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September 6, 2005

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

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results in the 2003/2004 Administrative Review of Certain Preserved Mushrooms from the People's Republic of China

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SUMMARY:

We have analyzed the briefs and rebuttal briefs of interested parties in the 2003/2004 administrative review of certain preserved mushrooms from the People's Republic of China ("PRC"). As a result of our analysis, we have made certain changes that depart from our findings in Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results and Partial Rescission of Fifth Antidumping Duty Administrative Review, 70 FR 10965 (March 7, 2005) ("Preliminary Results") with regard to the following respondents: China Processed Food Import & Export Company ("COFCO"); Gerber Food (Yunnan) Co., Ltd. ("Gerber"); Green Fresh Foods (Zhangzhou) Co., Ltd. ("Green Fresh"); Guangxi Hengxian Pro-Light Foods, Inc. ("Guangxi Hengxian"); Guangxi Yulin Oriental Food Co.; Ltd. ("Guangxi Yulin"); Shandong Jiufa Edible Fungus Corporation, Ltd. ("Jiufa"); and Xiamen International Trade & Industrial Co., Ltd. ("XITIC"). We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is the complete list of the issues in this administrative review:

General Issues

Comment 1 - Can Valuation
Comment 2- Surrogate Values
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B. SG&A
C. Labor
D. Water
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Company-Specific Issues

Guangxi Hengxian
Comment 3 - Clerical Errors in Program
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Comment 7 - Clerical Errors in Program

Jiufa
Comment 8 - Clerical Errors in Program
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COFCO
Comment 11 - Clerical Errors in Program
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Gerber
Comment 20 - Withdrawal from verification

Guangxi Yulin
Comment 21 - Failure to Participate

Background

We published the Preliminary Results in the 2003/2004 administrative review in the Federal Register on March 7, 2005. The period of review ("POR") is February 1, 2003 through January 31, 2004. The Department of Commerce ("the Department") conducted verification of Jiufa on March 14 through March 18, 2005; XITIC on March 21 through March 25; Gerber on March 29 through April 1, 2005 and Green Fresh on April 5 through April 8, 2005. On April 1, 2005, Gerber withdrew from verification indicating acceptance that withdrawal would result in total adverse facts available ("AFA"). On June 3, 2005 we sent a supplemental questionnaire to Guangxi Yulin. On June 30, 2005, we received a response from Guangxi Yulin that indicated the company was no longer participating in this review, acknowledging that it understood that it risked that the Department could make a finding that the company failed to cooperate to the best of its ability under section 776(b) of the Act.

We received case briefs from respondents COFCO, Green Fresh, Guangxi Hengxian, XITIC, and Jiufa on July 6, 2005. We also received case briefs from the Coalition for Fair Preserved Mushroom Trade (collectively, "petitioners") on July 6, 2005. We received rebuttal briefs from petitioners, COFCO, and Jiufa on July 13, 2005. There was no hearing in this case.

Changes Since the Preliminary Results

Based on the discussions below, we have made revisions to the data used for the final results.[1]

DISCUSSION OF THE ISSUES:

GENERAL ISSUES
Comment 1 - *Can Valuation*
Petitioners contend that the Department made a series of company-specific errors in assessing can consumption and valuation figures in its Preliminary Results margin calculation programs. According to petitioners' analysis, the Department's utilization of a can surrogate value on a USD/kg Net Drained Weight (NDW) basis is the source of the above-referenced calculation

[1] For further details, please see the Jiufa Final Analysis Memorandum; XITIC Final Analysis Memorandum; Guangxi Hengxian Final Analysis Memorandum; Green Fresh Final Analysis Memorandum; and COFCO Final Analysis Memorandum, all dated September 6, 2005, which are on file in Import Administration's Central Records Unit, room B-099 of the Department of Commerce building.

errors. A surrogate value on a USD/kg NDW basis, when multiplied by factors of production ("FOP") data on a can/kg NDW or can-making material/kg NDW basis, creates a unit mismatch, according to the petitioners. Petitioners observed two types of unit mismatch in particular, and submitted lengthy examples of both, in addition to examples of more accurate methodologies for calculating can consumption and valuation.

Finally, petitioners assert that the Department's methodology for calculating can consumption and valuation for companies that produce their own cans is faulty in that it fails to account for 'can loss' (i.e., damaged/unusable cans). Therefore, the petitioners argue, the final per-can value calculated for a can-producing company should be slightly higher than that for a can-purchasing company in order to account for this loss.

In its rebuttal, COFCO refers to the petitioners' brief on can consumption and valuation, yet limits its response to a position that the Department's surrogate value for size A-10 cans needs updating.

Department's Position:
We agree with petitioners with respect to their first point and have corrected this clerical error in the final results calculation. As to the petitioners' second claim that our present methodology is faulty in that it does not account for 'can loss' and should produce a slightly higher per-can value for can-producing companies, we agree that the loss concept is relevant. However, there is no evidence on the record to permit us to quantify this amount. Accordingly, the Department cannot adjust its calculations on this basis for this review. We will, however, address this issue, as appropriate, in the future.

Comment 2 - *Surrogate Values*
A. Soil
In the Preliminary Results, the Department included soil consumption in its normal value calculations and assigned a surrogate value for soil based on 2003 price information obtained from Mt. Scott Fuel Co.'s website.[2] COFCO and XITIC assert that the present soil valuation methodology is deficient, and urge the Department to reconsider its decision to value soil.

COFCO argues that producer Fujian Yu Xing Fruit & Vegetable Foodstuff Development Co. ("Yu Xing") did not purchase soil, nor consume significant quantities of soil, during the POR. Furthermore, this respondent reasons that the Department traditionally recognizes that "free inputs" such as soil and sea water should not be valued as separate components of normal value in margin calculations.[3] COFCO thus believes that soil in this case mirrors the previous two

[2] See http://www.mtscottfuel.com/rock_&soil_prices.htm

[3] Respondent cites administrative reviews and new shipper reviews in the Garlic from the PRC case for soil and Certain Frozen and Canned Warmwater Shrimp from the PRC, 69 FR 70997 (December 8, 2004) for its seawater example.

examples, when the Department "recognized that free inputs that would be free anywhere should not be valued as a separate component of normal value."[4] COFCO maintains that though it does not purchase soil directly, soil costs are already captured in normal value through the use surrogate financial ratios, which include land lease expenses.

However, to the degree that the Department does continue to value soil as an input, the respondent believes that the Department should reevaluate its choice for the soil surrogate value. COFCO argues that section 773(c)(4) of the Act requires the Department to utilize data from market-economy countries that are at a level of economic development comparable to the NME country and that are significant producers of comparable merchandise for use in calculating surrogate values. According to the respondent, the Department is required to discard "unreasonable and aberrational" surrogate values in accordance with Antidumping Duties; Countervailing Duties; Final Rule, 62 Fed. Reg. 27296, 27366 (May 19, 1997). This abnormally high soil price quote from a U.S. company, according to the respondent, fits this criterion and hence should be rejected for the final results.[5]

In place of the present source, the respondent recommends averaging a variety of Indian soil sources submitted in COFCO's April 11, 2005 surrogate value submission. COFCO argues that this submitted soil value average is superior because it is a) specific to agriculture and mushroom production; b) contemporaneous with the POR; c) based on publicly available non-export values; and d) representative of a range of prices.[6]

For its part, XITIC argues that the Department's preliminary soil valuation source applies to premium soil sold in the U.S. and overstates the value of the ordinary dirt XITIC uses in mushroom production. This respondent further maintains that the worth of soil cannot be separated from the value of land itself, and that the Department's SG&A calculations adequately account for land value. Yet if the Department is unswayed by its arguments and continues to value soil for the final results, this respondent recommends using the Indian soil data submitted by COFCO, as noted above.

Petitioners respond that the Department is correct to value soil as an input, based on a reading of COFCO's assertion that soil is an input "not consumed in its entirety"[7] in mushroom production. Petitioners thus argue that if an input is consumed to any degree it is correct for the Department

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[4] COFCO brief at 7.

[5] COFCO also argues that the Mt. Scott soil appears to be of premium quality and that there is no indication that the soil in question is used for agricultural purposes. See COFCO Brief, p. 9.

[6] The preceding criteria are in accordance with Department guidelines as illustrated in Chlorinated Isocyanurates from the People's Republic of China, 69 Fed. Reg. 75294, 75300 (December 16, 2004); and Preliminary Results.

[7] COFCO Brief, p. 6.

to value that input. In the event that the Department does decide to update its soil value as the respondent recommends, however, petitioners advocate using solely the respondent-submitted data derived from a report from India's National Bank for Agriculture and Rural Development (NABARD), for the reason that it is representative of soil values encountered by large-scale export-oriented mushroom producers in India.

Department's Position:
The Department continues to value soil separately as an FOP for the final results. In Pacific Giant, Inc. v. United States, 223 F. Supp. 2d 1336, 1342 (CIT 2002) ("Pacific Giant"), the CIT upheld the Department's position to focus on the quantity of inputs used by the PRC producers in valuing FOPs, rather than on the costs associated with these factors in the PRC. Citing section 773(c)(3) of the Act, the CIT stated: "The factors of production utilized in producing merchandise include, but are not limited to – (A) hours of labor required, (B) *quantities* of raw materials employed, (C) *amounts* of energy and other utilities consumed, and (D) representative capital cost including depreciation" (emphasis in original).[8] Furthermore, the CIT agreed that the input at issue in that case, water, was used "for more than incidental purposes," and therefore should be valued.[9] The Act specifies clearly that, for the purpose of constructing normal value in a non-market economy case, the Department values the FOPs based on the quantities of the inputs, not the costs associated with those inputs. Since soil constitutes a raw material, and this material is significant to the production of certain preserved mushrooms, we find that it is appropriate to assign soil a surrogate value and consider the quantity of this input used in subject merchandise production.

With regard to the soil surrogate value, we agree with both the respondent and petitioners, in part. For the final results, we valued soil using the data derived from the NABARD report. This source, placed on the record by COFCO, is contemporaneous with the POR and is specific to the subject merchandise under review. Use of this surrogate value is consistent with the Preliminary Results of the Eighth New Shipper Review in this case.[10]

B. Selling, General, and Administrative Expenses (SG&A)
1. *The Department used the wrong value for "Raw Materials"*
Jiufa and Guangxi Hengxian point out that the Department used the wrong figure for "Consumption of Raw Material." According to the respondents, the correct entry for raw material consumption should have come from Agro Dutch's Profit & Loss Statement, which includes all raw materials consumed, rather than the entry the Department used, labeled "CIF Value of Imports" from the same source.

Petitioners did not comment on this issue.

[8] See section 773(c)(3) of the Act; Pacific Giant at 1346.
[9] See Pacific Giant at 1346.
[10] See Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of the Eighth New Shipper Review, 70 Fed. Reg. 42034 (July 21, 2005).

Department's Position:
We agree with the respondents and have corrected this clerical error in the calculation of the SG&A surrogate value for the final results of review.

2. *The Department should add "job work" expenses to the denominator*
Jiufa states that the Department inadvertently excluded "job work expenses" from the denominator, contrary to past Department practice. The Department, according to Jiufa, normally adds "job work" expenses to salaries plus labor to calculate a total labor cost, but neglected to do so for the Preliminary Results of this review.

Petitioners did not comment on this issue.

Department's Position:
We agree with the respondent and have corrected this clerical error in the calculation of the SG&A surrogate value for the final results of review.

3. *The SG&A depreciation calculation is wrong*
Jiufa asserts that the Department incorrectly used data from the "Gross Block - Total" column instead of that from the "Depreciation Block - During the period" column in calculating SG&A depreciation. This respondent asserts that this error resulted in the Department mistakenly charging Jiufa with Agro Dutch's entire asset value, rather than the period-specific portion that is typically charged.

Petitioners did not comment on this issue.

Department's Position:
We agree with the respondent and have corrected this clerical error in the calculation of the SG&A surrogate value for the final results of review.

4. *The Department should exclude discounts and rebates from the calculation of the surrogate SG&A ratios*
COFCO contends that the Department neglected to exclude "Rebate & Discount" amounts from Flex Foods' financial statements when it calculated the surrogate SG&A ratio in the Preliminary Results. The respondent cites precedent that establishes that the Department typically rejects discounts and rebates from its SG&A calculation sources because it views these items as price adjustments which are separately valued in the calculation of normal value.[11] COFCO recommends that the Department remove discounts and rebates from Flex Foods financial data in its calculation of a surrogate SG&A ratio for the final results.

Petitioners agree with the respondent on this issue.

[11] See, e.g., Certain Color Television Receivers from the PRC, 69 Fed. Reg. 20594 (April 16, 2004) (Issues and Decision Memorandum, Comment 15); Tapered Roller Bearings and Parts Thereof, 63 Fed. Reg. 63842, 63852 (November 17, 1998).

Department's Position:
We agree with the respondent and petitioners and have corrected this clerical error in the calculation of the SG&A surrogate value for the final results of review.

5. *The Department should include an interest income offset to the financial expenses included in the calculation of the surrogate SG&A ratios*
Two respondents argue that in the Preliminary Results the Department failed to include an offset adjustment for interest income in the SG&A calculation. COFCO suggests that we calculate an amount for interest income by multiplying the line item "other income" by 20.49 percent. 20.49 percent is the percentage of other income that normally represents interest for Indian companies, per the Department's calculations.

Petitioners acknowledge that the Department should include an offset adjustment for interest income in the SG&A calculation. However; petitioners suggest another method of arriving at the amount of the adjustment. First, petitioners point out that the Department only allows an offset for short-term interest income. With regard to Agro Dutch, petitioners assert that using the balance sheet and Schedule 7, the percentage of short-term assets to total assets can be derived. This percentage, 72.8 percent, can be used as proxy for the percentage of short-term income to total income. 72.8 percent can be multiplied by the aforementioned 20.49 to arrive at 14.9 percent, or the percentage of other income that represents short-term interest for Indian companies. 14.9 percent is then multiplied by the line item "other income" to arrive at the short-term interest income adjustment. With regard to Flex Foods, petitioners state that the financial statements provide such a detailed breakdown of income that one does not need to substitute the more general 20.49 percent figure calculated for Indian companies in order to derive the portion of other income that represents interest; instead, petitioners calculate the total interest income based on Schedule 14. Petitioners then use the balance sheet and Schedule 9 to derive the percentage of short-term to total assets, or 8.9 percent. This percentage, 8.9 percent, can be used as proxy for the percentage of short-term income to total income. This percentage is then multiplied by the total interest income to arrive the short-term interest income adjustment.

Department's Position:
We disagree with both the respondents and petitioners. We will not offset financial expenses included in the calculation of SG&A expenses with any portion of interest income. As stated by the petitioners, it is the Department's practice to grant an offset to SG&A for interest income for short-term interest income only. However, it is not the Department's practice to attempt to distinguish between short-term and long-term interest income when the surrogate company's financial statements do not explicitly differentiate between the two; instead we simply apply the offset only to short-term interest expenses that appear on the face of the financial statement line items.[12] Because the Agro Dutch and Flex Foods financial statements do not have separate line items for short-term and long-term interest, we do not know the exact nature of the line items for

[12] See Certain Preserved Mushrooms from India: Final Results of Antidumping Duty Administrative Review 70 Fed. Reg. 37757 (June 30, 2005), and accompanying Issues and Decisions Memorandum at Comment 6.

other income or interest income; and therefore, we have no way of establishing the amount of short-term interest income with any degree of certainty. The petitioners' proposed calculations are based on presumptions as to Agro Dutch's and Flex Foods' short-term assets that are inherently speculative. Thus, any decision by the Department relying on those speculations would be suspect and potentially undermine the validity of the Department's calculations. Consequently, we have not allowed any offset for interest income in this case.

C. Labor

Respondents Jiufa and Guangxi Hengxian contend that during recent administrative reviews of this case, the Department has calculated China wage rates with a preordained result in mind, and has thus been selective as to the information it utilizes for wage rate calculation. Specifically, the respondents suggest that the Department overlooked updated data during a 2004 review of its China wage calculation, and more generally state that the Department has been unresponsive to the respondents' arguments for reforming the wage calculation methodology.

Guangxi Hengxian and Jiufa also argue that sections 773(c)(4)(A) and (3)(A) of the Act clearly require the Department to value wages in China using data from a market economy country at a comparable level of economic development which is a "significant producer" of comparable merchandise. Yet, according to the respondents, the Department has skirted this obligation since the promulgation of 19 CFR 351.408(c)(3) in 1997, which, the respondents argue, sets forth a methodology for labor rate calculation based on a large group of market economy countries not necessarily comparable to China in terms of economic development. Guangxi Hengxian and Jiufa argue that the Department has unlawfully determined China labor rates using a regression-based calculation methodology rather than utilizing a wage value from a surrogate country.

Furthermore, the respondents claim, the Department has incorrectly applied this regulation when calculating the Chinese wage rate. Departing from its mandate to consider wages in market economies at a comparable level of economic development that are "significant producer(s)" of subject merchandise, the Department's regression calculation considers a basket of countries that includes high-income Switzerland, the United Kingdom, Norway, and Germany, yet omits developing countries such as Bangladesh, the Czech Republic, Uruguay, Venezuela, Hungary, and Indonesia.

Both companies contend that a superior approach the Department could take to restoring accuracy and consistency to its labor value would be to apply India's wage rate as a surrogate in cases involving China. They note that India conforms neatly to the Department's mandate, for India is at a comparable level of economic development and shares a similar production pattern with China. Furthermore, the respondents observe that India, due to these similar qualities, is frequently utilized as a reference for factor price data in surrogate value calculations in China antidumping cases; yet the Department applied a China wage rate 600 percent higher than the rate used for India.[13]

[13] Jiufa argues in its case brief at page 31 "The 2002 wage rate for India was $0.14 per hour, as set forth on the data posted to the Department's website on October 6, 2004, and then later

Petitioners, in response to an August 17, 2005, Department fax that announced the posting of new NME wage rates on the Import Administration website and solicited comments from all of the parties in this case, contend that the Department should have used the 2003 wage rate data it circulated for comment in June 2005, rather than using the 2002 data it published on the Import Administration website on August 27, 2005.[14] Petitioners note that the data circulated in June (from 2003) is contemporaneous with the POR in this case, while the data (from 2002) released in August is not contemporaneous. Consequently, petitioners argue, by using 2002 wage rate data instead of 2003 wage rate data in this case, the Department breaking with its practice of using the most contemporaneous data available in its calculations.

Jiufa also commented on the Department's August 17, 2005, wage rate data release. This respondent reiterates its argument from earlier in this proceeding that the Department's calculation methodology is contrary to law as embodied in 19 CFR 351.408(c)(3). This respondent also posits that the Department's position that the Indian wage rate is not an accurate surrogate wage for China is cannot be substantiated by evidence, and that the Department has engineered a wage calculation methodology for China that guarantees an inflated rate. Furthermore, according to Jiufa, the Department illogically relies on GDP statistics from China in calculating wage rates, which is an approach at odds with the Department's designation of Chinese income and costs as "distorted" by non-market forces. This respondent argues that the Department's best approach to this issue is a matter of using the Indian country-wide wage rate as a surrogate.

Alternatively, Jiufa argues, the Department should amend the basket of countries it presently uses in its regression analysis so that it includes only market economy countries considered economically comparable. To demonstrate that the Department's current wage calculation and methodology are statistically flawed, the respondent submits an opinion offered by Mr. Daniel W. Klett of Capital Trade, Inc., as entered into the record in Dorbest Limited v. United States, in which Klett addresses the Department's revised 2002 calculation.[15] Klett argues in this brief that the Department's regression is distorted because it is based on only a subset of available data, excludes data from additional and relevant economies and includes data from high-wage countries. Klett posits that an "ordinary least squares" regression methodology is most appropriate for wage calculation in this case, as opposed to the Department's present approach.

On August 22, 2005, Guangxi Hengxian summarized and resubmitted its July 6, 2005, case brief arguments on the wage rate valuation issue in reference to the Department's August 17, 2005, notification to the parties of the new China wage rate. For details of this respondent's position on the issue, see the case brief argument summary above.

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removed"; the Chinese wage rate used by the Department in the Preliminary Results was $0.93.

[14] See Expected Non-Market Economy Wages: Request for Comment on Calculation Methodology, 70 Fed. Reg. 37761 (June 30, 2005).

[15] See Dorbest v. United States, CIT Court No. 05-0003 (consol.).

Department's Position:
In the preamble to its regulations, the Department explained the rationale for its calculation of expected NME wages:

> In general, we believe that more data is better than less data, and that averaging of multiple data points (or regression analysis) should lead to more accurate results in valuing any factor of production.[16]

The Department does not agree with the respondents that the Department should use India's average wage rate as a surrogate value for PRC labor because use of such data as a surrogate for PRC labor would be contrary to the Department's regulations. Section 351.408(c)(3) of the Department's regulations directs the Department to value labor in cases involving NME countries as follows:

> For labor, the Secretary will use regression-based wage rates reflective of the observed relationship between wages and national income in market economy countries. The Secretary will calculate the wage rate to be applied in non-market economy proceedings each year. The calculation will be based on current data, and will be made available to the public.

Recalculating the regression analysis using a different basket of countries would amount to a significant change in the Department's current methodology, which is a methodology consistent with the Department's regulations. The Department declines to do so in the context of the current review. We note that the Department has invited and received comments from the general public on this matter in a proceeding separate from the current review of this order.[17]

For the current review, the Department used the revised 2004 calculation of expected NME wage rate. As noted in Memorandum from Stephen F. Berlinguette, International Trade Compliance Analyst to Amber Musser, Acting Program Manager, regarding *Certain Preserved Mushrooms from the People's Republic of China ("PRC") New Non-Market Economy ("NME") Wage Rates*, (August 17, 2005), the Department has revised its 2004 calculation of expected NME wages in accordance with the voluntary remand requested in the ongoing Wooden Bedroom Furniture from the PRC litigation.[18] This revision to the Department's 2004 calculation of expected NME wages corrects errors in the 2004 calculation, which itself was not consistent with the Department's normal methodology and contained a number of errors.

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[16] See Antidumping Duties; Countervailing Duties: Final Rule, 62 FR 27296, 27367 (May 19, 1997).
[17] See Expected Non-Market Economy Wages: Request for Comment on Calculation Methodology, 70 FR 37761 (June 30, 2005).
[18] See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Redetermination Pursuant to Court Remand Orders, Court Nos. 05-00003 (June 1, 2005); 05-00083 (June 20, 2005) ("Wooden Bedroom Furniture from the PRC").

Specifically, as discussed in the Wooden Bedroom Furniture from the PRC remand redetermination, in October 2004 the Department posted an updated wage rate data set but did not rely upon this data set when calculating expected NME wage rates for 2004. Instead, the Department erred in October 2004 by relying on the regression analysis from the prior year's (2003) calculation of expected NME wage rates. The October 2004 wage rate data set and expected NME wage rates posted in November 2004 was an attempt to correct the Department's error. However, the Department has acknowledged that the November 2004 wage rate calculation was also in error because the Department did not rely on the most recent data available.

Accordingly, the Department's revised 2004 calculation of expected NME wage rates is consistent with its normal methodology, based upon the data available as of December 2004. See http://ia.ita.doc.gov.

On June 30, 2005, the Department published a notice in the Federal Register requesting comment on the sample wage rate methodology published on the Department's website.[19] We explicitly stated in this notice that this methodology will not be used for antidumping purposes, and, thus, believe it is inappropriate to apply the wage rate for the People's Republic of China proposed in this notice, U.S. $0.98/hour, to our final results in this segment as the petitioner has requested.

The Department believes that its current (revised 2004) calculation of expected NME wages is reasonable and correct, and will continue to rely upon it unless and until it is changed as a result of a thorough review subject to comment from all interested parties. For the final results of this review, the Department has valued labor with its expected NME wage rate for China, at USD 0.85 per hour.

D. Water

In the Preliminary Results, the Department assigned a surrogate value for water based on the water tariff rate reported on the Municipal Corporation of Greater Mumbai's website for 2000 through 2001 (i.e., http://www.mcgm.gov.in/Stat%20&%20Fig). Respondents Guangxi Hengxian and Jiufa contend that though this website contains a range of prices for Mumbai, the Department arbitrarily relied solely on the highest price in the range. Both respondents consider this approach contrary to past Department use of averaging to calculate surrogate values derived from a variety of price information.

Guangxi Hengxian advocates that the Department instead calculate water values from a report issued by the Indian Council of Agriculture that contains data for the period 2000 to 2002 and emphasizes rural water rates. Alternatively, Jiufa suggests the Department consider the source it used in the final results of the 9th administrative review of the Fresh Garlic from the People's Republic of China case, which was January 2003 industrial water data from India's Maharashtra Development Corporation.

[19] See Expected Non-Market Economy Wages: Request for Comment on Calculation Methodology, 70 FR 37761 (June 30, 2005).

Petitioners did not comment on this issue.

Department's Position:
The Department agrees with Jiufa's suggestion to use January 2003 industrial water data from India's Maharashtra Development Corporation to calculate a water value in the final results.

E. Gypsum
In the Preliminary Results, the Department combined two Indian HTS categories together to calculate an average price for the gypsum. Those categories were: 2520.10.01 ("Gypsum") and 2520.20.01 ("Calcined Plasters"). Jiufa states that "calcined plasters" is otherwise known as "stucco or plaster of Paris", and that, other than building materials, calcined gypsum is used for dental stones, dentures, plaster bandages for medical use, ceramic models, camera and lens polishes, industrial castings, and precision metal models. Jiufa argues that only HTS 2520.10.01 ("Gypsum") should be used as it is more specific to the input in question.

Petitioners did not comment on this issue.

Department's Position:
We agree with the respondent and have used HTS 2520.10.01 to calculate a surrogate value for gypsum for the final results of review.

F. Salt
Jiufa notes that in the Preliminary Results, the Department used HTS 2501.00.01 which shows zero imports during the POR. Therefore, Jiufa suggests that the Department use HTS 2501.00.10 which did have imports during the POR.

Petitioners did not comment on this issue.

Department's Position:
We agree with the respondent and have used HTS 2501.00.01 to calculate a surrogate value for salt for the final results of review.

G. Label
Guangxi Hengxian notes that in the Preliminary Results the Department valued labels using contemporary import data included in HTS 4811.21.09 from the World Trade Atlas. This HTS category is titled "OTHER SELF ADHESIVE PAPR AND PAPRBORD." Guangxi Hengxian recommends that the Department use HTS 4811.41.00, titled "SELF ADHESIVE PAPER & PAPRBOARD." Guangxi Hengxian argues that the Department should value labels using the data from this HTS subheading, as it is more representative of the input in question.

Petitioners did not comment on this issue.

Department's Position:
We agree with the respondent and have corrected the label surrogate value for the final results of review.

COMPANY-SPECIFIC ISSUES

GUANGXI HENGXIAN
Comment 3 - *Clerical Errors in Program*
1. Calculation of Normal Value
The Department incorrectly treated glue and labels as direct materials and applied the factory overhead and SG&A ratios to these packing materials. For the final results Guangxi Hengxian requests that the Department exclude the label and glue costs from direct materials and add them to the packing calculation.

Petitioners did not comment on this issue.

2. Calculation of Number of Cans Per Case
Guangxi Hengxian notes that the Department's calculation of the number of cans per case slightly overstates the actual number as reported by the respondent. Guangxi Hengxian requests that the Department use the actual number of cans that it sold.

Petitioners did not comment on this issue.

Department's Position:
We agree with the respondent and have corrected the clerical errors in the final results.

Comment 4 - *Valuation of Can Making Factors of Production*
Guangxi Hengxian claims that the Department incorrectly determined that it purchased a majority of its cans and assigned Guangxi Hengxian a finished can surrogate value in its Preliminary Results calculations. The respondent demonstrates that evidence it submitted for the record in this case supports the assertion that though it did not self-produce *all* of the cans it used in subject merchandise sales to the United States during the POR, it did manufacture a significant portion of the total number of cans it consumed during the same time period. Consequently, the respondent reasons that the Department should correct its can valuation methodology for Guangxi Hengxian in the final results. The respondent suggests that the Department calculate a weighted average between the value of the can based on the can-making factors and the surrogate value of the finished can that would reflect Guangxi Hengxian's ratio of finished can purchases to its can production.

Guangxi Hengxian notes that it is the long-standing Department practice to value the intermediate inputs of a production factor when that input is produced within an integrated

firm.[20] Though the Department outlined two exceptions to this practice, namely a) when the intermediate input accounts for an insignificant share of total output; and b) when intermediate input valuation would lead to an inaccurate result because a significant element of cost would not be adequately accounted for in the overall factors buildup, Guangxi Hengxian contends that neither exception applies in its case. The respondent thus argues that a) can-making is a significant share of total output; and b) valuing intermediate inputs in this situation lends itself to a more accurate result, for by doing so, the Department includes cost elements, such as can-making machinery depreciation, into factory overhead ratios. In its present form, the respondent asserts, the Department's calculations distort normal value by double-counting these depreciation and other can-making related costs, which are already included in the surrogate ratios.

Petitioners did not comment on this issue.

Department's Position:
We agree with the respondent. We note that the respondent did submit information prior to the Preliminary Results regarding the percentage of cans that it produced. As Guangxi Hengxian self-produces a majority of its cans, we have calculated a weighted-average between the value of the can based on the can-making factors and the surrogate value of the finished can that would reflect Guangxi Hengxian's ratio of finished can purchases to its can production.

Comment 5 - *Allocation of Growing Factors of Production*
To account for two mushroom growing periods that overlap with the POR, Guangxi Hengxian reported its FOP data based on a weighted average of the overlapping portion of each growing period's production. Guangxi Hengxian notes, however, that the Department instead reallocated the respondent's FOP data for the Preliminary Results to reflect the respondent's consumption of inputs during the entire first growing period and the portion of the second growing period that falls within the POR. The respondent contends that the Department simultaneously excluded critical production data pertaining to the second growing period that fell outside of the POR, though, thus contradicting its conventional methodology in cases involving agricultural product growing periods.

Normally, according to the respondent, the Department modifies the POR so as to fully capture agricultural product growing and production cycles.[21] Yet in the Preliminary Results, the Department found that "because one month of this canning period [for the second growing/production period] occurred during the POR (i.e., January 2004), it would be inappropriate to exclude all of the materials used during the second growing period." Guangxi Hengxian observes that the Department nevertheless excluded FOP data for subject merchandise

[20] See Final Determination of Sales at Less than Fair Value: Certain Ball Bearings and Parts Thereof from the People's Republic of China, 69 FR 10685 (March 6, 2003), and accompanying Issues and Decision Memorandum at Comment 6.
[21] See Fresh Garlic from the People's Republic of China: Final Results of Antidumping Administrative Review, 70 FR 340082 (June 13, 2005) to demonstrate the Department's practice of adjusting the POR to fit growing cycles.

production for the second growing period that fell outside of the POR, and argues that this methodology distorted the FOP data by not capturing the complete second growing and production cycle. Consequently, the respondent reasons that the Department should expand the POR to include the second growing period in its entirety and use the weighted average FOP data the respondent reported in its November 16, 2004, submission.

Petitioners did not comment on this issue.

Department's Position:
We partially agree with the respondents. We believe that capturing a portion of the second growing period is not representative of the FOP data used by Guangxi Hengxian. Instead of capturing the second growing period in its entirety, as suggested by the respondent, the Department will use FOPs for the first growing period only. The first growing period occurred both prior to and during the POR. However, the canning period associated with this growing period occurred in its entirety during the POR. Therefore, "growing" inputs used during the first growing period can be tied to the production of mushrooms during the POR. The factors of production for the second growing period occurred during and after the POR. However, the canning period associated with the second growing period occurred, almost entirely, after the POR. Hence, the "growing" inputs used during the second growing period can not necessarily be tied to production of mushrooms during the POR. Therefore, the Department finds that in order to capture the most accurate reflection of growing FOPs, it should consider the first growing period in its entirety and not consider any portion of the second growing period. This method is consistent with our methodology used for capturing inputs for other agricultural products with growing periods.[22]

Comment 6 - *Valuation of Scrap Mushrooms*
Guangxi Hengxian argues that the Department's practice is to offset production costs in the calculation of normal value with sales revenue of by-products generated during production.[23] However, the respondent believes that in the Preliminary Results the Department departed from this precedent in stating that the non-application of the offset was in accordance with the Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Steel Flat Products from the People's Republic of China, 66 FR 49632 (September 28, 2001).

The respondent contends that the case the Department cites is readily distinguishable from the present review. In that case the Department denied two companies' recovery/by-product credit because the companies "did not provide the requested information regarding where the costs associated with the further processing were captured." Guangxi Hengxian notes that in this case there is no dispute regarding the capturing of any costs, and that the only dispute is with the value associated with alleged "mushroom scrap." Guangxi Hengxian has submitted a surrogate value for "mushroom scrap" and advocates that the Department implement it for the final results.

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[22] See id.
[23] See Final Determination of Sales at Less Than Fair Value: Bulk Aspirin from the People's Republic of China, 65 FR 33805 (May 25, 2000).

Petitioners did not comment on this issue.

Department's Position:
We disagree with the respondent's argument and recommendations for three reasons. First, there is no information on the record that adequately defines the term "scrap" mushrooms. Hence, the Department cannot fully ascertain that "scrap" mushrooms are not indeed subject merchandise. Second, there is insufficient information as to the specifics surrounding the alleged "scrap" mushroom transactions. Guangxi Hengxian does not identify who purchases "scrap" mushrooms or how the "scrap" mushrooms are used. Finally, the Department has no reliable information on the record that could be used as a surrogate value for "scrap" mushrooms. For its part, the respondent has suggested a surrogate value for this material, but the Department finds that this submission is overly broad and not specific to mushroom "scrap." The Department cannot agree to offset a company's costs for an alleged by-product that may, or may not, be included in the scope of the order, especially when there is little or no information on the record about this "by-product."

For the above reasons, the Department continues to deny Guangxi Hengxian the calculation of a by-product offset for supposed "scrap" mushrooms in the final results of this review.

XITIC
Comment 7 - *Clerical Errors in Program*
1. Freight for tape
XITIC argues that the Department mistakenly multiplied the distance by the surrogate value for tape, instead of by the surrogate value for transportation.

2. Can values
The petitioners and respondent argues that the surrogate value for 4oz cans appears to have been omitted from the Department's calculation and should be included.

3. *Keeping Quantity and Price on a per Kilogram ("KG") non-drained weight ("NDW") basis*

Petitioners note that although the Department used the correct quantity field to obtain the per-unit amounts on a KG NDW basis, it did not calculate the gross unit price of the subject merchandise with the same methodology. Petitioners request that the Department redefine the gross unit price to match the per-unit quantity measurements.

Department's Position:
We agree with both parties and have corrected the above referenced clerical errors for XITIC.

JIUFA
Comment 8 - *Clerical Errors in Program*
1. The Department double-counted Jiufa's fresh mushroom growing costs.
Since Jiufa grows its own mushrooms, the company reported its cost to grow, harvest, and

process fresh mushrooms in fields 2.1 through 8.3 of its sections A, C, and D questionnaire.[24] In a supplemental questionnaire, the Department required Jiufa to also report a figure of consumption of fresh mushrooms. In the Preliminary Results, the Department inadvertently included both the fresh mushroom factor and the FOP necessary to grow the fresh mushrooms. According to the respondent, the Department double-counted Jiufa's raw materials, based on the fact that the Department's Direct Materials calculation includes the costs both for the fresh mushrooms themselves, as well as the costs to grow those very same fresh mushrooms.

Petitioners concur that the Department's Direct Materials calculation was incorrect, and advocate a correction based on applying the surrogate value for fresh mushroom consumption and adding the cost of all other growing inputs to the equation.

2. The Department double-counted Jiufa's packing labor.
Jiufa contends that its records did not provide a reliable and consistent way to separate packing labor from processing labor; thus, Jiufa reported a single figure for unskilled, skilled and indirect labor including both "processing and packing" in its most recently submitted database. Jiufa argues that in the Department's Preliminary Results margin calculation program, the Department reverted to Jiufa's initial databases and pulled in a variable for both direct labor and packing labor.

Since all of Jiufa's unskilled packing labor hours were already included in direct labor, Jiufa argues that to add another amount in for packing labor would not only double count the labor, but it would also exacerbate the inflation to Jiufa's costs caused by the fact that surrogate ratios are being applied to packing labor.

Petitioners did not comment on this issue.

Department's Position:
With regard to the first clerical error, the Department erred in valuing both fresh mushroom consumption and fresh mushroom FOP consumption. Since Jiufa provided all of the growing inputs for mushrooms, it is clear that in this case a fresh mushroom value does not also belong in the Direct Materials equation. Consequently, the Department agrees with the respondent's recommendation as to how to correct this miscalculation. With regard to the second clerical error, we again agree with the respondent that the Department used a variable for both direct and packing labor. We have corrected these clerical errors in the final results of review.

Comment 9 - *Valuing Jiufa's Affiliated Producer's FOPs for Self-produced Cans, Lids, and Cartons*

Jiufa argues that the Department's decision to disregard its reported factors for the can-, lid-, and

[24] See Grunfeld Desiderio to the Honorable Carlos M. Gutierrez, Secretary of Commerce, regarding *Section D Response of Shandong Jiuga Edible Fungus Co., Ltd.*: Preserved Mushrooms from the People's Republic of China (A-570-851) (May 21, 2004).

carton-making production of its subsidiaries is not in accordance with law. In the Preliminary Results, the Department stated that a collapsing analysis was not justified in the case of Jiufa, maintaining that the respondent did not qualify as a fully-integrated production group, and that thus the FOP data would not be used in its calculations.

Jiufa contends that the Department's preliminary position is flawed and that the Department's collapsing analysis position is inapplicable for the following reasons: a) the Yantai Muping Packing Materials Co., Ltd. ("Jiufa Packing") is located in the same production facility as Shandong Jiufa Edible Fungus Co., Ltd.- Muping Branch ("Jiufa Edible"); b) the Jiufa Group owned both Jiufa Edible and Jiufa Packing during the POR. Jiufa Edible owns 100 percent of the Jiufa Edible mushroom processing facility (where the subject merchandise was produced), and 86 percent of the Jiufa Group. The Jiufa Group owns 100 percent of Jiufa Packing. Thus, according to the respondent, Jiufa Edible is both a 100 percent owner of the Jiufa Packing and a 86 percent owner of the Jiufa Group; c) one individual has overall control over all of the Jiufa companies, and another individual has operational control over both the mushroom packing facility and the can-, lid-, and carton-making facility and is also a member of the board of directors of the respondent exporting entity, demonstrating strong management and directorship links among the entities; d) Jiufa Packing and Jiufa Edible operated as a single integrated entity during the POR[25]; and e) the Department confirmed at its 2005 verification of the respondent's submissions that, by way of sales income, Jiufa Edible and Jiufa Packing were 100 percent consolidated together into the total income of Jiufa Group. Based on these facts, the respondent reasons, the Department should reconsider its position that Jiufa's submitted FOP data should not be used for the inputs in question.

The respondent asserts that there are a number of rules that support its stance that, given the circumstances in this case, its FOP data should be accepted. Jiufa argues that Section 773(c)(1) of the antidumping statute does not require that the factors of production be "utilized" by the same corporate entity as the company that is producing the subject merchandise, and notes that the Department normally values each factor used in each stage of production for integrated producers.[26]

Jiufa declares that past Department decisions do not support the Department's position in the Preliminary Results. The respondent points out that the Department has in the past permitted respondents to report FOP data from unrelated subcontractors for inputs that are "highly integrated with the production of subject merchandise," noting that the inputs in question qualify as highly integrated.[27] Thus, according to this reasoning, when an input is highly integrated it is

[25] For example, the respondent asserts, the tin plate that Jiufa Fungus used to produce the subject merchandise was imported by Jiufa Fungus, not the Jiufa Packing Company.
[26] See Jiufa Case Brief at 14-17.
[27] See Final Determination of Sales at Less than Fair Value: Wooden Bedroom Furniture from the People's Republic of China, 69 FR 67313 (November 8, 2004), and accompanying Issues and Decision Memorandum at Comment 15; and Final Determination of Sales at Less than Fair Value: Cut-to-Length Carbon Steel Plate from the People's Republic of China, 62 FR 61294

immaterial whether that input is made by the respondent corporate entity, an affiliate, or an unaffiliated producer. Finally, the respondent cites the Certain Frozen Fish Fillets from the Socialist Republic of Vietnam in which the Department indicated that it will use the FOP for self-produced inputs where a) accuracy would be enhanced and would outweigh the increased burden of valuing the additional factors data; and b) no "mismatch" would result that could distort the normal value. Jiufa argues that both criteria apply in its case, and that a) there is not any increased burden on the Department in utilizing the submitted FOP data, and b) no mismatch would result, as the Department already utilizes can-producing surrogate value data in this case.[28]

Petitioners did not comment on this issue.

Department's Position:
We agree with the respondent and have treated the Jiufa Group, which includes the respondent Jiufa Edible in the above-referenced review, as a single entity for purposes of our antidumping analysis and will utilize its FOP data for cans, lids and cartons.

According to section 771(33)(E) of the Act, the Department considers parties to be "affiliated" if any person directly or indirectly owns, controls, or holds with power to vote, 5 percent or more of the outstanding voting stock of shares of any organization and such organization. Consistent with the criteria embodied in the statute, the Department finds that Jiufa Edible is affiliated with the Jiufa Group through stock ownership.

Although both statutory and regulatory provisions exist for classifying affiliated *producers* as a single entity, there are no statutory or regulatory provisions for considering related *non-producers* as a single entity with respect to antidumping analyses.[29] In a situation where Congress has not provided clear guidance on an issue, the courts have shown deference to the agency's interpretation of its own statute as long as the interpretation is reasonable.[30] Thus, in a number of past cases the Department has treated non-producing companies as a single entity based on the factors listed below.[31]

(Nov. 20, 1990).

[28] See Notice of Preliminary Determination of Sales at Less than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam 68 FR 4986, 4993 (January 31, 2003).

[29] See Queen's Flowers De Colombia v. United States, 21 CIT 968, 874 (CIT 1997) (Queens Flowers).

[30] See Koyo Seiko Co., Ltd. v. United States, 36 F.3d 1565, 1573 (Fed. Cir. 1994); Chevron U.S.A. Inc. v. Natural Resources Defense Council, 467 U.S. 837, 843 (1984).

[31] See, generally, Automotive Replacement Glass Windshields from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review, 69 FR 25545 (May 7, 2004); Automotive Replacement Glass Windshields from the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 69 FR 61790 (October 21, 2004); Certain Preserved Mushrooms From the People's Republic of China: Final Results of Sixth Antidumping

In determining whether to treat affiliated companies as a single entity, the Department considers the case-specific relationships between the companies under examination. The Department also considers whether the companies in question: (1) are affiliated, (2) have similar production facilities such that retooling would not be required to shift production from one company to another, and (3) have a significant potential for manipulation of price or production. See 19 CFR 351.401(f). The Department also relies on other factors such as: (4) whether the companies are closely intertwined, (5) the transactions that take place between the companies, and (6) the level of common ownership. However, all of these factors need not be present as long as the parties are sufficiently related to present the possibility of price manipulation.[32]

The chief executive officer ("CEO") of the Jiufa Group is also the CEO for Jiufa Edible. The Jiufa Group is a "holding company" that derives all of its income from its subsidiary companies and neither sells nor produces any products of its own and consolidates all income from its subsidiaries into the Jiufa Group. All are interconnected; Jiufa Edible has four factories, which purchased all of their cans, lids and cartons exclusively from Jiufa Packing, which is 100 percent owned by the Jiufa Group, for both subject and non-subject merchandise, during the POR. There is a significant potential for price manipulation because they share joint board members and management as well as cross-ownership. The head of the Muping Processing Branch, one of Jiufa Edible's four factories and the factory that produced the subject merchandise, is also the head of Jiufa Packing.

In deciding whether to treat the Jiufa Group, including Jiufa Edible and Jiufa Packing as a single entity, the Department believes it is relevant that: a) the companies are affiliated, as described above; b) each company has significant potential for price manipulation because of common ownership; c) the Jiufa Group and Jiufa Edible are intertwined because they have the same CEO and common management; d) there were frequent transactions between Jiufa Edible and Jiufa Packing during the POR, which is owned by the Jiufa Group; and e) the Jiufa Group and Jiufa Edible have a high level of common ownership.

Treating the Jiufa Group and its affiliates as an integrated entity is consistent with the Department's practice. The Department treats affiliated entities as a single entity where the parent company (i.e., the Jiufa Group) owns or controls directly or indirectly interests in any business conducted by its subsidiary company or its subsidiary's subsidiary. This ownership requirement can be satisfied through a majority direct and indirect stock ownership.[33]

Duty New Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review, 69 FR 54635 (September 9, 2004) and accompanying Issues and Decision Memorandum at Comment 1.

[32] See Queen's Flowers, 21 CIT at 979; Nihon Cement Co. v. United States, 17 CIT 400, 425 (CIT 1993).

[33] See NACCO Materials Handling Group, Inc. v. United States, 971 F.Supp. 586, 591 (CIT 1997) (NACCO Materials); Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil; Notice of Final Determination at Sales at Less Than Fair Value, 65 FR 5554, 5556 (February 4, 2000) and accompanying Issues and Decisions Memorandum at Comment 4 (Steel

Furthermore, the Department has consistently defended its treatment of affiliated parties as a single entity as necessary to prevent respondents from avoiding inclusion of certain U.S. expenses in the dumping analysis by shifting selling expenses from one company to related companies.[34] The Court of International Trade has also recognized that the antidumping statute, the regulations, and Department practice supports the treatment of affiliated parties as a single entity where there exists a possibility for manipulation of the prices and costs used in the dumping analysis or where such treatment is otherwise necessary in order to calculate accurately such prices and costs.[35]

Therefore, in accordance with the statute and regulations, case precedent, and the Department's practice, the Department has determined that it is appropriate to treat the Jiufa Group and its subsidiaries as a single entity for the purpose of its antidumping duty analysis in this POR.

Comment 10 - *Changes Resulting from Verification*

Jiufa argues that we should make three changes a result of information developed at verification. First, at verification, the Department confirmed that the correct distance from the factory to the port was greater than that reported by Jiufa. In addition, the reported factor for glue and the reported factor for water used in the growing stage should be revised.

Petitioners did not comment on this issue.

Department's Position:
We agree with the respondent and have made the changes for the final results of review.

COFCO
Comment 11 - *Clerical Errors in Program*
1. Valuation of Cans and Jars
COFCO argues that the Department should correct its margin calculation program so that the direct inputs values for cans and glass jars are incorporated into the direct material computation rather than the packing computation.

The petitioners did not comment on this issue.

2. By-product Offset
COFCO states that in the Preliminary Results the Department inadvertently increased, rather than lowered, Yu Xing's normal value by the offset amount for by-products recovered by Yu Xing. The respondent explains that the Department subtracted from the total cost of manufacturing an

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from Brazil); see, also, 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 22183 (May 3, 2001).
[34] See NACCO Materials, 971 F.Supp. at 588-91.
[35] See NACCO Materials, 971 F.Supp. at 588-92.

offset credit that was already negative, thus adding to normal value the offset for recovered inputs.

Petitioners stated that they do not oppose the change recommended by COFCO.

Department's position:
We agree with the respondent that the Department erred in calculating direct inputs for cans and glass jars, as well as Yu Xing's by-product offset, and have corrected the clerical errors for the final results.

Comment 12 - *AFA on Soil*
The respondent maintains that the Department unjustly assigned it an Adverse Facts Available ("AFA") value for soil for the Preliminary Results. According to COFCO, this situation arose when Yu Xing stated that it could not accurately report to the Department its soil consumption, on the basis that it did not purchase any soil during the POR nor maintain any records with regard to soil consumption. The respondent states that any information it reported on soil consumption would have been of dubious accuracy and unverifiable, and it thus risked a Department facts available ("FA") ruling in its choice to abstain from submitting a soil consumption factor. According to the respondent, its objective was to avoid an adverse ruling from the Department for reporting unverifiable information. COFCO argues that it would have been dishonest of it to estimate and report a theoretical consumption figure to the Department. Therefore, the respondent believes that the Department should reassign it a neutral FA consumption figure instead.

Petitioners argue that, contrary to the respondent's claim, COFCO could have cooperated and accurately recorded and reported its soil consumption to the Department. Hence, petitioners support the continued use of AFA.

Department's Position:
We agree with petitioners and have valued Yu Xing's soil consumption using AFA. Yu Xing failed to provide, as requested, a consumption factor for the soil which it used to grow fresh mushrooms. Although the respondent claimed that it did not purchase the soil used to grow fresh mushrooms and did not maintain consumption records for this input, we find again, that Yu Xing could have provided a theoretical usage amount for this input just as many respondents did with respect to soil, based on the land used to grow fresh mushrooms, height of the top soil used in mushroom sheds, and other factors. We note that the Department did not reject theoretical usage amounts provided by other respondents for the preliminary results in this case.

We have determined pursuant to sections 776(a) and 776(b) of the Act that Yu Xing did not act to the best of its ability in providing the factor data for this input, which is necessary for the Department's calculation of normal value. Therefore, as partial AFA, the Department has continued to use the highest per-unit soil factor (based on the per-unit consumption data for this input reported by the other respondents in this review) for purposes of valuing the costs associated with this input utilized by Yu Xing.

Comment 13 - *Jars Provided Free of Charge by U.S. Customer*

In the Preliminary Results, the Department did not adjust COFCO's U.S. price for merchandise sold in jars that were provided free of charge from the U.S. customer, because documentation submitted by one of COFCO's producers, Yu Xing, was insufficient to support its claim that it did not incur an expense for these jars. After the Preliminary Results, in response to a supplemental questionnaire, COFCO and Yu Xing provided additional information. The respondent argues that this information is sufficient to support the claim that its U.S. customer contracted with a PRC jar producer and that this producer delivered jars to Yu Xing in certain quantities on certain dates, free-of charge. COFCO contends that Yu Xing has established a link between these jars and the production of subject merchandise. Therefore, the respondent states, the Department should modify the U.S. prices of COFCO's subject merchandise jar transactions to reflect the U.S. customer's expenditures, both for the preserved mushrooms and the jars.

The respondent cites Brake Rotors from the People's Republic of China, in which the Department increased the U.S. sales price for all subject merchandise incorporating free items by the value of the free items.[36] COFCO asserts that unlike the situation in Brake Rotors from the People's Republic of China, the Department should ensure that it makes parallel adjustments to both normal value and U.S. price. It believes that the Department should adjust the normal value for glass jars after applying the surrogate add-on ratios.

Petitioners maintain that the Department should deny COFCO any adjustments for subject merchandise sold in free glass jars. Petitioners argue that COFCO failed to provide sufficient evidence demonstrating an arrangement between its U.S. customer and a PRC jar producer that provided Yu Xing with free jars specifically for use in the production of subject merchandise to be sold back by COFCO to the same U.S. customer. The Department's requests for specific information notwithstanding, petitioners allege, the respondent neglected to supply critical information and documentation that would have a) connected the free glass jars to a specific product or CONNUM of subject merchandise; b) reconciled free glass jar deliveries to the date of removal of same from inventory for production purposes; c) accurately accounted for beginning free glass jar inventories during POR months; and d) established that the free glass jars were used in specific U.S. sales.

Department's Position:

We agree with the respondent and have adjusted the U.S. price for the value of the free jars. The Department requested documentation from COFCO regarding free jars. COFCO provided a contract with the U.S. customer that explicitly said that the U.S. customer is responsible for the cost and delivery expenses for the jars. COFCO also provided proof of payment from their U.S.

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[36] See Brake Rotors from the People's Republic of China: Preliminary Results and Partial Rescission of Seventh Administrative Antidumping Duty Review and Preliminary Results of Eleventh New Shipper Review, 70 FR 24382, 24389-40 (May 9, 2005) ("Brake Rotors from the People's Republic of China").

customer to the jar supplier. In addition, the respondent provided proof of receipt of the jars and inventory-in and -out slips for the jars.

With regard to linking the free jars with the U.S. sales of subject merchandise (in jars), we considered that there were no sales of subject merchandise in jars to other U.S. customers during the POR. In addition, the amount of free jars COFCO received is greater than that of the free jars used in sales to the United States during the POR, indicating that it was not necessary to purchase additional jars to fill the demand for subject merchandise sold in jars to the United States during the POR. In sum, we feel that COFCO has provided enough information that we can establish a reasonable link between the free jars received and the jarred merchandise sold to the U.S. customer.

For the final results, we have used the method of adjusting the U.S. price that was applied in the sales at less than fair value investigation of chlorinated isocyanurates from the PRC.[37] In that case, we added the surrogate values for the free item(s) to direct materials in the normal value calculation and we adjusted the U.S. price by adding the same per-unit value(s) as calculated in the normal value build-up for the customer-provided factors at issue. This was done to ensure: first, that we followed the statute by including this factor of production in the normal value, second, that we properly accounted for the U.S. price's non-inclusion of the customer-provided inputs, and third, that we added the same amount to both the NV and U.S. price. We note that the respondent argues that we should ensure that we make a parallel adjustment to both normal value and U.S. price by revising our methodology and adding the cost of the jar not to direct materials, but directly to normal value after the calculation of overhead, SG&A, and profit amounts. We have not revised our methodology however, because all inputs into the production process are valued prior to the calculation of overhead, SG&A, and profit amounts.

Comment 14 - *Conversion Rate for Spawn*
In the Preliminary Results the Department used a 1.5:1 liter-to-kilogram conversion rate for spawn. The respondent argues that, by using the solid material liter-to-kilogram conversion ratio of 1.5:1, the Department is making presumptions about the weight and density of spawn relative to the weight and density of liquids (1 liquid liter = 1 kilogram). Because the Department cannot accurately verify the weight and density of the spawn used by Indian mushroom producers, COFCO advises, the Department should adopt a neutral FA spawn conversion ratio of 1:1.

Petitioners contend that the respondent's argument that there is no way to confirm that spawn is not heavier or denser than typical solid materials, such as gravel, is ludicrous given that spawn is typically a very light, airy substance. Petitioners thus advocate maintaining the 1.5:1 ratio currently in use.

[37] See Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China, 70 FR 24502 (May 10, 2005).

Department's Position:
We continue to use the 1.5:1 liter-to-kilogram conversion rate for spawn. The respondent has not provided any factual evidence in support of its request to revise the conversion rate. The Department believes that continuing to use the 1.5:1 conversion rate ensures transparency, particularly given the absence of more compelling evidence to revise the conversion rate for spawn.

Comment 15 - *Copper Wire Inclusion in COM*
Though in past reviews COFCO has reported copper wire as a material input and the Department has treated copper wire as a direct material and separate component of normal value, the respondent argues that this methodology should be reexamined for the final results.

The respondent claims that copper wire does not fit the Department's definition of a direct material and separate component of normal value because copper wire a) is not a direct material consumed in the production process; b) is not physically incorporated in the finished product; c) is recovered and recycled; d) has a low value; and e) is recorded as part of the company's overhead costs, all of which the respondent maintains are parameters established by Department precedent.[38] Therefore, COFCO believes that copper wire qualifies as an indirect material and should be considered a component of factory overhead.

Petitioners note that COFCO claims a copper wire offset amount for the remainder of the copper wire that is ejected and recaptured, and not fused to the can's surface. Therefore, petitioners argue that the copper wire used in can making is an input, as there is a portion fused to the can's surface, even if it is only used in small amounts. For this reason, copper wire should be valued as a direct input. In addition, petitioners point out that soil, fertilizer, and water are valued even if their physical selves (i.e., their microscopic nutrients) are only partly absorbed by the growing mushroom.

Department's Position:
We agree with petitioners. Copper wire is used as a heat conduit in the can-making process and is a necessary material input into the can. Notably, an amount of copper wire is absorbed into and becomes part of the final can. Finally, the scope of the subject merchandise in this case covers cans, and therefore all can-making FOPs must be considered in the Department's

[38] The respondent bases this assertion on its interpretations of Department decisions in Bicycles from the People's Republic of China, 61 FR 19026, 19040 (April 30, 1996); Brake Drums and Brake Rotors from the People's Republic of China, 62 FR 9160, 9169 (February 28, 1997); Certain Malleable Iron Pipe Fittings from the People's Republic of China, 68 FR 61395 (October 28, 2003) (Comment 11); Urea Ammonium Nitrate from Belarus, 68 FR 9055 (February 27, 2003) (Issues and Decision Memorandum, Comment 2); Urea Ammonium Nitrate from the Russian Federation, 68 FR 9977 (March 3, 2003) (Issues and Decision Memorandum, Comment 5); Cut-to-Length Carbon Steel Plate from the People's Republic of China, 62 FR 31972, 31977 (June 11, 1997); and Heavy Forged Hand Tools from the People's Republic of China, 60 FR 49251, 49254 (September 22, 1995).

calculations, pursuant to Section 773(c)(3) of the Act. For these reasons, the Department will continue to value copper wire as a direct material input in the final results of this review.

The Department notes that it has used this methodology in past reviews of this case as well as in reviews of the Canned Pineapple Fruit from Thailand case.[39] In this case, the Department reviewed companies that also used copper wire as a heat conductor in the self-production of tin cans. Similar to the present circumstances, the cans themselves were part of the scope in the Canned Pineapple Fruit from Thailand case. In the most recent segments of this case, the Department valued copper wire as a direct material input in subject merchandise production, just as we are doing in this segment.

Comment 16 - *FOPs for Brined Mushrooms Produced by Fujian Zishan*
In requesting that the Department accept a new allocation methodology, COFCO argues the following: that on December 8, 2004, it submitted a new allocation methodology for canned mushrooms and brined mushrooms for application in the Preliminary Results, but the Department chose not to review the submission; and that on March 7, 2005, it requested an opportunity to submit documents supporting its case for the new methodology, but the Department denied the request, on the grounds that the deadline for submitting new information in the instant case had passed, and that the record in the proceeding had been closed. Instead, the Department used the fourth review methodology to perform the allocation in its calculations for COFCO. Hence, the respondent asks that the Department accept COFCO's fifth review fresh mushroom allocation methodology for the final results.

Petitioners do not comment specifically on whether the Department was correct to reject COFCO's submission. Petitioners do take exception with the respondent's contrast of the Department's treatment of its submission versus the Department's acceptance of petitioners' submission of new can valuation information after the filing deadline in April 2005. Petitioners assert that its submission consisted of information already on the record from past proceedings, as opposed to the respondent's submission of new proprietary data.

Department's Position:
The Department notes that the respondent initially submitted its new allocation methodology in its May 28, 2004, questionnaire response. The Department then offered the respondent an opportunity to address deficiencies pertaining to its methodology in a supplemental questionnaire to which COFCO responded on December 8, 2004. Based on its analysis of this information, the Department determined that the new methodology was not appropriate because the allocation of fresh mushroom consumption was inappropriately shifted from fresh mushroom production to

[39] See Notice of Preliminary Results and Preliminary Determination to Revoke Order in Part: Canned Pineapple Fruit from Thailand, 69 FR 18524 (April 8, 2004); Notice of Final Results of Antidumping Duty Administrative Review and Final Determination to Revoke Order in Part: Canned Pineapple Fruit from Thailand, 69 FR 50164 (August 13, 2004) ("Canned Pineapple Fruit from Thailand"); and both factor valuation memoranda and all company-specific calculation memoranda pertinent to both reviews.

brined mushroom production. Thus for the Preliminary Results the Department determined to use the methodology COFCO submitted, and the Department verified, for the fourth review of this order.

In accordance with 19 CFR 351.301(b)(2), the deadline for submitting new factual information is 140 days after the last day of the anniversary month of the order. In this case, that deadline was July 31, 2004. On March 7, 2005, after the Department's issuance of the Preliminary Results, COFCO requested that the Department grant the it the opportunity to "further support, and if necessary, correct the fresh mushroom input allocation factors reported for its affiliate Fujian Zishan Group, Co.," for the Preliminary Results. We note that COFCO submitted its request to add new factual information to the record 220 days after the above-referenced deadline for submitting new factual information in this case. Therefore, COFCO's submission was rejected by the Department on March 15, 2005, as untimely new factual information.

We note that the Department had already issued detailed questionnaires regarding COFCO's allocation methodology, and that the Department is required to work within a limited time frame established in section 751(a)(3) of the Act. Therefore, consistent with the timeline set forth in the Act, and the Department's regulations, it was appropriate for the Department to reject COFCO's March 7, 2005, submission. Further, the Department already had a verified and useable methodology on the record of the proceeding. Thus, we continue to find that the allocation methodology from the fourth review should be used in our calculations.

Comment 17 - *Weight Averaging the Factors of Production for the Affiliated Producers*
The respondent argues that the Department reversed four reviews worth of methodological precedent with regard to COFCO by weight-averaging factors among COFCO's three producers, Yu Xing, Fujian Zishan, and COFCO Zhangzhou. Though the Department correctly considers the aforementioned three companies to be affiliates, the respondent contends, in past reviews it has considered only FOP data from Yu Xing, the only affiliated producer that supplies subject merchandise to COFCO for export to the United States.[40]

COFCO also claims that the Department poorly timed its decision to utilize a new approach to considering its FOP data. According to the respondent, the Department informally announced its decision by requesting FOP data for all of COFCO's affiliates, irrespective of their involvement in COFCO's export of subject merchandise to the U.S., in a fourth review questionnaire issued during the final three weeks of the fifth review POR. Consequently, the respondent protests, COFCO was unable to adapt to the new methodology and adjust its U.S. prices for the fifth review, notably for subject merchandise that had already entered the U.S. during the fifth review POR.

[40] See Certain Preserved Mushrooms from the PRC, 66 FR 31204 (June 11, 2001). COFCO argues that this document establishes the Department's reliance on Yu Xing data *only* to calculate COFCO's margin. COFCO also cites this document to demonstrate that petitioners withdrew their review request for COFCO "after COFCO and Yu Xing provided data to the Department" (7/6/2005, Trade Pacific case brief, p. 20).

COFCO argues that the Department abused its discretion because it had not requested FOP data from the three affiliated producers at any time during the three prior administrative reviews, even though the Department knew of the pertinent affiliations. Furthermore, COFCO argues that it has been placed at a disadvantage because it has consistently relied on the methodology the Department accepted in earlier segments in order to avoid price discrimination activity in the U.S. market during past and present periods of review. To demonstrate that the Department's approach to the issue was unreasonable, the respondent cites CIT decisions that define boundaries within which the Department has discretion to modify its margin calculation methodologies.[41]

Petitioners state that the Department is correct in the above approach, as the issue is currently under court appeal. Until the court makes its judgment and instructs the Department on the matter, petitioners contend, the Department should continue utilizing this methodology.

Department's Position:
As explained in the Preliminary Results, to the extent that 19 CFR 351.401(f), which provides for the collapsing of producers, does not conflict with the Department's application of separate rates and enforcement of the NME provision, section 773(c) of the Act, the Department will collapse two or more affiliated entities in a case involving an NME country if the facts of the case warrant such treatment. Furthermore, 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.[42] 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 instance, no party has contested our decision that COFCO, COFCO Zhangzhou, Yu Xing, and Fujian Zishan are affiliated through the common control of COFCO's parent company pursuant to

[41] The cites include Shikoku Chems. Corp. v. United States, 795 F. Supp. 417, 421-22 (1992); IPSCO v. United States, 687 F. Supp. 614, 631 n.27 697 F. Supp. 1222 (1988).
[42] See Hontex Enterprises, Inc. v. United States, 248 F. Supp. 2d 1323, 1342 (CIT 2003) (noting that the application of collapsing in the NME context may differ from the standard factors listed in the regulation). In summary, depending upon the facts of each investigation or administrative review, if there is evidence of significant potential for manipulation or control between or among producers which produce similar and/or identical merchandise, but may not all produce their product for sale to the United States, the Department may find such evidence sufficient to apply the collapsing criteria in an NME context in order to determine whether all or some of those affiliated producers should be treated as one entity (see Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China, Preliminary Determination of Sales at Less Than Fair Value, 66 FR 22183 (May 3, 2001); Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China, 66 FR 49632 (September 28, 2001); and Anshan Iron & Steel Co. v. United States, Slip. Op. 03-83 at 32-33 (CIT 2003)).

section 771(33)(F) and (G) of the Act.

In the instant case, in the Preliminary Results the Department found that the first two criteria of the collapsing criteria are met because the producers at issue (Yu Xing, Fujian Zishan, and COFCO Zhangzhou) are affiliated and have production facilities for producing similar or identical products, such that no retooling at any of the three facilities is required in order to restructure manufacturing priorities. Finally, we found that the third collapsing criterion is met in this case because a significant potential for manipulation of price or production exists among COFCO and its affiliates.[43] We note that respondent has cited no information to suggest that the Department's analysis in the Preliminary Results was incorrect. Rather, COFCO simply challenges the Department's decision, arguing that the Department applied a "new" methodology retroactively after COFCO detrimentally relied upon the methodology used by the Department in the investigation and first three administrative reviews. This is the second review that the Department has applied this methodology; accordingly, it is not "new." Moreover, the Department may adjust its calculations and methodology where the record supports such changes and the Department explains the basis for such changes.[44] Therefore, we continue to find in the final results that COFCO, COFCO Zhangzhou, Yu Xing, and Fujian Zishan are affiliated through the common control of COFCO's parent company, and, as referenced above, have calculated normal value by weight-averaging the factors of production for each of COFCO's affiliated producers.

GREEN FRESH

Comment 18 - *AFA on CEP sales*

The Department preliminarily decided to apply AFA to Green Fresh's constructed export price ("CEP") sales because Green Fresh failed to provide critical information to the Department within the time line set forth under the antidumping statute and regulations. Most importantly, Green Fresh did not submit audited financial statements or tax returns for its U.S. affiliate, Green Mega. Green Fresh argues that it should not be assigned partial AFA for the final results because Green Mega is a small company that does not routinely have its annual financial information audited. It argues that the company did not have an audited financial statement for the fiscal year ending March 2004; therefore, it could not have complied with the Department's request for an audited financial statement. Green Fresh recognizes that it should have informed the Department that Green Mega would be filing its tax return later than the expected date of December 16, 2004, but argues that its failure to do so was an oversight that does not warrant a partial AFA decision.

Petitioners believe that the Department's preliminary decision to apply AFA to Green Fresh's CEP sales is consistent with the antidumping statute and regulations and that the Department should continue to apply AFA to Green Fresh's CEP sales in the final results. Petitioners argue that Green Fresh attempted to avoid the Department's review of CEP sales. For instance, in Green Fresh's May 20, 2004, original questionnaire response it reported that all sales to the U.S. during the POR were on an EP basis and that all sales were made to a single unaffiliated customer. Petitioners assert that the result of this was that Green Fresh intentionally omitted a

[43] See Preliminary Results at 70 FR 10970.

[44] See RHP Bearings Ltd. V. United States, 120 F. Supp. 2d 1116, 1124 (2000).

large percentage of its CEP sales. As the respondent began to place information on the record, petitioners feel that Green Fresh continued to withhold crucial information, such as the audited financial statements and tax return of Green Mega. Finally, when the tax returns were filed, it was in an untimely manner, and the petitioners believe that there were several questionable aspects of these returns.

In addition, petitioners state that Green Fresh's uncooperative behavior in this review is not an isolated action by the respondent. Petitioners reference the "collusion" scheme with Gerber which occurred in the prior administrative review.[45] Petitioners also point out that Green Fresh consistently denied affiliations with Family Mutual, Farmer Depot, and Taho International until this administrative review. Petitioners believe that because of Green Fresh's uncooperative behavior and failure to submit critical documents in a timely manner, the application of AFA is warranted.

Department's Position:
We agree with the petitioners. The Department's analysis and conclusions on this issue were stated in the Preliminary Results. In sections A, C, and D of the Department's questionnaire, as well as the first supplemental questionnaire in this review, the Department requested that Green Fresh provide documentation pertaining to its U.S. affiliate Green Mega by December 16, 2004 that included Green Mega's fiscal year 2003 financial statements and a complete and signed copy of Green Mega's 2003 U.S. Federal Tax Return.[46] Though given these two opportunities to do so, Green Fresh failed to provide the documents in question. Furthermore, Green Fresh communicated to the Department that it had obtained an extension until December 15, 2004 to file Green Mega's U.S. tax return, and consequently, the Department arranged the December 16, 2004, submission deadline to account for the extension. The Department thus met its obligations under section 782(d) to allow Green Fresh the opportunity to correct deficiencies in a timely manner.

We note that, in accordance with 19 CFR 351.301(b)(2), the deadline for submitting new factual information in this case was July 19, 2004. On March 7, 2005, the respondent attempted to submit its affiliate's tax documents to the Department 81 days after the December 16, 2004, deadline agreed upon between the respondent and the Department, as well as 231 days after the above-referenced deadline for submitting new factual information in this case.

Consistent with section 351.104(a)(2) of the Department's regulations, the Department returned

[45] See Certain Preserved Mushrooms from the People's Republic of China: Final Results of Sixth Antidumping Duty Administrative Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review, 69 FR 54635 (September 9, 2004), and accompanying Issues and Decisions Memorandum at Comment 5.
[46] Sections A, C, and D of the Department's questionnaire, as well as the first supplemental questionnaires sent to Green Fresh in this review were dated March 30, 2004, and June 29, 2004, respectively.

the untimely submission to Green Fresh on March 15, 2004.[47] Lacking Green Mega's tax return in the period of time preceding the Department's March 2, 2005, deadline for the issuance of the Preliminary Results, the Department could not accurately analyze Green Mega's financial and sales data for the POR. Accordingly, the Department could not accurately analyze Green Fresh's CEP sales for this review. Without precise information and analysis on Green Fresh's CEP sales, the Department was unable to calculate a margin for Green Fresh that correctly reflected the facts in this company's case.

Section 776(a) of the Act provides that if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use facts otherwise available in reaching the applicable results. Furthermore, Section 776(b) of the Act provides that the Department may apply an adverse inference to facts otherwise available if it is determined that a party has not acted to the best of its ability.

As Green Fresh failed to provide the requested information after the Department gave it multiple opportunities and deadlines within which to do so, the Department has determined that the application of adverse facts available is warranted in this case. Green Fresh has failed to cooperate with the Department to the best of its ability and provide the Department with requested information in a timely manner. The Department must rely on the record before it, and verification is just that- a verification of information already on the record- and not an opportunity for parties to place new information on the record. Despite numerous opportunities to file Green Mega's U.S. tax return on the record, Green Fresh failed to do so- and never requested an extension from the agency to allow it to file the documents after the December 16, 2004.

Additionally, although the Department has verified Green Fresh's EP sales, it does not have sufficient evidence on the record to assume that it can rely on the incomplete CEP sales information provided. In conclusion, Green Fresh's U.S. affiliates failed to provide critical information necessary to substantiate Green Fresh's reported CEP sales data within the time line set forth in the Department's regulations. As a result, the Department is unable to rely on Green Fresh's CEP data. Therefore, we find that, pursuant to sections 776(a)(2)(D) and 776(b) of the Act, the use of AFA is warranted in this segment of the proceeding with respect to Green Fresh's CEP sales.

Section 776(c) of the Act requires the Department to corroborate any use of facts available. The Department has determined that the applicable AFA rate to apply in this case is the PRC-wide

[47] See United States Department of Commerce to Ms. Lizbeth Levinson, Garvey Shubert Barer regarding *Fifth Antidumping Duty Administrative Review of Certain Preserved Mushrooms from the People's Republic of China* (March 15, 2005), for the Department's position on this late submission.

rate, the highest dumping margin from any segment of this proceeding. This rate was established in the less-than-fair-value investigation based on information contained in the petition, and corroborated in the final results of the first administrative review.[48] The Department determines that the PRC-wide rate of 198.63 is thus appropriate for Green Fresh's CEP sales in this instance.

In order for information to be considered corroborated, pursuant to section 776(c) of the Act, the information must be found to be both reliable and relevant. Throughout the history of this proceeding, the highest dumping margin from any segment is 198.63 percent; it is currently the PRC-wide rate and was calculated based on information contained in the petition. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China, 63 FR 72255 (December 31, 1998). The information contained in the petition was corroborated for the preliminary results of the first administrative review. See Certain Preserved Mushrooms from the People's Republic of China: Final Results of First Antidumping Duty Administrative Review, 66 FR 31204 (June 11, 2001). Further, it was corroborated in subsequent reviews to the extent that the Department referred to the history of corroboration and found that the Department received no information that warranted revisiting the issue. See Certain Preserved Mushrooms from the People's Republic of China: Final Results of Sixth Antidumping Duty Administrative Review and Partial Rescission of the Fourth Antidumping Duty Administrative Review, 69 FR 54635 (September 9, 2004). Similarly, no information has been presented in the current review that calls into question the reliability of this information. Thus, the Department finds that the information is reliable.

With respect to the relevance aspect of corroboration, the Department stated in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1996) (TRBs), that it will ``consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin." See TRBs, 61 FR at 57392, See also Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review, 61 FR 6812, 6814 (February 22, 1996) (disregarding the highest margin in the case as best information available because the margin was based on another company's uncharacteristic business expense resulting in an extremely high margin). The rate used is the rate currently applicable to Green Fresh's CEP sales, and all exporters subject to the PRC-wide rate. Further, there is no information on the administrative record of the current review that indicates the application of this rate would be inappropriate or that the margin is not

[48] See e.g., Notice of Final Results of Sales at Less Than Fair Value; Certain Preserved Mushrooms from the PRC, 66 FR 50608 (October 4, 2001); Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of First Antidumping Duty Administrative Review , 68 FR 69988 (December 16, 2003); and reinforced in Certain Preserved Mushrooms from the People's Republic of China: Final Results of First Antidumping Duty Administrative Review, 69 FR 24128 (May 3, 2004).

relevant. Therefore, for all CEP sales reported by Green Fresh, we have applied, as adverse facts available, the 198.63 percent margin from the petition, and have satisfied the corroboration requirements under section 776(c) of the Act. See Persulfates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 66 FR 18439, 18441 (April 9, 2001) (employing a petition rate used as adverse facts available in a previous segment as adverse facts available in the current review).

Comment 19 - *Verification Changes*

Petitioners state that at verification the Department verified on a map that the distance from the factory to the center of the port city was greater than the distance reported by Green Fresh in its response. Green Fresh explained at verification that this was because the port was on the outskirts of the city, closer to the factory, so it adjusted the distance accordingly. Petitioners pointed out that Green Fresh did not present any information at verification that would support Green Fresh's estimate of the distance from the center of the city to the port (which was netted from the distance from the factory to the center of the city). Petitioners assert that the Department should use the verified distance from the factory to the center of the city as the distance for the inland freight calculation as well as the Sigma freight distance.[49]

In addition, petitioners say that the Department verified that Green Fresh bought several inputs from intermediate suppliers, such as local villagers or trading companies, and did not purchase the inputs from the producers themselves. At verification it was determined that Green Fresh reported the distance to the village or trading company and in many cases did not even know where the producer was located. Petitioners cite Sigma v. United States, in which the Court of Appeals of the Federal Circuit (CAFC) made it clear that the relevant location is the location at which the materials were produced in the NME.[50] In this case, the relevant location would be the site of the material production, rather than, say, the locations of distributors or other suppliers. Also, petitioners state that in the one case that Green Fresh knew the distance from the supplier to its own production facility, the actual distance was many times greater than the distance Green Fresh reported to the Department. Petitioners argue that we should apply partial FA in calculating the freight distance for any inputs for which Green Fresh does not know the original producer's location. Partial FA in this case would be the application of the distance to the nearest port or the Sigma freight distance.

The respondent did not comment on this issue.

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[49] The "Sigma Rule" accounts for the shorter of the reported distances from either the closest PRC port of importation to the factory processing the subject merchandise, or the input source of origin to the factory processing the subject merchandise, irrespective of intermediate distribution centers. See Sigma v. United States, 117 F. 3d 1401,1408 (Fed. Cir. July 7, 1997) ("Sigma").

[50] See Sigma, 117 F. 3d at 1408 (Fed. Cir. July 7, 1997); see also Petroleum Wax Candles from the PRC, 69 FR 12121, March 15, 2004, and accompanying issues and decision memorandum at Comment 2.

Department's Position:
We agree with petitioners on both points. We have adjusted the inland freight to the distance (factory to port) that was measured at verification. As a consequence, Sigma freight has also been adjusted. In instances where the supplier is only an intermediary and does not also produce the input, it is the Department's practice to use the distance from the *producer's* location to the respondent's factory in its calculations.[51]

Green Fresh initially reported freight distances for its FOP based on the distance from its factory to the entities from which it purchased its inputs. In most cases, however, Green Fresh purchased its inputs from middlemen and not the original producers. By not reporting the distance from its factory to the input producer location, Green Fresh did not accurately report its supplier freight distances pursuant to Sigma. At verification, the Department discovered this significant error. Green Fresh could not rectify the error by submitting the FOP freight distances based on the correct method of recording the distance between its factory and the FOP producer location. Without this information, the Department cannot calculate a margin for Green Fresh that accurately values the respondent's FOP inclusive of freight charges.

Section 776(a) of the Act provides that if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use facts otherwise available in reaching the applicable determination. Accordingly, the Department has applied partial FA to Green Fresh's reported freight distances in its calculations.

Section 782(d) of the Act provides that if the Department determines that a response to a request for information does not comply with the request, the Department shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of the review. In this administrative review, the Department issued its standard questionnaire and supplemental questionnaires to the respondent to obtain an accurate reporting of Green Fresh's FOP freight distances. The Department then verified this information, and learning that the original submissions were erroneous, requested that Green Fresh provide corrected FOP freight distances. The respondent could not do so. Accordingly, and pursuant to section 782(d) of the Act, the Department provided Green Fresh with numerous opportunities to remedy or explain deficiencies on the record.

The Department has concluded that, within the meaning of section 776(a) of the Act, the respondent has failed to provide necessary accurate information in response to the Departments' questionnaires. Specifically, we find that Green Fresh withheld or did not provide complete and reliable information to the Department pertaining to FOP freight distances in the form and manner

[51] See Sigma, 117 F.3d 1405-1406.

requested by the Department. The lack of this necessary data impeded the conduct of the administrative review. We conclude that the information regarding FOP freight distances provided by Green Fresh are not reliable or usable and that, therefore, the use of facts otherwise available is appropriate.

Section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's request for information. As noted in Nippon Steel Corp. v. United States, such a finding is supported by substantial evidence, in accordance with section 516(A) of the Act, if the Department "(1) articulates its reasons for concluding a party failed to act to the best of its ability; and (2) explains why the missing information is significant to the review."[52] The Department's "reasons for concluding that a party failed to act to the best of its ability should include (1) a finding that a party could comply with the request for information; and (2) a finding of either a willful decision not to comply or insufficient attention to statutory duties."[53] The Department may also draw some inferences from a pattern of behavior.[54] Furthermore, to determine whether the respondent "cooperated" by "acting to the best of its ability" under section 776(b) of the Act, the Department also considers the accuracy and completeness of submitted information, and whether the respondent has hindered the calculation of accurate dumping margins.[55]

We conclude that, within the meaning of section 776(b) of the Act, Green Fresh failed to cooperate by not acting to the best of its abilities in complying with the Department's requests for information for FOP freight distance data and that the use of AFA is appropriate. Green Fresh's responses to the Department's questions concerning FOP freight distance data contained significant errors that could not be rectified. In this occurrence, AFA would constitute the Department's use of the freight distance required by the court in Sigma in place of the respondent's original data submissions. The Department has thus applied the Sigma freight distance, i.e., the *verified* distance between factory and port, for this respondent in its calculations for the freight distance as concerns the following inputs: mother spawn, straw, cow dung, calcium phosphate, gypsum, lime, carbanide, salt, citric acid, glue, copper wire, nitrogen, and coating. We note that the distance from the supplier of tin plate was adjusted at verification, but as this modified distance exceeds the Sigma freight distance, the supplier distance for this input will become equal to the Sigma freight distance as well.

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[52] See Nippon Steel Corp. v. United States, 118 F. Supp. 2d 1366, 1378 (Oct. 26, 2000) ("Nippon Steel")

[53] See Pacific Giant (citing Nippon Steel at 1378-1379) (emphasis added).

[54] See Borden, Inc. v. United States, 22 C.I.T. 1153, 1154 (1998).

[55] See Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review, 62 FR 53808, 53819-53820 (October 16, 1997).

GERBER

Comment 20 - *Withdrawal from Verification*

Petitioners argue that because Gerber terminated verification and continues to attempt to defraud the U.S. Government, the company should receive total AFA in the final results. Petitioners point out that in the past Gerber has engaged in concerted and deliberate schemes to defraud the Department and the U.S. Government by using the shipment and importation paperwork of another company with a lower duty deposit rate to avoid making legally required cash deposits.[56] Petitioners continue by explaining that at verification the Department discovered, among other things, new evidence that Gerber was using shipping documents and labels of Guangxi Yulin, another Chinese company that is a respondent in the review. Petitioners cite the verification report stating that following such discoveries Gerber terminated verification and that Gerber was aware that this decision would result in total AFA.

The respondent did not comment on this issue.

Department's Position:

On March 29, 2005, the Department commenced a verification of the facts submitted by Gerber in its responses to the Department's questionnaires. On April 1, 2005, the fourth day of verification, Gerber withdrew from verification, reclaiming its verification exhibits, and indicating acceptance that withdrawal would result in total AFA. Due to the proprietary nature of this issue, see Memorandum Discussing the On Site Meetings to Verify the Response of Gerber Foods (Yunnan) Co., Ltd. ("Gerber") in the Fifth Antidumping Duty Review of Certain Preserved Mushrooms from the People's Republic of China ("PRC") dated June 13, 2005, from Amber Musser, International Trade Compliance Analyst, through James C. Doyle, Director, Office 9, to the File, ("Gerber Memo") for a discussion of the events that occurred at verification prior to Gerber's withdrawal. Gerber's withdrawal from verification and reclamation of its verification exhibits prevented the Department from completing its verification of the information on the record for Gerber, including its eligibility for a separate rate.

Companies that do not establish their eligibility for a separate rate are deemed to be part of the PRC-wide entity. As discussed in the Preliminary Results, the Department determined that the PRC-wide entity was uncooperative and determined to apply adverse facts available. Moreover, as detailed in the final results Federal Register notice, the Department continues to find that the PRC-wide entity, which includes Gerber, did not cooperate to the best of its ability, and that the application of adverse facts available is appropriate.

Section 776(a) of the Act provides that if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner

[56] See Certain Preserved Mushrooms from the People's Republic of China: Final Results of Sixth Antidumping Duty New Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review, 69 FR 54635 (September 9, 2004), and accompanying Issues and Decisions Memorandum at Comment 5.

requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use facts otherwise available in reaching the applicable determination. Because the PRC-wide entity, which includes Gerber "significantly impeded" this proceeding and provided unverifiable information, the Department must apply FA to determine the margin for the PRC-wide entity.

Section 776(b) of the Act provides that if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission (as the case may be), in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. Such adverse inference may include reliance on information derived from any other information placed on the record. Because the PRC-wide entity through Gerber did not only fail to cooperate to the best of its ability, but failed to cooperate with the Department at all after the third day of verification, we conclude under section 776(b) that an facts available inference that is adverse to the interests of the PRC-wide entity is appropriate in this case. Therefore, the Department has applied the highest rate on the record of this proceeding to the PRC-wide entity POR sales as total AFA. By doing so, we ensure that the companies that fail to cooperate will not obtain a more favorable result than those companies that complied fully with the Department's requests in this review.

In accordance with the Department's practice, we have assigned to the PRC-wide entity rate of 198.63 percent as AFA.[57] In selecting a rate for adverse facts available, the Department selects a rate that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."[58] Pursuant to section 776(c) of the Act, this rate is the highest dumping margin from any segment of this proceeding and was established in the less-than-fair-value investigation based on information contained in the petition, and corroborated in the final results of the first administrative review.[59] See the Department's position in Comment 18 for a detailed discussion regarding the corroboration of the PRC-wide rate.

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[57] See, e.g., Rescission of Second New Shipper Review and Final Results and Partial Rescission of First Antidumping Duty Administrative Review: Brake Rotors from the People's Republic of China , 64 FR 61581, 61584 (November 12, 1999).

[58] See Final Results of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan, 63 FR 8909, 8932 (February 23, 1998).

[59] See e.g., Notice of Final Results of Sales at Less Than Fair Value; Certain Preserved Mushrooms from the PRC, 63 FR 72255 (December 31, 1998); Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of First Antidumping Duty Administrative Review , 65 FR 66703 (November 7, 2000); and reinforced in Certain Preserved Mushrooms from the People's Republic of China: Final Results of First Antidumping Duty Administrative Review, 66 FR 31204 (June 11, 2001).

GUANGXI YULIN
Comment 21 - *Failure to Participate*

Petitioners believe that the Department should reject Guangxi Yulin's submissions and apply total AFA. Petitioners point out that Guangxi Yulin failed to answer the Department's June 3, 2005, supplemental questionnaire response and argue that, because of the nature of the issues raised and the information sought, the answer to the company's supplemental questionnaire response would have provided the singularly important basis for determining what rate to assign the respondent in this review. The petitioners believe that the Guangxi Yulin's failure to respond to the supplemental questionnaire strongly suggests questionable activities during the POR; and thus, the Department should resort to total AFA.

The respondent did not comment on this issue.

Department's Position:
The Department has determined that the application of AFA is warranted with respect to Guangxi Yulin because they have not cooperated in this review by refusing to provide crucial information upon the Department's request. The Department's request for information was made after the Department discovered Guangxi Yulin's name in Gerber's records at the verification of Gerber. Subsequently, on June 3, 2005, the Department issued a supplemental questionnaire to Guangxi Yulin allowing it a chance to clarify and explain its relationship with Gerber. Guangxi Yulin was granted an extension to respond to this supplemental, but on June 30, 2005, its counsel informed the Department that it would not participate any further in this review or the ongoing sixth review of this case. Guangxi Yulin acknowledged that it risked a Department finding that it failed to cooperate to the best of its ability under sections 776(a) and 776(b) of the Act. Due to the proprietary nature of this issue, additional discussion may be found in the June 7, 2005, Gerber Memo.

Guangxi Yulin's refusal to respond to the Department's final supplemental questionnaire leaves the record incomplete, as the Department has no other available means to obtain the information requested in the supplemental questionnaire. Section 776(a) of the Act provides that if (1) the necessary information is not available on the record, or (2) an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use facts otherwise available in reaching the applicable determination. Guangxi Yulin withheld information the Department requested and thus impeded this proceeding. Therefore, pursuant to sections 776(a)(1) and 776(a)(A) and (B) of the Act, the Department finds the lack of this critical information on the record warrants the application of facts available all to of Guangxi Yulin's POR sales during this review.

The Department believes that due to the circumstances surrounding the issuance of the

questionnaire, the information was critical and necessary to the Department's review of Guangxi Yulin's production and sales during the POR. The Department further finds that Guangxi Yulin failed to cooperate to the best of its ability. Section 776(b) of the Act provides that if the administering authority or the Commission (as the case may be) finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission (as the case may be), in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. Such adverse inference may include reliance on information derived from any other information placed on the record. Because this respondent failed to cooperate to the best of its ability, we conclude under section 776(b) that a facts available inference that is adverse to the interests of Guangxi Yulin is warranted in this case. Therefore, the Department will apply the PRC country-wide rate to Guangxi Yulin's POR sales as AFA. By doing so, we ensure that the companies that fail to cooperate will not obtain a more favorable result than those companies that complied fully with the Department's requests in this review. See the Department's position in Comment 18 for a detailed discussion regarding the corroboration of the PRC-wide rate.

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 review in the Federal Register.

Agree _____ Disagree _____

_____
Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

_____
Date