which has a *de minimis* rate, the cash deposit rates will be zero, (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company–specific rate published in the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review or in the most recent segment of the proceeding in which that manufacturer participated; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 162.14 percent, the all others rate established in the less–than-fair–value investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

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

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.214.

Dated: February 25, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–5004 Filed 3–4–04; 8:45 am]

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 of Sixth New Shipper Review and Preliminary Results and Partial Rescission of Fourth Antidumping Duty Administrative Review

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

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

SUMMARY: The Department of Commerce (''the Department'') is concurrently conducting the sixth new shipper review and fourth administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (''PRC'') covering the period February 1, 2002, through January 31, 2003. The new shipper review covers one exporter. We have preliminarily determined that this exporter has made sales at less than normal value and that its reported sale appears to be a *bona fide* sale. The administrative review covers six exporters. We have preliminarily determined that sales have been made below normal value with respect to one of these exporters. If these preliminary results are adopted in our final results of these reviews, we will instruct 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.

EFFECTIVE DATE: March 5, 2004.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Jim Mathews, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1766, or (202) 482–2778, respectively.

SUPPLEMENTARY INFORMATION:

Background

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

On February 3, 2003, the Department published a notice advising of the opportunity to request an administrative review of the antidumping duty order on certain preserved mushrooms from the PRC (68 FR 5272). On February 25 and 28, 2003, the Department received timely requests from Gerber Food (Yunnan) Co., Ltd., (''Gerber''), Green Fresh Foods (Zhangzhou) Co., Ltd. (''Green Fresh''), Guangxi Yulin Oriental Food Co., Ltd. (''Guangxi Yulin''), Shantou Hongda Industrial General Corporation, (''Shantou Hongda''), and Shenxian Dongxing Foods Co., Ltd. (''Shenxian Dongxing'') for an administrative review pursuant to 19 CFR 351.213(b).

On February 28, 2003, the Department received timely requests from Primera Harvest (Xiangfan) Co., Ltd. (''Primera Harvest'') and Xiamen International Trade & Industrial Co., Ltd. (''XITIC'') for a new shipper review in accordance with 19 CFR 351.214(c).

On February 28, 2003, the petitioner [1] requested an administrative review pursuant to 19 CFR 351.213(b) of 11 companies [2] which it claimed were producers and/or exporters of the subject merchandise. Five of these 11 companies also requested a review.

On March 12, 2003, Primera Harvest and XITIC both agreed to waive the time limits applicable to the new shipper review and to permit the Department to conduct the new shipper review concurrently with the administrative review.

On March 20, 2002, the Department initiated an administrative review covering the companies listed in the petitioner's February 28, 2003, request. (*See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 68 FR 14394, 14399 (March 25, 2003)).

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

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

On March 29, 2002, the Department initiated a new shipper review of Primera Harvest and XITIC. (*See Certain Preserved Mushrooms from the People's Republic of China: Initiation of New Shipper Antidumping Duty Review*, 68 FR 15152 (March 28, 2003)).

On April 1, 2003, we issued a questionnaire to each PRC company listed in the above-referenced initiation notices.

On May 1, 2003, the Department provided the parties an opportunity to submit publicly available information (''PAI'') for consideration in these preliminary results.

On May 7, 2003, the respondents Raoping Xingyu and Shenzhen Qunxingyuan each indicated that neither company had shipments of the subject merchandise to the United States during the POR.

On May 13, 2003, Minhui and Zhongjia each filed submissions with the Department certifying that neither company had any shipments of the subject merchandise to the United States during the POR other than the sale each reported in a prior new shipper review (the POR of which overlapped with the POR of this administrative review).

From May 12 through June 13, 2003, COFCO, Gerber, Green Fresh, Guangxi Yulin, Primera Harvest, Shantou Hongda, and Shenxian Dongxing submitted their responses to the Department's antidumping duty questionnaire.

As a result of not receiving its response to the antidumping duty questionnaire, the Department issued a letter to Zhangzhou Jingxiang on May 29, 2003, which provided this company with an additional two weeks of time to respond to the Department's questionnaire. We received no reply to this letter or response to the questionnaire from this company.

On June 12, 2003, the petitioner requested an extension until July 10, 2003, to withdraw any request for review of companies listed in its February 28, 2003, communication, which the Department granted on June 16, 2003.

From June 25 through July 18, 2003, the petitioner submitted comments on the questionnaire responses provided by COFCO, Gerber, Green Fresh, Guangxi Yulin, Primera Harvest, Shantou Hongda, and Shenxian Dongxing.

On July 10, 2003, the petitioner requested an extension of time until August 18, 2003, to submit factual information in this case, which the Department granted on July 22, 2003.

From July 28 through August 15, 2003, the Department issued COFCO, Gerber, Green Fresh, Guangxi Yulin, Primera Harvest, Shantou Hongda, and Shenxian Dongxing a supplemental questionnaire.

On August 7, 2003, the Department issued a memorandum which notified the interested parties of its intent to rescind the new shipper review with respect to XITIC because it failed to provide proper certifications in accordance with 19 CFR 351.214(b)(ii)(B) based on data contained in its questionnaire response. We provided parties until August 21, 2003, to comment on the Department's intent to rescind the review with respect to XITIC. No parties submitted comments.

Also on August 7, 2003, the petitioner withdrew its request for an administrative review of Minhui and Zhongjia.

On August 15, 2003, the petitioner, COFCO, and Guangxi Yulin submitted PAI for use in valuing the factors of production. On September 2, 2003, COFCO and Guangxi Yulin submitted additional PAI.

On August 20, 2003, Minhui and Zhongjia requested that the Department conduct a review of their sales and factors of production data in the context of the administrative review and on September 15, 2003, they requested that the Department place their data on the record of the administrative review. On September 2, and 23, 2003, the petitioner objected to both above-noted requests made by Minhui and Zhongjia.

From August 28 through September 15, 2003, the respondents submitted their responses to the Department's supplemental questionnaire.

On September 24, 2003, Shantou Hongda indicated that it would not participate in verification.

On October 3, 2003, the Department published in the **Federal Register** a notice of postponement of the preliminary results until no later than March 1, 2004 (68 FR 57424).

On October 9, 2003, the Department rescinded the new shipper review with respect to XITIC. (*See Certain Preserved Mushrooms From the People's Republic of China: Notice of Partial Rescission of Sixth New Shipper Review,* 68 FR 59586 (October 16, 2003).)

From September through November 2003, the petitioner submitted additional comments on the questionnaire responses provided by COFCO, Gerber, Green Fresh, Guangxi Yulin, Primera Harvest, and Shenxian Dongxing.

In October 2003, the Department issued Primera Harvest and Shenxian Dongxing second supplemental questionnaires and also received these companies' responses to those supplemental questionnaires. Also in October 2003, the Department issued verification outlines to Primera Harvest and Shenxian Dongxing.

The Department conducted verification of the responses of Primera Harvest and Shenxian Dongxing during the period October 28 through November 21, 2003. On December 12, 2003, the Department issued the verification report for Shenxian Dongxing. On January 30, 2004, the Department issued the verification report for Primera Harvest.

On November 3, 2003, the Department rescinded the administrative review with respect to Minhui and Zhongjia. (*See Certain Preserved Mushrooms From the People's Republic of China: Notice of Partial Rescission of Fourth New Shipper Review,* 68 FR 63065 (November 3, 2003).)

From October to December 2003, the Department issued COFCO two supplemental questionnaires and Gerber and Green Fresh a second supplemental questionnaire, and received responses from these companies during the period November 2003 to January 2004.

From December 10, 2003, to January 6, 2004, Department officials met with counsel for the petitioner and COFCO to discuss whether or not COFCO's affiliated preserved mushroom producers should also be required to report their factors of production (*see ex parte* memoranda to the file dated December 22, 2003, and January 7, 2004).

In January 2004, the Department issued COFCO a fourth supplemental questionnaire which addressed its affiliations with other companies that sold and/or produced preserved mushrooms during the POR and requested COFCO to provide factors of production data for those companies. In January and February 2004, COFCO submitted its responses.

In February 2004, the petitioner submitted pre-preliminary results comments on the data provided by all respondents in these reviews. (*See* company-specific calculation memoranda dated March 1, 2004, for further discussion.)

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.[3]

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.

Period of Reviews

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

Verification

As provided in section 782(i)(2) of the Act, we verified information provided by Primera Harvest and Shenxian Dongxing. We used standard verification procedures, including on-site inspection of the manufacturers' and exporters' facilities, and examination of relevant sales and financial records. Our verification results are outlined in the verification report for each company. (For further discussion, *see* December 12, 2003, verification report for Shenxian Dongxing in the Fourth Antidumping Duty Administrative Review (''Shenxian Dongxing verification report''); and January 30, 2004, verification report for Primera Harvest in the Sixth Antidumping Duty New Shipper Review (''Primera Harvest verification report'').)

Partial Rescission of Administrative Review

We are preliminarily rescinding this review with respect to Zhangzhou Jingxiang because the shipment data we examined did not show U.S. entries of the subject merchandise during the POR from this company.

Bona Fide Sale Analysis—Primera Harvest

The petitioner contends that Primera Harvest is not a bona fide new shipper and therefore, the Department should rescind its new shipper review. Among other things, the petitioner claims that the respondent is affiliated with other companies which produced and exported preserved mushrooms from Chile and which are subject to an antidumping duty order. Morever, the petitioner argues that through its past and present affiliations, Primera Harvest's overseer and part owner has been involved in selling practices in the past, and during the POR, which circumvented the antidumping duty orders on certain preserved mushrooms from both Chile and the PRC, a fact which alone calls into question the reliability of the data provided by Primera Harvest in this new shipper review. In addition, the petitioner claims that Primera Harvest's reported price for its sole U.S. sale during the POR was aberrationally high when compared to the average unit value of U.S. imports of comparable goods during the POR and during the month of the sale, and that the quantity of the sale was aberrationally low when compared to the average shipment size of comparable goods during the POR and during the month of the sale. Finally, the petitioner claims that Primera Harvest offers no plausible reason for why its U.S. customer would pay such a high price for a common commodity product, shipped by an unknown company that previously did not participate in the U.S. market, and with no special considerations that would justify the reported price level.

For the reasons stated below, we preliminarily find that Primera Harvest's reported U.S. sale during the POR appears to be a *bona fide* sale, as required by 19 CFR 351.214(b)(2)(iv)(C), based on the totality of the facts on the record. Specifically, we find that (1) the net price of its single reported sale (*i.e.*, gross unit price net of international freight and U.S. brokerage and handling, and movement expenses) was similar to the average unit value of U.S. imports of comparable canned mushrooms from the PRC during the POR; (2) the price of the sale was within the range of prices of comparable goods imported from the PRC during the POR; and (3) the price charged by Primera Harvest to its U.S. customer was similar to the prices which Primera Harvest charged to the same U.S. customer during the POR for sales of mushrooms produced in the PRC by other manufacturers. We also find that the quantity of the sale was within the range of shipment sizes of comparable goods imported from the PRC during the POR. (*See* March 1, 2004, memorandum to the file for further discussion of our price and quantity analysis.)

Although the petitioner states that the person who oversees Primera Harvest's operations was involved in selling practices in the past which allegedly circumvented the antidumping duty order on certain preserved mushrooms from Chile, this allegation does not serve as a sufficient basis to call into question the reliability of data provided by Primera Harvest in this new shipper review for a different country (*see* data contained in attachment 1 of the petitioner's February 18, 2004, submission, and *Certain Preserved Mushrooms from Chile: Final Results of Administrative Review,* 67 FR 31769 (May 10, 2002) and accompanying decision memorandum at Comment 2). Furthermore, the petitioner's allegations as to other questionable sales involving this individual outside of this new shipper proceeding do not pertain to the *bona fides* of the transaction under review (*see* pages 27–28 of the Primera Harvest verification report). While the Department has scrutinized the circumstances of the transaction carefully, we have not identified information on the record that establishes that the transaction was not *bona fide.*

Moreover, although Primera Harvest had no other arm's-length sales of any merchandise, subject or non-subject, during or after the POR (up until the time of verification) and therefore, apparently, had no commercial income during this period, we do not find that this factor in and of itself, in light of all of the other information of record provided above, is sufficient for calling into question the *bona fides* of its reported U.S. sale. In addition, the Department verified that Primera Harvest was undergoing significant construction of production facilities for certain preserved mushrooms during the POR and afterward. This fact provides further evidence that this company was,

[3] On June 19, 2000, the Department affirmed that ''marinated,'' ''acidified,'' or ''pickled'' mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order. *See* ''Recommendation Memorandum—Final Ruling of Request by Tak Fat, *et al.* for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China,'' dated June 19, 2000. This decision is currently on appeal.

and continues to be, legitimately engaged in the production and export of subject merchandise (*see* pages 23–24 of the Primera Harvest verification report). Therefore, for the reasons mentioned above, the Department preliminarily finds that Primera Harvest's sole U.S. sale during the POR was a *bona fide* commercial transaction.

Affiliation—COFCO

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''), to two other preserved mushroom producers, COFCO (Zhangzhou) Food Industrial Co., Ltd. (''COFCO Zhangzhou'') and Fujian Zishan Group Co. (''Fujian Zishan''), from which it did not purchase subject merchandise during the POR. The petitioner maintains that the Department should collapse these entities for margin calculation purposes because a significant potential for manipulation of price or production between these entities otherwise exists.

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. 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.

In this case, COFCO holds a significant ownership share in Yu Xing (*see* exhibit 2 of COFCO's November 10, 2003, 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* exhibit 4 of COFCO's September 9, 2003, submission; and pages 2–4 and exhibit 7 of COFCO's January 23, 2004, submission). Therefore, 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 for the reasons stated above.

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 for the reasons stated below. Specifically, both COFCO and Yu Xing hold significant ownership shares in COFCO Zhangzhou (*see* also exhibit 2 of COFCO's November 10, 2003, 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 pages 2–4 and exhibit 7 of COFCO's January 23, 2004, submission). COFCO Zhangzhou and Yu Xing also have the same general manager (*see* exhibit 5 of COFCO's January 23, 2004, submission). Therefore, 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 2 of COFCO's November 10, 2003, 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 pages 2–4 and exhibit 7 of COFCO's January 23, 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 2 of COFCO's November 10, 2003, submission). Furthermore, we note that one of Fujian Zishan's board members also serves as the general manager at Xiamen Jiahua. In addition, we note that the same individual who certified the accuracy of COFCO's sales and factors of production data also certified to the accuracy of Fujian Zishan's factors of production. Accordingly, we find that COFCO, COFCO Zhangzhou, Yu Xing, Fujian Zishan, and Xiamen Jiahua are affiliated through the common control of COFCO's parent company pursuant to section 771(33)(F) of the Act. Furthermore, 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 COFCO, COFCO Zhangzhou, Yu Xing, and Xiamen Jiahua in accordance with section 771(33)(G) of the Act.

Collapsing—COFCO

Based on the ownership ties described above, the Department requested COFCO to (1) report the factors of production data from each company listed above if it produced preserved mushrooms during the POR; and (2) provide information on the relationship between and among these companies for purposes of determining whether the Department should collapse any or all of them in the preliminary results (*see* January 8, 2004, supplemental questionnaire for details).

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,* Slip Op. 03–17, 36 (February 13, 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 ownership ties 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)).

Based on data contained in its supplemental questionnaire responses, COFCO indicated that only COFCO Zhangzhou, Fujian Zishan, and Yu Xing produced preserved mushrooms during the POR. Therefore, we find that the first and second collapsing criteria are met here because these companies are affiliated as explained above and all have production facilities for producing similar or identical products that would not require substantial retooling in order to restructure manufacturing priorities (*see* factors of production data submitted by each company in COFCO's February 9, 2004, submission).

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 Zhangzhou, Yu Xing, and Fujian Zishan for the following reasons. As explained above, there is a level of common ownership between and among these companies. Second, also as discussed above, a significant level of common control exists among these companies. Third, we find that the operations of COFCO, COFCO Zhangzhou, Yu Xing, and Fujian Zishan are sufficiently intertwined. Specifically, since the less-than-fair-value (''LTFV'') investigation, COFCO has shifted its source of supply among these affiliates. Fujian Zishan's factors data was initially used for purposes of determining COFCO's dumping margin in the LTFV investigation of this proceeding (*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)). Moreover, we note that during the POR Fujian Zishan supplied preserved mushrooms to Xiamen Jiahua, and Yu Xing supplied preserved mushrooms to COFCO (*see* page exhibit 1 of COFCO's February 9, 2004, submission and page 4 of COFCO's November 10, 2003, submission).

Therefore, based on the above-mentioned findings and following the guidance of 19 CFR 351.401(f), we have preliminarily collapsed the three producers noted above because there is a significant potential for manipulation between these parties. (*See* March 1, 2004, memorandum from Office Director to the Deputy Assistant Secretary for further discussion.)

Affiliation—Green Fresh

In its questionnaire response, Green Fresh stated that when its general manager is not present in the United States, the daily operations of its U.S. subsidiary, Green Mega, are managed by an individual who owns a U.S. company which purchased the subject merchandise directly from Green Fresh during the POR. This individual is also an employee at another U.S. company which also purchased the subject merchandise directly from Green Fresh during the POR.

Section 771(33)(G) of the Act states that ''any person who controls any other person and such other person'' shall be considered to be ''affiliated.'' Further, ''a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.''

Therefore, because Green Fresh, Green Mega, and two of its U.S. customers during the POR appeared to be affiliated in accordance with section 771(33)(G) of the Act, we issued Green Fresh a supplemental questionnaire which requested Green Fresh to provide the data for its sales to its two U.S. customers (for which the unnamed individual mentioned above was either the owner of or an employee in those companies), as well as Green Mega's sales to its U.S. customers.

Even though it appears that Green Mega and two of Green Fresh's U.S. customers may be affiliated under section 771(33)(G) of the Act, data contained in Green Fresh's responses indicated that Green Mega did not make any sales of subject merchandise during the POR. Specifically, a further examination of the data contained in Green Fresh's questionnaire responses indicates that although Green Mega was set up in March 2002, it did not make any sales of the subject merchandise until February 2003 (which is outside the POR of this administrative review). Therefore, for these preliminary results, we have not used the U.S. sales reported by Green Mega in our analysis. In addition, data contained in Green Fresh's U.S. sales listing indicates that Green Fresh sold the subject merchandise to the two U.S. customers in question prior to the period during which its affiliate Green Mega claims it began its sales operations in the United States (*i.e.*, February 2003). Therefore, based on the facts described above, we preliminarily find an insufficient basis to further consider Green Fresh and two of its U.S. customers affiliated parties within the meaning of section 771(33) of the Act during this POR. However, we intend to re-examine this affiliation issue in the next administrative review, should a review be requested.

Facts Available—Gerber/Green Fresh

Background

In the final results of the prior administrative review, the Department determined that the application of adverse facts available was warranted for both Gerber and Green Fresh, pursuant to sections 776(a) and (b) of the Act. The Department found that during that period of review, Gerber and Green Fresh had entered into an arrangement through which Gerber exported its own subject merchandise to the United States, but reported Green Fresh as the exporter (*see Certain Preserved Mushrooms from the People's Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 68 FR 41304, 41306 (July 11, 2003) (and

accompanying decision memorandum at Comment 1) (''*PRC Mushrooms Third Administrative Review*''). For a limited number of transactions, Green Fresh processed some initial paperwork, but for the vast majority of sales, did nothing but sell Gerber its invoices for a commission. The result of this arrangement was that for numerous transactions during that period of review, Gerber made cash deposits of estimated antidumping duties not at its own rate, but at the much lower calculated cash deposit rate assigned to Green Fresh. Thus, Gerber, with Green Fresh's assistance, was able to circumvent the collection of substantial cash deposits during that period of review.

The Department determined in the final results of the last review that neither Gerber, nor Green Fresh, had acted to the best of its ability. The Department explained that both Gerber and Green Fresh continually misrepresented in their questionnaire responses to the Department the specifics of their true relationship during the POR (*see* also *PRC Mushrooms Third Administrative Review* at Comment 1). Thus, it was not until verification of these companies that the Department became fully aware of many of the details recounted above. *Id* at Comment 1. The Department further explained that it could not rely upon the information which Gerber and Green Fresh supplied to the Department because through their misrepresentations in numerous questionnaire responses, the veracity and credibility of all the companies' responses were called into question by the Department. *Id* at Comment 1. Finally, the Department explained that, no matter the motivations of the parties to the Gerber/Green Fresh arrangement, Gerber evaded payment of cash deposits which it was required to pay pursuant to section 751(a)(2)(C) of the Act, and Green Fresh provided the means by which Gerber was able to evade such collection. Thus, pursuant to its discretion to prevent the evasion or circumvention of the antidumping law, the Department determined that the application of total adverse facts available was appropriate for both Gerber and Green Fresh. *Id* at Comment 1 (citing *Mitsubishi Elec. Corp.* v. *United States*, 700 F. Supp. 538, 555 (1988), *aff'd* 898 F. 2d 1577 (Fed. Cir. 1990).)

The Current POR—Gerber

Gerber continued to use Green Fresh's invoices during the POR covered by this administrative review. *See* Gerber's Supplemental Questionnaire Response, dated September 3, 2003 at 4–14. Gerber's estimated cash deposit rate, derived from its first administrative review, was 121.33 percent during the POR. (*See Amended Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms from the People's Republic of China*, 66 FR 35595, 35596 (July 6, 2001).) On the other hand, Green Fresh's estimated cash deposit rate was 29.87 percent, derived from its own new shipper review. (*See Final Results of New Shipper Review: Certain Preserved Mushrooms from the People's Republic of China*, 66 FR 45006 (August 27, 2001).) Thus, Gerber continued to circumvent the collection of substantial cash deposits during this POR. Furthermore, just as in the last review, such circumvention could not have occurred but for Green Fresh's arrangement with Gerber. In addition, Gerber placed a copy of the alleged contractual agreement between itself and Green Fresh during the last administrative review on the record of that review, and the terms of the alleged agreement itself purport to last through May 2002—during the POR covered by this administrative review. This submission, as well as all relevant documentation pertaining to Gerber and Green Fresh's relationship from the previous administrative review record were placed on the record of this proceeding on February 13, 2004. *See Memorandum to File Re: Gerber and Green Fresh Documents*, February 13, 2004.

The Department has preliminarily determined that the application of total adverse facts available for Gerber is warranted for this administrative review. Gerber did not submit to CBP the appropriate cash deposit rates assigned to it by the Department for numerous transactions during the POR, as directed by the Act. *See* section 751(a)(2)(C) of the Act. There is an ''inherent power of an administrative agency to protect the integrity of its own proceedings.'' See *Alberta Gas Chemicals Ltd.* v. *United States*, 650 F. 2d 9 (2nd Cir. 1981). As the Department provided in its *PRC Mushrooms Third Administrative Review*, ''the Department has discretion to administer the law in a manner that prevents evasion of the order.'' *See PRC Mushrooms Third Administrative Review* at Comment 1. Indeed, as the Court of International Trade (''CIT'') provided in *Tung Mung Development* v. *United States*, 219 F. Supp. 2d 1333, 1343 (CIT 2002), *aff'd, Tung Mung,* et. al., 03–1073, 03–1095 (January 15, 2004), ''the ITA has been vested with authority to administer the antidumping laws in accordance with the legislative intent. To this end, the ITA has (a) certain amount of discretion (to act) * * * with the purpose in mind of preventing the intentional evasion or circumvention of the antidumping duty law. *Mitsubishi Elec. Corp.* v. *United States*, 700 F. Supp. 538, 555 (1988), *aff'd* 898 F. 2d 1577 (Fed. Cir. 1990).'' Without such authority, the Department, despite being the administrative agency designated with the responsibility of enforcing the antidumping law, would be forced to accept and review sales that were the result of potentially illegal or inappropriate arrangements. *See Elkem Metals Co.* v. *United States,* 276 F. Supp. 2d. 1296 (CIT 2003)(determining that the ITC correctly applied ''best information available,'' the precursor to adverse facts available, when the existence of a price fixing scheme came to light following an investigation). Such abuse of the antidumping review process is unacceptable and certainly not a situation Congress anticipated or believed acceptable when it drafted the antidumping statutory provisions. *See Queen's Flowers De Colombia* v. *United States*, 981 F. Supp. 617, 621 (CIT 1997) (determining that the Department's decision to define the term ''company'' to include several closely related companies was a permissible application of the statute, given its ''responsibility to prevent circumvention of the antidumping law''); *Hontex Enterprises, Inc.,* et. al. v. *United States*, 248 F. Supp. 1323, 1343 (CIT 2003) (finding that the Department's decision to increase the scope of its analysis to include NME exporters was reasonable in light of its ''responsibility to prevent circumvention of the antidumping law''). This inherent authority to protect the integrity of the antidumping review process and prevent circumvention of the law is essential to the Department in both its practice and its regulations. *See, e.g.,* 19 CFR 351.401(f)(2003) (the Department's ''collapsing'' regulation. Pursuant to this regulation, the Department will treat two or more affiliated producers as a single entity if it determines that there is a ''significant potential for the manipulation of price or production''). Thus, because Gerber circumvented the antidumping duty law and evaded the collection of the appropriate cash deposits during the POR, the Department, pursuant to this inherent authority, has determined that the application of total facts available is warranted.

Gerber and Green Fresh have indicated on the record that during this POR Gerber used Green Fresh's invoices

when exporting some of its merchandise to the United States, although Gerber was providing Green Fresh with apparently no compensation for such usage and Gerber was aware that Green Fresh believed that their business relationship had allegedly ended (*see* pages 4–8 of Gerber's September 3, 2003, supplemental questionnaire response). Gerber has also indicated on the record that the reason for its arrangement with Green Fresh was allegedly to report information to the PRC government using Green Fresh's name and not its own (*see* pages 6–7 of the Gerber verification report in the *PRC Mushrooms Third Administrative Review).* In addition, the Department found at verification during the last POR that Gerber mis-characterized its contract disputes with Green Fresh during that POR, disputes that allegedly continued through to the current POR. *Id.* All of this, taken with the fact that Gerber circumvented the collection of the appropriate cash deposits during the POR, leads the Department to determine that it cannot find Gerber's submissions to the Department to be reliable for purposes of this administrative review. The entire antidumping duty review process is inherently dependent upon a respondent being forthright, honest, and participating to the best of its ability, not just in the current review period, but in previous administrative periods when actions taken during those periods directly affect the outcome of a subsequent review or reviews. Gerber has not acted to the best of its ability and its actions with respect to the Gerber/Green Fresh sales have undermined the credibility of all other information it has provided to the Department. Accordingly, the application of facts available is warranted, pursuant to section 776(a) of the Act.

In selecting from among facts available, pursuant to section 776(b) of the Act, an adverse inference is warranted when the Department has determined that a respondent has ''failed to cooperate by not acting to the best of its ability to comply with a request for information.'' The Court of Appeals for the Federal Circuit (''CAFC''), in *Nippon Steel Corporation* v. *United States,* 337 F. 3d 1373, 1380 (Fed. Cir. 2003), provided an explanation of this standard, holding that the Department need not show intentional conduct existed on the part of the respondent, but merely that a ''failure to cooperate to the best of a respondent's ability'' existed, *ie.,* information was not provided ''under circumstances in which it is reasonable to conclude that less than full cooperation has been shown.'' *Id.* The CAFC did acknowledge, however, that ''deliberate concealment or inaccurate reporting'' would certainly be a reason to apply adverse facts available (''AFA''), although it indicated that inadequate responses to Department inquiries ''would suffice'' as well. *Id.* Further, adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* ''Statement of Administrative Action'' accompanying the URAA, H.R. Rep. No. 103–316, 870 (1994) (''SAA'') at 870; *Borden, Inc.* v. *United States,* 4 F. Supp. 2d 1221 (CIT 1998); and *Mannesmannrohren-Werke AG* v. *United States,* 77 F. Supp. 2d 1302 (CIT 1999). Such adverse inferences may include reliance on information derived from (1) the petition; (2) a final determination in the investigation under this title; (3) any previous review under section 751 or determination under section 753, or (4) any other information on the record.

In this case, an adverse inference is warranted because (1) Gerber participated in a scheme which resulted in the circumvention of the antidumping duty order and the evasion of the appropriate level of cash deposits, and (2) Gerber has not acted to the best of its ability in its reporting of information to the United States government, both at the time of entry of the merchandise and in previous submissions to the Department relating to the agreement between Gerber and Green Fresh which directly pertained to the transactions now under review in this POR. Accordingly, the Department is assigning Gerber the PRC-wide rate of 198.63 as total adverse facts available. We have also referred the matter to CBP so that the activities engaged in by this company can be properly addressed under U.S. customs law.

The Current POR—Green Fresh

With respect to Green Fresh, Green Fresh claims in its questionnaire responses that it did not provide Gerber with any of its sales invoices during the POR and that its business relationship with Gerber was terminated during the period of the prior administrative review (*see* pages 6–7 of the Green Fresh verification report issued in the *PRC Mushrooms Third Administrative Review).* However, whether Green Fresh supplied Gerber with sales invoices before the POR began, or during the POR, is less important than the fact that Gerber used Green Fresh's invoices during the POR. An administrative review POR is an artificial structure, set up for the Department to review particular entries exported to the United States at a particular time period. The underlying motivations of the parties to the transactions have little relevance to our analysis outside of a ''best of its ability'' determination for adverse facts available purposes under section 776(b) of the Act. The entry documents reflect the transaction information necessary for the Department to conduct its standard analysis. In this case, the entry documents show that Green Fresh's invoices were used by Gerber and resulted in the evasion of payment of cash deposits during the POR. Accordingly, to protect the integrity of our administrative proceedings, the Department has preliminarily determined that the application of facts available, pursuant to section 776(a) of the Act, is warranted with respect to Green Fresh.

Green Fresh argues that it did not consent to Gerber's use of its invoices during the POR, and Gerber has stated that it believes Green Fresh had no knowledge of its Green Fresh-invoice sales during the POR (*see* page 7 of the Green Fresh verification report issued in the *PRC Mushrooms Third Administrative Review* and pages 4–8 of Gerber's September 3, 2003, supplemental questionnaire response). This fact is further supported by the statement of both parties that Green Fresh received no compensation from Gerber during the POR. Thus, the Department has preliminarily determined that application of total facts available would be inappropriate for Green Fresh, as nothing on the record calls into question Green Fresh's other reported information during this administrative review. Rather, we believe that the use of partial facts available is appropriate, limited only to the Gerber/Green Fresh transactions.

Furthermore, section 776(b) of the Act provides that the Department may apply an adverse inference to facts available when it determines that a respondent has not acted to the best of its ability. Green Fresh has provided no proof on the record that it took measures to prevent Gerber from continuing to use its invoices in this POR: Green Fresh has supplied no documentation, legal or otherwise, to show that, in accordance with its own commercial well-being, it attempted in good faith to stop Gerber from actively circumventing the antidumping duty order and evading the payment of cash deposits during the POR. In addition, Green Fresh has provided the Department with no evidence that the terms of its ''Agreement'' with Gerber were terminated prior to May 2002 (*i.e.*, were

not in effect during the POR covered by this administrative review). All Green Fresh has provided on the record is claims which comply with claims made by Green Fresh officials to Department representatives at verification during the last POR. (*See* pages 7 of Green Fresh's September 15, 2003, submission; pages 5–7 of the Green Fresh verification report, and pages 6–7 of the Gerber verification report issued in the *PRC Mushrooms Third Administrative Review*.) It stands to reason that if a competitor producer/exporter of subject merchandise uses a company's invoices to export to the United States, in direct competition with that company's business, company officials would take several measures to prevent such misuse of its paperwork. Green Fresh has supplied no documentation on the record of taking any measures whatsoever against Gerber to prevent use of its invoices.

Accordingly, because Green Fresh assisted Gerber in the circumvention of the antidumping duty order and because it has provided no documentary evidence on the record that its relationship ended with Gerber in the prior POR, or that it attempted to the best of its ability to prevent the use of its invoices by Gerber during this POR, the Department has determined that Green Fresh did not act to the best of its ability, pursuant to section 776(b) of the Act. More specifically, as facts available, we have determined that because certain Gerber transactions identified Green Fresh as the exporter and because those transactions used Green Fresh's invoices, these specific transactions should be attributed to Green Fresh in our calculations. Thus, as partial adverse facts available, the Department has applied the PRC-wide rate of 198.63 percent to those sales made by Gerber using Green Fresh's invoices.

Facts Available—Shantou Hongda

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

Shantou Hongda refused to allow the Department to conduct verification of its submitted information (*see* September 24, 2003, memorandum from case analyst to the file). Section 776(a)(2)(D) of the Act provides that if an interested party provides information that cannot be verified, the use of facts available is warranted. Furthermore, pursuant to section 776(b) of the Act, the Department may apply an adverse inference if it finds a respondent has not acted to the best of its ability.

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 refused to allow the Department to conduct verification of its submitted data. Shantou Hongda, accordingly, failed to act to the best of its ability in cooperating with the Department 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 Shantou Hongda. Consequently, Shantou Hongda is not eligible to receive a separate rate and will be part of the PRC NME entity, subject to the PRC-wide rate.

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 Shantou Hongda 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 is to ensure that the margin is sufficiently adverse ''as to effectuate the purpose of the facts available rule to induce a respondent to provide the Department with complete and accurate information in a timely manner.'' (*See Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan,* 63 FR 8909, 8932, (February 23, 1998).) We believe that the rate assigned is appropriate in this regard.

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 AFA the highest rate from any segment of this administrative proceeding, which is a rate calculated in the 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).) Unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only sources for calculated margins are administrative determinations.

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 both Gerber and Shantou Hongda was calculated during the LTFV investigation. This AFA rate is the same rate which the Department assigned to Gerber in the previous review and the rate itself has not changed since the LTFV. When using a previously calculated margin as facts available, for purposes of corroboration the Department will consider, in the context of the current review, whether that margin is both reliable and relevant. Furthermore, 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 and found that the Department received no information that warranted revisiting the issue. (See *e.g., Certain Preserved Mushrooms from the People's Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review,* 68 FR 41304, 41307 (July 11, 2003)). No information has been presented in the current review that calls into question the reliability of this information. 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. 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 Gerber and Shantou Hongda, and certain sales made with Green Fresh's invoices but which Green Fresh did not report in its questionnaire response.

Separate Rates

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

Three respondents, Green Fresh, Guangxi Yulin, and Shenxian Dongxing, are joint ventures of PRC entities. The other respondent, COFCO, is owned by ''all of the people.'' Thus, a separate-rates analysis is necessary to determine whether the export activities of each of these four exporters is independent from government control. (*See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China (''Bicycles'')*, 61 FR 56570 (April 30, 1996).) To establish whether a firm is sufficiently independent in its export activities from government control to be entitled to a separate rate, the Department utilizes a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) *(''Sparklers'')*, and amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) *(''Silicon Carbide'')*. Under the separate-rates criteria, the Department assigns separate rates in NME cases only if the respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. De Jure Control

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, Green Fresh, Guangxi Yulin, and Shenxian Dongxing have placed on the administrative record the following documents to demonstrate absence of *de jure* control: the 1994 ''Foreign Trade Law of the People's Republic of China;'' and the ''Company Law of the PRC,'' effective as of July 1, 1994. In other cases involving products from the PRC, respondents have submitted the following additional documents to demonstrate absence of *de jure* control, and the Department has placed these additional documents on the record as well: the ''Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People,'' adopted on April 13, 1988 (''the Industrial Enterprises Law''); ''The Enterprise Legal Person Registration Administrative Regulations,'' promulgated on June 13, 1988; the 1990 ''Regulation Governing Rural Collectively-Owned Enterprises of PRC;'' and the 1992 ''Regulations for Transformation of Operational Mechanisms of State-Owned Industrial Enterprises'' (''Business Operation Provisions''). (*See* March 1, 2004, memorandum to the file which 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.)

COFCO, Green Fresh, Guangxi Yulin, and Shenxian Dongxing each has asserted the following: (1) Each establishes its own export prices; (2) each negotiates contracts without guidance from any governmental entities or organizations; (3) each makes its own personnel decisions; and (4) each retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. Additionally, each respondent's questionnaire responses indicate that its pricing during the POR does not suggest coordination among exporters. Furthermore, with respect to Shenxian Dongxing, we examined documentation at verification which substantiated its claims as noted above (*see* pages 3–7 of the Shenxian Dongxing verification report). As a result, there is a sufficient basis to preliminarily determine that each respondent listed above 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.

Normal Value Comparisons

To determine whether sales of the subject merchandise by COFCO, Green Fresh, Guangxi Yulin, Primera Harvest, and Shenxian Dongxing to the United States were made at prices below normal value (''NV''), we compared each company's export prices (''EPs'') or constructed export prices (''CEP'') to NV, as described in the ''Export Price,'' ''Constructed Export Price,'' and ''Normal Value'' sections of this notice, below.

Export Price

For COFCO, Green Fresh, Guangxi Yulin, and Shenxian Dongxing, 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 CEP was not otherwise indicated. We made the following company-specific adjustments:

A. Green Fresh

We calculated EP based on packed, FOB foreign port and/or 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 a market-economy freight carrier 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 the Green Fresh's and Guangxi Yulin's reported per-unit packed weights used to derive PRC movement expenses (*see* Green Fresh and Guangxi Yulin calculation memoranda).

B. COFCO and Guangxi Yulin

We calculated export price based on packed, FOB foreign port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight, brokerage, and handling expenses in accordance with section 772(C) of the Act. Because foreign inland freight, brokerage, and handling expenses were provided by PRC service providers or paid for in renminbi, we based these charges on surrogate rates from India. (*See* discussion above for further details.) We revised COFCO's and Guangxi Yulin's reported per-unit packed weights used to derive PRC movement expenses (*see* COFCO and Guangxi Yulin calculation memoranda).

C. Shenxian Dongxing

We calculated export price based on packed, CIF foreign port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight, brokerage, and handling expenses in accordance with section 772(C) of the Act. Because foreign inland freight, brokerage, and handling expenses were provided by PRC service providers or paid for in renminbi, we based these charges on surrogate rates from India. (*See* discussion above for further details.) Based on our verification findings, Shenxian Dongxing reported its U.S. prices inclusive of international freight and separately reported an amount for this expense on a transaction-specific basis. Because Shenxian Dongxing was paid in full for this expense by its U.S. customers, we deducted this amount from the starting price. We also revised (1) the gross unit price and quantity data reported for one U.S. sales transaction; (2) the reported distance from the factory to the port of exportation; and (3) the per-unit packed weights used to derive PRC movement expenses. (*See* Shenxian Dongxing verification report at 11–13 and 21–22, and Shenxian Dongxing calculation memorandum.)

Constructed Export Price

For Primera Harvest we calculated CEP in accordance with section 772(b) of the Act because the U.S. sale was made for the account of Primera Harvest by its subsidiary in the United States, Primera Harvest, Inc. (''PHI''), to an unaffiliated purchaser in the United States.

We based CEP on a packed, ex-U.S. warehouse price 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. import duties and fees (including harbor maintenance fees, merchandise processing fees), U.S. inland freight expenses (*i.e.*, freight from the U.S. port to the U.S. warehouse), and U.S. warehousing expenses. 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. However, unlike the other respondents, one of Primera Harvest's freight service providers also used a barge to transport the subject merchandise to the last delivery location prior to exportation. Therefore, to value foreign inland shipping charges, we used a July 1997 Indian domestic ship rate. 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. Based on our verification findings, we revised the reported distance from the factory to the port in the PRC. (*See* Primera Harvest verification report at 30.) We also revised the Primera Harvest's reported per-unit packed weights used to derive PRC movement expenses (*see* Primera Harvest calculation memorandum).

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) and indirect selling expenses incurred in the United States. Based on our verification findings, we revised this company's reported credit expenses. (*See also* Primera Harvest verification report at 30.) We also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

Normal Value

A. Non-Market Economy Status

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. (*See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003)). None of the parties to this proceeding has contested such treatment. Accordingly, we calculated NV in accordance with section 773(C) of the Act, which applies to NME countries.

B. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value an NME producer's factors of production, to the extent possible, in one or more market economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. India is among the countries comparable to the PRC in terms of overall economic development. (*See* April 23, 2003, Memorandum from the Office of Policy to the Team Leader.) In addition, based on publicly available information placed on the record, India is a significant producer of the subject merchandise. Accordingly, we selected India as the surrogate country for purposes of valuing the factors of production because it meets the Department's criteria for surrogate country selection.

C. Factors of Production

In accordance with section 773(c) of the Act, we calculated normal value based on the factors of production which included, but were not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs, including depreciation. We used the factors reported by the five respondents, except as noted below. To calculate NV, we multiplied the reported unit factor quantities by publicly available Indian values.

Based on our verification findings, both Primera Harvest and Shenxian Dongxing failed to provide supporting documentation at verification for certain material factors reported in each company's questionnaire responses. Thus, pursuant to section 776(a)(2)(D) of the Act, the Department was forced to use facts otherwise available to value these factors of production.

Specifically, Primera Harvest did not report the electricity amount used in the fresh mushroom growing stage of production even though it claimed otherwise prior to verification. This information is necessary for determining the normal value of its reported U.S. sale. Therefore, absent verifiable data for this energy input, the Department, as facts available, calculated an average electricity amount for the fresh mushroom growing stage based on the verified electricity amounts contained in its response for its other stages of production (*e.g.*, brining and canning).

As for Shenxian Dongxing, this respondent was unable to support at verification its reported water usage figures for four-ounce can sizes. This information is necessary for determining the normal value of Shenxian Dongxing's reported U.S. sales. For the only other can size for which Shenxian Dongxing reported water factors (*i.e.*, 68-ounce can size), the Department was able to verify that data. Therefore, as facts available, the Department used the verified per-unit water factors for Shenxian Dongxing's 68-ounce can sizes of preserved mushrooms for purposes of valuing the costs associated with water used for its 4-ounce can sizes.

Based on our verification findings at Primera Harvest, we also revised the following data in Primera Harvest's response: (1) The reported per-unit consumption factors for citric acid, cottonseed meal, fertilizer, label, tape, carton, electricity used for brining, electricity used for canning, and the water used for growing, brining, and canning; and (2) the distances from Primera Harvest to its spawn and can suppliers. (*See* Primera Harvest verification report at 39 through 46, and Primera Harvest calculation memorandum.)

Based on our verification findings at Shenxian Dongxing, we also revised the following data in Shenxian Dongxing's response: (1) The reported per-unit consumption amounts for tin plate, tin plate scrap, labor and electricity for can-making, water and labor for mushroom-growing, label, carton, and glue used for preserved mushrooms contained in 68-ounce can sizes; (2) the reported per-unit consumption amounts for potassium super, calcium carbonate, and cartons used for preserved mushrooms contained in 4-ounce cans; and (3) the distances reported from certain material suppliers. We also disallowed an offset for copper scrap reported by this company because we verified that it simply returned the used copper wire to its vendor for reprocessing rather than sold the copper wire scrap (*See* Shenxian Dongxing verification report at 19–21, and March 1, 2004, Shenxian Dongxing calculation memorandum.)

With respect to the factors data submitted by COFCO's affiliated producer, Fujian Zishan, we made numerous adjustments to its submitted data which were necessary for purposes of collapsing identical products which both it and another COFCO affiliated producer, Yu Xing, produced during the POR (*see* COFCO calculation memorandum for further discussion).

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

To value fresh mushrooms and rice straw, we used an average price based on data contained in the 2001–2002 financial report of Premier Explosives Ltd. (''Premier'').

To value cow manure and general and/or wheat straw, we used an average price based on data contained in the 2001–2002 financial report of Flex Foods Ltd. (''Flex Foods'') and the 2002–2003 financial report of Agro Dutch Foods, Ltd. (''Agro Dutch'') (*i.e.*,

two Indian producers of the subject merchandise).

To value chicken manure and spawn, we used an average price based on data contained in the 2001–2002 financial reports of Flex Foods and Premier and the 2002–2003 financial report of Agro Dutch. For those respondents which used mother spawn, we also used the average spawn price to value mother spawn because we were unable to obtain publicly available information which contained a price for mother spawn.

To value soil, we used July 2003 price data from two U.S. periodicals: *Mt. Scott Fuel* and *Interval Compost* because we could not obtain an Indian surrogate value for this input.

To value wheat and super phosphate, we used price data contained in Flex Foods' 2001–2002 financial report because no such data was available from the other financial reports on the record.

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 15, 2003, PAI submission.

To value fertilizer, salt, lime, cotton, tin plate scrap, copper conducting wire, and copper wire scrap, can and lid scrap, lacquer, nitrogen, steam coal, sodium hydrosulphite, sodium metabisulphite, and vitamin C, we used February 2002–January 2003 average Indian import values downloaded from the *World Trade Atlas Trade Information System (Internet Version 4.3e)* (''*World Trade Atlas*''). We also added an amount for loading and additional transportation charges associated with delivering coal to the factory based on June 1999 Indian price data contained in the periodical *Business Line*.

For those respondents which used cotton seed meal, we also used the average cotton price to value cotton seed meal because we were unable to obtain publicly available information which contained a price for cotton seed meal.

To value rye, we used a February 2002–January 2003 average import value for cereal grain from the *World Trade Atlas* because we were unable to obtain a more specific value for this input.

For rice husks, we used a January–March 2000 average import value from the *World Trade Atlas* because we were unable to obtain price data more contemporaneous with the POR.

For disodium stannous citrate, we used a February 2002–January 2003 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 tin plate, we used an average price based on February 2002–January 2003 data contained in *World Trade Atlas* and data contained in Agro Dutch's 2002–2003 financial report.

To value citric acid, calcium carbonate, and urea (*i.e.*, carbamide), we used an average import price based on February 2002–January 2003 data contained in the *World Trade Atlas* and February 2002–January 2003 Indian domestic price data contained in *Chemical Weekly*, consistent with our past practice (*see Certain Preserved Mushrooms from the People's Republic of China: Final Results of Third New Shipper Review and Final Results and Partial Rescission of Second Antidumping Duty Administrative Review*, 67 FR 46173 (July 12, 2002) and accompanying decision memorandum at Comment 7)). For those prices obtained from *Chemical Weekly*, where appropriate, we also deducted an amount for excise taxes based on the methodology applied to values from the same source in a prior review involving the subject merchandise from the PRC. (*See* page 4 of the May 31, 2001, Preliminary Results Valuation Memorandum for the *Preliminary Results of New Shipper Review: Certain Preserved Mushrooms from the People's Republic of China*, 66 FR 30695 (June 7, 2001) (''Preliminary Results Valuation Memorandum'') which has been placed on the record of this proceeding.)

To value calcium phosphate, we used a December 1999 U.S. value from *Chemical Market Reporter* because we could not obtain an Indian surrogate value for this input. Although the value from *Chemical Market Reporter* was in U.S. dollars, it was not contemporaneous with the POR. Therefore, we inflated this value to the POR using WPIs.

To value gypsum, we used an average price based on February 2002–January 2003 data contained in *World Trade Atlas* and data contained in Flex Foods' 2001–2002 financial report.

To value potassium super, we used an average price based on February 2002–January 2003 Indian price data contained in *Chemical Weekly*.

To value water, we used 1995–1996 and 1996–1997 Indian price data from the *Second Water Utilities Data Book*. Since this value was not contemporaneous with the POR, we adjusted this value for inflation based on wholesale price indices published in the International Monetary Fund's *IFS*.

To value electricity, we used 2001 Indian price data from the International Energy Agency's (''IEA'') report, ''Electricity Prices for Industry,'' contained in the *2002 Key World Energy Statistics from the IEA*.

To value diesel oil, we used data contained in the 1999–2000 financial report of Hindustan Lever Ltd.

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

To value factory overhead and selling, general, and administrative (''SG&A'') expenses, we used the 2002–2003 financial data of Agro Dutch and the 2001–2002 financial data of Flex Foods, both Indian producers of the subject merchandise. To value profit, we only used the 2001–2002 financial data of Flex Foods because Agro Dutch experienced a loss during the above-mentioned period. Therefore, in accordance with the Department's practice, we have excluded the financial data of Agro Dutch from the surrogate profit calculation. (*See Notice of Final Determination of Sales at Less Than Fair Value: Certain Ball Bearings and Parts Thereof from the People's Republic of China*, 68 FR 10685 (March 6, 2003) and accompanying decision memorandum at Comment 1)).

We did not use the following two other Indian sources of data to value factory overhead, SG&A or profit: the 2001–2002 fiscal data obtained for Premier and the 2002–2003 fiscal data obtained for Himalya International Ltd. (''Himalya''), because although each company produces the subject merchandise, the subject merchandise is but one of several products produced. Moreover, in accordance with the Department's practice in the prior administrative review, we also do not find it appropriate to use Himalya's financial data because, unlike Himalya, none of the PRC respondents (including Green Fresh and Primera Harvest) have operations overseas which sell non-subject merchandise and which would necessitate incurring additional costs not associated with the sale of mushrooms (*see also Certain Preserved Mushrooms from the People's Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 68 FR 41304 (July 11, 2003) and accompanying decision memorandum at Comment 4).

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*.

To value PRC inland freight for inputs shipped by truck, we used Indian freight rates published in the February 2002–June 2002 issues of *Chemical Weekly* and obtained distances between cities from the following Web sites: *http://www.infreight.com* and *http://www.sitaindia.com/Packages/CityDistance.php*.

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

To value corrugated cartons, labels, tape, and glue we used February 2002–January 2003 average import values from the *World Trade Atlas*.

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

Preliminary Results of the Review

We preliminarily determine that the following margins exist for the following exporters under review during the period February 1, 2002, through January 31, 2003:

Manufacturer/producer/exporter	Margin (percent)
China Processed Food Import & Export Company	87.47
Gerber Food (Yunnan) Co., Ltd.	198.63
Green Fresh Foods (Zhangzhou) Co., Ltd.	31.38
Guangxi Yulin Oriental Food Co., Ltd.	0.00
Primera Harvest (Xiangfan) Co., Ltd.	46.90
Shenxian Dongxing Foods Co., Ltd.	17.65
PRC–Wide Rate (including Shantou Hongda Industrial General Corp.)	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 June 8, 2004.

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 28, 2004, pursuant to 19 CFR 351.309(c). Rebuttal briefs, limited to issues raised in the case briefs, will be due not later than June 4, 2004, pursuant to 19 CFR 351.309(d). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

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

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement 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 not the importers of record for the subject merchandise. 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 these reviews and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

Upon completion of these reviews, for entries from COFCO, Gerber, Green Fresh, Guangxi Yulin, Primera Harvest, and Shenxian Dongxing, we will require cash deposits at the rate established in the final results as further described below.

Bonding will no longer be permitted to fulfill security requirements for shipments of brake rotors from the PRC produced and exported by Primera Harvest that are entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of the new shipper review. The following cash deposit requirements will be effective upon publication of the final results of the new shipper review for all shipments of subject merchandise from Primera Harvest entered, or withdrawn from warehouse, for consumption on or after the publication date: (1) For subject merchandise manufactured and exported by Primera Harvest, a cash deposit will be required if the cash deposit rate calculated in the final results is not zero or *de minimis*; and (2) for subject merchandise exported by Primera Harvest but not manufactured by Primera Harvest, the cash deposit rate will continue to be the PRC countrywide rate (*i.e.*, 198.63 percent).

The following deposit requirements will be effective upon publication of the final results of the 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 Yulin, and Shenxian Dongxing 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 (*i.e.*, Raoping Xingyu); (3) the cash deposit rate for the PRC NME entity (including Shantou Hongda, Shenzhen Qunxingyuan, and Zhangzhou Jingxiang) will continue to be 198.63 percent; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC 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.

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

Dated: March 1, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–5007 Filed 3–4–04; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Amended Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of Amended Final Results of Antidumping Duty Administrative Review.

SUMMARY: As a result of a final and conclusive court decision, the Department of Commerce is revising the countrywide rate for the final results of June 1, 1993, through May 31, 1994, administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China.

EFFECTIVE DATE: March 5, 2004.

FOR FURTHER INFORMATION CONTACT: Yang Jin Chun or Mark Ross, Group 1, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–5760 and (202) 482–4794 respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Background

On February 11, 1997, the Department of Commerce (the Department) published in the **Federal Register** its final results of the administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished (TRBs), from the People's Republic of China (PRC). See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of Antidumping Duty Administrative Review and Revocation in Part of Antidumping Duty Order*, 62 FR 6189 (February 11, 1997). As a result of litigation, the Court of International Trade (CIT) remanded the results of the review to the Department on October 25, 2001. See *Peer Bearing Company v. United States*, 182 F. Supp. 2d 1285 (CIT 2001). The Department completed its final results of redetermination on remand on March 12, 2002, and submitted the results to the CIT; the CIT affirmed the Department's final remand results and dismissed the case. See *Peer Bearing Company v. United States*, No. 97–03–00419, slip op. 02–53 (CIT 2002). In another decision, *Transcom, Inc. v. United States*, 294 F.3d 1371 (Fed. Cir. 2002), the Court of Appeals for the Federal Circuit issued an opinion affirming the Department's original determination in this administrative review. As there was a final and conclusive court decision in this action, on December 31, 2002, we published in the **Federal Register** a notice of amended final results of administrative review. See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Amended Final Results of Antidumping Duty Administrative Review*, 67 FR 79902 (December 31, 2002) (*Amended Final Results*). In the *Amended Final Results*, we inadvertently omitted the revised PRC countrywide rate of 60.95 percent from the list of the revised weighted–average margins that was included in the final results of redetermination completed on March 12, 2002, and affirmed on June 5, 2002, by the CIT.

Amendment to Final Results

Pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), we are now amending the PRC countrywide rate from the final results of the administrative review of the antidumping duty order on TRBs from the PRC for the period of review June 1, 1993, through May 31, 1994. The revised PRC countrywide rate is 60.95 percent.

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. We will issue appropriate assessment instructions directly to CBP within 15 days of publication of these amended final results of review.

Cash–Deposit Requirement

In accordance with section 751(a)(2)(C) of the Act, upon publication of these amended final results, for all PRC exporters which have not been found to be entitled to a separate rate, the cash–deposit rate will be the PRC countrywide rate of 60.95 percent for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date.

We are issuing and publishing this administrative review and notice in accordance with section 751(a)(1) of the Act.

Dated: February 27, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–5003 Filed 3–4–04; 8:45 am]

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