and based on several considerations, including the structure of the collapsed entity, the level of control between/among affiliates and the level of participation by each affiliate in the proceeding. For further discussion, see *Decision Memo* at Comment 1.

Separate Rates

In the *Preliminary Results*, 69 FR at 10418, we considered only respondent exporters in our separate rates analysis and granted a separate rate to COFCO, Primera Harvest, Guangxi Yulin, Shenxian Dongxing and Green Fresh. For purposes of the final results, this analysis has not changed for any respondent exporter except COFCO. For COFCO, we have revisited our separate rates analysis as a result of our collapsing decision discussed above, and have now considered COFCO and the five affiliates mentioned above as a collapsed entity for purposes of determining whether or not the collapsed entity as a whole is entitled to a separate rate.

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). COFCO is owned by its affiliate China National, an exporter, which is owned by "all of the people." COFCO also owns in part two preserved mushroom producers, COFCO Zhangzhou and Yu Xing. (Yu Xing has export rights but has never directly exported.) In addition to COFCO, China National owns in part Xiamen Jiahua (*i.e.*, a preserved mushroom exporter) and Xiamen Jiahua owns in part Fujian Zishan (*i.e.*, another preserved mushroom producer which also has export rights). Thus, a separate-rates analysis is necessary to determine whether the export activities of the collapsed entity as a whole are 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* government control over export activities.

1. De Jure Control

Evidence supporting, though not requiring, a finding of *de jure* absence of government control over exporter activities includes: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

COFCO and its affiliates have placed on the administrative record the following documents to demonstrate absence of *de jure* control: The 1994 "Foreign Trade Law of the People's Republic of China;" and the "Company Law of the PRC," effective as of July 1, 1994. 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 March 1, 2004, memorandum to the file which placed the above-referenced laws on the record of this proceeding segment.)

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*, 60 FR 22544 (May 8, 1995) ("Furfuryl Alcohol"), 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 government 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* government control of its export functions: (1) Whether the export prices are set by, or subject to the approval of, a government 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.)

COFCO and its collapsed affiliates each have asserted the following, where applicable: (1) It establishes its own export prices; (2) it negotiates contracts without guidance from any government entities or organizations; (3) it makes its own personnel decisions; and (4) it 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, this collapsed entity's questionnaire responses indicate that its pricing during the POR does not suggest coordination among exporters.

Furthermore, we examined documentation at verification which substantiated its claims as noted above (see China National/COFCO verification report at 3–12; COFCO Zhangzhou verification report at 3–6; Fujian Zishan verification report at 4–8; Xiamen Jiahua verification report at 3–7; and Yu Xing verification report at 3–7). As a result, there is a sufficient basis to determine that COFCO and its affiliates listed above have demonstrated as a whole a *de facto* absence of government control of their export functions and are entitled to a separate rate. Consequently, we have determined that the “collapsed”

entity has met the criteria for the application of a separate rate.

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/frn>. 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 submitted since the preliminary results, the comments received from the interested parties and verification findings, where applicable, we have made changes in the margin calculation for each respondent as noted below. For a discussion of these changes, see the “Margin Calculations” section of the *Decision Memo*.

As discussed above, we collapsed COFCO with its three affiliated producers and two affiliated exporters in accordance with section 771(33) of the Act and the criteria enumerated in 19 CFR 351.401(f). We also assigned the “collapsed” rate to COFCO and all of the affiliates which comprise the collapsed entity. See also *Decision Memo* at Comment 1.

For COFCO, we revised (1) the invoice numbers for five sales transactions reported in its November 10, 2003, U.S. sales listing; and (2) the amount reported in the field QTY2U for one U.S. sales transaction (see China National/COFCO Verification Report at page 3).

For Fujian Zishan, we revised (1) its reported consumption ratios for salt, disodium starrous citrate, sodium metabisulfite, rongalite, water, electricity, coal, heavy diesel oil; and (2) its reported usage ratios for direct, indirect and packing labor (see Fujian Zishan Verification Report at pages 3 and 19).

For Yu Xing, we revised (1) its reported consumption ratio for coal; and relied on (2) its labor usage ratios for canned brined mushroom production (*i.e.*, growing, collecting, and harvesting) and canned fresh mushroom production (*i.e.*, growing) as reported in

exhibit 15 of its September 9, 2003, supplemental questionnaire response (“SQR”) rather than in its February 9, 2004, SQR (see Yu Xing Verification Report at pages 3 and 16).

For each of COFCO's collapsed producers, where applicable, we weight-averaged the normal values on a control number-specific basis rather than weight-averaging the factors reported for each control number. See *Decision Memo* at Comment 2.

We corrected a calculation error by comparing COFCO's reported U.S. prices per can, instead of its U.S. prices per kilogram drained weight, to NV (the factors of which were reported on a per-can basis). See *Decision Memo* at Comment 11.

For Green Fresh, we used the reported date of the sales invoice as the basis for determining which sales Green Fresh was required to report in the administrative review. See *Decision Memo* at Comment 6.

For Guangxi Yulin, we revised its per-unit direct labor calculation based on information submitted in its July 12, 2004, SQR.

For Primera Harvest, we corrected the per-unit consumption factor amounts for cotton seed meal and fertilizer noted in the Department's verification report and used in our preliminary margin calculation by multiplying the factor amounts for these inputs by the correct fresh mushrooms-to-canned mushrooms conversion ratio (“conversion ratio”). We corrected another error in our calculation by not applying the conversion ratio a second time to the factor amounts for these inputs in the margin program. For mother spawn, we also corrected the per-unit consumption factor amount noted in the verification report and used in our preliminary margin calculation by multiplying the factor amount for this input by the correct conversion ratio. See *Decision Memo* at Comment 15.

We calculated average surrogate percentages for factory overhead, and selling, general and administrative (“SG&A”) expenses using the 2002–2003 financial reports of Agro Dutch Foods Ltd. (“Agro Dutch”) and Flex Foods Ltd. (“Flex Foods”). We calculated a surrogate percentage for profit using only the 2002–2003 financial report of Flex Foods. See *Decision Memo* at Comment 8.

We corrected our SG&A calculation ratio for Agro Dutch by removing customs duties and freight from Agro Dutch's total SG&A expenses. See *Decision Memo* at Comment 9.

To value fresh mushrooms, we used purchase data contained in the 2002–2003 financial report of Premier

Explosives Ltd. ("Premier"). See *Decision Memo* at Comment 12.

To value chicken manure and spawn, we used data contained in the 2002–2003 financial reports of Agro Dutch, Flex Foods, and Premier.

To value cow manure and general straw, we used data contained in the 2002–2003 financial report of Agro Dutch and Flex Foods.

To value rice husks, we used May 2003 Indian price data from *Hindu Business Line*. See *Decision Memo* at Comment 14.

To value rice straw, we used data contained in Premier's 2002–2003 financial report.

To value gypsum, we used an average price based on February 2002–January 2003 data contained in *World Trade Atlas*, and data contained in Flex Foods' 2002–2003 financial report.

To value wheat grain and super phosphate, we used price data contained in Flex Foods' 2002–2003 financial report.

To value urea, we used an average price based on February 2002–January 2003 data contained in *Chemical Weekly* and *World Trade Atlas*, as well

as data contained in Flex Foods' 2002–2003 financial report.

To reflect the correction of a conversion error, we revised the surrogate value used for tin plate in the *Preliminary Results* based on price data available in the 2002–2003 financial report of Agro Dutch and February 2002–January 2003 data from *World Trade Atlas*.

Final Results of Reviews

We determine that the following weighted-average margin percentages exist for the period February 1, 2002, through January 31, 2003:

Exporter	Margin (percent)
China Processed Food Import & Export Company ("COFCO") (which includes its affiliates China National Cereals, Oils, & Foodstuffs Import & Export Corporation, COFCO (Zhangzhou) Food Industrial Co., Ltd., Fujian Zishan Group Co., Xiamen Jiahua Import & Export Trading Co., Ltd., and Fujian Yu Xing Fruit & Vegetable Foodstuff Development Co.)	3.92
Gerber Food (Yunnan) Co., Ltd	198.63
Green Fresh Foods (Zhangzhou) Co., Ltd	42.90
Guangxi Yulin Oriental Food Co., Ltd	0.00
Primera Harvest (Xiangfan) Co., Ltd	82.22
Shantou Hongda Industrial General Corporation	198.63
Shenxian Dongxing Foods Co., Ltd	66.50
PRC-Wide Rate	198.63

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisal instructions for the companies subject to these reviews directly to CBP 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 they are not the importers 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. 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 CBP 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 CBP 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 Primera Harvest 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 COFCO and its five affiliates (*i.e.*, China National, COFCO Zhangzhou, Fujian Zishan, Yu Xing, and Xiamen Jiahua), Gerber, Green Fresh, Guangxi Yulin, Primera Harvest (*i.e.*, for subject merchandise both manufactured and exported by Primera Harvest), 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 whom a review was not requested (*e.g.*, Zhangzhou Jingxiang, Minhui, Zhongjia, Raoping Xingyu, and Shenzhen Qunmingyuan) 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 Gerber and Shantou Hongda) and for subject merchandise exported but not manufactured by Primera Harvest 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: September 1, 2004.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memo

Comments

- Issue 1: Collapsing of COFCO's Affiliates and Rate Assignment
- Issue 2: Calculating a Weighted-Average Normal Value for Unique Products Which Were Produced by More Than One of COFCO's Affiliated Producers
- Issue 3: Valuing the Intermediate Input for Producers Which Leased Farm Land to Produce the Intermediate Input
- Issue 4: Shenxian Dongxing's Reported Mushroom Growing Inputs
- Issue 5: Application of Facts Available to Gerber and Green Fresh
- Issue 6: Inclusion of Green Fresh's U.S. Affiliate's Sales in the Margin Analysis and the Department's Affiliation Decision with Respect to Two of Green Fresh's U.S. Customers
- Issue 7: Use of Publicly Available Information Contained in the Petitioner's June 14, 2004, Submission
- Issue 8: Use of Flex Foods' Financial Data to Derive Surrogate Financial Percentages
- Issue 9: Inclusion of Certain Expense Line Items to Derive an SG&A Surrogate Percentage Based on Agro Dutch's Financial Data
- Issue 10: Deducting Foreign Inland Freight, Brokerage, and Handling Expenses from U.S. Price
- Issue 11: U.S. Price to Normal Value Comparisons to Determine COFCO's Margin
- Issue 12: Surrogate Value for Fresh Mushrooms
- Issue 13: Surrogate Value for Soil
- Issue 14: Surrogate Value for Rice Husks
- Issue 15: Miscellaneous Corrections

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DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A-580-844]

Steel Concrete Reinforcing Bars From the Republic of Korea: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review

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

ACTION: Notice of final results and final partial rescission of antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is rescinding, in part, the second antidumping duty administrative review of steel concrete reinforcing bar (Rebar) from the Republic of Korea (Korea) because Dongkuk Steel Mill Co. Ltd. (DSM), INI Steel, Korea Iron and Steel Co. Ltd. (KISCO), and Kosteel Co., Ltd. (Kosteel) did not ship subject merchandise to the United States during the period of review. In addition, we continue to determine that the application of total adverse facts available (AFA) is warranted for Dongil Industries Co. Ltd. (Dongil) and Hanbo Iron & Steel Co. (Hanbo). The period of review (POR) is September 1, 2002, through August 31, 2003.

EFFECTIVE DATE: September 9, 2004.

FOR FURTHER INFORMATION CONTACT: Sam Zengotibengoa or Mark Manning, Office 4, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-4195 or (202) 482-5253, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The product covered by this administrative review is all rebar sold in straight lengths, currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 7214.20.00 or any other tariff item number. Specifically excluded are plain rounds (*i.e.*, non-deformed or smooth bars) and rebar that has been further processed through bending or coating. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Background

On September 2, 2003, the Department published a notice of opportunity to request the second administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 68 FR 52181 (September 2, 2003). On September 30, 2003, in accordance with 19 CFR 351.213(b), the petitioner requested an administrative review of the following six manufacturers/exporters of rebar from Korea: Dongil, DSM, Hanbo, INI Steel, KISCO, and Kosteel. On October 24, 2003, the Department published the notice of initiation of this administrative review, covering the POR. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 68 FR 60910 (October 24, 2003). DSM, INI Steel, KISCO, and Kosteel notified the Department that they had no sales or shipments of subject merchandise in the United States during the POR. The Department obtained data from U.S. Customs and Border Protection (CBP) that supported their claims of no entries during the POR. On June 8, 2004, the Department published the notice of preliminary results, and preliminary rescission of DSM, INI Steel, KISCO, and Kosteel. *See Steel Concrete Reinforcing Bar From The Republic of Korea: Notice of Preliminary Results and Preliminary Rescission, in Part, of Antidumping Duty Administrative Review*, 69 FR 31961 (June 8, 2004) (*Preliminary Results*). Because Dongil and Hanbo failed to respond to the Department's October 22, 2004, questionnaire and May 11, 2004, letter, the Department preliminarily found that the application of total AFA was warranted. (*See Preliminary Results.*) We provided all interested parties the opportunity to comment on our *Preliminary Results*. We received no comments.

Partial Rescission of Review

As mentioned above, we received no comments from interested parties on our preliminary decision to partially rescind the review. Since the record evidence indicates that DSM, INI Steel, KISCO, and Kosteel did not have sales or shipments of subject merchandise during the POR, in accordance with 19 CFR 351.213(d)(3) and consistent with our practice, we are rescinding this review for DSM, INI Steel, KISCO, and Kosteel because they had no shipments. *See e.g., Polychloroprene Rubber From Japan: Notice of Rescission of Antidumping Duty Administrative Review*, 66 FR 45005 (August 27, 2001).