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MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Jeffrey May
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results of the Antidumping Duty New Shipper and Administrative Reviews on Certain Preserved Mushrooms from the People's Republic of China – February 1, 2002, through January 31, 2003

Summary

We have analyzed the comments of the interested parties in the new shipper and administrative reviews of the antidumping duty order covering certain preserved mushrooms from the People's Republic of China ("PRC"). As a result of our analysis of these comments, we have made changes in the margin calculations as discussed in the "Margin Calculations" section of this memorandum. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in these reviews for which we received comments from parties:

Issue 1: Collapsing of COFCO's Affiliates and Rate Assignment
Issue 2: Calculating a Weighted-Average Normal Value for Unique Products Which Were Produced by More Than One of COFCO's Affiliated Producers
Issue 3: Valuing the Intermediate Input for Producers Which Leased Farm Land to Produce the Intermediate Input
Issue 4: Shenxian Dongxing's Reported Mushroom Growing Inputs
Issue 5: Application of Facts Available to Gerber and Green Fresh
Issue 6: Inclusion of Green Fresh's U.S. Affiliate's Sales in the Margin Analysis and the Department's Affiliation Decision with Respect to Two of Green Fresh's U.S. Customers
Issue 7: Use of Publicly Available Information Contained in the Petitioner's June 14, 2004, Submission
Issue 8: Use of Flex Foods' Financial Data to Derive Surrogate Financial Percentages

Issue 9: Inclusion of Certain Expense Line Items to Derive an SG&A Surrogate Percentage Based on Agro Dutch's Financial Data
Issue 10: Deducting Foreign Inland Freight, Brokerage, and Handling Expenses from U.S. Price
Issue 11: U.S. Price to Normal Value Comparisons to Determine COFCO's Margin
Issue 12: Surrogate Value for Fresh Mushrooms
Issue 13: Surrogate Value for Soil
Issue 14: Surrogate Value for Rice Husks
Issue 15: Miscellaneous Corrections

Background

On March 5, 2004, the Department published in the Federal Register the preliminary results of the new shipper review and fourth antidumping duty administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China ("PRC") (see Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of Sixth Shipper Review and Preliminary Results and Partial Rescission of Fourth Antidumping Duty Administrative Review, 69 FR 10410 (March 5, 2004) ("Preliminary Results"). The products covered by this order are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The period of review ("POR") is February 1, 2002, through January 31, 2003. For a detailed discussion of the events which have occurred in these reviews since the Preliminary Results, see the "Background" section of the Federal Register notice. We provided parties with an opportunity to comment on our Preliminary Results.

Margin Calculations

We calculated export price and normal value ("NV") using the same methodology stated in the preliminary results, except as follows:

1. We collapsed COFCO with its three affiliated producers and two affiliated exporters in accordance with section 771(33) of the Tariff Act of 1930, as amended ("the Act") and the criteria enumerated in 19 CFR 351.401(f). We also assigned the "collapsed" rate to COFCO and all of the affiliates which comprise the collapsed entity. See Comment 1 below.

2. For COFCO, we revised (a) the invoice numbers for five sales transactions reported in its November 10, 2003, U.S. sales listing; and (b) the amount reported in the field QTY2U for one U.S. sales transaction (see China National/COFCO Verification Report at page 3).
3. For Fujian Zishan, we revised (a) its reported consumption ratios for salt, disodium starrous citrate, sodium metabisulfite, rongalite, water, electricity, coal, heavy diesel oil; and (b) its reported usage ratios for direct, indirect and packing labor (see Fujian Zishan Verification Report at pages 3 and 19).

4. For Yu Xing, we revised (a) its reported consumption ratio for coal; and relied on (b) its labor usage ratios for canned brined mushroom production (i.e., growing, collecting, and harvesting) and canned fresh mushroom production (i.e., growing) as reported in exhibit 15 of its September 9, 2003, supplemental questionnaire response ("SQR") rather than in its February 9, 2004, SQR (see Yu Xing Verification Report at pages 3 and 16).

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

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

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

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

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

10. We calculated average surrogate percentages for factory overhead and SG&A expenses using the 2002-2003 financial reports of Agro Dutch Foods Ltd. ("Agro Dutch") and Flex Foods Ltd. ("Flex Foods"). We calculated a surrogate percentage for profit using only the 2002-2003 financial report of Flex Foods. See Comment 8 below.

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

12. To value fresh mushrooms, we used purchase data contained in the 2002-2003 financial report of Premier Explosives Ltd. ("Premier"). See Comment 12 below.

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

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

15. To value rice husks, we used May 2003 Indian price data from Hindu Business Line. See Comment 14 below.

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

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

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

19. To value urea, we used an average price based on February 2002-January 2003 data contained in Chemical Weekly and World Trade Atlas, as well as data contained in Flex Foods' 2002-2003 financial report.

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

Discussion of the Issues

Comment 1: *Collapsing of COFCO's Affiliates and Rate Assignment*

In the Preliminary Results, we collapsed the respondent exporter COFCO with three affiliated producers of subject merchandise (only one of which supplied COFCO with the preserved mushrooms it sold to the United States during the POR and two of which have the ability to export their products, but did not export them to the United States during the POR). We emphasized in the Preliminary Results that we would consider collapsing affiliated producers in the non-market economy ("NME") context on a case-by-case basis as long as it did not conflict with our NME methodology or separate rates test. While we also determined that COFCO was affiliated with two other exporters (neither of which exported preserved mushrooms to the United States during the POR), we did not include these companies in our collapsing decision. Moreover, we assigned the resulting margin only to COFCO, not the collapsed entity, in accordance with our normal NME practice to assign separate rates only to respondent exporters. We did not specifically address the issue of whether COFCO's rate should be

applied to its affiliates because we needed to obtain information from its affiliates in order to make a separate rates determination in relation to the entity as a whole. Since the Preliminary Results, we issued all of COFCO's affiliates a separate rate questionnaire and verified the data reported.

COFCO maintains that as a result of its verification findings, the Department should further explain and re-examine its preliminary decision to collapse it with its three affiliated producers.
First, although the Department intended to calculate a single weighted-average margin for it as a result of collapsing it with its three affiliated producers, COFCO argues that the Department failed to indicate in the Preliminary Results to which entities this rate applied. Specifically, COFCO maintains that the Department must clearly establish guidelines for when collapsing is warranted so that companies intending to export subject merchandise, like COFCO, can ensure that they are not selling at less than fair value. In order to provide more predictability with respect to when collapsing is warranted for some or all of COFCO's affiliates, COFCO poses several questions in its case brief with respect to this matter by asking the Department what it would do if COFCO's affiliate, Xiamen Jiahua, started selling to the U.S. market subject merchandise produced by Fujian Zishan and what rate it would assign to COFCO. Otherwise, COFCO maintains that the Department departed from its general collapsing principle in the Preliminary Results.

Second, COFCO argues that the Department did not correctly implement its collapsing requirements with respect to it because two of these requirements (i.e., 19 CFR 351.401(f)(1) and (2)) are not met by its affiliated producers. With respect to the applicability of 19 CFR 351.401(f)(1) in this case, COFCO contends that all three of its affiliated producers (i.e., COFCO Zhangzhou, Fujian Zishan, and Yu Xing) have production facilities for producing similar or identical products that would require substantial retooling in order to restructure manufacturing priorities. For example, COFCO states that the Department confirmed through verification that Yu Xing is a fully vertically integrated canned preserved mushroom producer, whereas Fujian Zishan purchases both fresh mushrooms and tin cans used to produce preserved mushrooms and COFCO Zhangzhou has no retorting equipment (i.e., equipment necessary for canned mushroom production) and does not can its preserved mushrooms. Therefore, COFCO concludes that because Fujian Zishan and COFCO Zhangzhou are not currently producing the fresh mushrooms which they use to produce preserved mushrooms, these affiliated producers have virtually no opportunity to establish production facilities necessary for them to start their own mushroom growing and collection operations. Consequently, COFCO argues that a substantial addition to each company's facilities and/or production operations would be required for both Fujian Zishan and COFCO Zhangzhou to grow and harvest mushrooms. COFCO, therefore, contends that the Department should not collapse its three affiliated producers in the final results because COFCO Zhangzhou and Fujian Zishan each have vastly different production capabilities which would be extremely difficult, if not impossible, to restructure so that their equally dissimilar production processes are more similar to those of Yu Xing (i.e., the affiliated producer which actually produced the subject merchandise sold by COFCO to the United States during the POR).

With respect to the applicability of 19 CFR 351.401(f)(2) in this case, COFCO contends that there

does not exist a significant potential for manipulation of price or production between Yu Xing and Fujian Zishan because these companies neither share the same general manager nor have common ownership. Specifically, COFCO argues that its parent company, through Xiamen Jiahua, does not have a significant ownership in Fujian Zishan and neither its parent nor Xiamen Jiahua has a significant level of common control in Fujian Zishan's operations. For example, COFCO cites the Department's verification report for Fujian Zishan as evidence that Xiamen Jiahua's representative on Fujian Zishan's board of directors does not exhibit any control and/or influence over Fujian Zishan's export pricing or production decisions. Moreover, COFCO contends that there is no evidence on this record that supports a finding that the operations of Yu Xing and Fujian Zishan are sufficiently intertwined. Specifically, COFCO contends that the Department's verification findings clearly demonstrate that Yu Xing and Fujian Zishan do not share the same employees, suppliers, managers, board members, or pricing information, and do not have any intercompany transactions. Therefore, for the reasons stated above, COFCO argues that the Department has no basis in this review to collapse Yu Xing and Fujian Zishan (i.e., two of its affiliated producers) and should reverse its preliminary decision on this issue.

COFCO also argues that the Department cannot depart from its calculation methodology established in prior reviews of only using Yu Xing's factors of production to determine COFCO's margin because it has not clearly provided the grounds for departing from prior norms and because such action works to COFCO's detriment. Moreover, COFCO points out that by including Fujian Zishan's factor data in its analysis, the Department has created a margin for COFCO where one would not exist if the Department refrains from using a new calculation methodology which was announced for the first time in the Preliminary Results. In support of its argument, COFCO cites to Shikoku Chemical Corp. v. United States, 16 CIT 382, 288-89, 795 F. Supp. 417, 421-22 (1992) ("Shikoku Chemical"). COFCO argues that the Court of International Trade ("CIT") ruled in Shikoku Chemical that it was an abuse of discretion and unreasonable for the Department to alter its calculation methodology in that review given that the respondent had relied on the Department's methodology in prior reviews so that it could eventually apply for revocation of the antidumping duty order. Therefore, COFCO argues that the Department can only change its calculation methodology with respect to COFCO on a prospective, rather than on a retroactive, basis.

In response to COFCO's claim that the Department did not follow its collapsing principles because it did not indicate whether the rate assigned to COFCO also applied to the collapsed entity, the petitioner contends that implicit in the Department's decision to collapse COFCO with its affiliated producers is the understanding that they will be treated as a single entity. Therefore, the petitioner maintains that treatment as a single entity implies the application of a single antidumping margin. In support of its position, the petitioner cites the Department's collapsing decision memorandum issued in the Preliminary Results in which the Department stated that "... based on the totality of the circumstances, the Department will collapse affiliated producers and treat them as a single entity where the criteria of 19 CFR 351.401(f) are met." To the extent that the Department determines that any clarification of its margin assignment is necessary, the petitioner states that the Department can further specify the bases for application of the calculated collapsed margin in the final results. Moreover, in response to the

hypothetical collapsing situations which COFCO posed to the Department in its case brief, the petitioner contends that the Department should not engage in making decisions on this issue based on hypothetical situations and analysis. Rather, the petitioner maintains that the Department should base its collapsing decision on the facts before it and develop its collapsing practice when new situations present themselves.

In response to COFCO's claim that its three affiliated producers each have production facilities for producing similar or identical products that would require substantial retooling in order to restructure manufacturing priorities, the petitioner points out that with respect to producing the subject merchandise (i.e., preserved mushrooms), each of COFCO's affiliated producers has the necessary facilities. Moreover, the petitioner contends that COFCO overstates the differences between each of its affiliates' production facilities for producing the subject merchandise. For example, the petitioner notes that Fujian Zishan, like Yu Xing, could easily grow fresh mushrooms rather than purchase them without substantial investment or retooling. The petitioner also maintains that the Department should not consider whether COFCO's affiliated producers purchase or produce the intermediate product (i.e., fresh mushrooms) as the determining factor with respect to whether or not each of COFCO's affiliated producers has similar production facilities. If the Department were to adopt such an approach, the petitioner contends the Department would severely limit its flexibility in how it conducts collapsing determinations. Moreover, the petitioner points out that such an approach would be inconsistent with the clear intent of 19 CFR 351.401(f).

In response to COFCO's claim that the Department has no basis to find that there exists a significant potential for manipulation of price or production between Yu Xing and Fujian Zishan, the petitioner notes that the record shows that COFCO has already manipulated production of the subject merchandise among these affiliates. Specifically, the petitioner notes that in the less-than-fair-value ("LTFV") investigation, Fujian Zishan's factors data was used to determine COFCO's margin. As a result of shifting its source of production among affiliates, the petitioner points out that in the first administrative review, Yu Xing's data rather than Fujian Zishan's factor data served as the basis for determining COFCO's margin. Because there is a history of actual manipulation of production between Yu Xing and Fujian Zishan, the petitioner contends that the Department was justified in deciding to collapse COFCO's affiliated producers in the Preliminary Results. In support of its argument, the petitioner cites Slater Steel Corp. v. United States, 279 F. Supp. 2d 1370, 1380 (CIT 2003).

Moreover, the petitioner maintains that the record clearly shows that there exists a significant level of common control over Fujian Zishan and Yu Xing by COFCO's parent, China National. Specifically, the petitioner maintains that China National's significant ownership in Fujian Zishan via Xiamen Jiahua (another company which is also affiliated with COFCO and China National) and in Yu Xing through COFCO demonstrates common control pursuant to section 771(33)(F) of the Act. Although COFCO claims that Xiamen Jiahua's management has infrequent contact with Fujian Zishan's management, the petitioner maintains this claim, if valid, does not undo the relationship and close affiliation which China

National has with Fujian Zishan through Xiamen Jiahua. Therefore, the petitioner maintains that COFCO's argument that no potential for manipulation exists between its affiliated producers is without merit.

In response to COFCO's claim that the Department did not correctly implement its collapsing requirements, the petitioner points out that COFCO fails to identify any specific factor or evidence that conflicts with the Department's collapsing analysis. Therefore, the petitioner contends that the Department has no reason to change its preliminary decision to collapse the COFCO companies.

Finally, in response to COFCO's assertion that the CIT's decision in Shikoku Chemical prevents the Department from altering its calculation methodology in this review with respect to it by collapsing for the first time its affiliated producers, the petitioner maintains that Shikoku Chemical involved a different fact pattern. Specifically, the petitioner notes that Shikoku Chemical ruled that it was unreasonable for the Department to alter its calculation approach in a review in which the respondent had requested revocation in which the fact pattern had not changed from the original LTFV investigation. The petitioner maintains that the situation in this review is different from that in Shikoku Chemical because COFCO has shifted production among its affiliated suppliers from the LTFV investigation to the present and that this fact alone provides a sufficient basis for the Department to alter its calculation methodology with respect to COFCO by collapsing its affiliated producers.

Department's Position:

We agree with the petitioner that collapsing is warranted in this case and have collapsed COFCO and five of its affiliates (i.e., China National, COFCO Zhangzhou, Fujian Zishan, Xiamen Jiahua, and Yu Xing) in accordance with section 771(33) of the Act and the criteria enumerated in 19 CFR 351.401(f) in the final results. We agree with COFCO that the rate assigned to the entity we have collapsed in the final results applies to COFCO as well as the affiliates of COFCO which we collapsed. Although we also agree with the petitioner that the Department's guidelines for collapsing in an NME case have been clearly articulated in our Preliminary Results, for purposes of further clarification, we have discussed in detail the basis for our collapsing decision below.

As discussed in the Preliminary Results, to the extent that section 771(33) of the Act does not conflict with the Department's application of separate rates and enforcement of the non-market economy ("NME") provision, section 773(c) of the Act, the Department will determine that exporters and/or producers are affiliated if the facts of the case support such a finding (see 69 FR at 10413). We find that this condition has not prevented us from examining whether certain exporters and/or producers are affiliated with COFCO in this administrative review. While COFCO has challenged the Department's preliminary collapsing determination with respect to Fujian Zishan, none of the parties has contested our decision made in the Preliminary Results 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, or that 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 based on the fact that there are common individuals in positions of control and/or influence between and among these companies. Therefore, consistent with our verification findings, we continue to find in the final results 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) and (G) of the Act.

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).)

Also, as discussed in the Preliminary Results, to the extent that the Department's collapsing regulation (i.e., 19 CFR 351.401(f)) does not conflict with the Department's application of separate rates and enforcement of the NME provision, 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 also noted in the Preliminary Results 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 69 FR at 10414). See Hontex Enterprises, Inc. v. United States, 248 F. Supp. 2d 1323, 1342 (noting that the application of collapsing in the NME context may differ from the standard factors listed in the regulation).

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

2003) ("Anshan")).

Since the Preliminary Results, we have conducted verification of the data which served as the basis for our collapsing decision. Based on our verification findings, we find that our collapsing decision was incomplete because it did not address the role of two of COFCO's other affiliates, exporters China National (i.e., COFCO's parent company) and Xiamen Jiahua, which are part of the network of common control described above. Therefore, for the reasons mentioned below, we have also included these two companies in our collapsing analysis in the final results.

As noted above, none of the parties in this case contest the fact that COFCO, China National, COFCO Zhangzhou, Fujian Zishan, Xiamen Jiahua, and Yu Xing are affiliated through the common control of COFCO's parent company pursuant to section 771(33)(F) and (G) of the Act. Three of these entities, COFCO Zhangzhou, Fujian, Zishan, and Yu Xing are producers. With respect to whether COFCO Zhangzhou, Fujian Zishan, and Yu Xing have production facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities as required by 19 CFR 351.401(f)(1), it is not our practice to consider the sourcing of inputs used to produce merchandise subject to the antidumping duty order (i.e., fresh mushrooms) for purposes of this analysis, but rather we consider a producer's ability to produce the final product subject to the order (i.e., preserved mushrooms) a more significant factor for determining whether this collapsing criterion is met. It is true that Yu Xing grows on leased land the fresh mushrooms it uses in the preserved mushroom production process whereas both COFCO Zhangzhou and Fujian Zishan purchase their fresh mushrooms. However, this distinction is not relevant in addressing the question of whether these producers are able to produce preserved mushrooms. Moreover, as we have seen in the course of administering this antidumping duty order, canned mushroom producers will base their decision on whether to lease land to grow fresh mushrooms or to purchase the fresh mushrooms on financial considerations. Such decisions do not prevent the potential of manipulating mushroom production between producers.

In this case, all three affiliated producers produce merchandise which would be subject to the antidumping duty order if this merchandise entered the United States because all three producers have the facilities necessary to produce preserved mushrooms. Fujian Zishan and Yu Xing both have the necessary retorting equipment to produce preserved mushrooms in cans and the ability to produce preserved mushrooms in jars. In fact, Fujian Zishan and Yu Xing both produce the same canned mushroom products (see Fujian Zishan verification report at 9-10; and Yu Xing verification report at 8-9). Although COFCO Zhangzhou does not have retorting equipment, it does produce preserved mushrooms at its facility as well (albeit in barrels) (see COFCO Zhangzhou verification report at 7-8). Therefore, for the reasons noted above, we continue to find a sufficient basis to conclude that all three producers at issue have facilities for producing similar or identical products (i.e., preserved mushrooms), such that no retooling at any of the three facilities is required in order to restructure manufacturing priorities.

With respect to whether there is a significant potential for manipulation of price or production among COFCO and its affiliates, we have re-examined (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. Based on our verification findings, we continue to find that there is a significant level of common ownership between and among COFCO, China National, Xiamen Jiahua, COFCO Zhangzhou, Fujian Zishan, and Yu Xing. Specifically, COFCO holds a significant ownership share in Yu Xing and both COFCO and Yu Xing hold significant ownership shares in COFCO Zhangzhou. Moreover, COFCO's parent company, China National, holds a significant ownership share in Xiamen Jiahua which holds a significant ownership share in Fujian Zishan. (See COFCO/China National verification report at 5-7; Yu Xing verification report at 4; Xiamen Jiahua verification report at 4-5; and Fujian Zishan verification report at 5-6.)

We also continue to find that a significant level of common control exists among these companies. Specifically, based on our verification findings, we confirmed that China National appointed COFCO's general manager and that this same individual was appointed by China National to be Xiamen Jiahua's executive director and serves as a board member at both COFCO Zhangzhou and Yu Xing (see COFCO/China National verification report at 8; Xiamen Jiahua verification report at 3; Yu Xing verification report at 3; and COFCO Zhangzhou verification report at 3). Moreover, Xiamen Jiahua's general manager is a vice chairman on Fujian Zishan's board of directors (see Fujian Zishan verification report at 5). Moreover, in order to further examine the level of involvement of Xiamen Jiahua's general manager in Fujian Zishan's operations as a member of the board, at verification we requested Fujian Zishan to supply us with any board meeting minutes. Although its articles of association explicitly state that board meeting minutes should be maintained by the company in the ordinary course of business, company officials at Fujian Zishan stated that no such board meeting minutes were maintained by the company (see Fujian Zishan verification report at 4-5). With the exception of Fujian Zishan, each of the affiliated companies produced such documentation (i.e., board meeting minutes) upon request at verification. Accordingly, it was only Fujian Zishan which did not provide this information to the Department. In light of these missing documents and the fact that the articles of association mandate that Fujian Zishan maintain these documents, we have made the adverse presumption, pursuant to section 776(a) and (b) of the Act, that these missing documents contain indicia of Xiamen Jiahua's involvement in Fujian Zishan's activities. Such a presumption is necessary because it does not appear that Fujian Zishan has acted to the best of its ability in providing the requested necessary information (which its own articles of association mandate should be maintained) to the Department.

We also find that the operations of COFCO, COFCO Zhangzhou, Yu Xing, Fujian Zishan, as well as China National and Xiamen Jiahua are sufficiently intertwined. Specifically, based on our verification findings, China National consolidates COFCO's and Xiamen Jiahua's financial data in its financial statements as well as issues a business plan which provides guidance to its affiliated companies (e.g., COFCO and Xiamen Jiahua) through the use of export targets based on the general category of product (i.e., foodstuffs) listed in the business plan (see China National/COFCO verification report at 8

and 12). Moreover, based on our verification findings,
we find that there are significant sales transactions between and among the above-mentioned affiliates which serve as additional evidence that their operations are intertwined. For example, although COFCO was able to purchase mushrooms from any of its three affiliated producers, it decided to purchase mushroom products from only Yu Xing and COFCO Zhangzhou during the POR. Similarly, it decided to purchase non-mushroom products from Fujian Zishan. Moreover, although COFCO was able to purchase mushroom products from both affiliated and unaffiliated producers for sale to the U.S. market, it decided only to export to the U.S. market mushroom products produced by its affiliate Yu Xing (see China National/COFCO verification report at 17-18; and Fujian Zishan verification report at 11). In addition, even though Fujian Zishan could have exported all of its mushroom products (i.e., subject and non-subject mushroom products) on its own, it chose to export through Xiamen Jiahua and COFCO non-subject mushroom products (e.g., marinated mushrooms) to the U.S. market (see Fujian Zishan verification report at 12). Similarly, Xiamen Jiahua was able to purchase mushroom products for export from both Fujian Zishan and COFCO Zhangzhou, but decided not to sell those products to COFCO for export to the United States. Rather, it chose to export these products on its own to third country markets if they were in-scope merchandise or to the U.S. market if they were out-of-scope merchandise (see Xiamen Jiahua verification report at 10; and Fujian Zishan verification report at 12). In addition, Xiamen Jiahua sold mushroom products (which were not produced by any of the three affiliated producers) to COFCO which, in turn, exported the products to third country markets (see China National/COFCO verification report at 18; and Xiamen Jiahua verification report at 10). Furthermore, since the LTFV investigation, COFCO has shifted its source of supply among its affiliates. Specifically, during the LTFV investigation period, COFCO sourced from Fujian Zishan the preserved mushrooms it exported to the United States. However, COFCO now purchases its preserved mushrooms from its other affiliated producer, Yu Xing (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) and Preliminary Results).

In response to COFCO's allegation that the Department's decision to significantly alter the method by which it determines its antidumping duty margin is not in accordance with the CIT's decision in Shikoku Chemical, we note that the facts are different in this case. Specifically, in this case COFCO has shifted its production among affiliated producers since the LTFV investigation segment of this proceeding. Therefore, unlike the situation in Shikoku Chemical, the facts have changed from the LTFV investigation to this review with respect to COFCO. As previously stated, COFCO purchased subject merchandise from Fujian Zishan for export to the United States during the LTFV investigation. In contrast, COFCO is currently exporting to the United States subject merchandise purchased from Yu Xing in which COFCO obtained a significant ownership share during this POR (i.e., November 2002) (see Yu Xing verification report at 3). Therefore, we find that the facts in this case are dissimilar to those in Shikoku Chemical and, as a result, COFCO's argument is without merit.

Furthermore, we note that our analysis in this case is consistent with the Department's collapsing analysis in Anshan. In Anshan, the CIT upheld the Department's collapsing methodology and agreed

that not collapsing the producers in that case would allow foreign producers with multiple facilities to move production of U.S. sales to the most efficient plants, thereby understating NV. See Anshan at 33. Our analysis in this case is consistent with that determination.

For purposes of determining whether to assign the same rate to all entities which the Department has collapsed (i.e., the collapsed entity), we recognize that in the Preliminary Results, the Department was not explicit in its assignment of the "collapsed rate." For the final results, we note that implicit in the Department's decision to collapse the above-referenced companies is that the resulting rate would apply to all of the companies in the collapsed entity, provided that the entity as a whole is eligible for a separate rate, because to do otherwise would defeat the purpose of collapsing them in the first place. We also note that the rationale for collapsing, to prevent manipulation of price and/or production (see 19 CFR 351.401(f)), applies to both producers and exporters, if the facts indicate that producers of like merchandise are affiliated as a result of their mutual relationship with an exporter. In this case, COFCO and its collapsed affiliates, as a whole, are entitled to a separate rate based on the data in their questionnaire response as verified by the Department (see "Separate Rates" section of Federal Register notice for further details). Therefore, based on the foregoing analysis, we have determined it appropriate to apply the "collapsed" rate to all of the affiliated companies comprising the collapsed entity. This determination is specific to the facts presented in this review and based on several considerations, including the structure of the collapsed entity, the level of control between/among affiliates and the level of participation by each affiliate in the proceeding. Given the unique relationships which arise in NMEs between individual companies and the government, a separate rate will be granted to the collapsed entity only if the facts, taken as a whole, support such a finding. The granting of a separate rate to the entire entity is warranted in this case for the reasons stated above. Accordingly, we have collapsed COFCO and its affiliates, China National, COFCO Zhangzhou, Fujian Zishan, Xiamen Jiahua, and Yu Xing, and we have assigned to all of them the same antidumping rate in the final results.

Comment 2: *Calculating a Weighted-Average Normal Value for Unique Products Which Were Produced by More Than One of COFCO's Affiliated Producers*

In instances where more than one of COFCO's affiliated producers produced the same canned mushroom product, in the Preliminary Results we first weight-averaged the factors of production reported by each producer for those products and applied the appropriate surrogate values to the weighted-average factors in order to derive normal value ("NV"). We then compared U.S. price to NV in COFCO's preliminary results margin program.

If the Department determines that collapsing is warranted in this case with respect to COFCO and its affiliated producers, COFCO argues, the Department should first calculate NV for each product based on the factors of production at each separate facility and then average the NVs by applying a weighting factor based on the total production quantity of each unique product. In support of its argument, COFCO cites Certain Hot-Rolled Carbon Steel Flat Products where the Department used the above-mentioned methodology for purposes of deriving NV based on the data furnished by affiliated

producers in that case.

The petitioner contends that COFCO's request to weight average NVs for each of its facilities instead of the factors of production is an attempt to dilute the Department's collapsing decision, and that its calculation methodology used in the Preliminary Results is in accordance with the spirit of collapsing sales and properly treats the costs reported by collapsed producers collectively. In support of its position, the petitioner cites Antidumping Duties and Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments: Antidumping Duties and Countervailing Duties, 61 FR 7308, 7330 (February 27, 1996).

However, the petitioner agrees with COFCO that the Department's calculation methodology used in the Preliminary Results inadvertently derived a simple average rather than a weighted average of the factors of production reported by COFCO's affiliated producers. Therefore, to correct this calculation error, the petitioner proposes inserting specific production weight-averaging instructions into the SAS program used by the Department to calculate COFCO's margin in the final results.

Department's Position:

We agree with COFCO and have used the NV calculation method employed in Certain Hot-Rolled Carbon Steel Flat Products to determine COFCO's margin in the final results. Although the method we employed in the Preliminary Results is one possible and acceptable method of determining NV in situations where more than one collapsed producer produces the same product, we recognize that employing such a method in this case would not result in any significant numerical difference in the results from the method employed in Certain Hot-Rolled Carbon Steel Flat Products, despite the fact that the sourcing of significant inputs (i.e., fresh mushrooms and cans) differs among producers (see Calculation Memorandum for the Final Results for China Processed Food Import & Export Company, dated September 1, 2004 ("COFCO Calculation Memorandum"), for further details). Therefore, to provide more consistency and transparency when determining NV in situations where collapsing producers is warranted, we have employed the same NV calculation method used in Certain Hot-Rolled Carbon Steel Flat Products for this purpose in the final results. Furthermore, this calculation methodology is consistent with the vast majority of cases wherein the Department has decided to collapse producers/exporters.

Comment 3: *Valuing the Intermediate Input for Producers Which Leased Farm Land to Produce Intermediate Input*

The petitioner argues that for the respondents in these reviews who leased farm land to grow fresh mushrooms (i.e., an intermediate product which is used to produce canned (preserved) mushrooms), the Department should value the fresh mushrooms used in the canning process rather than the inputs used to produce the fresh mushrooms in accordance with the Department's criteria articulated in the Final Determination of Sales at Less Than Fair Value: Certain Frozen Fillets from the Socialist

Republic of Vietnam, 68 FR 37116 (June 23, 2003) and accompanying Issues and Decision Memorandum at Comment 3) ("Frozen Fillets"). Specifically, the petitioner contends that the facts in Frozen Fillets are analogous with the facts in these reviews for the following three reasons. First, the petitioner maintains that certain respondents in this review (i.e., Green Fresh, Primera Harvest, Shenxian Dongxing and COFCO's supplier Yu Xing), are not fully integrated producers because each of these companies leased farm land to grow the fresh mushrooms during the period of these reviews. As a result, the petitioner contends that these respondents are similar to the frozen fillet respondents because they also did not own, or bear the full risk of loss for, their growing operations. Second, the petitioner contends that valuing the fresh mushrooms rather than the inputs used to produce the fresh mushrooms will lead to a more accurate result by capturing the additional costs incurred at prior stages of production. In this regard, the petitioner asserts that the above-mentioned respondents are not fully integrated canned mushroom producers because they lease the farmland to grow the fresh mushrooms, whereas the Indian producers (i.e., Agro Dutch and Flex Foods) whose financial data is being considered for purposes of deriving a surrogate overhead percentage ratio, are integrated producers. Third, the petitioner contends that the Indian surrogate producer financial data from which the Department derives a factory overhead ratio does not include an expense for leasing land or the additional costs (i.e., building sheds, etc.) which are incurred when growing mushrooms on leased land. In support of its position, the petitioner also cites the Department's recent decisions on this issue in Notice of Final Determination of Sales at Less than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Ukraine, 67 FR 55785 (August 30, 2002); and Certain Hot-Rolled Carbon Steel Flat Products.

In response to COFCO's argument (discussed further below) that the Department should use Yu Xing's fresh mushroom growing factors to value the fresh mushroom consumption data reported by its two other affiliated producers (which did not grow fresh mushrooms during the POR), the petitioner maintains that use of this method would reduce the accuracy of the Department's antidumping duty calculation. In response to COFCO's contention that the Department use COFCO's proposed method because the production experiences of the surrogate Indian producers more closely match those of Yu Xing than those of Fujian Zishan and COFCO Zhangzhou, the petitioner contends that the Department has rejected such an argument when parties in prior cases have argued that the surrogate Indian financial statements used must relate to Indian companies whose operations provide an identical, or nearly identical, match to the structure of Chinese producers. In support of its argument, the petitioner cites Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China, 69 FR 20594 (April 16, 2004) ("CTVs").

Alternatively, should the Department decide not to follow the methodology used in Frozen Fillets, the petitioner contends that the Department should at a minimum separately value the land lease costs incurred by the respondents by using a surrogate land lease value in accordance with the Department's practice. In support of its counter-argument, the petitioner cites Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review, 69 FR 40607,

40611 (July 6, 2004) ("Fresh Garlic").

If the Department decides to apply the methodology used in Frozen Fillets in this case, COFCO argues, the Department should value the fresh mushrooms purchased by its affiliated producers, Fujian Zishan and COFCO Zhangzhou, by using the mushroom growing inputs reported by its other affiliated producer Yu Xing. COFCO points out that the production experiences of the surrogate Indian producers more closely match that of Yu Xing than those of Fujian Zishan and COFCO Zhangzhou. Specifically, COFCO argues that, like Yu Xing, the surrogate Indian producers are integrated producers which grow their fresh mushrooms and therefore have similar production processes. Therefore, COFCO maintains that the surrogate percentage ratios which the Department will derive from the data obtained from the Indian surrogate producers' financial reports do not reflect the production experience of non-integrated producers like Fujian Zishan and COFCO Zhangzhou which purchase their fresh mushrooms. Accordingly, if the Department decides to depart from the respondents' actual factor of production experience, COFCO maintains, the Department should use Yu Xing's fresh mushroom growing factors to value the fresh mushroom consumption data reported by Fujian Zishan and COFCO Zhangzhou.

COFCO also contends that the Department should not include in the NV calculation an additional amount for land lease costs because there is no evidence on the record to suggest that the Indian surrogate companies' financial reports do not also include land and shed costs. Specifically, COFCO maintains that the data contained in the Indian surrogate companies' financial reports reflect costs for "lease rent" and/or "rent" expenses which the Department included in the selling, general and administrative ("SG&A") expense ratio calculation in the Preliminary Results. Moreover, COFCO notes that the Department included other expenses associated with leasing such as "repair and maintenance" and "depreciation" in the SG&A and/or factory overhead ratio calculation. Therefore, to avoid double-counting, COFCO argues that the Department should not add to NV a cost that is already captured in the factory overhead and SG&A ratio calculations.

Alternatively, COFCO argues that the Department should not add a value for land lease costs to Yu Xing's NV calculations because the Department's practice is not to tailor its NV calculations based on the production experience of the surrogate producers. The respondent urges the Department to continue this approach in these reviews. However, if the Department decides to include land lease costs in its NV calculation, COFCO contends, the Department must remove any expenses from the Indian surrogate companies' financial reports which the respondents do not incur.

Moreover, in its comments on the land lease value submitted on August 5, 2004, COFCO argues that the Department should use an alternative land lease value from a 1996 policy notification issued by the State of Rajasthan, rather than the land lease value from the 2001 Punjab State Development Report ("Punjab Report"), because the value from the Punjab Report does not appear to be an actual cost for leasing land and because it is unclear what the value itself represents (i.e., 17,500 rupees per hectare versus 17.500 rupees per hectare).

In its August 5, 2004, comments, Gerber and Green Fresh argue that the Department should not separately value land lease costs because the Indian surrogate companies' financial data indicates that they own their own land. Therefore, Gerber and Green Fresh contend that cost of land is already fully accounted for in the Department's surrogate financial ratio calculations.

In its August 16, 2004, rebuttal comments, the petitioner claims that the value contained in the Punjab Report is unquestionably a land lease value which represents 17,500 rupees per hectare.

Department's Position:

We disagree with the petitioner that the facts in this case require that we apply the valuation methodology from Frozen Fillets and value the intermediate product (i.e., fresh mushrooms) rather than the inputs certain respondents used to grow the fresh mushrooms during the POR.

Specifically, with the exception of two of COFCO's affiliated producers, we find that each of the respondents in this review for which we calculated a margin actually grew the fresh mushrooms which they used to produce the subject merchandise (i.e., preserved mushrooms). While the petitioner maintains that these respondents are not integrated producers because they do not own the land which they used to produce the fresh mushrooms, we consider these respondents to be integrated producers because they each incurred the costs to produce the fresh mushrooms on land which they each leased from unaffiliated farmers during the POR. Therefore, each respondent in this review purchased and/or supplied the inputs which were used to grow the fresh mushrooms on the land which they leased, and as a result, bore the full risk of loss for their growing operations. Unlike the situation in Frozen Fillets where the Department placed great importance on the extent to which fish farmer actually bore the costs of operating the cages which they leased to raise the fish, the respondents in these mushroom reviews bear all the costs of growing the mushrooms by supplying all of the material, energy, and labor inputs necessary for this purpose. Furthermore, certain respondents (e.g., Primera Harvest) in these reviews actually constructed the sheds which they used on the land they leased. Other respondents (e.g., Shenxian Dongxing and Yu Xing), however, did not. Rather, the land each company leased already contained sheds (i.e., brick and/or clay) which were permanent rather than temporary (i.e., straw huts) structures. Nonetheless, these additional costs are normally treated as overhead items and not directly valued for purposes of determining a respondent's material costs. We have no reason to try to account for shed costs in the mushroom value when such costs are normally considered overhead items. Therefore, we do not consider valuing the fresh mushrooms rather than the inputs used to produce fresh mushrooms a more accurate method of capturing all of the costs which a respondent would necessarily incur to grow fresh mushrooms if it used its own land rather than leased the land in order to produce the subject merchandise.

Finally, as a general matter, the 2002-2003 financial reports of the two surrogate Indian producers (i.e., Agro Dutch and Flex Foods) which we are using to derive our financial ratios should include any and/or all additional costs associated with producing fresh mushrooms (i.e., land lease costs and/or mushroom

shed usage) even if these Indian producers do not in fact own the land used to grow fresh mushrooms. The depreciation data contained in both Indian producers' financial reports indicates that each owns the land to operate its facilities. However, we are unable to determine based on the data contained in the record whether the land owned also includes the land which both companies used to grow fresh mushrooms. Therefore, absent information to the contrary, we have to consider whether the two Indian surrogate producers may have leased the land they used to grow the fresh mushrooms and, if so, whether such leasing expenses are included in their financial reports. Our review of each producers' financial report indicates that such expenses are included. Specifically, the administrative portion of Agro Dutch's 2002-2003 financial report includes an expense item for lease. Similarly, the administration portion of Flex Foods' 2002-2003 financial report includes an expense item for both rent and lease rent. Although, these line items might include a variety of lease expenses, we find no basis to conclude that all types of lease expenses (i.e., machinery, land, etc.) would not be included in one or both of these line items. This situation differs from the situation in Fresh Garlic, cited by the petitioner, because in that case the Department was using an Indian tea producer's financial report as a surrogate for a garlic producer's selling, general and administrative ("SG&A") expenses and factory overhead costs and that surrogate producer's financial report did not have a separate line item for leasing expenses (see Fresh Garlic, 69 FR at 40611). Therefore, we do not find it appropriate to separately value the cost of land lease in this case because we consider this expense to be included in the financial data of the Indian surrogate producers which we are using to derive surrogate financial ratios.

Comment 4: *Shenxian Dongxing's Reported Mushroom Growing Inputs*

If the Department determines not to apply the Frozen Fillets criteria in this case to value the intermediate product (i.e., fresh mushrooms) used by Shenxian Dongxing, the petitioner contends, the Department must value Shenxian Dongxing's usage of fresh mushrooms rather than the inputs it used to grow the fresh mushrooms because the Department's verification findings indicate that Shenxian Dongxing both purchased and sourced its fresh mushrooms from leased farms during the POR. However, because Shenxian Dongxing did not submit data for the fresh mushrooms which it purchased during the POR or report a per-unit consumption factor for purchased fresh mushrooms, the petitioner argues that the Department must resort to adverse facts available with respect to this respondent by using the highest fresh mushroom consumption factor verified by the Department in the administrative review.

Shenxian Dongxing did not comment on this issue.

Department's Position:

In the Preliminary Results, we stated that based on our examination of its production data, payment documentation, and salary documentation at verification, Shenxian Dongxing did not purchase the mushrooms it used to produce the subject merchandise during the POR. Rather, we found that Shenxian Dongxing only grew fresh mushrooms during the POR and provided the inputs necessary for

growing those fresh mushrooms which it used in its canned mushroom production process (see February 28, 2004, Memorandum from the Team Leader to the File entitled 4th Administrative Review of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China: Calculation Memorandum for the Preliminary Results for Shenxian Dongxing Foods Co., Ltd. ("Shenxian Dongxing")).

We realize that our verification report indicates that Shenxian Dongxing's general manager stated at verification that during the POR, Shenxian Dongxing also purchased mushrooms from four farms which it did not directly lease (see page 8 of the Shenxian Dongxing verification report). This section of the verification report is the basis for the petitioner's claim that this respondent did not report data for the fresh mushrooms which it purchased during the POR. However, Shenxian Dongxing also clarified what it meant by the term "purchase" at verification. In this case, Shenxian Dongxing defined the term "purchase" to mean supplying these other farms with the inputs used to produce the fresh mushrooms and entering into an informal joint-lease agreement with these other farms (see also page 8 of the Shenxian Dongxing verification report). Therefore, we interpret this statement to mean that Shenxian Dongxing supplied the inputs to the four farms in order to grow mushrooms on land which it did not formally lease but for which it paid the landholders an amount for its use.

Furthermore, based on documentation we examined at verification, we are certain that the word "purchase" was mis-translated from Mandarin in the context of how Shenxian Dongxing acquired fresh mushrooms from the four farms for which it did not enter into formal lease agreements. Specifically on this point, Shenxian Dongxing's production records clearly show that it recorded in its accounting system the material, labor, and electricity costs for producing all of the fresh mushrooms which it canned during the POR (see verification exhibits 11A, 11B, 12, 13A through 13C, 20, and 21A of Shenxian Dongxing's verification report). Therefore, we have no reason to conclude that Shenxian Dongxing should have reported a "purchased" fresh mushroom consumption factor rather than the consumption factors for the inputs it supplied to the farms to produce the fresh mushrooms used in its canned mushroom production process during the POR, as suggested by the petitioner.

Comment 5: *Application of Facts Available to Gerber and Green Fresh*

In the Preliminary Results, the Department found that Gerber participated in a scheme which resulted in the circumvention of the antidumping duty order and the evasion of payment of the appropriate level of cash deposits. Specifically, the Department found that Gerber used the invoices of another company with a substantially lower cash deposit rate (i.e., Green Fresh) rather than its own invoices for numerous transactions during this POR. As a result, Gerber did not submit to U.S. Customs and Border Protection ("CBP") the appropriate cash deposits based on the rate assigned to it by the Department for these transactions. Furthermore, the Department also found that Gerber did not act to the best of its ability in its reporting of information in its previous submissions to the Department, relating to the agreement between Gerber and Green Fresh which directly pertained to the transactions under review in this POR. Accordingly, in its preliminary determination the Department assigned Gerber the PRC-

wide rate of 198.63 percent as total adverse facts available ("AFA"). See Preliminary Results, 69 FR at 10414-10417.

As for respondent Green Fresh, the Department found that Green Fresh provided the means (i.e., the invoices) by which Gerber was able to evade the collection of cash deposits for certain transactions during this review. Unlike Gerber, however, whose circumvention of the collection of cash deposits in the prior review period continued into the current review period, the record did not show that Green Fresh actively participated in this scheme in the current review in the same manner as it did in the last review period. Furthermore, Gerber and Green Fresh both claimed that Green Fresh had no affirmative knowledge that its invoices were actually being used by Gerber in the current POR. Thus, the Department concluded in its Preliminary Results that the application of total facts available to Green Fresh would not be appropriate, as nothing on the record called into question Green Fresh's other reported information during this administrative review. Nonetheless, with respect to the Gerber transactions using Green Fresh's invoices, Green Fresh provided no evidence on the record to substantiate its claims that its contractual relationship with Gerber ended in the prior review period (despite its claim that it did not receive full payment (i.e., a commission) from Gerber). Moreover, it did not provide evidence on the record that it had no reason to believe that Gerber was using its invoices (which it purchased in the previous POR) during this POR. Further, Green Fresh agreed that it took absolutely no actions to prevent the usage of its invoices during the POR by Gerber, even though it was aware that Gerber disputed the cessation of the two companies' contractual relationship (see page 7 of the February 12, 2003, Green Fresh verification report from the prior administrative review which was placed on the record of this review on February 13, 2004). Accordingly, the Department held that Green Fresh did not act to the best of its ability in proving to the Department that it did not assist Gerber in the continuation of the scheme to circumvent the antidumping duty order during the POR pursuant to sections 776(a) and 776(b) of the Act. Accordingly, in order to protect the integrity of its administrative proceeding, the Department found that the application of partial AFA pursuant to sections 776(a) and 776(b) of the Act was warranted for Green Fresh with respect to the Gerber-Green Fresh transactions. As facts available, we determined that because certain Gerber transactions identified Green Fresh as the exporter and because those transactions used Green Fresh's invoices, these specific transactions should be attributed to Green Fresh in our calculations.

As a result of a scheme between Green Fresh and Gerber which continued to allow Gerber to evade the antidumping duty order during the period of this review, the petitioner states that in the Preliminary Results the Department correctly applied partial AFA by assigning the PRC-wide rate to certain U.S. sales which Gerber made using Green Fresh invoices and including those sales in Green Fresh's margin calculation.

Gerber and Green Fresh ("the respondents") contend that the petitioner incorrectly characterizes the agreement between them in its case brief as a "collusive scheme" to evade the antidumping duty order. The respondents maintain that they entered into an arm's-length agreement which they genuinely thought would result in Green Fresh being accurately described as the exporter of the merchandise and Gerber

being described as the producer of the merchandise such that Green Fresh's cash deposit rate would apply based on the Department's standard cash deposit instructions. Therefore, the respondents contend that there is no evidence of collusion or an intent to evade the antidumping duty order by either respondent.

Furthermore, the respondents claim that the terms of their agreement clearly show that Green Fresh would be the actual exporter of Gerber's merchandise. The respondents further state that Green Fresh was to perform the role of exporter of Gerber's merchandise by using its PRC customs declaration form along with its packing list and sales invoice. The respondents also claim that their agreement was not an instance of "invoice selling" where perhaps "collusion" could be inferred because for the first 11 shipments of Gerber-produced merchandise covered by their agreement, Green Fresh was the actual exporter by issuing and/or obtaining all of the necessary documentation for those first 11 shipments. Therefore, based on the belief that Green Fresh was legally the exporter for those first 11 shipments, the respondents maintain that they had no indication that Department would take issue with Green Fresh's characterization that it was the exporter because neither the Department's regulations nor its antidumping duty questionnaire defines the term "exporter."

The respondents further contend that the Department acted wrongly by applying partial AFA to Green Fresh and total AFA to Gerber based on its own precedent. Specifically, the respondents claim that the Department faced a similar situation in a prior case in which neither respondent was a party but decided in that case not to apply AFA. In support of its argument, the respondents cite Final Results of Antidumping Duty Administrative Review: Sebacic Acid from the People's Republic of China, 62 FR 10530 (March 7, 1997) ("Sebacic Acid") in which the respondent, SICC, acted as a sales agent for two sales made by the producer (i.e., Sinochem Import and Export Corporation ("Jiangsu")) and reported those sales as its own sales. Although the respondent in Sebacic Acid characterized those two sales as its own in order to assist Jiangsu in avoiding the posting of the higher antidumping duty cash deposit, the respondents contend that the Department applied Jiangsu's cash deposit rate to those two sales at issue rather than penalizing both parties for having structured their sales transactions so as to avoid the higher cash deposit rate. Moreover, the respondents contend that when information on the record clearly establishes the true seller/exporter in the transaction chain for purposes of determining an antidumping duty rate, the Department must rely on that data to establish the assessment rate for those entries and the cash deposit rate for future entries. In support of its argument, the respondents cite Union Camp v. United States, 22 CIT 267, 8 F. Supp. 2d 842 (1998) ("Union Camp") and C.J. Towers & Sons v. United States, 21 CCPA 417, 71 F.2d 438 (1934).

Department's Position:

For the reasons which have been laid out in the Department's preliminary results in the current review, as well as those which were laid out in the final results of the last review, we agree with the petitioners' contention that Green Fresh's participation in an inappropriate scheme with respondent Gerber in the prior POR to circumvent the cash deposit rates continued to effect transactions which occurred during

the current POR. Similarly, for the reasons laid out in the Preliminary Results, the Department finds that the application of partial AFA pursuant to sections 776(a) and 776(b) of the Act is warranted for Green Fresh with respect to the Gerber-Green Fresh transactions. The Department determined it was appropriate to use those transactions in Green Fresh's calculation for two reasons: (1) because those transactions were reported to the U.S. government as Green Fresh's sales upon importation; and (2) even if Green Fresh's claims were truthful about not affirmatively knowing that its invoices continued to be used by Gerber in this POR, its silent allowance of Gerber to use its invoices in circumventing the antidumping duty law, and failure to demand return of all unused invoices, was no different in its effect than its active assistance to further the contractual scheme in the previous POR. Thus, as partial AFA, the Department applied the PRC-wide rate of 198.63 percent to those sales made by Gerber using Green Fresh's invoices.

Specifically, consistent with our preliminary determination, we find that the Gerber transactions during this POR which utilized Green Fresh invoices and which identified Green Fresh as the exporter should be attributed to Green Fresh in our calculations. Therefore, as partial AFA, the Department has continued to apply the PRC-wide rate of 198.63 percent to those sales made by Gerber using Green Fresh's invoices.

With regard to the cases cited by the respondents, we find that our final determination is consistent with the precedent laid out in Sebacic Acid and Union Camp.[1] In the instant case, the activities engaged in by Gerber and Green Fresh were essentially the same as those that the companies in Sebacic Acid (i.e., SICC and Jiangsu) engaged in. Specifically, one company with a lower cash deposit rate (i.e., SICC and Green Fresh) assisted another company with a higher rate (i.e., Jiangsu and Gerber) to circumvent the payment of the appropriate amount of cash deposits. Furthermore, subsequent to the Department's preliminary determination in the instant matter, the Department issued a determination in another case that contained a similar set of facts. In Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Preliminary Results of Administrative Reviews, Preliminary Partial Rescission of Antidumping Duty Administrative Reviews, and Determination Not To Revoke in Part, 69 FR 11371 (March 10, 1004) ("Hand Tools from the PRC"), the Department found that several of the respondents "participated in an invoice scheme which resulted in circumvention of the antidumping duty order" that "undermined our ability to impose accurate antidumping duties." Additionally, these respondents "continually misrepresented" the true nature of the invoice scheme. Accordingly, the Department found that the use of AFA was warranted. Id. at 11375-11376.

In response to Green Fresh's contention that, unlike the Department's ruling for Green Fresh, the Department did not "penalize" SICC and Jiangsu for having structured their sales transactions so as to avoid the higher cash deposit rate, the Department notes that our decision to apply partial AFA in Green Fresh's case is not punitive. Rather, our decision to apply partial AFA in this case is merely a

[1] In Union Camp, the Department's decision in Sebacic Acid was upheld by the CIT.

measure designed to "protect the integrity of our administrative proceedings" against the use of such "invoice schemes". See Preliminary Results, 69 FR at 10416. The Department notes that the relief sought by the respondents, if granted, would have the effect of nullifying the effect of an antidumping duty review or investigation and circumventing the payment of cash deposits. Accordingly, the Department is exercising the inherent power vested in it to prevent this sort of behavior. 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"); and Hontex Enterprises, Inc., et. al. v. United States, 248 F. Supp. 1323, 1343 (CIT 2003) (finding that the Department's decision to increase the scope of its analysis to include NME exporters was reasonable in light of its "responsibility to prevent circumvention of the antidumping law"). Consequently, as partial AFA, we have applied the PRC-wide rate of 198.63 percent to those sales made by Gerber using Green Fresh's invoices.

Comment 6: *Inclusion of Green Fresh's U.S. Affiliate's Sales in the Margin Analysis and the Department's Affiliation Decision with Respect to Two of Green Fresh's U.S. Customers*

In the Preliminary Results, we did not include in our margin analysis for Green Fresh any of the reported sales made by its U.S. affiliate Green Mega to unaffiliated customers in the United States because the invoice dates for these sales were outside the POR (i.e., beginning in February 2003). Also, in the Preliminary Results, we did not consider Green Fresh and two of its U.S. customers to be affiliated during the POR based on their respective relationship with Green Mega, because the invoice dates of Green Fresh's sales to these customers preceded the period in which Green Mega claimed it began its sales operations in the United States (i.e., February 2003). Therefore, we used in our margin analysis the sales Green Fresh made to these two U.S. customers and did not question the fact that they had not provided downstream sales information as originally requested by the Department.

The petitioner claims that the Department should reverse its preliminary decision that Green Fresh and two of its U.S. customers were not affiliated during the period of this review within the meaning of section 771(33) of the Act. Specifically, the petitioner points out that although Green Fresh set up its U.S. affiliate, Green Mega, in April 2002 (i.e., near the beginning of the POR), Green Mega actually started its business operations (i.e., sending purchase orders to Green Fresh starting in November 2002) before it was officially registered with the state of California in January 2003. In addition, the petitioner states that Green Mega shares a common business address with one of Green Fresh's two U.S. customers at issue as well as with the customer to whom Green Mega reportedly resold the subject merchandise after the POR. (Moreover, the petitioner points out that the other Green Fresh customer at issue is located in the same building as Green Mega.) Finally, the petitioner contends that information contained in this record clearly demonstrates that Green Mega and Green Fresh's two U.S. customers are under the common control of the same individual and that all of these companies resold the subject merchandise purchased from Green Fresh during the POR. Based on this reasoning, the

petitioner urges the Department to reconsider its preliminary decision that Green Fresh and two of its U.S. customers were not affiliated during the period of this review. If the Department reverses its preliminary decision on this matter, the petitioner maintains, the Department must resort to total AFA in determining Green Fresh's margin in the final results because the Department requested and Green Fresh did not provide the resale data from either of its U.S. customers at issue.

The petitioner also claims that by changing its date of sale methodology during the course of this review, Green Fresh has withheld information from the Department with respect to a "large block of sales" which it sold to its affiliate Green Mega during this POR. To redress this matter, the petitioner contends that the Department should use the purchase order date and not the date of the sales invoice to determine whether Green Fresh properly reported all of its U.S. sales of subject merchandise (i.e., sales made to the first unaffiliated U.S. customers) during the POR. For those sales (with purchase order dates within the POR) which Green Fresh sold to its U.S. affiliate, Green Mega, and for which the Department instructed Green Mega to report the sale to its first unaffiliated U.S. customer, the petitioner alleges that Green Fresh is using different dates of sale (i.e., the purchase order date to report Green Fresh's sales to Green Mega and the invoice date to report Green Mega's sales to unaffiliated U.S. customers) in order to prevent a "large block" of sales from being considered in this review. Therefore, the petitioner argues that the Department should also consider "the block of sales" at issue (i.e., Green Mega's sales to unaffiliated U.S. customers which result from Green Fresh's sales to Green Mega with purchase order dates within the POR) subject to this review regardless of when Green Mega issued the sales invoice to its first unaffiliated U.S. customer. The petitioner argues that to do otherwise, the Department risks being prevented from reviewing this "block of sales" in this review or in a subsequent review.

Green Fresh argues that the Department correctly excluded the sales sold by Green Fresh's U.S. affiliate, Green Mega, because those sales transactions were sold by Green Mega during February 2003 (which is outside the period of this review). Moreover, Green Fresh contends that the petitioner unfairly alleges that Green Fresh had some motivation for seeking not to report the "large block of sales" discussed above and that Green Fresh has manipulated this review by providing the Department with conflicting information on the date of sale matter. Specifically, Green Fresh maintains that the information which allows the Department to calculate Green Fresh's margin using either the date of invoice or the date of the purchase order as the date of sale is on the record. Finally, if the Department decides to use the date of the purchase order as the basis for determining which sales to include in Green Fresh's margin calculation, then Green Fresh concedes that the Department should include the sales made by Green Mega to unaffiliated U.S. customers with a purchase order date in the POR (i.e., January 2003) in Green Fresh's margin analysis.

Department's Position:

We disagree with the petitioner and have continued to rely on the date of the sales invoice to Green Fresh's first unaffiliated U.S. customer as the basis for determining which sales Green Fresh and its

U.S. affiliate, Green Mega, were required to report. Also, on the basis of the facts of this case, we do not believe Green Fresh was affiliated with two of its U.S. customers during the period of this review.

The Department's normal methodology is to use date of sale based on the date of invoice unless it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale (e.g., price, quantity) (see 19 CFR 351.401(i).) In the U.S. sales listing included in its June 6, 2003, questionnaire response, Green Fresh used the date of the purchase order as the basis for determining the date of sale and for purposes of reporting its sales of subject merchandise during the POR. Green Fresh included a "large block" of sales in its June 6, 2003, U.S. sales listing which it made to its U.S. affiliate Green Mega during the POR based on the date of the purchase order from Green Mega's U.S. customer. However, Green Fresh did not report for these Green Mega sales the downstream sales data based on Green Mega's sales to its first unaffiliated U.S. customer. Accordingly, in our supplemental questionnaire, we instructed Green Fresh to report the downstream sales data for the sales which Green Fresh sold through Green Mega based on whether the date of Green Mega's sales invoice was within the POR. However, Green Fresh continued to use the date of the purchase order as the basis for reporting its sales and only included the portion of its sales to Green Mega for which both the purchase order and the date of Green Fresh's invoice to Green Mega were within the POR. Finally, recognizing that it should be using the invoice date and not the date of the purchase order as the basis for its reported information to the Department, Green Fresh removed from its U.S. sales listing submitted in its September 15, 2003, supplemental questionnaire response all but seven of the sales which it sold through Green Mega because the Green Fresh invoice dates for those previously reported sales to Green Mega were outside the POR (even though the purchase order date was within the POR). However, Green Fresh's responses were still not complete because it did not provide the downstream sales data for those seven Green Mega sales. Therefore, in our second supplemental questionnaire, we instructed Green Fresh to provide the downstream sales data for those seven Green Mega sales included in its September 15, 2003, supplemental response, which Green Fresh finally provided in its January 14, 2004, second supplemental response.

In the Preliminary Results, we used the date of the sales invoice as the basis for determining which sales to include in Green Fresh's margin calculation. In the final results, we are continuing to use the date of the sales invoice in accordance with our normal date of sale methodology. However, although we considered the date of the sales invoice to the first unaffiliated U.S. customer as the proper basis for determining which sales to include in Green Fresh's margin calculation in the Preliminary Results, we inadvertently did not include data reported for eight sales invoices to a particular customer which Green Fresh included in its June 6, 2003, U.S. sales listing, but did not include in its September 15, 2003, U.S. sales listing as a result of its mistaken continued use of the date of the purchase order as the basis for reporting its U.S. sales during the POR. Therefore, for the final results, we have also included these sales in our margin analysis because the invoice date to the first unaffiliated U.S. customer is within the POR.

We also continue to find that Green Fresh was not yet affiliated with one of the two customers

mentioned above during the POR. Specifically, although data placed on the record of this review shows that the owner of this customer/company also handles the daily business affairs of Green Fresh's affiliate, Green Mega, and that this relationship indicates that Green Fresh may currently be affiliated with this U.S. customer through its relationship with Green Mega, the sales made by Green Fresh to this customer, based on the date of invoice, preceded the period in which Green Mega became operational (i.e., before Green Mega started invoicing its own sales as of February 2003). We consider the date of the sales invoice the proper basis for determining which entity's downstream sales Green Fresh was required to report in this review absent proof of its ability to control or affiliation before the date of sale. No such proof exists in this case. Therefore, we have no basis to resort to facts available pursuant to section 776(a) of the Act, with respect to the sales Green Fresh sold to this customer because Green Fresh reported the necessary data to calculate a margin for these sales.

Moreover, although there is evidence to indicate that Green Fresh may also be currently affiliated with the other U.S. customer at issue based on that customer's relationship with Green Mega and the other U.S. customer discussed above, the sales made by Green Fresh to this customer, based on the date of invoice, also preceded the period in which Green Mega became operational (i.e., before Green Mega started invoicing its own sales, as of February 2003). Therefore, we also have no basis to resort to facts available with respect to the sales Green Fresh sold to this customer as well, because all of Green Fresh's sales to this customer during the POR (based on the sales invoice date) occurred before Green Mega became operational (i.e., February 2003) and there is no evidence on the record to suggest that actual affiliation existed before this time.

In response to the petitioner's contention that Green Mega was operational before February 2003, we continue to consider the sales invoice date (i.e., the date on Green Mega's sales invoice) to be the determining factor for when Green Mega actually started doing business. This is important for purposes of our affiliation analysis. Although Green Mega's 2003 Federal Tax Return indicates that the company was incorporated in April 2002, the statement of information (domestic stock corporation) filed with the State of California indicates that Green Mega registered its business operations on January 31, 2003. Although data contained in Green Fresh's September 15, 2003, U.S. sales listing indicates that some of the purchase order dates for the sales which Green Fresh made through Green Mega were in November 2002 (i.e., during the POR), we cannot consider the date of the purchase order alone as the appropriate basis to determine which sales and from which entity this respondent was required to report during the period of this review. As the Department recently explained in Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, 69 FR 33626 (June 16, 2004) and accompanying Issues and Decision Memorandum at Comment 19, the relationships between two parties during the POR, both before and after the date of sale, is important to a determination that those companies were affiliated during the POR, as the petitioner argues. However, the facts of this case indicate Green Mega was not yet fully operational when negotiations on Green Fresh's sales commenced and no further proof on the record indicates that Green Fresh had the ability to control the U.S. customer's pricing decisions at that time, pursuant to section 771(33)(G) of the Act. For this reason, we have determined that: (1) the date of sale should be

based on the date of the sales invoice in accordance with our normal date of sale methodology; and (2) although an affiliation may have existed between Green Fresh and two of its U.S. customers following Green Mega's completed establishment, such a relationship appears not to have been fully developed before that time. Based on the facts on this record, we have no reason to depart from our normal date of sale methodology in this review with respect to Green Fresh.

With respect to the seven Green Mega sales for which Green Fresh did include movement but not selling expense data in its January 12, 2004, supplemental questionnaire response, we continue to find that these sales are outside the POR based on the sales invoice date (i.e., the date on Green Mega's sales invoice to its U.S. customer). Therefore, although Green Fresh did not provide all of the requested expense data for these constructed export price sales transactions, the fact that we are not using them in our analysis makes this point inconsequential. However, for these sales as well as the other sales which Green Fresh originally reported were sold through Green Mega in its June 6, 2003, U.S. sales listing, we will analyze these sales in the context of the next administrative review, for which one has been requested for Green Fresh, and instruct Green Fresh to report the downstream sales data from Green Mega to its unaffiliated U.S. customer based on the date of invoice. If we find that Green Fresh, through Green Mega or otherwise, is also affiliated with the above-mentioned two U.S. customers in the subsequent POR, then we will instruct Green Fresh to report the downstream sales data for its sales to these U.S. customers in the next administrative review.

Comment 7: *Use of Publicly Available Information Contained in the Petitioner's June 14, 2004, Submission*

The Preliminary Results were published on March 5, 2004, and all parties had twenty days after that date, in accordance with 19 CFR 351.301(c)(3)(ii), to submit additional publicly available information ("PAI") for consideration in the final results. On March 10, 2004, COFCO requested an extension of time until April 30, 2004, in which to file PAI, which the Department granted. On April 15, 2004, COFCO again requested an extension of time in which to file PAI with the Department, this time until May 31, 2004. Because the Department decided to fully extend the final results in both reviews, the Department granted COFCO's extension request and provided the same extension to all parties in both reviews. Because May 31, 2004, was a federal holiday, COFCO and Guangxi Yulin submitted additional PAI (i.e., Premier's 2002-2003 financial report) for consideration in the final results of the administrative review on June 1, 2004. Although the petitioner did not submit PAI on June 1, 2004, the petitioner did submit rebuttal comments on June 14, 2004, which included additional PAI (i.e., Flex Foods' 2002-2003 financial report) for consideration in the final results of both reviews.

COFCO, Guangxi Yulin, and Primera Harvest ("the respondents") maintain that the Flex Foods' 2002-2003 financial report contained in the petitioner's June 14, 2004, submission was untimely filed and is not permissible under 19 CFR 351.301(c) because the PAI submitted by the petitioner does not rebut, clarify, or correct the factual information (i.e., data contained in Premier's 2002-2003 financial report) submitted by COFCO and Guangxi Yulin. The respondents further argue that the PAI included in the

petitioner's June 14, 2004, submission is merely additional PAI, not rebuttal PAI, which should be considered untimely filed. Moreover, the respondents argue that the additional PAI is not rebuttal PAI because it did not "disprove the Premier financial data, or show that the Premier data are in and of themselves false."

The respondents maintain further that in a prior case in which the same situation as described above was present, the same petitioner submitted new factual information in its rebuttal comments and the Department ultimately instructed the petitioner to redact the new factual information from its rebuttal comments (see CTVs and accompanying Issues and Decision Memorandum at Comment 24).

In addition, the respondents argue that the Department should not allow interested parties to submit new factual information in rebuttal comments because such a practice disallows other interested parties from directly rebutting it. The respondents also maintain that by permitting certain interested parties to submit PAI in their rebuttal comments, the Department allows them to freely manipulate the administrative process. Therefore, for the reasons stated above, the respondents argue that the Department should not consider data contained in Flex Foods' 2002-2003 financial report in the final results of these reviews.

The petitioner argues that the data contained in its PAI rebuttal submission (i.e., Flex Foods' 2002-2003 financial report) does rebut and clarify factual information which was already on the record of these reviews. For certain inputs (i.e., spawn and chicken manure), the petitioner notes that the Department derived an average price by using 2002-2003 data from one Indian producer's financial report (i.e., that of Agro Dutch). The petitioner also points out that Premier's 2002-2003 financial report submitted by COFCO and Guangxi Yulin on June 1, 2004, contains values for some of those same above-mentioned inputs (e.g., fresh mushrooms, spawn, paddy rice straw, chicken manure) and data for deriving surrogate financial percentages (i.e., factory overhead, SG&A, and profit) for consideration in these reviews. Therefore, the petitioner contends that the Flex Foods' 2002-2003 financial report contained in its June 14, 2004, submission rebutted the spawn and chicken manure price data provided by COFCO and Guangxi Yulin.

Moreover, with respect to the surrogate financial percentages at issue, the petitioner alleges that COFCO and Guangxi Yulin stated in its June 1, 2004, submission that because Premier was primarily involved in producing non-mushroom products during 2002-2003, the Department should continue not to use Premier's financial data to derive surrogate percentages in the final results. Therefore, by including Flex Foods' data (which also included information for deriving surrogate financial percentages) in its rebuttal submission, the petitioner argues that such data does not have to disprove the validity of data already submitted by another interested party in order to be considered rebuttal PAI in accordance with 19 CFR 351.301(c).

The petitioner also maintains that its June 14, 2004, submission was timely filed because the Department's regulations allow for parties to submit rebuttal PAI and comments within ten days after

new factual information is placed on the record for consideration (unless the Department specifies otherwise). Specifically, in this instance, the petitioner points out that COFCO and Guangxi Yulin submitted new factual information on June 1, 2004. Because the Department was officially closed on Friday, June 11, 2004 (which is 10 days after June 1, 2004), the petitioner contends that it had no other recourse but to file its rebuttal comments on June 14, 2004 (i.e., the next business day on which the Department was open).

With respect to the respondents' contention that the facts in this case are analogous to those in CTVs, the petitioner maintains that in the CTVs case the Department ruled against the petitioner because it filed new factual information in the context of alleging clerical errors and not in the context of rebutting, clarifying, or correcting factual information submitted by another interested party.

Department's Position:

The Department has determined that the publicly available data, the Flex Foods 2002-2003 financial report, submitted by the petitioners in its June 14, 2004, PAI rebuttal comments should remain on the record for consideration in the final results.

In this case, the respondents requested, and were granted, over two months of extensions before finally providing the Department with the updated (2002-2003) Premier financial report. This report contains information regarding the valuation of several inputs (i.e., fresh mushrooms, spawn, paddy rice straw, chicken manure) as well as data regarding the value of land lease (see Comment 9 below) and the derivation of surrogate financial percentages. There are three surrogate producer companies--Agro Dutch, Premier, and Flex Foods–whose financial reports were used for surrogate valuation purposes in the Preliminary Results.[2] The Department already had the 2002-2003 financial report for Agro Dutch on the record prior to the preliminary results, and the respondents submitted Premier's 2002-2003 financial report on June 1; therefore, the only surrogate producer company for which the Department did not have an updated (2002-2003) financial report until the petitioner's June 14 submission was Flex Foods. Thus, the petitioner's submission of Flex Food's 2002-2003 financial report was neither unexpected, nor unhelpful to the Department for purposes of using the most contemporaneous information on the record.

The data contained in the 2002-2003 Flex Foods financial report contains information regarding the valuation of each of the items mentioned above with respect to the Premier financial report. Moreover, as we have noted, the 2002-2003 Flex Foods financial report is more contemporaneous with the POR than is the 2001-2002 Flex Foods financial report which the Department used for purposes of the preliminary results (i.e., the 2002-2003 financial report overlaps with the POR by ten months, whereas

[2]Specifically, the Department used the 2002-2003 financial report of Agro Dutch and the 2001-2002 financial reports of Premier and Flex Foods.

the 2001-2002 financial report overlaps with the POR only by two months). In addition, we find that the Flex Foods financial report at issue provides data which is of equal quality to the data contained in the other two Indian producers' financial reports which we are using for surrogate valuation purposes.

Section 19 CFR 351.302(b) provides that the Department may, for good cause, extend any time limit established by the regulations. In the facts of this case, there is a genuine issue as to whether the information provided by the petitioner was "rebuttal" information. In light of the fact that two of the three surrogate companies' updated financial reports were on the record, owing in no small part to the Department's granting of two months of extensions to the respondents, it is neither unreasonable nor unexpected that the Department would have inquired into the existence of the 2002-2003 financial report of the remaining surrogate company on its own, pursuant to 19 CFR 351.301(c)(2), had petitioners not placed the information on the record so soon after Premier's financial report was placed on the record.

The Department may request information from the parties at any time during the proceeding which it believes necessary and relevant to the proceeding, and may extend any time limits for parties to submit information. Even if the Flex Foods financial report can be considered untimely factual new information, the Department has determined it appropriate to extend the time limits established by the regulations to allow this information on the record. See Silicon Metal from the People's Republic of China: Notice of Rescission of New Shipper Review and Administrative Review for China Shanxi Province Lin Fen Prefecture Foreign Trade Import and Export Corp., 68 Fed. Reg. 11057, 11058 (March 7, 2002)(accepting untimely request for withdrawal of an administrative review because the Department would have rescinded anyway based on no shipments to the United States).

Accepting the respondents' arguments on this issue would produce the undesirable result of the Department using Flex Foods' less contemporaneous data despite the fact that the Department is aware that more contemporaneous data for the same company is available. Furthermore, and most importantly, we note that the parties had ample opportunity since the petitioner's filing of this data on June 14, 2004, to fully comment on the merits of the Flex Foods data in their briefs and rebuttal briefs to the Department, which they did. The Department has accordingly addressed the merits of those arguments in the various comments of these final results. Thus, there is no lack of notice on the part of any interested party in this case, and no party may claim that it has been harmed in that its arguments on this issue have not been considered by the Department. For all of these reasons, the Department has accepted the petitioner's submission of the 2002-2003 Flex Foods final report on the record.

With respect to the respondents' reference to the CTVs case, the facts of that case related to rebuttal information filed with the Department in the context of a ministerial error allegation. Parties were unable to comment on the merits of that information, as the record of the proceeding had already closed, with the exception of addressing actual ministerial errors. The facts of that case are entirely different from the ones at issue in this case, and therefore, the decision in the CTVs case does not apply.

Comment 8: *Use of Flex Foods' Financial Data to Derive Surrogate Financial Percentages*

In the preliminary results, the Department derived the surrogate ratios for factory overhead and SG&A expenses using Agro Dutch's 2002-2003 financial report and Flex Foods' 2001-2002 financial report. However, to derive the surrogate ratio for profit, the Department used only Flex Foods' 2001-2002 financial report because Agro Dutch did not realize a profit during the period 2002-2003. Since the preliminary results, the petitioner submitted Flex Foods' 2002-2003 financial report for consideration in the final results of these reviews.

Primera Harvest argues that the Department should not use Flex Foods' 2002-2003 financial data to derive surrogate value percentages because it claims that this company's sales of subject merchandise (i.e., processed mushrooms) accounted for only 26.40 percent of its total sales value and its production of subject merchandise accounted for less than 50 percent of its total production by value during 2002-2003. Primera Harvest also maintains that in these reviews and in a prior review the Department has not considered other companies' financial data (i.e., Premier and Himalya) for similar reasons. For example, with respect to Premier, Primera Harvest contends that the Department in the Preliminary Results stated that it was not using this company's financial data in these reviews to derive surrogate percentages because Premier produced an insignificant amount of the subject merchandise in terms of its total production (i.e., explosive materials) during the period 2001-2002 (see 69 FR at 10421). Similarly, Primera Harvest contends that the Department has stated in a prior administrative review that it considered Himalya's financial data inappropriate to use for deriving surrogate percentages because Himalya has several branches that are not dedicated to the production of either subject or similar merchandise (e.g., Infotech, Chemical, etc.) and has several divisions that are located in the United States which do not appear to be selling preserved mushrooms (see Certain Preserved Mushrooms from the People's Republic of China: Final Results and Partial Rescission of New Shipper Review and Final Results and Partial Rescission of Third Antidumping Duty Administrative Review, 68 FR 41304 (July 11, 2003) and accompanying Issues and Decision Memorandum at Comment 4).

Primera Harvest also contends that even though Flex Food's financial data indicates that it was profitable during the period 2002-2003, additional data contained in this company's financial report notes that Flex Foods did not realize a profit on its sales of subject merchandise. Specifically, Primera Harvest argues that Flex Food's financial data indicates that its processed mushroom sales price was less than the inventory value and cost of production of such merchandise. Therefore, for the reasons stated above, Primera Harvest argues that the Department should use only Agro Dutch's 2002-2003 financial data to derive surrogate percentages for factory overhead and SG&A in the final results of these reviews. Because Agro Dutch's financial data indicates that it was not profitable during the period 2002-2003, Primera Harvest proposes that the Department use a profit ratio based on data contained in the 2001-2002 financial reports of both Agro Dutch and Flex Foods as an alternative.

COFCO also argues that Department should not use Flex Foods' 2002-2003 financial report to derive surrogate financial percentages because Flex Foods does not primarily produce subject merchandise

based on the sales data contained in its financial report. Therefore, COFCO maintains that, to the degree the Department excludes the financial data of other Indian producers for this reason, the Department should also exclude Flex Foods' financial data. Conversely, COFCO argues that if the Department includes Flex Foods' financial data then it should also include Himalya's and Premier's financial data because both of these companies, like Flex Foods, also do not primarily produce subject merchandise.

Furthermore, COFCO argues that even though the Indian producer Himalya, unlike the respondents, has extensive overseas operations which sell non-subject merchandise, the Department should also use Himalya's 2002-2003 financial report to derive surrogate financial percentages. In support of its argument, COFCO mentions the Department's use of Indian surrogate companies without overseas operations to calculate financial ratios for PRC respondents with overseas operations in numerous administrative reviews of brake rotors from the PRC. Moreover, COFCO contends that any overseas expenses would be offset by higher prices and that the Department should not assume that Himalya has additional costs because of its overseas operations or that such expenses would not be offset with higher sales prices.

Moreover, COFCO argues that the Department should not use some portions of a surrogate company's financial experience (i.e., Agro Dutch's overhead and SG&A ratios) and, at the same time, ignore other portions (i.e., Agro Dutch's negative profit ratio) because the ratios are integrated and interdependent. Specifically, COFCO contends that if a company has higher overhead and SG&A costs, it will have a lower profit margin. By selecting only certain aspects of a surrogate company's financial experience, COFCO argues that the Department is adopting a practice that leads to surrogate financial ratios that are both distortive and not representative of the surrogate industry experience. Therefore, in order to avoid using an inconsistent calculation methodology that appears to serve no purpose but to increase NVs, COFCO contends that the Department should use all of Agro Dutch's surrogate ratios or none of them.

The petitioner contends that the Department should continue to use the financial data of Agro Dutch and Flex Foods as it did in the Preliminary Results, adjusted to reflect the data in Flex Foods' 2002-2003 financial report, to derive surrogate percentages because these Indian producers, unlike Himalya and Premier, have operations that are limited to the production of preserved mushrooms and similar products. In addition, the petitioner urges the Department to follow its general practice of basing its profit calculation in an NME case in the same manner it would in a market economy case. Specifically, the petitioner states that the Department should consider using Flex Foods' profit data based on its experience, not only on the subject merchandise, but also on the general category of products. Moreover, to the extent that the Department seriously considers Primera Harvest's argument that Flex Foods realized a negative profit on its sales of the subject merchandise, the petitioner highlights errors in Primera's Harvest's profit calculation and assumptions on how to interpret Flex Foods' data.

Department's Position:

We disagree with the respondents and have used the 2002-2003 financial reports of Agro Dutch and Flex Foods in the final results to derive surrogate percentages for factory overhead and SG&A expenses. We have used only Flex Foods 2002-2003 financial data to derive a surrogate percentage for profit.

When selecting surrogate producer financial reports for purposes of deriving surrogate percentages, the Department's preference is to use, where possible, the financial data of surrogate producers of identical merchandise, provided that the surrogate value data is not distorted or otherwise unreliable (see Persulfates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 69 FR 47887, 47890 (August 6, 2004)). Of the four Indian companies for which the parties in these reviews have submitted financial data for consideration, all four Indian companies (i.e., Agro Dutch, Flex Foods, Himalya, and Premier) produced subject merchandise during the POR. Moreover, all four Indian companies' financial reports are equally contemporaneous with the POR. Although COFCO claims that the Department has used the reverse logic in numerous administrative reviews of brake rotors from the PRC by using Indian surrogate companies without overseas operations to calculate financial ratios for PRC respondents with overseas operations, we note that in the brake rotors case, we normally do not have available for consideration, and the PRC respondents do not submit, financial reports for surrogate Indian producers which have overseas operations. Moreover, this issue has never been raised by any interested party in the brake rotors case.

However, in situations where the Department is able to choose among surrogate producer financial reports, the surrogate producers whose operations are more similar to those of the PRC respondents, the Department has expressed a preference for doing so (see Nation Ford Chem. Co. v. United States, 985 F.Supp. 133, 137 (CIT 1997); Nation Ford Chem Co. v. United States, 166 F.3d 1373 (Fed. Cir.1999); and 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 Issues and Decision Memorandum at Comment 4) ("PRC Mushrooms 3rd AR").

In these reviews, the mushroom respondents have operations which are limited to the production of mushrooms and other similar agricultural products. Moreover, none of the PRC mushroom respondents have operations overseas which sell non-subject merchandise and which would necessitate incurring additional costs unassociated with the sale of preserved mushrooms. Based on data contained in the financial reports of the four Indian producers mentioned above, only two of those Indian producers (i.e., Agro Dutch and Flex Foods) have operations during the POR that are similar to those of the PRC respondents (i.e., their operations are limited to the production of preserved mushrooms and similar products, and they do not have overseas operations). Specifically, the operations of Agro Dutch and Flex Foods, unlike Premier, are limited to the production of mushrooms and other similar agricultural products (see Certain Preserved Mushrooms from the People's Republic

of China: Preliminary Results and Partial Rescission of Fourth New Shipper Review and Preliminary Results of Third Antidumping Duty Administrative Review, 68 FR 10694, 10702 (March 6, 2003). Contrary to Primera Harvest's claim that Flex Foods is not a significant producer of the subject merchandise based on sale value data contained in Flex Foods' 2002-2003 financial report, we do not consider the sales value the most important factor when determining whether a company is a significant producer of the subject merchandise. Rather, we find that the production quantity should be the determining factor in such an analysis. Therefore, based on the production data contained in Flex Foods' 2002-2003 financial report, Flex Foods was clearly a significant producer of the subject merchandise during the POR (i.e., production of preserved mushrooms accounted for over 80 percent of the company's total production during the POR).

Moreover, Agro Dutch and Flex Foods, unlike Himalya, do not appear to have operations overseas which sell non-subject merchandise and which would necessitate incurring additional costs unassociated with the sale of preserved mushrooms. Specifically, we have examined data in a prior review which clearly established that Himalya has several branches that are not dedicated to the production of either identical or similar merchandise (e.g., Infotech, Chemical, etc.). Furthermore, we also found that Himalya has several divisions that are located in the United States which do not appear to be selling preserved mushrooms (see PRC Mushrooms 3rd AR). Therefore, based on this information, we determined that Himalya's financial data was not as representative of the PRC respondents' experience as was the financial data of Agro Dutch and Flex Foods. We have no factual evidence in these reviews that would cause us to change this determination.

For purposes of deriving a profit ratio, only Flex Foods realized a profit based on data contained in its 2002-2003 financial report. Therefore, consistent with the Department's practice, we have not used the 2002-2003 financial data of Agro Dutch for purposes of deriving the surrogate profit ratio (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 Issues and Decision Memorandum at Comment 1)). Although COFCO argues that the Department should use all data from the selected surrogate producers' financial reports even if the surrogate producer did not realize a profit, such treatment would be contrary to the Department's established practice. The Department's treatment on the use of profit is governed by explicit language contained in the Statement of Administrative Action ("SAA") which states that "in most cases, Commerce would use profitable sales as the basis for calculating profit for the purposes of constructed value." (See SAA at 840; and Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From The People's Republic of China, 67 FR 6482 (February 12, 2002) and accompanying Issues and Decision Memorandum at Comment 21).

Finally, with respect to Primera Harvest's argument that the Department should not use Flex Foods' profit data because Flex Foods did not realize a profit with respect to its sales of subject merchandise, we note that the Department's general practice is to determine profit based on a company's production and sales of the foreign like product in accordance with section 773(e)(2)(A) of the Act. Because Flex

Foods' financial report only provides a profit based on all of its sales (i.e., both subject and non-subject merchandise sales), we are permitted under section 773(e)(2)(B)(i) of the Act to base profit on a company's production and sales of merchandise in the same general category of products as the subject merchandise. Because Flex Food's 2002-2003 financial report indicates that it primarily sold different varieties of prepared mushrooms (i.e., the same general category of products as the subject merchandise), we find no reason to depart from our standard practice in this case and consider whether a company was profitable only with respect to its sales of the subject merchandise.

Comment 9: *Inclusion of Certain Expense Line Items to Derive an SG&A Surrogate Percentage Based on Agro Dutch's Financial Data*

Primera Harvest contends that the Department should not have included the expense line item "customs duties and others" contained in schedule 15 and "sales commissions" contained in schedule 13 of Agro Dutch's 2002-2003 financial report to derive a SG&A surrogate percentage in the preliminary results. Specifically, this respondent maintains that the Department ruled in another NME case that movement expenses and discounts should be excluded from the SG&A surrogate percentage calculation if these expense items are clearly identified on the surrogate financial statements because these items are price adjustments which are separately valued elsewhere in the calculation of NV and/or U.S. price. In support of its argument, this respondent cites CTVs.

The petitioner contends that the Department's calculation of Agro Dutch's 2002-2003 SG&A expenses followed the practice set forth in CTVs and was thus correct. The petitioner argues that the Department acted properly in not excluding "customs duties and others" from Agro Dutch's SG&A calculation as Agro Dutch's 2002-2003 financials do not "clearly identify" the amount incurred for these items. As such, it is not possible to break apart selling expenses and accurately derive the amounts for customs duties and antidumping duties. Furthermore, the petitioner alleges that, should the Department exclude these expenses, it would be departing from its established practice in CTVs. The petitioner also points to the Department's factor valuation memo for the preliminary results in arguing that the Department should not adjust for "freight outward and other expenses". Finally, regarding the respondent's argument that the Department should exclude sales commissions from Agro Dutch's SG&A calculation, the petitioner contends that the Department should not depart from its normal practice by excluding sales commissions from Agro Dutch's SG&A calculation. Citing CTVs, the petitioner argues that sales commissions cannot be classified as movement/freight expenses, discounts, or rebates.

Department's Position:

We agree with the petitioner's contention that our decision in the preliminary determination to treat commissions as part of SG&A is consistent with our past practice. We therefore disagree with the respondent's contention that commissions are price adjustments which should be excluded from the SG&A calculation. The Department previously confronted this issue (i.e., commissions with regard to

the calculation of SG&A) in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1996- 1997 Antidumping Duty Administrative Review and New Shipper Review and Determination Not To Revoke Order in Part, 63 FR 63842 (November 17, 1998) (TRBs). In the TRBs case, the respondents were making the same argument as the respondent Primera Harvest is making in this case; that because commissions are valued directly elsewhere in the Department's FOP calculation, including them in the SG&A calculation would result in double counting. See TRBs at Comment 18. Consistent with our determination in that case, the Department finds that sales commissions are standard selling costs (not a reduction to sales revenue like discounts) which should be included in the SG&A calculation.

On the other hand, the Department agrees with the respondent's contention that the customs duties cited in line item 4 of Schedule 15 of Agro Dutch's financial (i.e., "Selling Expenses - Customs Duties and Others" (hereafter referred to as "line item 4")) should be excluded from the SG&A calculation. The petitioner's reliance on CTVs in this instance is incorrect. The petitioner does not dispute the fact that customs duties and antidumping duty deposits should be excluded from the SG&A calculation. Rather, they argue that there is no proof that the word "others" contained in line item 4 refers to antidumping duty deposits and assessments paid by Agro Dutch, and therefore the Department cannot derive the amounts for customs and antidumping duties included in line item 4. The Department finds, due to the context in which these expenses are reported in Agro Dutch's financial, they are sufficiently identifiable. The Department notes that the other three line items contained in Schedule 15 relate in some way to movement/freight expenses. Indeed, recognizing this fact, the Department chose not to include these other line items in its SG&A calculation for Agro Dutch in the preliminary determination as they were accounted for elsewhere in the Department's margin calculation. We have no evidence to presume that the "others" portion of line item 4 does not also correspond to freight/movement expenses. Accordingly, because the "others" portion of line item 4 was included among the movement/freight expenses reported under Schedule 15, we should have excluded it from our SG&A calculation for Agro Dutch.

Comment 10: *Deducting Foreign Inland Freight, Brokerage, and Handling Expenses from U.S. Price*

In the preliminary results, the Department assigned a surrogate value to the foreign inland freight, brokerage, and handling expenses which the respondents incurred during the POR to export the subject merchandise to the United States and deducted these expenses from the reported U.S. gross unit prices for purposes of determining the respondents' dumping margins.

COFCO maintains that the Department should not deduct these expenses from its reported U.S. prices because its affiliated producer, Yu Xing, and not COFCO, incurred these expenses, as noted in the Department's verification report. Specifically, COFCO points out that Yu Xing was responsible for all of the transportation and costs in delivering the subject merchandise destined for sale in the U.S. market to the PRC port of exportation, and these terms were specified in COFCO's sales contract with Yu

Xing (which the Department examined at COFCO's verification). Because these expenses were incurred by Yu Xing, COFCO contends that it was simply a reseller that obtained ownership of the subject merchandise from Yu Xing and transferred title of the goods to its U.S. customer at the PRC port of exportation. Therefore, COFCO maintains that the Department should not deduct these expenses from its reported U.S. prices because COFCO did not incur these expenses. In support of its argument, COFCO cites the Department's decision in the Notice of Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Carbon-Quality Steel Pipe from the PRC, 67 FR 36570 (May 24, 2002) ("Circular Welded Carbon-Quality Steel Pipe") (where the Department stated that because the suppliers (and not the reseller) incurred the costs for foreign inland freight, brokerage, and handling, these expenses were not deducted from the reseller's reported U.S. prices).

Although the record may demonstrate that COFCO's supplier, Yu Xing, incurred the above-mentioned expenses, the petitioner contends that this fact does not justify not deducting these expenses from COFCO's reported U.S. prices because Yu Xing is COFCO's affiliated producer which the Department has collapsed with COFCO and with other affiliated producers in accordance with 19 CFR 351.304(f). The petitioner maintains that in collapsing COFCO with its affiliated producers, the Department must treat all of these companies as a single entity and therefore include all of these companies' applicable expenses (e.g., foreign movement, brokerage, and handling expenses) in the overall calculation of U.S. price. Therefore, the petitioner contends that COFCO's margin must be based on the factor and price information from all of COFCO's affiliated producers that were engaged in the production, marketing, or sale of the subject merchandise during the POR. With respect to COFCO's reliance on the Department's decision in Circular Welded Carbon-Quality Steel Pipe, the petitioner maintains that the reason the Department did not deduct these expenses for the U.S. prices reported by the respondent Bao Steel in that case was because Bao Steel's suppliers were unaffiliated with it and delivered the subject merchandise directly to the PRC port of exportation where Bao Steel transferred title of the goods to a freight forwarding company. Therefore, for the reasons stated above, the petitioner maintains that the Department is required to deduct the foreign inland freight, brokerage, and handling expenses incurred by Yu Xing from COFCO's reported U.S. prices.

Department's Position:

We disagree with COFCO and have continued to deduct foreign inland freight, brokerage, and handling expenses incurred by COFCO's affiliated producer, Yu Xing, from COFCO's reported U.S. prices. In general, if a respondent or its affiliated producer incurs expenses associated with transporting to and/or clearing the subject merchandise through the PRC of exportation, the Department is required to deduct these expenses from the U.S. gross unit price in accordance with its standard practice. In this case, we determined that it is appropriate to collapse COFCO and Yu Xing, among other affiliated companies, and treat them as one entity for dumping margin calculation purposes (see Comment 1 above). Accordingly, it is appropriate to deduct all movement expenses incurred by these companies on U.S. sales of the subject merchandise. Furthermore, COFCO's reliance on Circular Welded Carbon-Quality Steel Pipe to support its argument that the Department should not deduct movement

expenses from the gross unit price if the producer, rather than the exporter, incurred such expenses before the title of the goods transferred to the exporter is without merit because the parties at issue in that case were not found to be affiliated under section 771(33) of the Act and 19 CFR 351.102, or collapsed under 19 CFR 351.401(f).

Comment 11: *U.S. Price to Normal Value Comparisons to Determine COFCO's Margin*

COFCO claims that in the Preliminary Results the Department compared its reported U.S. prices to NV on different bases. Specifically, COFCO alleges that the Department committed a clerical error by comparing its U.S. prices on a kilogram drained-weight basis to its NVs on a container-weight basis. Moreover, COFCO alleges that the Department committed an additional error when it calculated its packing material costs on a kilogram drained-weight basis and added those costs to the NVs. In the final results, COFCO requests that the Department calculate its net U.S. prices and NVs using the same bases to ensure correct comparisons.

The petitioner contends that because COFCO did not specifically identify where in the Department's margin SAS programming the Department compared COFCO's reported U.S. prices with NVs on different bases, it is denied the ability to comment on this methodological matter.

Department's Position:

We agree with COFCO and have corrected the errors described above in its margin program by using the same basis (i.e., kilogram per container) when determining its U.S. prices and packing material costs and comparing U.S. price to NV in the final results. While the petitioner states that the Department cannot make this correction because COFCO did not specifically point out where the errors were made in the margin program, we were able to identify the errors based on data contained in its questionnaire responses and have corrected them accordingly.

Comment 12: *Surrogate Value for Fresh Mushrooms*

For the preliminary results, the Department used an average price based on sales data from the 2001-2002 financial report of Premier to value the fresh mushrooms reported by certain respondents in these reviews. On June 1, 2004, COFCO and its affiliates placed on the record a fresh mushroom average price based on purchase data (not sales data) from the 2002-2003 financial report of Premier for consideration in the final results.

COFCO maintains that although the 2002-2003 financial report of Premier contains both sales and purchase data for purposes of deriving an average fresh mushroom price, the Department should use the purchase data rather than the sales data to derive an average price for fresh mushrooms because Premier's sales data does not just include sales values for fresh mushrooms. Because Premier is a producer of preserved mushrooms, COFCO contends that the mushroom sales data contained in

Premier's financial report also includes sales values for further processed mushrooms based on clarifying data also contained in Premier's financial report. Therefore, COFCO concludes that the Department should use the purchase data contained on page 33 of Premier's 2002-2003 financial report to value fresh mushrooms because a fresh mushroom value derived from the purchase data more accurately reflects the experience of respondents which purchased, rather than sold, fresh mushrooms during the POR. To further support its contention that the purchase data from Premier's financial report is more suitable for purposes of valuing fresh mushrooms used by certain respondents in these reviews, COFCO points out that a comparison of price data contained in additional publicly available information which it submitted in its June 1, 2004, submission (i.e., an unwashed fresh mushroom price included in an article from The Tribune (of India) and an average Indian export value for fresh or chilled mushrooms from the World Trade Atlas) demonstrates that the mushroom purchase price data, rather than sales price date, from Premier's financial report is more suitable for valuing fresh mushroom consumption in these final results.

The petitioner maintains that the Department should use the sales value data in Premier's 2002-2003 financial report to value fresh mushrooms. However, if the Department concludes that the purchase price data, rather than the sales price data, contained in that financial report is more appropriate to value certain respondents' fresh mushroom consumption, then the petitioner contends that the Department should also use the unwashed fresh mushroom price from The Tribune (of India) and the export price from World Trade Atlas to calculate an average POR mushroom price because the Department has expressed a preference in these reviews and in prior reviews to use country-wide values, not just producer-specific values, where possible.

Department's Position:

Unlike Premier's 2001-2002 financial report, Premier's 2002-2003 financial report contains purchase data for fresh mushrooms which enables us to derive a per-unit purchase price for fresh mushrooms. Therefore, we have used the purchase data, rather than the sales data, for this input from 2002-2003 Premier's financial report because the purchase data is a better estimate of the costs incurred by those respondents which purchased the fresh mushrooms which they used to produce the subject merchandise during the POR. We did not use the November 2003 mushroom price from The Tribune (of India) because (1) that price was applicable outside the POR; and (2) we have a value applicable during the POR which is specific to the input. Moreover, we did not use the February 2002-January 2003 price for fresh mushrooms from World Trade Atlas because it is an export price which the Department prefers not to use when a domestic and/or import price for the same input is also available.

Comment 13: *Surrogate Value for Soil*

For certain respondents which reported using soil, the Department used a U.S. price for "top soil" from Intervale Compost to value this input in the Preliminary Results because there was no other available price data for this material input. On March 25, 2004, Primera Harvest placed on the record 2002

data published by the Central Public Works Department of the Government of India for consideration in the final results. On June 14, 2004, the petitioner placed on the record a value for "pressed mud" from the 2002-2003 financial report of Flex Foods for consideration in the final results.

Primera Harvest maintains that the cost of the dirt it uses as compost to grow fresh mushrooms is so insignificant that the Department has declined to value this material input in prior administrative reviews. However, if the Department decides to value this input in these reviews, then Primera Harvest contends that the Department should use a 2002 value published by the Central Public Works Department of the Government of India to value this input because this value is more specific to the input (i.e., riverbed soil) which it used in its fresh mushroom production process. Primera Harvest argues that the Department should not use the "top soil" value from Intervale Compost to value its use of riverbed soil because the soil it uses is not high-grade soil, whereas "top soil" is a high-grade soil. Similarly, Primera Harvest argues that the Department should not use the "pressed mud" value from Flex Foods' 2002-2003 financial report because it is not specific to the input (i.e., riverbed soil) which it used in its production process during the POR.

The petitioner requests that the Department use the "pressed mud" value from Flex Foods' 2002-2003 financial report rather than the U.S. soil price used in the Preliminary Results to value soil because the value from Flex Food's financial report reflects soils used by an Indian mushroom producer.

In response to Primera Harvest's assertion that riverbed soil is not high-grade soil, the petitioner claims that riverbed soil is not just "regular dirt" and that it is in fact loaded with minerals and nutrients which is similar to top soil. Therefore, the petitioner contends that a surrogate value for top soil is still the most appropriate value to use to value riverbed soil. With respect to Primera Harvest's submitted surrogate value, the petitioner claims that the proposed figure from the Indian Government's Central Public Works Department publication is not a value but in fact a schedule of rates for services (e.g., supplying and stacking sludge). Therefore, the petitioner claims that Primera Harvest did not submit a surrogate value for soil. Finally, if the Department decides to use the data submitted by Primera Harvest to value soil, the petitioner maintains, the calculation methodology proposed by this respondent is flawed. Specifically, the petitioner contends that in order to convert the surrogate value submitted by Primera Harvest from a bulk density to a weight basis, the Department should use an average rather than the highest range-of-soil density ratio proposed by the respondent.

Department's Position:

We disagree with the parties and have continued to use the U.S. soil price for top soil in the final results, consistent with the Preliminary Results, as it is the best price data available on the record for the valuation of soil used to grow mushrooms. The reason why we did not use the data contained in the Indian Government's Central Public Works Department publication to value soil is because the excerpt submitted by the respondent only appears to provide a rate for services rather than a surrogate value for soil. Absent the additional data necessary to clarify the nature of the data contained in this

publication, we do not have a sufficient basis to use this data to value soil in the final results. Furthermore, we have not used the value for "pressed mud" from Flex Foods' 2002-2003 financial report, as advocated by the petitioner, because given the magnitude of that value, we cannot conclude that it is representative of the value for soil used to grow mushrooms versus other applications (e.g., construction of sheds).

Comment 14: *Surrogate Value for Rice Husks*

For certain respondents which reported using rice husks, the Department used a January-March 2000 average import value for rice-in-husks from the World Trade Atlas to value this input in the Preliminary Results because we were unable to obtain price data more contemporaneous with the POR and because there was no other available price data for this material input. On March 25, 2004, Primera Harvest placed on the record price data from the May 2003 edition of Hindu Business Line for consideration in the final results.

Primera Harvest maintains that the Department should use in the final results the 150 rupee-per- ton value (i.e., the lowest price in the range) provided in Hindu Business Line to value rice husks (i.e., a waste by-product derived from rice) because it is more specific to the input than the value (i.e., rice-in-husks) the Department used in the Preliminary Results.

The petitioner contends that if the Department decides to rely on the data contained in Hindu Business Line to value rice husks, the Department should use in the final results the 1,200 rupees-per-ton value (i.e., the highest price in the range) provided in Hindu Business Line because the article indicates that as of May 2003 the price of rice husks has increased to 1,200 rupees per ton. The petitioner maintains that it is reasonable to conclude from the data contained in Hindu Business Line that the 1,200 rupee value was applicable for three months into the POR.

Department's Position:

We agree with both parties and have used the price data contained the May 2003 issue of Hindu Business Line to value rice husks. However, because there is no indication in the May 2003 issue when the price increase from 150 to 1,200 rupees per ton took place, we have decided to use a simple average of the two prices to value rice husks and adjust this price to the POR in the final results.

Comment 15: *Miscellaneous Corrections*

The petitioner alleges certain clerical errors with respect to the calculation of specific surrogate values (i.e., general straw and tin plate) used by the Department in the Preliminary Results.

COFCO urges that the Department incorporate in the final results of review the minor corrections which it and its affiliates provided the Department at verification. Moreover, COFCO provides its own surrogate value calculations for certain material inputs (i.e., mushrooms, cow manure, straw, and

spawn) in response to the updated surrogate value calculations provided by the petitioner in its case brief, as well as its own surrogate financial ratio calculations based on data contained in Premier's 2002-2003 financial report.

Primera Harvest alleges clerical errors with respect to the amounts the Department used for certain factors (i.e., fertilizer, cotton seed, water, electricity) to derive its NV in the Preliminary Results.

Department's Position:

With respect to the surrogate value calculations provided by both COFCO and the petitioner in their case briefs, we are either no longer using that data at all in the final results, have used more updated publicly available information than the data upon which COFCO and the petitioner's calculations are based, or have revised the calculations using updated publicly available information while continuing to employ the methodology from the Preliminary Results, where appropriate. See Final Results Valuation Memorandum for details.

With respect to the minor corrections provided by COFCO at verification, we have incorporated them accordingly in the final results margin calculation. See "Margin Calculations" section above.

With respect to the clerical error allegations made by Primera Harvest for cotton seed meal and fertilizer, we agree in part that they are ministerial errors as defined under 19 CFR 351.224(f), and have made the necessary corrections to the margin calculations in accordance with 19 CFR 351.224(e). See September 1, 2004, memorandum from case analyst to the file entitled, Calculation Memorandum for the Final Results for Primera Harvest (Xiangfan) Co., Ltd., dated September 1, 2004 ("Primera Harvest Calculation Memorandum") for further details. With respect to the clerical error allegations made by Primera Harvest for water and electricity, we do not find that we have made ministerial errors as defined under 19 CFR 351.224(f) and have therefore made no corrections (see also Primera Harvest Calculation Memorandum for further discussion).

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of these reviews and the final weighted-average dumping margins for the reviewed firms in the Federal Register.

Agree____ Disagree____

_____
Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

_____
(Date)