

review for the comparable goods sold during the POR.

We also find that the quantity of the sale was abnormally low when compared to the average size of shipments of comparable goods during the month in which the sale was made and to the range of shipment sizes of other PRC exporters under review for comparable merchandise. In addition, because Shenzhen Qunxingyuan had no other sales of any merchandise, subject or non-subject, during or after the POR and therefore, apparently, had no commercial income during this period, we believe the legitimacy of this company as a viable commercial entity is called into question. In addition, the conflicting information we obtained regarding the address of its U.S. customer and other information regarding another respondent relating to this customer's reported address, leads us to question the legitimacy of the U.S. customer, and as a result, the bona fides of the reported sale itself. For all of these reasons, the Department preliminarily finds Shenzhen Qunxingyuan's sole U.S. sale during the POR was not a *bona fide* commercial transaction. (See February 28, 2003, memorandum from Office Director to the Acting Deputy Assistant Secretary for further discussion.)

Relationship Between Two Respondents

Two respondents in this review, Gerber and Green Fresh, revealed to the Department on the record that they had a business relationship during the POR. The Department finds that this relationship resulted in evasion of antidumping cash deposits during the POR. (See February 28, 2003, memorandum from Office Director to the Acting Deputy Assistant Secretary for further discussion.)

As stated in *Tung Mung Development v. United States*, 219 F. Supp. 2d 1333 (CIT August 22, 2002), *appeal entered* ("*Tung Mung v. United States*"), the Department has a duty to apply its law in a manner as to prevent the evasion of antidumping duties: "The ITA has been vested with authority to administer the antidumping laws in accordance with the legislative intent. To this end, the ITA has a certain amount of discretion [to act] * * * with the purpose in mind of preventing the intentional evasion or circumvention of the antidumping duty law. *Mitsubishi Elec. Corp. v. United States*, 12 C.I.T. 1025, 1046, 700 F. Supp. 538, 555 (1988), *aff'd* 898 F.2d 1577 (Fed. Cir. 1990)." The Department has preliminarily calculated an individual margin for each of these respondents

based on the data reported by each of them, adjusted to reflect verification findings, which it will also use to calculate importer-specific assessment rates. However, because the Department is concerned that antidumping duty cash deposits may be evaded again in subsequent PORs, as they were in this POR, the Department has determined it appropriate to assign to each of these respondents for future cash deposit purposes the higher of the rates calculated for each of them in this review.

Facts Available

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

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

In this review, the Department issued Shenxian Dongxing a supplemental questionnaire, requesting it to address discrepancies in data provided in its original questionnaire response and to provide secondary worksheets which demonstrated how it derived the numerical data contained in its response. As a result of conducting verification of the data submitted by Shenxian Dongxing, we discovered at verification that Shenxian Dongxing provided the Department with erroneous quantity (*i.e.*, drained weight and packed weight) data for *all* of its U.S. sales during the POR which were reported in its U.S. sales listing contained in its Section C response. At verification, Shenxian Dongxing acknowledged these errors and explained that they were data processing errors. (See Shenxian Dongxing Verification Report at 3, and 15 through 17.)

The sales and packed quantity figures reported for each U.S. sale are derived from data contained in the sales invoice (*i.e.*, number of cartons, number of cans, and per-unit drained weight) and packing list (*e.g.*, net per-unit weight). The sales quantity data is critical for purposes of calculating the weighted-average dumping margin, and the packed weight quantity is important for purposes of calculating the respondent's U.S. movement expenses (which are

deducted from the U.S. price for margin calculation purposes). While the erroneous quantity figures at issue cannot be fixed using accurate, verified information on the record, the U.S. gross unit price data reported by this respondent is reliable and can be used for purposes of calculating sales-specific margins for the respondent. Furthermore, the errors at issue are isolated in nature and not so egregious that the Department is unable to use the rest of Shenxian Dongxing's reported U.S. sales data, after adjustments per verification findings, for purposes of calculating a margin. However, to do so, we must resort to facts available because we are unable to calculate a weighted-average margin by using this data. We therefore find that, pursuant to section 776(a)(2)(D) of the Act, the use of facts available is warranted in this segment of the proceeding with respect to Shenxian Dongxing.

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

In this segment of the proceeding, in accordance with Department practice (*see, e.g., Brake Rotors from the People's Republic of China: Preliminary Results and Preliminary Partial Rescission of the Fifth Antidumping Duty Administrative Review and Preliminary Results of the Seventh New Shipper Review*, 68 FR 1031, 1033 (January 8, 2003)), as adverse facts available, we have assigned to exports of the subject merchandise by Shenxian Dongxing a rate of 68.45 percent, which is the highest rate calculated for any of its U.S. sales transactions. The Department's