

fact that Gerber certified as truthful false information it provided to the Department, in numerous questionnaire responses.

Under these circumstances, section 776(a)(2) of the Act states that the Department may use "facts available" if an interested party (A) withholds information that has been requested by the Department, (C) significantly impedes a proceeding under this title or (D) provides such information but the information cannot be verified. All of these provisions apply in this case. Because the Department relies on original sales invoices to verify the accuracy of the sales listing, the information Gerber mis-characterized and withheld was fundamental and material to the Department's analysis. Gerber's actions now lead us to question our verification findings which were predicated on the reliability of Gerber's own information and records. Gerber's consistent mis-characterization of the facts on the record impeded a proper review of Gerber's transactions. This is particularly true, given that the vast majority of Gerber's reported U.S. sales were made using Green Fresh's sales invoices. Without the necessary information pertaining to these transactions, the Department could not realistically conduct an accurate review of Gerber. Clearly in this case, Gerber did not act to the best of its ability by providing the Department with incorrect and misleading mis-characterizations of its agreement with Green Fresh and misusing Green Fresh's invoices to evade the payment of cash deposits during the POR.

For these reasons, the Department has determined that it will apply total adverse facts available to Gerber in this case. Thus, as adverse facts available, in light of record evidence of material misrepresentations by Gerber as noted above and the potential for future misconduct, the assignment of a cash deposit and assessment rate equal to the PRC-wide rate of 198.63 percent is appropriate. The application of this cash deposit rate reflects the Department's best estimate as to what the company's ultimate assessed duty liability would be in the next stage of the proceeding, given the uncertainty created by the misconduct that has characterized the parties' behavior to date. The Department considers the assignment of this rate to Gerber sufficient to encourage it to cooperate with the Department in future reviews, and to ensure that Gerber cannot undermine the efficacy of the antidumping duty law by posting insufficient and improper deposits.

With respect to Green Fresh, its misrepresentations on the record significantly impeded this proceeding as well. Like Gerber, Green Fresh also stated in its questionnaire responses that it acted as an agent for sales made and produced by Gerber, whereby it received a commission for exporting that merchandise on Gerber's behalf to the U.S. market during the POR (see May 23, 2002, submission at 11). In describing its role as Gerber's agent, Green Fresh indicated that it provided Gerber with specific export documents (i.e., an invoice, PRC Customs and quarantine inspection form, packing list, VAT refund form, and PRC Customs declaration form) for only a portion of Gerber's sales transactions during the POR (see December 23, 2003, submissions at 1 and 2). Moreover, Green Fresh indicated that it had the data for these affected sales transactions and separately reported them in its supplemental response (see December 23, 2002, submission at 3). With respect to these affected sales transactions which it claimed it acted as Gerber's shipping agent, Green Fresh did not reveal to the Department until verification that it merely provided Gerber with blank sales invoices for purposes of enabling Gerber to ship its merchandise to the U.S. market during the POR at a lower cash deposit rate. Furthermore, although Green Fresh claimed that it actually arranged for the shipment of Gerber-produced merchandise included in these affected sales transactions (which were reported by both companies in their respective Section C sales listings), Green Fresh was unable to provide complete documentation for all of the affected sales transactions to support its claim that it served as a *bona fide* shipping agent on behalf of Gerber with respect to these sales (see February 12, 2003, Green Fresh verification report at 6–7 and exhibit 6P). Because these affected sales transactions were documented with invoices issued by Green Fresh and not by Gerber but could not be tied to records prepared by Green Fresh in the ordinary course of business, we were unable to verify the extent of Green Fresh's involvement with respect to these sales or to corroborate Green Fresh's statements. Therefore, given the fact that the sales in question were made using Green Fresh's invoices and that Green Fresh was unable to provide its own supporting documentation for all but one of these sales transactions, we question the reliability of Green Fresh's reported sales data, its sales documentation, and the additional data it provided at verification.

Furthermore, the willingness of Green Fresh to assist another company to evade the payment of legally required cash deposits, as well as its consistent mis-characterization of the facts on the record (despite its representatives' certification of the facts contained in multiple submissions to the Department as truthful when they were not), leads us again to question the validity of the books and records examined by the Department at verification. Thus, consistent with our analysis for Gerber, we do not believe that Green Fresh's reported information can be relied upon by the Department in calculating an antidumping duty margin and cash deposit/assessment rates. Consequently, pursuant to sections 776(a)(2)(A), (C) and (D) of the Act, the Department is applying total facts available to Green Fresh. Furthermore, pursuant to section 776(b) of the Act, an adverse inference is warranted because Green Fresh's sale of invoices for purposes of aiding Gerber to evade cash deposits, as well as its mis-characterization of the facts in this case, clearly demonstrate that Green Fresh did not act to the best of its ability during this administrative review.

Thus, as adverse facts available, in light of record evidence of material misrepresentations by Green Fresh as noted above and the potential for future misconduct, the assignment of a cash deposit and assessment rate equal to the PRC-wide rate of 198.63 percent is appropriate. (See Issues and Decision Memorandum ("Decision Memo") from Jeffrey May, Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration at Comment 1 for further discussion).

Corroboration of Facts Available

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action, H.R. Doc. 103–316 ("SAA"), states that "corroborate" means to determine that the information used has probative value. See SAA at 870. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.

In this segment of the proceeding, in accordance with Department practice, as adverse facts available, we have assigned to exports of the subject merchandise by Gerber and Green Fresh the PRC-wide rate of 198.63 percent, a