

addition of vegetable and/or palm-based wax to petroleum wax are later-developed products that can be considered subject to the antidumping duty order on petroleum wax candles from the PRC under the later-developed merchandise provision.<sup>2</sup>

The Department recognizes that the ITC's final injury determination states that "commercial production of candles generally uses "natural" waxes (paraffins, microcrystallines, stearic acid, and beeswax) in various combinations." See *Candles from the People's Republic of China*, Investigation No. 731-TA-282 (Final), USITC Publication 1888 (August 1986) at 2 ("ITC Final Determination"). In addition, we note that the *ITC Final Determination* defined petroleum wax candles "as those composed of over 50 percent petroleum wax," and noted that such candles "may contain other waxes in varying amounts, depending on the size and shape of the candle, to enhance the melt-point, viscosity, and burning power." *Id.* However, because the Department did not address the proportion of these waxes that would be indicative of petroleum wax candles, there is no clear basis for the Department to make a conclusive determination that candles with non-petroleum waxes in a different proportion are not later-developed merchandise. Consequently, we are initiating this inquiry under section 781(d) of the Act.

In addition, parties may submit comments regarding the appropriateness of our later-developed analysis as provided in this notice, no later than thirty days from the date of publication of this notice. Rebuttal comments are due no later than forty days from the date of publication of this notice.

The Department will not order the suspension of liquidation of entries of any additional merchandise at this time. However, in accordance with 19 CFR 351.225(l)(2), if the Department issues a preliminary affirmative determination, we will then instruct CBP to suspend liquidation and require a cash deposit of estimated duties on the merchandise.

We intend to notify the ITC in the event of an affirmative preliminary determination of circumvention, in accordance with 781(e)(1) of the Act and 19 CFR 351.225(f)(7)(i)(C). The Department will, following consultation with interested parties, establish a schedule for questionnaires and comments on the issues. The

<sup>2</sup> The Department recognizes that certain parties submitted comments addressing certain factors as required by section 781(d) of the Act, however the Department will address these comments in the final determination.

Department intends to issue its final determinations within 300 days of the date of publication of this initiation. This notice is published in accordance with sections 781(c) and 781(d) of the Act and 19 CFR 351.225(i).

Dated: February 25, 2005.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

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**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-851]

#### **Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results and Partial Rescission of Fifth Antidumping Duty Administrative Review**

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

**SUMMARY:** The Department of Commerce ("the Department") is conducting the fifth administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China ("PRC") covering the period February 1, 2003, through January 31, 2004. We have preliminarily determined that sales have been made below normal value. If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on entries of subject merchandise during the period of review ("POR"), for which the importer-specific assessment rates are above *de minimis*.

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

**DATES:** *Effective Date:* March 7, 2005.

**FOR FURTHER INFORMATION CONTACT:** Amber Musser or Brian C. Smith, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-1777, or (202) 482-1766, respectively.

#### **Background**

On February 19, 1999, the Department published in the **Federal Register** an amended final determination and antidumping duty order on certain

preserved mushrooms from the PRC. See *Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms from the People's Republic of China*, 64 FR 8308 (February 19, 1999).

On February 3, 2004, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on certain preserved mushrooms from the PRC. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 69 FR 5125 (February 3, 2004). On February 5 and 27, 2004, the Department received timely requests from Dingyuan Import & Export Corporation ("Dingyuan"), Gerber Food (Yunnan) Co., Ltd., Gerber Food (Yunnan) Co., Ltd., ("Gerber"), Guangxi Hengxian Pro-Light Foods, Inc. ("Guangxi Hengxian"), Primera Harvest (Xiangfan) Co., Ltd. ("Primera Harvest"), Shantou Hongda Industrial General Corporation, ("Shantou Hongda"), Shandong Jiufa Edible Fungus Corporation, Ltd. ("Jiufa"), and Xiamen International Trade & Industrial Co., Ltd. ("XITIC") for an administrative review pursuant to 19 CFR 351.213(b).

On February 27, 2004, the petitioner<sup>1</sup> requested an administrative review pursuant to 19 CFR 351.213(b) of 19 companies,<sup>2</sup> which it claimed were

<sup>1</sup> The petitioner is the Coalition for Fair Preserved Mushroom Trade which includes the following domestic companies: L.K. Bowman, Inc., Monterey Mushrooms, Inc., Mushrooms Canning Company, and Sunny Dell Foods, Inc.

<sup>2</sup> The petitioner's request included the following companies: (1) China Processed Food Import & Export Company ("COFCO") and 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"); (2) Gerber; (3) Green Fresh Foods (Zhangzhou) Co., Ltd. and its affiliate Zhangzhou Longhai Lubao Food Co., Ltd.; (4) Guangxi Hengxian; (5) Guangxi Yizhou Dongfang Cannery ("Guangxi Yizhou"); (6) Guangxi Yulin Oriental Food Co., Ltd. ("Guangxi Yulin"); (7) Nanning Runchao Industrial Trade Co., Ltd. ("Nanning Runchao"); (8) Primera Harvest; (9) Raoping Xingyu Foods Co., Ltd. ("Raoping Xingyu") and its affiliate Raoping Yucun Canned Foods Factory ("Raoping Yucun"); (10) Shanghai Superlucky Import & Export Company, Ltd. ("Superlucky"); (11) Shantou Hongda; (12) Shenxian Dongxing Foods Co., Ltd. ("Shenxian Dongxing"); (13) Shenzhen Qunxingyuan Trading Co., Ltd. ("Shenzhen Qunxingyuan"); (14) Tak Fat Trading Co. ("Tak Fat") and its affiliate Mei Wei Food Industry Co., Ltd. ("Mei Wei"); (15) Xiamen Zhongjia Imp. & Exp. Co., Ltd. ("Zhongjia"); (16) XITIC and its affiliate Inter-Foods D.S. Co., Ltd.; (17) Zhangzhou Hongning Canned Food Factory; (18) Zhangzhou Jingxiang Foods Co., Ltd.; and (19) Zhangzhou Longhai Minhui Industry and Trade Co., Ltd. ("Minhui").

producers and/or exporters of the subject merchandise. Five of these 19 companies also requested a review.

On March 30, 2004, the Department initiated an administrative review covering the companies listed in the requests received from the interested parties. (*See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 69 FR 15788, 15801 (March 26, 2004)).

On October 15, 2004, the Department published in the **Federal Register** a notice of postponement of the preliminary results until no later than February 28, 2005 (69 FR 61202).

### Respondents

On March 30, 2004, we issued the antidumping duty questionnaire to each PRC company listed in the above-referenced initiation notice.

On April 1, 2004, the respondents Guangxi Yizhou, Nanning Runchao, Raoping Xingyu and its affiliate Raoping Yucun, Shenxian Dongxing, and Shenzhen Qunxingyuan each indicated that it did not have shipments of the subject merchandise to the United States during the POR.

On May 7, 2004, the respondents Minhui, Primera Harvest, Superlucky, Tak Fat and its affiliate Mei Wei, and Zhongjia each indicated that it did not have shipments of the subject merchandise to the United States during the POR.

From May 13 through May 28, 2004, COFCO and its affiliates, Gerber, Green Fresh, Guangxi Hengxian, Guangxi Yulin, Jiufa, Shantou Hongda, and XITIC submitted their responses to the Department's antidumping duty questionnaire.

From May 29 through July 15, 2004, the petitioner submitted comments on the questionnaire responses provided by COFCO, Gerber, Green Fresh, and Guangxi Hengxian.

From July 7 through August 3, 2004, the Department issued COFCO, Gerber, Green Fresh, Guangxi Hengxian, Guangxi Yulin, Jiufa, Shantou Hongda, and XITIC supplemental questionnaires.

On August 3, 2004, Shantou Hongda indicated that it no longer intended to participate in this review and requested that the Department extend the time limit for withdrawing its request for an administrative review.

From August 11 through September 13, 2004, COFCO, Gerber, Green Fresh, Guangxi Hengxian, Guangxi Yulin, Jiufa, and XITIC submitted their responses to the Department's supplemental questionnaire.

From September 16 through October 18, 2004, the petitioner submitted additional comments on the

questionnaire responses provided by COFCO, Gerber, and Guangxi Hengxian.

From October 12 through November 29, 2004, the Department issued COFCO, Gerber, Green Fresh, Guangxi Hengxian, Guangxi Yulin, Jiufa, and XITIC second supplemental questionnaires.

From November 9 through December 27, 2004, COFCO, Gerber, Green Fresh, Guangxi Hengxian, Guangxi Yulin, Jiufa, and XITIC submitted their responses to the Department's second supplemental questionnaires.

On December 2, 2004, the petitioner submitted additional comments on the second supplemental questionnaire response provided by Guangxi Hengxian.

On November 18, 2004, the Department issued Gerber a third supplemental questionnaire which it submitted on December 16, 2004.

On December 20, 2004, the Department issued Guangxi Hengxian a third supplemental questionnaire which it submitted on January 12, 2005.

On December 29, 2004, the Department issued COFCO a third supplemental questionnaire which it submitted on January 25, 2005.

From December 17 through December 20, 2004, the Department issued COFCO, Gerber, Green Fresh, Guangxi Hengxian, Guangxi Yulin, Jiufa, and XITIC a sales and cost reconciliation questionnaire, which the respondents submitted from January 19, through January 26, 2005.

On December 29, 2004, the Department issued Gerber a fourth supplemental questionnaire which it submitted on January 24, 2005.

As a result of not receiving its response to the antidumping duty questionnaire, the Department issued a letter to Zhangzhou Jingxiang on January 3, 2005, which notified this company of the consequences of not having responded to the Department's antidumping questionnaire.

On January 18, 2005, the petitioner submitted additional comments on the questionnaire responses provided by COFCO.

### Surrogate Country and Factors

On April 29, 2004, the Department provided the parties an opportunity to submit publicly available information ("PAI") for consideration in these preliminary results.

On August 16, 2004, the petitioner, Gerber, Guangxi Hengxian, Jiufa, and XITIC submitted PAI for use in valuing the factors of production. On August 26, 2004, the petitioner, Guangxi Hengxian, and Jiufa submitted additional PAI. On September 7, 2004, the petitioner

submitted additional PAI and comments.

On October 22, 2004, Guangxi Hengxian and Jiufa submitted comments on the Department's surrogate value for labor which was posted on the Department's Web site on October 6, 2004.

On January 10, 2005, Guangxi Hengxian and Jiufa submitted additional surrogate values for consideration in this review.

### Pre-Preliminary Results Comments

On February 4, 2005, the petitioner submitted pre-preliminary results comments on the domestic re-sale data provided by Gerber in this review (*see* February 28, 2005, Memorandum to the File from case analyst).

### Period of Review

The POR is February 1, 2003, through January 31, 2004.

### Scope of Order

The products covered by this order are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis*. "Preserved mushrooms" refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including, but not limited to, cans or glass jars in a suitable liquid medium, including, but not limited to, water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including "refrigerated" or "quick blanched mushrooms"; (3) dried mushrooms; (4) frozen mushrooms; and (5) "marinated," "acidified," or "pickled" mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.<sup>3</sup>

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

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

#### Partial Rescission of Administrative Review

We are preliminarily rescinding this review with respect to Guangxi Yizhou, Minhui, Nanning Runchao, Primera Harvest, Raoping Xingyu and its affiliate Raoping Yucun, Shenxian Dongxing, Shenzhen Qunxingyuan, Superlucky, Tak Fat and its affiliate Mei Wei, and Zhongjia, because the shipment data we examined did not show U.S. entries of the subject merchandise during the POR from these companies (see February 28, 2005, Memorandum to the File from case analyst).

#### Non-Market Economy Country

In every case conducted by the Department involving the PRC, the PRC has been treated as a non-market economy (“NME”) country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is a NME country shall remain in effect until revoked by the administering authority. (See *Fresh Garlic from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission in Part*, 69 FR 70638 (December 7, 2004)). None of the parties to this proceeding has contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

#### Surrogate Country

Section 773(c)(4) of the Act requires the Department to value an NME producer’s factors of production, to the extent possible, in one or more market-economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. India is among the countries comparable to the PRC in terms of overall economic development (see April 13, 2004, Memorandum from

the Office of Policy to Irene Darzenta Tzafolias). In addition, based on publicly available information placed on the record (e.g., world production data), India is a significant producer of the subject merchandise. Accordingly, we have considered India the surrogate country for purposes of valuing the factors of production because it meets the Department’s criteria for surrogate-country selection (see Memorandum Re: 5th Antidumping Duty Administrative Review on Certain Preserved Mushrooms from the People’s Republic of China: Selection of a Surrogate Country, dated February 28, 2005, for further discussion).

#### Facts Available—Green Fresh

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

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

In this review, Green Fresh reported both export price (“EP”) and constructed export price (“CEP”) sales transactions of subject merchandise during the POR. However, Green Fresh failed to provide critical information that the Department must have in order to rely on its CEP sales transactions. Specifically, in the Department’s original questionnaire, we requested that Green Fresh provide the financial and sales data for its U.S. affiliates’ sales transactions of subject merchandise made during the POR. In response to the Department’s questionnaire, Green Fresh did not report any data for its U.S. affiliates. The Department, in its first supplemental questionnaire, requested that this respondent provide sales and audited financial data (i.e., financial statements and U.S. tax returns) for its two U.S. affiliates (i.e., Green Mega and Family Mutual Corporation). Although Green Fresh provided sales price data for its two U.S. affiliates in response to our first supplemental questionnaire, it also stated that it was unable to provide the other requested information at that time because it had requested an extension until December 15, 2004, to file its 2003 Federal tax returns with the U.S. Internal Revenue Service. Further, Green Fresh stated that it would provide

audited financial statements and tax returns for both of its U.S. affiliates promptly after issuance. The Department, in its second supplemental questionnaire, instructed Green Fresh that it must provide the finalized financial statements and tax returns for both of its U.S. affiliates when they become available (which in this case was December 16, 2004), and Green Fresh, in response to this questionnaire, stated that it will submit the requested documentation by December 16, 2004. Green Fresh failed to provide the requested financial and tax return data applicable during the POR for its two U.S. affiliates, despite the fact that the Department issued Green Fresh two supplemental questionnaires on this matter (see the Department’s July 29 and October 25, 2004, supplemental questionnaires). Moreover, Green Fresh did not include the requested data in its sales and cost reconciliation questionnaire response submitted on January 19, 2005.

Because most of Green Fresh’s reported CEP sales transactions during this POR were first sold through Green Mega before being re-sold through Green Fresh’s other U.S. affiliate (i.e., Family Mutual Corporation) to the first unaffiliated U.S. customer, Green Mega’s U.S. financial data is necessary to support the information reported for these CEP sales transactions. Without this requested information, the Department is unable to determine the complete universe of Green Mega’s sales transactions during the POR in order to ensure that all U.S. sales of subject merchandise have been reported. Moreover, without this requested information, the Department is unable to rely on the sales data reported by Family Mutual Corporation because all of its reported CEP sales transactions originally were purchased from Green Mega before being resold to the first unaffiliated U.S. customer during the POR. Family Mutual Corporation’s financial information is necessary for deriving an amount for CEP profit and indirect selling expenses. Without these data sources, the Department cannot accurately assess the reliability and completeness of Family Mutual Corporation’s sales data.

For these CEP sales transactions, the Department also requested, and Green Fresh failed to provide, (1) worksheets which supported its per-unit amounts for customs duties; (2) shipment dates; and (3) selling expense data applicable for Green Mega during the POR. This information is necessary for the Department to calculate a proper dumping margin.

Mushrooms from the People’s Republic of China,” dated June 19, 2000. On February 9, 2005, this decision was upheld by the United States Court of Appeals for the Federal Circuit. See *Tak Fat v. United States*, Court No. 04–1131, 1174 (Fed. Cir. 2005).

Section 782(d) of the Act requires that the Department allow parties to remedy deficient submissions to the extent that time limits in the review period allow. As stated above, the Department gave Green Fresh multiple opportunities to provide the necessary financial data, including through the date by which Green Fresh, itself, indicated it would provide the data. Accordingly, the Department met its obligations under section 782(d).

As discussed above, both of Green Fresh's U.S. affiliates failed to provide critical information necessary to substantiate Green Fresh's reported CEP sales data. As a result, the Department is unable to rely on Green Fresh's CEP data. Therefore, we find that, pursuant to section 776(a)(2)(D) of the Act, the use of facts available is warranted in this segment of the proceeding with respect to Green Fresh.

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

In this segment of the proceeding, in accordance with the Department's practice (see, e.g., *Brake Rotors from the People's Republic of China: Preliminary Results and Preliminary Partial Rescission of the Fifth Antidumping Duty Administrative Review and Preliminary Results of the Seventh New Shipper Review*, 68 FR 1031, 1033 (January 8, 2003)), as partial adverse facts available, we have assigned to Green Fresh's reported CEP sales transactions a rate of 198.63 percent, which is the PRC-wide rate. The Department's practice when selecting an adverse rate from among the possible sources of information on the record is

to ensure that the margin is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce a respondent to provide the Department with complete and accurate information in a timely manner." (See *Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).) The Department is not applying total adverse facts available because, pursuant to section 782(e) of the Act, because we believe that sufficient record information established the reliability of the data which Green Fresh reported for its EP sales transactions to calculate an appropriate margin. Thus, we are only applying as partial adverse facts available a rate of 198.63 percent to Green Fresh's reported CEP sales transactions.

#### **Facts Available—Dingyuan, Shantou Hongda, and Zhangzhou Jingxiang**

For the reasons stated below, we have applied total adverse facts available to Dingyuan, Shantou Hongda, and Zhangzhou Jingxiang.

On August 3, 2004, Shantou Hongda informed the Department that it no longer intended to participate in this review (see Shantou Hongda's August 3, 2004, submission). Pursuant to sections 776(a) and (b) of the Act, the Department may apply adverse facts available if it finds a respondent has not acted to the best of its ability in cooperating with the Department in this segment of the proceeding.

The Department was unable to ascertain the accuracy of Shantou Hongda's submitted data or determine whether Shantou Hongda was entitled to a separate rate because Shantou Hongda stated that it no longer intended to participate in this review after the Department issued it a supplemental questionnaire. As a result, Shantou Hongda did not provide the Department with requested information.

With respect to Dingyuan and Zhangzhou Jingxiang, both companies failed to respond to the Department's antidumping duty questionnaire. Dingyuan, Shantou Hongda, and Zhangzhou Jingxiang, accordingly, each failed to act to the best of its ability in cooperating with the Department's request for information in this segment of the proceeding.

As a result, none of these companies is eligible to receive a separate rate and will be part of the PRC NME entity, subject to the PRC-wide rate. Pursuant to section 776(b) of the Act, we have applied total adverse facts available with respect to the PRC-wide entity,

including Dingyuan, Shantou Hongda, and Zhangzhou Jingxiang.

In this segment of the proceeding, in accordance with Department practice (see, e.g., *Brake Rotors from the People's Republic of China: Preliminary Results and Preliminary Partial Rescission of the Fifth Antidumping Duty Administrative Review and Preliminary Results of the Seventh New Shipper Review*, 68 FR 1031, 1033 (January 8, 2003)), as adverse facts available, we have assigned to exports of the subject merchandise by Dingyuan, Shantou Hongda, and Zhangzhou Jingxiang a rate of 198.63 percent, which is the PRC-wide rate. As noted above with respect to Green Fresh, we believe that the rate assigned is appropriate to induce the respondent to provide the Department with complete, accurate, and timely submissions in future reviews.

#### **Corroboration of Facts Available**

Section 776(c) of the Act requires that the Department corroborate, to the extent practicable, a figure which it applies as facts available. To be considered corroborated, information must be found to be both reliable and relevant. We are applying as adverse facts available ("AFA") the highest rate from any segment of this administrative proceeding, which is a rate from 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)).

The information upon which the AFA rate is based in the current review (i.e., the PRC-wide rate of 198.63 percent) being assigned to Dingyuan, Shantou Hongda, and Zhangzhou Jingxiang was the highest rate from the petition in the LTFV investigation. This AFA rate is the same rate which the Department assigned to Shantou Hongda in the previous review and the rate itself has not changed since the original LTFV determination. For purposes of corroboration, the Department will consider whether that margin is both reliable and relevant. The AFA rate we are applying for the current review was corroborated in reviews subsequent to the LTFV investigation to the extent that the Department referred to the history of corroboration. Furthermore, no information has been presented in the current review that calls into question the reliability of this information. (See e.g., *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*, 69 FR 54635, 54637 (September 9, 2004) (“*Mushrooms 4th AR Final Results*”).

To further corroborate the AFA margin of 198.63 percent in this review, we compared that margin to the margins we found for the other respondents which sold identical and/or similar products. Based on our above-mentioned analysis, we find that 198.63 percent is within the margins for individual sales of identical and/or similar products reported by certain respondents in this review (see Memorandum Re: 5th Antidumping Duty Administrative Review on Certain Preserved Mushrooms from the People’s Republic of China: Corroboration, dated February 28, 2005, for further discussion). Thus, the Department finds that the information is reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company’s uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited. See *D & L Supply Co. v. United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated). The information used in calculating this margin was based on sales and production data submitted by the respondents in the LTFV investigation, together with the most appropriate surrogate value information available to the Department chosen from submissions by the parties in the LTFV investigation, as well as gathered by the Department itself. Furthermore, the calculation of this margin was subject to comment from interested parties in the proceeding. Moreover, as there is no information on the record of this review that demonstrates that this rate is not appropriately used as AFA, we determine that this rate has relevance.

Based on our analysis as described above, we find that the margin of 198.63 percent is reliable and has relevance. As

the rate is both reliable and relevant, we determine that it has probative value. Accordingly, we determine that the calculated rate of 198.63 percent, which is the current PRC-wide rate, is in accord with the requirement of section 776(c) that secondary information be corroborated (*i.e.*, that it have probative value). We have assigned this AFA rate to exports of the subject merchandise by Dingyuan, Shantou Hongda, Zhangzhou Jingxiang, and certain sales made with Green Fresh.

#### Affiliation—COFCO

To the extent that section 771(33) of the Act does not conflict with the Department’s application of separate rates and enforcement of the non-market economy (“NME”) provision, section 773(c) of the Act, the Department will determine that exporters and/or producers are affiliated if the facts of the case support such a finding (see *See Mushrooms 4th AR Final Results*, 69 FR at 54639). For the reasons discussed below, we find that this condition has not prevented us from examining whether certain exporters and/or producers are affiliated with COFCO in this administrative review.

COFCO purchased preserved mushrooms from its producer, Fujian Yu Xing Fruit & Vegetable Foodstuff Development Co. (“Yu Xing”), which it then sold to the United States during the POR. COFCO is also linked through its parent company, China National Cereals, Oils, & Foodstuffs Import & Export Corporation (“China National”), and Xiamen Jiahua Import and Export Trading Co., Ltd. (“Xiamen Jiahua”) to two other preserved mushroom producers, COFCO (Zhangzhou) Food Industrial Co., Ltd. (“COFCO Zhangzhou”) and Fujian Zishan Group Co. (“Fujian Zishan”), from which COFCO purchased preserved mushrooms but claims it did not re-sell to the U.S. market during the POR (see exhibit 1 of COFCO’s January 21, 2005, submission).

Section 771(33)(E) of the Act provides that the Department will find parties to be affiliated if any person directly or indirectly owns, controls, or holds with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization; section 771(33)(F) of the Act provides that parties are affiliated if two or more persons directly or indirectly control, or are controlled by, or under common control with any other person; and section 771(33)(G) of the Act provides that parties are affiliated if any person controls any other person.

In this case, COFCO holds a significant ownership share in Yu Xing

(see exhibit 9 of COFCO’s May 28, 2004, submission). Moreover, COFCO and Yu Xing share a company official who is on the board of directors at both companies and whose responsibilities include (1) examining and executing the implementation of resolutions passed by the board members; (2) convening shareholder meetings; and (3) providing financial reports of each company’s business performance to each company’s board of directors (see page A–10 and exhibit 7 of COFCO’s May 28, 2004, submission; and exhibit 13 of COFCO’s September 9, 2004, submission). Based on such record information, the Department has determined in this case that COFCO and Yu Xing are affiliated in accordance with sections 771(33)(E), (F), and (G) of the Act.

In addition, COFCO Zhangzhou (which also produced preserved mushrooms during the POR) appears to be affiliated with both COFCO and Yu Xing based on section 771(33) of the Act. Specifically, both COFCO and Yu Xing hold significant ownership shares in COFCO Zhangzhou (see exhibit 5 of COFCO’s September 9, 2004, submission). Moreover, COFCO Zhangzhou shares with COFCO and Yu Xing the same company official who is also on the board of directors at COFCO Zhangzhou, and who also performs the same responsibilities at COFCO Zhangzhou which he performs at COFCO and Yu Xing as described above (see also exhibit 7 of COFCO’s May 28, 2004, submission). COFCO Zhangzhou and Yu Xing also have the same general manager (see also exhibit 7 of COFCO’s May 28, 2004, submission). For these reasons, the Department has determined in this case that COFCO, Yu Xing, and COFCO Zhangzhou are also affiliated in accordance with section 771(33)(E), (F), and (G) of the Act.

Furthermore, based on data contained in COFCO’s questionnaire responses, COFCO, COFCO Zhangzhou, and Yu Xing are also affiliated, pursuant to section 771(33) of the Act, either directly or indirectly, with two other companies (*i.e.*, Xiamen Jiahua Import & Export Trading Co., Ltd. (“Xiamen Jiahua”) and Fujian Zishan), which sold and/or produced preserved mushrooms for markets other than the U.S. market during the POR. Specifically, COFCO’s parent company, China National, holds a significant ownership share in Xiamen Jiahua (see also exhibit 9 of COFCO’s May 28, 2004, submission). Moreover, the same company official who is on the board of directors at COFCO, COFCO Zhangzhou, and Yu Xing is also on the board of directors at Xiamen Jiahua. In addition, this company official performs

the same responsibilities at COFCO, COFCO Zhangzhou, and Yu Xing as described above, which he performs at Xiamen Jiahua (*see* also exhibit 7 of COFCO's May 28, 2004, submission).

With respect to Fujian Zishan (*i.e.*, another producer of preserved mushrooms during the POR), we note that Xiamen Jiahua holds a significant ownership share in Fujian Zishan and that COFCO's parent company, China National, holds a significant ownership share in Xiamen Jiahua (*see* also exhibit 9 of COFCO's May 28, 2004, submission). Also, we note that one of Fujian Zishan's board members also serves as the general manager at Xiamen Jiahua. Moreover, given that there are shared individuals in positions of control and/or influence between and among these companies as discussed above, we also find sufficient control exists between these entities to believe that Fujian Zishan is affiliated with China National, COFCO, COFCO Zhangzhou, Yu Xing, and Xiamen Jiahua in accordance with section 771(33)(G) of the Act. Accordingly, we find that COFCO, China National, COFCO Zhangzhou, Fujian Zishan, Xiamen Jiahua, and Yu Xing are affiliated through the common control of COFCO's parent company pursuant to section 771(33)(F) and (G) of the Act.

#### Collapsing—COFCO

Pursuant to 19 CFR 351.401(f), the Department will collapse producers and treat them as a single entity where (1) those producers are affiliated, (2) the producers have production facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (3) there is a significant potential for manipulation of price or production. In determining whether a significant potential for manipulation exists, the regulations provide that the Department may consider various factors, including (1) the level of common ownership, (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm, and (3) whether the operations of the affiliated firms are intertwined. (*See Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review*, 63 FR 12764, 12774 (March 16, 1998) and *Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Taiwan*, 62 FR 51427, 51436 (October 1, 1997).) To the extent that this provision does not conflict with the Department's application of separate rates and enforcement of the NME provision,

section 773(c) of the Act, the Department will collapse two or more affiliated entities in a case involving an NME country if the facts of the case warrant such treatment. Furthermore, we note that the factors listed in 19 CFR 351.401(f)(2) are not exhaustive, and in the context of an NME investigation or administrative review, other factors unique to the relationship of business entities within the NME may lead the Department to determine that collapsing is either warranted or unwarranted, depending on the facts of the case. *See Hontex Enterprises, Inc. v. United States*, 248 F. Supp. 2d 1323, 1342 (CIT 2003) (noting that the application of collapsing in the NME context may differ from the standard factors listed in the regulation).

In summary, depending upon the facts of each investigation or administrative review, if there is evidence of significant potential for manipulation or control between or among producers which produce similar and/or identical merchandise, but may not all produce their product for sale to the United States, the Department may find such evidence sufficient to apply the collapsing criteria in an NME context in order to determine whether all or some of those affiliated producers should be treated as one entity (*see Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China, Preliminary Determination of Sales at Less Than Fair Value*, 66 FR 22183 (May 3, 2001); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China*, 66 FR 49632 (September 28, 2001) ("*Certain Hot-Rolled Carbon Steel Flat Products*"); and *Anshan Iron & Steel Co. v. United States*, Slip. Op. 03-83 at 32-33 (CIT 2003) ("*Anshan*"). We also note that the rationale for collapsing, to prevent manipulation of price and/or production (*see* 19 CFR 351.401(f)), 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.

As noted above in the "Affiliation" section of this notice, we find a sufficient basis to conclude that COFCO, China National, COFCO Zhangzhou, Fujian Zishan, Xiamen Jiahua, and Yu Xing are affiliated through the common control of COFCO's parent company pursuant to section 771(33)(F) and (G) of the Act. Three of these entities, COFCO Zhangzhou, Fujian Zishan, and Yu Xing produced preserved mushrooms during the POR, which would be subject to the antidumping duty order if this

merchandise entered the United States since all three producers have the facilities necessary to produce preserved mushrooms (*see* factors of production data submitted by each company in COFCO's May 28, 2004, submission). Therefore, we find that the first and second collapsing criteria are met here because these producers at issue have production facilities for producing similar or identical products, such that no retooling at any of the three facilities is required in order to restructure manufacturing priorities.

Finally, we find that the third collapsing criterion is met in this case because a significant potential for manipulation of price or production exists among COFCO and its affiliates for the following reasons.

First, as explained above, there is a substantial level of common ownership between and among these companies. Second, a significant level of common control exists among these companies. Specifically, China National appointed COFCO's general manager and that this same individual was appointed by China National to be Xiamen Jiahua's executive director and serves as a board member at both COFCO Zhangzhou and Yu Xing (*see* exhibits 7 of COFCO's May 28, 2004, submission). Moreover, Xiamen Jiahua's general manager is a vice chairman on Fujian Zishan's board of directors (*see* also exhibit 7 of COFCO's May 28, 2004, submission). Moreover, Xiamen Jiahua, upon request, receives business projections from Fujian Zishan despite Fujian Zishan's claim that it does not maintain documentation which would establish the extent of Xiamen Jiahua's involvement in its activities (*see* exhibit 2 of COFCO's January 21, 2005, submission).

Third, we find that the operations of COFCO, COFCO Zhangzhou, Yu Xing, and Fujian Zishan, China National, and Xiamen Jiahua are sufficiently intertwined. Specifically, China National consolidates COFCO's and Xiamen Jiahua's financial data in its financial statements as well as issues a business plan which provides guidance to its affiliated companies (*e.g.*, COFCO and Xiamen Jiahua) through the use of export targets based on the general category of product (*i.e.*, foodstuffs) listed in the business plan (*see* the public version of the Department's China National/COFCO July 6, 2004, verification report at 8 and 12 issued in *Mushrooms 4th AR Final Results*, which has been placed on the record of this review). Furthermore, there are significant sales transactions between and among the above-mentioned affiliates which serve as additional

evidence that their operations are intertwined. For example, COFCO purchased mushroom products from all three of its affiliated producers during the POR of this review (see page A-2 of COFCO's May 28, 2004, submission and exhibit 1 of COFCO's January 21, 2005, submission). However, COFCO decided only to export to the U.S. market mushroom products produced by its affiliate Yu Xing (see exhibit 13 of COFCO's May 28, 2004, submission). In addition, even though Fujian Zishan could have exported all of its mushroom products (i.e., subject and non-subject mushroom products) independently to the United States, it chose not to export subject mushroom products to the U.S. market during the POR (see page 13 of COFCO's September 9, 2004, submission). Similarly, Xiamen Jiahua was able to purchase mushroom products for export from both Fujian Zishan and COFCO Zhangzhou, but decided not to sell those products to COFCO for export to the United States. Rather, it chose to export these products on its own to third country markets if they were in-scope merchandise (see page 12 of COFCO's September 9, 2004, submission). In addition, since the LTFV investigation, COFCO has shifted its source of supply among these affiliates. In the LTFV investigation of this proceeding, Fujian Zishan's factors data was initially used for purposes of determining COFCO's dumping margin (see *Notice of Final Determination of Sales at Less Than Fair Market Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255, 72258 (December 31, 1998)). However, during the POR, COFCO only purchased its preserved mushrooms from its other affiliated producer, Yu Xing, for sale to the United States.

Therefore, based on the above-mentioned reasons and the guidance of 19 CFR 351.401(f), we have preliminarily collapsed COFCO and its affiliates noted above because there is a significant potential for manipulation of production and/or sales decisions between these parties. Consequently, we have 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. This decision is specific to the facts presented in this review and based on several considerations, including the structure of the collapsed entity and the level of control between/among affiliates and the level of participation by each affiliate in the proceeding. Given the unique relationships which arise in NMEs

between individual companies and the government, a separate rate will be granted to the collapsed entity only if the facts, taken as a whole, support such a finding (see "Separate Rates" section below for further discussion).

#### Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate (i.e., a PRC-wide rate). One respondent in this review, Gerber, is wholly owned by companies located outside the PRC. Thus, for Gerber, because we have no evidence indicating that it is under the control of the PRC government, a separate rates analysis is not necessary to determine whether it is independent from government control. (See *Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of Fifth New Shipper Review*, 66 FR 44331 (August 23, 2001), which cites *Brake Rotors from the People's Republic of China: Preliminary Results and Partial Rescission of the Fifth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review*, 66 FR 29080 (May 29, 2001) (where the respondent was wholly owned by a U.S. registered company); *Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review*, 66 FR 27063 (May 16, 2001), which cites *Brake Rotors from the People's Republic of China: Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review*, 66 FR 1303, 1306 (January 8, 2001) (where the respondent was wholly owned by a company located in Hong Kong); and *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China*, 64 FR 71104, 71105 (December 20, 1999) (where the respondent was wholly owned by persons located in Hong Kong)).

Two respondents, Green Fresh and Guangxi Yulin, are joint ventures of PRC entities. Two respondents, Jiufa and XITIC, are joint-stock companies in the PRC. Another respondent, Guangxi Hengxian, is a limited liability company.

The remaining respondent, 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). As discussed above in the "Collapsing" section of this notice, we have preliminarily considered COFCO and the five affiliates mentioned above as a collapsed entity.

Thus, a separate-rates analysis is necessary to determine whether the export activities of each of above-mentioned respondents (including COFCO's collapsed entity as a whole) is independent from government control. (See *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 56570 (April 30, 1996) ("Bicycles").) To establish whether a firm is sufficiently independent in its export activities from government control to be entitled to a separate rate, the Department utilizes a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("Sparklers"), and amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("Silicon Carbide"). Under the separate-rates criteria, the Department assigns separate rates in NME cases only if the respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

#### 1. De Jure Control

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's collapsed entity, Green Fresh, Guangxi Hengxian, Guangxi Yulin, Jiufa, and XITIC 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;" the "Company Law of the PRC," effective as of July 1, 1994; and "The Enterprise Legal Person Registration Administrative Regulations," promulgated on June 13, 1988. 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 1990 “Regulation Governing Rural Collectively-Owned Enterprises of PRC”; and the 1992 “Regulations for Transformation of Operational Mechanisms of State-Owned Industrial Enterprises” (“Business Operation Provisions”). (See February 28, 2005, memorandum to the file which places 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 governmental control which would preclude the Department from assigning separate rates.

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by, or subject to the approval of, a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the

disposition of profits or financing of losses. (See *Silicon Carbide*, 59 at 22587 and *Furfuryl Alcohol*, 60 FR at 22545.)

The affiliates in COFCO’s collapsed entity (where applicable), Green Fresh, Guangxi Hengxian, Guangxi Yulin, Jiufa, and XITIC each has asserted the following: (1) Each establishes its own export prices; (2) each negotiates contracts without guidance from any governmental entities or organizations; (3) each makes its own personnel decisions; and (4) each retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. Additionally, each respondent’s questionnaire responses indicate that its pricing during the POR does not suggest coordination among exporters. As a result, there is a sufficient basis to preliminarily determine that each respondent listed above (including COFCO’s collapsed entity as a whole) has demonstrated a *de facto* absence of government control of its export functions and is entitled to a separate rate. Consequently, we have preliminarily determined that each of these respondents has met the criteria for the application of separate rates. Moreover, with respect to the affiliates included in COFCO’s collapsed entity, we have assigned to all of them the same antidumping rate in these preliminary results for the above-mentioned reasons.

## Normal Value Comparisons

To determine whether sales of the subject merchandise by COFCO and its affiliates, Gerber, Green Fresh, Guangxi Hengxian, Guangxi Yulin, Jiufa, and XITIC to the United States were made at prices below normal value (“NV”), we compared each company’s EPs or CEPs to NV, as described in the “Export Price,” “Constructed Export Price,” and “Normal Value” sections of this notice, below.

### Export Price

For COFCO, Gerber, Green Fresh, Guangxi Yulin, Jiufa, and XITIC, we used EP methodology in accordance with section 772(a) of the Act for sales in which the subject merchandise was first sold prior to importation by the exporter outside the United States directly to an unaffiliated purchaser in the United States and for sales in which CEP was not otherwise indicated. (See “Facts Available—Green Fresh” section above for the Department’s reason for resorting to facts available with respect to Green Fresh’s reported CEP sales transactions). We made the following company-specific adjustments:

### A Green Fresh

We calculated EP based on packed, CNF U.S. port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight, foreign brokerage and handling charges in the PRC, and international freight in accordance with section 772(c) of the Act. Because foreign inland freight and foreign brokerage and handling fees were provided by PRC service providers or paid for in renminbi, we based those charges on surrogate rates from India (see “Surrogate Country” section below for further discussion of our surrogate-country selection). To value foreign inland trucking charges, we used Indian truck freight rates published in *Chemical Weekly* and distance information obtained from the following Web sites: <http://www.infreight.com>, and <http://www.sitaindia.com/Packages/CityDistance.php>. To value foreign brokerage and handling expenses, we relied on 1999–2000 public information reported in the LTFV investigation on certain hot-rolled carbon steel flat products from India (see *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from India*, 67 FR 50406 (October 3, 2001)). For international freight (*i.e.*, ocean freight), we used the reported expenses because Green Fresh reportedly used only market-economy freight carriers and paid for those expenses in a market-economy currency (see, e.g., *Brake Rotors from the People’s Republic of China: Final Results of Antidumping Duty New Shipper Review*, 64 FR 9972, 9974 (March 1, 1999)). We also revised Green Fresh’s reported per-unit packed weights used to derive PRC movement expenses (see Green Fresh calculation memorandum).

### B. COFCO, Guangxi Yulin, and XITIC

We calculated export price based on packed, FOB foreign port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight, brokerage, and handling expenses in accordance with section 772(c) of the Act. Because foreign inland freight, brokerage, and handling expenses were provided by PRC service providers or paid for in Chinese currency (*i.e.*, renminbi), we based these charges on surrogate rates from India. (See discussion above for further details.) Although COFCO claims the Department should not deduct the foreign inland freight, brokerage, and

handling expenses from its reported U.S. prices because its affiliated producer, Yu Xing and not COFCO, incurred these expenses, we have continued to deduct these expenses incurred by Yu Xing, from COFCO's reported U.S. prices. This deduction complies with the requirements of section 772(c) of the Act that instructs the Department to deduct expenses from the U.S. gross unit price if a respondent or its affiliated producer incurs expenses associated with transporting to and/or clearing the subject merchandise through the country of exportation. See *Mushrooms 4th AR Final Results*, 69 FR at 54635, and accompanying Issues and Decision Memorandum at Comment 10.

COFCO claims that its affiliated producer, Yu Xing, did not incur an expense for the glass jars used to export the subject merchandise to the United States because COFCO's U.S. customers provided this item to Yu Xing free-of-charge. In the Department's supplemental questionnaire, we specifically requested COFCO to provide documentation (*i.e.*, sample invoice, sales contract, and/or purchase agreement) to support its claim. Rather than providing any of the requested documentation in support of its claim that it incurred no expense for this item, COFCO provided only alleged (not sale) customer correspondence.

Because COFCO has not sufficiently supported its claim that its U.S. customer contracted with a PRC jar producer, and that this producer had indeed delivered jars to Yu Xing in a certain quantity on a certain date, free-of-charge, the Department has not modified the U.S. price of those transactions to reflect the U.S. customer's reported expenditures for the preserved mushrooms and the jars. Because the details of the alleged jars transactions are virtually nonexistent on the record, and the link between these jars and the production of the subject merchandise has not been sufficiently established, the Department has preliminarily found that the record does not support such an adjustment to COFCO's reported U.S. prices. This preliminary decision on this matter is consistent with *Brake Rotors from the People's Republic of China: Preliminary Results and Partial Rescission of the Sixth Administrative Review and Preliminary Results and Final Partial Rescission of the Ninth New Shipper Review*, 69 FR 10402, 10407 (March 5, 2004). As the Department has an affirmative obligation to prevent the manipulation of its calculations through unsubstantiated claims on the record. It would not be reasonable at this time to grant COFCO the modification to its

calculations without substantial evidence on the record to support its claim.

Finally, we also revised COFCO's, Guangxi Yulin's and XITIC's reported per-unit packed weights used to derive PRC movement expenses (*see* COFCO, Guangxi Yulin, and XITIC calculation memoranda).

#### C. Gerber and Jiufa

We calculated export price based on packed, CIF U.S. port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight, brokerage, and handling expenses, international freight (*i.e.*, ocean freight), U.S. brokerage and handling charges, U.S. import duties and fees (including harbor maintenance fees, merchandise processing fees), and U.S. demurrage charges in accordance with section 772(c) of the Act. To value foreign inland train charges, we used price quotes published in the July 2001 *Reserve Bank of India Bulletin*. Because foreign inland trucking charges, brokerage, and handling expenses were provided by PRC service providers or paid for in renminbi, we based these charges on surrogate rates from India. (*See* discussion above for further details.) For international freight, we used the reported expenses because each respondent used a market-economy freight carrier and paid for the expenses in a market-economy currency. We also revised the Gerber's and Jiufa's reported per-unit packed weights used to derive PRC movement expenses (*see* Gerber and Jiufa calculation memoranda).

#### Constructed Export Price

For Guangxi Hengxian we calculated CEP in accordance with section 772(b) of the Act because the U.S. sale was made for the account of Guangxi Hengxian by its subsidiary in the United States, Sino-Trend, Inc. ("Sino-Trend"), to an unaffiliated purchaser in the United States.

We based CEP on a packed, ex-U.S. port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included foreign inland freight and foreign brokerage and handling charges in the PRC, international freight (*i.e.*, ocean freight), U.S. brokerage and handling charges, U.S. import duties and fees (including harbor maintenance fees, merchandise processing fees), and U.S. demurrage charges. As all foreign

inland freight and foreign brokerage and handling expenses were provided by PRC service providers or paid for in renminbi, we valued these services using the Indian surrogate values discussed above. For international freight, we used the reported expenses because the respondent used a market-economy freight carrier and paid for the expenses in a market-economy currency (*see* Guangxi Hengxian calculation memorandum for further discussion).

In accordance with section 772(d)(1) of the Act, we also deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit expenses), indirect selling expenses, and inventory carrying expenses incurred in the United States. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

#### Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using a factors-of-production methodology if the merchandise is exported from an NME country and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department will base NV on the factors of production because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under its normal methodologies.

For purposes of calculating NV, we valued the PRC factors of production in accordance with section 773(c)(1) of the Act. Factors of production include, but are not limited to, hours of labor required, quantities of raw materials employed, amounts of energy and other utilities consumed, and representative capital costs, including depreciation. *See* Section 773(c)(3) of the Act. In examining surrogate values, we selected, where possible, the publicly available value which was an average non-export value, representative of a range of prices within the POR or most contemporaneous with the POR, product-specific, and tax-exclusive. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates from the People's Republic of China*, 69 FR 75294, 75300 (December 16, 2004) ("*Chlorinated Isocyanurates*"). We used the usage rates reported by the respondents for materials, energy, labor, by-products, and packing. *See Factor Valuation*

*Memo* for a more detailed explanation of the methodology used in calculating various surrogate values.

Pursuant to section 776(a)(2)(D) of the Act, the Department used facts otherwise available to value certain factors of production for which Gerber, Green Fresh, Guangxi Yulin and Yu Xing (*i.e.*, COFCO's affiliated producer) failed to provide consumption data in response to supplemental questionnaires issued by the Department to these companies.

Specifically, Green Fresh failed to provide, as requested, a consumption factor for the water it used to grow fresh mushrooms. Although this respondent claimed it obtained the water free of charge from a nearby river and was unable to determine the amount of water it used to grow its fresh mushrooms, the Department was clear in its supplemental questionnaires that the respondent is required to report the requested information. *See Pacific Giant v. United States*, 223 F. Supp. 2nd 1336, 1346 (CIT 2002) (affirming the Department's valuation of water). Green Fresh did not have to provide an exact factor, but like the other respondents, it could have provided a theoretical usage amount for this input (*i.e.*, a calculated factor based on the land used to grow fresh mushrooms, the amount of water used per hectare, etc.).

In addition, although this respondent argues that valuing this factor would result in double counting its costs associated with water usage in the fresh mushroom production process if the Department also valued the electricity it used to pump the water from the nearby river, we find that Green Fresh did not provide sufficient evidence in its questionnaire responses to demonstrate that its reported electricity usage for growing fresh mushrooms was only limited to water pumping activities. Such information is necessary for determining the normal value of Green Fresh's reported U.S. sales. Thus, with respect to this factor, we have determined that Green Fresh did not act to the best of its ability in providing us with the requested information. Accordingly, pursuant to section 776(b) of the Act, as adverse facts available, the Department has used the highest per-unit water factor for fresh mushroom production (based on the per-unit consumption data for this input reported by the other respondents in this review) for purposes of valuing the costs associated with this input utilized by Green Fresh.

Section 773(c)(3) of the Act states that "the factors of production utilized in producing merchandise include, but are not limited to the quantities of raw

materials employed." Therefore, the Department is required under the Act to value all inputs (including inputs for which the respondent claims were provided to it purportedly free of charge). As explained in the "Export Price" section above, COFCO did not sufficiently support its claim that its U.S. customer provided Yu Xing the jars it used free-of-charge. For this reason, we have not adjusted COFCO's reported U.S. prices to include the value of jars for certain sales of preserved mushrooms in these preliminary results. Despite the fact that we have not made the above-referenced adjustment to COFCO's U.S. prices reported for sales of the subject merchandise contained in jars, section 773(c)(3) of the Act nevertheless requires the Department to value each factor of production used to produce the subject merchandise. Accordingly, for these preliminary results, the Department has valued the jar usage amounts reported by Yu Xing by using a surrogate value (*see Factor Valuation Memo*).

As for Gerber, Guangxi Yulin, and Yu Xing (*i.e.*, COFCO's affiliated producer), these respondents failed to provide, as requested, a consumption factor for the soil which they used to grow fresh mushrooms. Although these respondents claimed that they did not purchase the soil used to grow fresh mushrooms and do not maintain consumption records for this input, we find again, the respondents could have provided a theoretical usage amount for this input just as many respondents did with respect to water, based on the land used to grow fresh mushrooms, height of the top soil used in mushroom sheds, and other factors. Despite these respondents' claims that the soil should not be treated as a direct material because this input is not incorporated in the intermediate product (*i.e.*, fresh mushrooms), we consider soil an integral part of the fresh mushroom process because without this input, the fresh mushrooms cannot be produced. This information is necessary for determining the normal value of COFCO's, Gerber's, and Guangxi Yulin's reported U.S. sales. We have determined pursuant to section 776(b) of the Act that companies did not act to the best of their ability in providing the factor data for this input. Therefore, as adverse facts available, the Department has used the highest per-unit soil factor (based on the per-unit consumption data for this input reported by the other respondents in this review) for purposes of valuing the costs associated with this input utilized by Gerber, Guangxi Yulin, and Yu Xing (*i.e.*, COFCO's affiliated

producer). *See* company-specific calculation memoranda for further discussion.

With respect to other factors data submitted by COFCO's affiliated producer, Fujian Zishan, and Guangxi Hengxian, we made adjustments to their submitted data which we deemed were necessary based on comments submitted by the petitioner in this review (*see* COFCO and Guangxi Hengxian calculation memoranda for further discussion).

#### Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on the factors of production reported by the respondents for the POR. To calculate NV, we multiplied the reported per-unit factor quantities by publicly available Indian surrogate values (except where noted below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. *See Manganese Metal from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 63 FR 12442 (March 13, 1998). As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory, where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401 (Fed. Cir. 1997). Due to the extensive number of surrogate values it was necessary to assign in this investigation, we present a discussion of the main factors. For a detailed description of all surrogate values used for respondents, *see Factor Valuation Memo*.

Except where discussed below, we valued raw material inputs using February 2003-January 2004 weighted-average Indian import values derived from the *World Trade Atlas* online ("WTA") (*see also Factor Valuation Memo*). The Indian import statistics we obtained from the WTA were published by the DGCI&S, Ministry of Commerce of India, which were reported in rupees and are contemporaneous with the POR. Indian surrogate values denominated in foreign currencies were converted to U.S. dollars using the applicable average exchange rate for India for the POR. The average exchange rate was based on exchange rate data from the Department's Web site. Where we could not obtain publicly available

information contemporaneous with the POR with which to value factors, we adjusted the surrogate values for inflation using Indian wholesale price indices ("WPIs") as published in the International Monetary Fund's *International Financial Statistics*. See *Factor Valuation Memo*.

Furthermore, with regard to the Indian import-based surrogate values, we have disregarded prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to conclude that there is reason to believe or suspect all exports to all markets from these countries are subsidized. See *Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers From The People's Republic*, 61 FR 66255 (February 12, 1996), and accompanying *Issues and Decision Memorandum* at Comment 1.

Finally, imports that were labeled as originating from an "unspecified" country were excluded from the average value, because the Department could not be certain that they were not from either an NME or a country with general export subsidies.

#### Surrogate Valuations

To value fresh mushrooms and rice straw, we used an April 2002-March 2003 average price based on purchase data contained in the 2003-2004 financial report of Premier Explosives Ltd. ("Premier"). See *Mushrooms 4th AR Final Results*, 69 FR at 54635, and accompanying *Issues and Decision Memorandum* at Comment 12.

To value cow manure and general and/or wheat straw, we used an average price based on data contained in the 2003-2004 financial reports of Agro Dutch Foods, Ltd. ("Agro Dutch") and Flex Foods Ltd. ("Flex Foods") (*i.e.*, two Indian producers of the subject merchandise) because we could not obtain any other Indian surrogate values for these inputs.

To value spawn and chicken manure, we used an average price based on data contained in the 2003-2004 financial reports of Agro Dutch, Flex Foods Ltd., and Premier. We did not use the spawn value data obtained from the National Research Center for Mushroom (which was established by the Indian Council of Agricultural Research), because data on the record indicates that this research center is fully financed by the Indian

government, and its spawn price is not determined by market forces.

For those respondents which used mother spawn, we also used the average spawn price to value mother spawn from Agro Dutch, Flex Foods, and Premier, because we were unable to obtain publicly available information which contained a price for mother spawn.

To value rice straw, we used price data contained in Premier's 2003-2004 financial report because no such data was available from the other financial reports on the record and we could not obtain any other Indian surrogate values for this input.

To value wheat, we used price data contained in Flex Foods' 2003-2004 financial report because no such data was available from the other financial reports on the record and we could not obtain any other Indian surrogate values for this input.

To value super phosphate, we used price data contained in Flex Foods' 2002-2003 financial report because no such data was available from the other financial reports on the record and we could not obtain any other Indian surrogate values for this input.

To value soil, we used July 2003 price data from two U.S. periodicals, *Mt. Scott Fuel* and *Interval Compost*, rather the data contained in the Indian Government's Central Public Works Department publication, because the excerpt from this publication only appears to provide a rate for services (*e.g.*, supplying and stacking earth at site) rather than a surrogate value for soil. Moreover, we did not use the value for "pressed mud" from Flex Foods' 2003-2004 financial report to value this input, because given the magnitude of that value, we cannot conclude that it is representative of the value for soil used to grow mushrooms versus other applications (*e.g.*, construction of sheds). See *Mushrooms 4th AR Final Results*, 69 FR at 54635, and accompanying *Issues and Decision Memorandum* at Comment 13.

For disodium stannous citrate, we used a February 2003-January 2004 average import value for sodium citrate from the *World Trade Atlas* because we were unable to obtain a more specific value for this input.

To value monosodium glutamate, we used a January 2003-December 2003 weighted-average value based on imports of these inputs into the Indonesia from *WTA*, because we had reason to believe or suspect that a significant amount of imports of this input into India during the POR were subsidized.

For those respondents which only purchased tin cans used in the production of preserved mushrooms during the POR, we valued tin cans using the can-purchase-specific price data from the May 21, 2001, public version response submitted by Agro Dutch in the 2nd antidumping duty administrative review of certain preserved mushrooms from India, and derived per-unit, can-size-specific prices using the petitioner's methodology contained in its August 16, 2004, PAI submission.

For those respondents (*i.e.*, COFCO) which both purchased and produced tin cans during the POR we valued tin cans using the actual price data from the supplemental questionnaire response submitted by Agro Dutch Foods, Ltd. ("Agro Dutch") in the 3rd antidumping duty administrative review of certain preserved mushrooms from India.

Although Jiufa reported its affiliate's factors used to produce cans, we did not value the factors it reported for producing cans because a collapsing analysis pursuant to 19 CFR 351.401(f) was not warranted in this instance. Instead, we valued this company's reported can factor.

To value water, we used the water tariff rate for the greater Municipality of Mumbai, India ("Mumbai Municipality"), that was formerly available on the Municipal Corporation of Greater Mumbai's Web site and was used in the *Final Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol From the People's Republic of China*, 69 FR 34130 (June 18, 2004). See also <http://www.mcgm.gov.in/Stat%20&%20Fig/Revenue.htm>. The latest available data covers the period from February 2001 through November 2002. The cost of water during this period ranged from 1.0 to 35.00 Rs/1,000 liters (1,000 liters of water is equivalent to 1 cubic meter of water and 1 cubic meter of water is equivalent to 1 metric ton of water). We used the highest value from the water price range data from the Mumbai Municipality.

We valued electricity using the 2000 total average price per kilowatt hour for "Electricity for Industry" as reported in the International Energy Agency's ("IEA"'s) publication, *Energy Prices and Taxes, Fourth Quarter, 2003*.

We added an amount for loading and additional transportation charges associated with delivering coal to the factory based on June 1999 Indian price data contained in the periodical *Business Line*.

To value diesel fuel, we used 2002 Indian price data from IEA's *Key World Energy Statistics*.

To value steam, we used January–June 1999 Indian price data from *PR Newswire Association Inc.*

Section 351.408(c)(3) of the Department’s regulations requires the use of a regression-based wage rate. Therefore, to value the labor input, the Department used the regression-based wage rate for the PRC published by Import Administration on our website. The source of the wage rate data is the *Yearbook of Labour Statistics 2002*, published by the International Labour Office (“ILO”), (Geneva: 2002), Chapter 5B: Wages in Manufacturing. See the Import Administration Web site: <http://ia.ita.doc.gov/wages/02wages/02wages.html>. Although Guangxi Hengxian and Juifa question the Department’s labor rate calculation methodology in using per-capita Gross National Income (“GNI”) and wage-rate information available from the ILO web site for certain countries in its regression analysis, we have continued to employ our long-established methodology for determining the wage rate for the PRC. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture from the People’s Republic of China*, 69 FR 67313 (November 17, 2004), and accompanying *Issues and Decision Memorandum* at Comment 23.

Certain respondents (e.g., COFCO, Guangxi Yulin) reported certain by-products (i.e., recovered tin plate, recovered copper wire, and mushroom scrap) in producing the subject merchandise which each either re-sold or re-used to produce the subject merchandise during the POR. Therefore, in those instances where the respondent provided documentation to support its by-product claim and we obtained appropriate surrogate values for those by-products, we allowed a recovery/by-product credit. Because we could not obtain an appropriate surrogate value for mushroom scrap, we did not value this by-product in the preliminary results. Our treatment of by-products in this proceeding is in accordance with the Department’s practice. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Steel Flat Products from the People’s Republic of China*, 66 FR 49632 (September 28, 2001), and accompanying *Issues and Decision Memorandum* at Comment 3.

To value packing materials, we used February 2003–January 2004 weighted-average Indian import values derived from *WTA*. Although Jiufa reported its affiliate’s factors used to produce cartons, we did not value the factors it reported for producing cartons because a collapsing analysis pursuant to 19 CFR

351.401(f) was not warranted in this instance. Instead, we valued this company’s reported carton factor.

To value PRC inland freight for inputs shipped by truck, we used Indian freight rates published in the October 2003–January 2004 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>.

To value PRC inland freight for inputs shipped by train, we used price quotes published in the July 2001 *Reserve Bank of India Bulletin*.

To value factory overhead (“FOH”) and selling, general & administrative (“SG&A”) expenses, and profit, we used data from the 2003–2004 financial reports of Agro Dutch Foods, Ltd. (“Agro Dutch”) and Flex Foods Ltd. (“Flex Foods”). These Indian companies are producers of the subject merchandise based on data contained in each Indian company’s financial reports.

We did not use the 2003–2004 financial data obtained for Premier to value factory overhead, SG&A or profit, because although this company produces the subject merchandise, its operations, unlike Agro Dutch and Flex Foods, are not limited to the production of mushrooms and other similar agricultural products. See *Mushrooms 4th AR Final Results*, 69 FR at 54635, and accompanying *Issues and Decision Memorandum* at Comment 8.

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

**Verification**

In accordance with section 782(i)(2) of the Act and 19 CFR 351.307, the Department will conduct a complete and thorough verification of a number of respondents in this review, including, but not limited to, Gerber, Green Fresh (with respect to its EP sales and factors of production data used in our analysis), Jiufa, and XITIC. With respect to Gerber and Green Fresh, we will ascertain whether they continued to engage in practices which resulted in the application of adverse facts available in the prior two administrative reviews.

**Preliminary Results of the Review**

We preliminarily find that the following margins exist for the following exporters under review during the period February 1, 2003, through January 31, 2004:

**CERTAIN PRESERVED MUSHROOMS FROM THE PRC MANDATORY RESPONDENTS**

Manufacturer/exporter	Weighted-average margin (percent)
China Processed Food Import & Export Company .....	38.25
Gerber Food (Yunnan) Co., Ltd	0.00
Green Fresh Foods (Zhangzhou) Co., Ltd .....	153.93
Guangxi Hengxian Pro-Light Foods, Inc .....	49.98
Guangxi Yulin Oriental Food Co., Ltd .....	8.92
Shandong Jiufa Edible Fungus Corporation Ltd .....	65.57
Xiamen International Trade & Industrial Co., Ltd .....	8.69
PRC-Wide Rate .....	198.63

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication of this notice. If requested, a hearing will be held on May 16, 2005.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this notice. Requests should contain: (1) The party’s name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. See 19 CFR 351.310(c).

Issues raised in the hearing will be limited to those raised in case briefs and rebuttal briefs. Case briefs from interested parties may be submitted not later than May 2, 2005, pursuant to 19 CFR 351.309(c). Rebuttal briefs, limited to issues raised in the case briefs, will be due not later than May 9, 2005, pursuant to 19 CFR 351.309(d). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will issue the final results of this administrative review,

including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

#### Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisal instructions for the companies subject to this review directly to CBP within 15 days of publication of the final results of this review. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer- or customer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. For certain respondents for which we calculated a margin, we do not have the actual entered value because they are either not the importers of record for the subject merchandise or were unable to obtain the entered value data for their reported sales from the importer of record. For these respondents, we intend to calculate individual customer-specific assessment rates by aggregating the dumping margins calculated for all of the U.S. sales examined and dividing that amount by the total quantity of the sales examined. 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 will calculate customer-specific *ad valorem* ratios based on export prices.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer or customer-specific assessment rate calculated in the final results of this review 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 rate in effect at the time of entry. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

#### Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the final results of the administrative review for all shipments of certain preserved mushrooms from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication

date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for COFCO, Gerber, Green Fresh, Guangxi Hengxian, Guangxi Yulin, Jiufa, and XITIC, will be the rates determined in the final results of review (except that if a rate is *de minimis*, *i.e.*, less than 0.50 percent, no cash deposit will be required); (2) the cash deposit rate for PRC exporters who received a separate rate in a prior segment of the proceeding (which were not reviewed in this segment of the proceeding) will continue to be the rate assigned in that segment of the proceeding (*e.g.*, Guangxi Yizhou, Minhui, Nanning Runchao, Primera Harvest, Raoping Xingyu and its affiliate Raoping Yucun, Shenxian Dongxing, Shenzhen Qunxingyuan, Superlucky, Tak Fat and its affiliate Mei Wei, and Zhongjia); (3) the cash deposit rate for the PRC NME entity (including Dingyuan, Shantou Hongda, and Zhangzhou Jingxiang) will continue to be 198.63 percent; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC exporter that supplied that exporter.

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

#### Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice is in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: February 28, 2005.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E5-925 Filed 3-4-05; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-533-810]

#### Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Stainless Steel Bar From India

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

**SUMMARY:** In response to requests from interested parties, the Department of Commerce is conducting an administrative review of the antidumping duty order on stainless steel bar from India with respect to Chandan Steel Ltd. This review covers sales of stainless steel bar from India to the United States during the period February 1, 2003, through January 31, 2004. We have preliminarily found that sales have been made below normal value by Chandan Steel Ltd. We invite interested parties to comment on these preliminary results.

We are also rescinding this administrative review with respect to Ferro Alloys Corp., Ltd.; Isibars Ltd.; Mukand, Ltd.; Venus Wire Industries Ltd.; and the Viraj Group, Ltd. (Viraj Alloys, Ltd.; Viraj Forgings, Ltd.; and Viraj Imppoexpo, Ltd.).

**DATES:** *Effective Date:* March 7, 2005.

**FOR FURTHER INFORMATION CONTACT:** Melanie Brown or Julie Santoboni, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-4987 and (202) 482-4194, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On February 3, 2004, the Department of Commerce (the Department) published a notice in the **Federal Register** providing opportunity for interested parties to request an administrative review of the antidumping duty order on stainless steel bar (SSB) from India. *See Notice of Opportunity to Request Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 69 FR 5125 (February 3, 2004).

The Department received requests for an administrative review from Chandan Steel Ltd. (Chandan); Ferro Alloys Corp., Ltd. (FACOR); Isibars Ltd. (Isibars); Mukand, Ltd. (Mukand); Venus Wire Industries Limited (Venus); and Viraj Alloys, Ltd., Viraj Forgings, Ltd.