

DEPARTMENT OF COMMERCE**International Trade Administration****[A-570-851]****Certain Preserved Mushrooms from the People's Republic of China: Notice of Court Decision Not in Harmony with Final Results of Administrative Review**

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: On January 5, 2010, the United States Court of International Trade (CIT) sustained the Department of Commerce's (the Department's) results of redetermination pursuant to the CIT's remand in *Gerber Food (Yunnan) Co., Ltd. and Green Fresh (Zhangzhou) Co., Ltd. v. United States*, Court No. 04-00454 (May 5, 2009) (*Gerber v. United States Remand Order*). See Redetermination Pursuant to Court Remand, dated July 24, 2009 (Remand Redetermination) (found at <http://ia.ita.doc.gov/remands>); and *Gerber Food (Yunnan) Co., Ltd. and Green Fresh (Zhangzhou) Co., Ltd. v. United States*, Slip Op. 10-2 (January 5, 2010) (*Gerber v. United States II*). Consistent with the decision of the United States Court of Appeals for the Federal Circuit (CAFC) in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's final results of the administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (PRC) covering the period of review (POR) of February 1, 2002, through January 31, 2003. 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) (*Final Results*).

FOR FURTHER INFORMATION CONTACT: Brian Smith, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone (202) 482-1766.

SUPPLEMENTARY INFORMATION:**Background**

On September 9, 2004, the Department published its final results in the antidumping duty administrative review of certain preserved mushrooms from the PRC covering the POR of

February 1, 2002, through January 31, 2003 (fourth administrative review). See *Final Results*. In the *Final Results*, the Department applied total adverse facts available (AFA) in calculating the cash deposit and assessment rates for respondent Gerber Food (Yunnan) Co., Ltd. (Gerber), and partial AFA in calculating the cash deposit and assessment rates for respondent Green Fresh (Zhangzhou) Co., Ltd. (Green Fresh). See *Final Results*, 69 FR at 54637-54638. The Department found that Gerber and Green Fresh were involved in a business arrangement/scheme, commencing during the period of the prior (third) administrative review, that resulted in the circumvention of the proper payment of cash deposits on certain POR entries of subject merchandise made by Gerber. As either total or partial AFA, the Department applied the PRC-wide-rate of 198.63 percent to both companies. Gerber and Green Fresh challenged the Department's resorting to the application of AFA to determine their cash deposit and assessment rates in the *Final Results*.

In light of the CIT's analysis in its decisions in the litigation covering the third administrative review (see *Gerber Food (Yunnan) Co., Ltd. and Green Fresh (Zhangzhou) Co., Ltd. v. United States*, Slip Op. 08-97 (September 16, 2008) (*Gerber v. United States I*), which concerned the same parties and many of the same issues as those in the fourth administrative review, and the factual similarity between the administrative records of the third and fourth administrative reviews, the Government of the United States requested a voluntary remand, which the CIT granted on May 5, 2009. See *Gerber v. United States Remand Order*. Pursuant to this remand order and consistent with the Court's analysis in *Gerber v. United States I*, the Department issued its final results of redetermination on July 24, 2009. In this redetermination, the Department recalculated the margin for Gerber using a rate other than the PRC-wide rate as partial AFA with respect to only those sales of subject merchandise made by Gerber during the POR which were exported to the United States using the invoices of Green Fresh. The Department also recalculated the margin for Green Fresh exclusive of the application of AFA. The Department's redetermination resulted in changes to the *Final Results* weighted-average margins for Gerber from 198.63 percent to 22.84 percent, and for Green Fresh from 42.90 percent to 15.83 percent. See *Remand Determination* at 1, and 4-7. The CIT affirmed this redetermination

on January 5, 2010. See *Gerber v. United States II* at 3.

Timken Notice

In its decision in *Timken*, 893 F.2d at 341, the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's decision in *Gerber v. United States II* constitutes a final decision of that court that is not in harmony with the Department's *Final Results*. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. In the event the CIT's ruling is not appealed or, if appealed, upheld by the CAFC, the Department will instruct U.S. Customs and Border Protection to assess antidumping duties on entries of the subject merchandise during the POR from Gerber and Green Fresh based on the revised assessment rates calculated by the Department. This notice of court decision is effective January 15, 2010.

This notice is issued and published in accordance with section 516A(c)(1) of the Act.

Dated: January 19, 2010.

Ronald K. Lorentzen

Deputy Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE**International Trade Administration****[A-489-501]****Certain Welded Carbon Steel Pipe and Tube from Turkey: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review**

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

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