

sliced, diced, or as stems and pieces. Included within the scope of this order are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

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

The merchandise subject to this order is classifiable under subheadings: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153 and 0711.51.0000 of the Harmonized Tariff Schedule of the United States<sup>6</sup> ("HTS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

#### Partial Rescission of Administrative Review

We have rescinded this review with respect to China Processed, Compania Envasador, and Raoping Xingyu pursuant to 19 CFR 351.213(d)(1), because the petitioners withdrew their request for review and no other interested party requested a review of these companies. See *Certain Preserved Mushrooms from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 53914 (August 20, 2002).

#### Facts Available—Shenxian Dongxing

In the *Preliminary Results*, 67 FR at 10697, the Department determined that the use of adverse facts available was warranted in accordance with section 776(b) of the Tariff Act of 1930, as amended ("the Act"), to calculate the dumping margin for Shenxian Dongxing. Because Shenxian Dongxing failed to provide usable transaction-specific sales quantities for purposes of

calculating its weighted-average dumping margin, we determined that Shenxian Dongxing did not cooperate to the best of its ability. Since the preliminary results, nothing has changed to reverse our preliminary decision regarding Shenxian Dongxing and Shenxian Dongxing has filed no comments on the record addressing the Department's calculation. Therefore, pursuant to section 776(b) of the Act, we have continued to make an adverse inference with respect to Shenxian Dongxing by assigning to its exports of the subject merchandise a rate of 61.37 percent, which is the highest rate calculated for any of its U.S. sales transactions based on the use of additional publicly available information and the comments received from the interested parties since the preliminary results (see "Changes Since the Preliminary Results" section below for further discussion).

#### Facts Available—Gerber/Green Fresh

In the *Preliminary Results*, 67 FR at 10697, the Department determined that the business relationship which existed between Gerber and Green Fresh resulted in evasion of antidumping cash deposits during the POR. (See February 28, 2003, memorandum from Office Director to the Acting Deputy Assistant Secretary entitled "Cash Deposit Rate for Gerber Food (Yunnan) Co., Ltd. and Green Fresh Foods (Zhangzhou) Co., Ltd." ("Gerber-Green Fresh memo") for further discussion). Consequently, as adverse facts available, the Department preliminarily assigned to each of these respondents for future cash deposit purposes the higher of the rates calculated for each of them in this review.<sup>7</sup> The preliminary calculated margins for Gerber and Green Fresh were 1.17 percent and 46.41 percent, respectively. However, as adverse facts available for cash deposit purposes, we assigned both companies Green Fresh's calculated margin of 46.41 percent. We invited comments on our preliminary results.

After considering the comments submitted by the parties on this matter, we find that our preliminary decision with respect to Gerber and Green Fresh did not sufficiently address the fact that both companies withheld crucial information prior to verification and actively colluded to circumvent the cash deposit rates in effect during the POR. After a re-examination of the facts on the record of this review, we find that

the use of total adverse facts available is warranted in this case with respect to determining Gerber's and Green Fresh's cash deposit and assessment rates for the reasons stated below.

With respect to Gerber, we find that Gerber continually misrepresented in its questionnaire responses the true nature of its relationship with Green Fresh during the POR. In its questionnaire responses, which were accompanied by a certification from Gerber officials attesting to the validity and truthfulness of these responses, Gerber claimed that Green Fresh acted as an agent on its behalf by arranging for the shipment on some of its reported U.S. sales of self-produced subject merchandise during the POR (see May 23, 2003, Section A response at A-11). Moreover, Gerber indicated that Green Fresh acted as its agent from September 2001 to May 2002 and Gerber paid it a commission for each container of Gerber-produced merchandise which Green Fresh shipped to the U.S. market on Gerber's behalf (see September 11, 2002, submission at 6).

Based on this information, the Department was led to believe prior to verification that Gerber's business with Green Fresh was at arms-length, and constituted a *bona fide* business arrangement under which Green Fresh did, in fact, operate as the exporter of the merchandise. However, an examination of sales and export documentation at verification revealed that Gerber in fact arranged shipment of all of its sales of subject merchandise and paid Green Fresh a fee to use Green Fresh's sales invoices for this purpose in order to take advantage of Green Fresh's comparatively low cash deposit rate during the POR (see February 12, 2003, Gerber verification report at 5-7 and exhibits 4D through 4K). Absent verification, the Department would never have discovered that Gerber used Green Fresh's sales invoices in order to benefit from Green Fresh's lower cash deposit rate.

Gerber's misrepresentations were highly material to the Department's analysis and call into question the veracity of other responses provided by Gerber. Despite Gerber's pre-verification claims to the contrary, Green Fresh never acted as Gerber's agent for most of the Gerber/Green Fresh reported transactions. Green Fresh had at most negligible commercial involvement with the specific transactions involving the export of Gerber's merchandise to the United States from the PRC using its invoices. Although the nature of this relationship came to light at verification, the Department deems it critical to the resolution of this issue the

<sup>5</sup> On June 19, 2000, the Department affirmed that "marinated," "acidified," or "pickled" mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order. See "Recommendation Memorandum-Final Ruling of Request by Tak Fat, et al. for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China," dated June 19, 2000.

<sup>6</sup> Prior to January 1, 2002, the HTS subheadings were as follows: 2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000.

<sup>7</sup> For assessment purposes, we preliminarily stated that we intended to calculate importer-specific duty assessment rates based on the data provided by these two companies, as adjusted, to reflect verification findings.