Antidumping Duty Proceeding	Period to be Reviewed
Italy: Certain Pasta, A-475–818: Pastificio Carmine Russo S.p.A.	07/01/02 - 12/31/02

Concurrent with the publication of this notice, and in accordance with 19 CFR 351.214(e), we will instruct the U.S. Customs Service to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the company listed above, until the completion of the review.

Interested parties may submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305.

This initiation notice is in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214.

Dated: February 28, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–5495 Filed 3–6–03; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–813]

Certain Preserved Mushrooms From India: Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to timely requests by three manufacturer/exporters and the petitioner,[1] the Department of Commerce is conducting an administrative review of the antidumping duty order on certain preserved mushrooms from India with respect to three companies. The period of review is February 1, 2001, through January 31, 2002.

We preliminarily determine that sales have been made below normal value. Interested parties are invited to comment on these preliminary results. If these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service to assess antidumping duties on all appropriate entries.

EFFECTIVE DATE: March 7, 2003.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Kate Johnson, Office 2, AD/CVD Enforcement Group I, Import Administration—Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–4929, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 19, 1999, the Department published in the **Federal Register** an amended final determination and antidumping duty order on certain preserved mushrooms from India (64 FR 8311).

On February 1, 2002, the Department published a notice advising of the opportunity to request an administrative review of the antidumping duty order on certain preserved mushrooms from India (67 FR 4945). In response to timely requests by three manufacturers/exporters, Agro Dutch Foods Ltd. (Agro Dutch), Himalya International Ltd. (Himalya), and Weikfield Agro Products, Ltd. (Weikfield), and the petitioner, the Department published a notice of initiation of an administrative review with respect to three companies: Agro Dutch, Himalya, and Weikfield (67 FR 14696, March 27, 2002). The period of review (POR) is February 1, 2001, through January 31, 2002.

On April 12, 2002, the Department issued antidumping duty questionnaires to the above-mentioned companies. We received responses to the original questionnaire during the period May through July 2002. We issued supplemental questionnaires in July, October, and November 2002, and received responses during the period August through December 2002. For Weikfield and Himalya, Section D questionnaire response data was removed from the record in December 2002 and January 2003, respectively (*see* December 30, 2002, Letter to Matthew P. Jaffe, counsel to Weikfield regarding the removal of Weikfield's Section D responses from the record, and January 16, 2003, Memorandum to the File concerning the removal of Himalya's Section D responses from the record). As a result of the initiation of sales below the cost of production (COP) investigations, discussed below, these Section D responses were re-submitted for the record in January (Weikfield) and February (Himalya) 2003.

In October 2003, we conducted an on-site verification of Agro Dutch's questionnaire responses. The results of this verification are described in *Sales and Cost of Production Verification in Chandigarh, India of Agro Dutch Industries, Ltd.*, Memorandum to the File dated December 10, 2002 (*Agro Dutch Verification Report*).

On January 3, 2003, the Department received an allegation from the petitioner that Weikfield sold certain preserved mushrooms in India at prices below the COP. This allegation was timely because the Department had extended the deadline for such an allegation. On January 21, 2003, the Department initiated a cost investigation of Weikfield's home-market sales of this merchandise. *See Petitioner's Allegation of Sales Below the Cost of Production for Weikfield Agro Products Ltd.*, Memorandum to Louis Apple from Mark J. Todd dated January 21, 2003.

On January 15, 2003, the Department received an allegation from the petitioner that Himalya sold certain preserved mushrooms in India at prices below the COP. This allegation was timely because the Department had extended the deadline for such an allegation. On January 29, 2003, the Department initiated a cost investigation of Himalya's home-market sales of this merchandise. *See Petitioner's Allegation of Sales Below the Cost of Production for Himalya International Limited*, Memorandum to Louis Apple from Aleta Habeeb dated January 29, 2003.

Scope of the Order

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis*. "Preserved mushrooms" refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water,

[1] The petitioner is the Coalition for Fair Preserved Mushroom Trade which includes the American Mushroom Institute and the following domestic companies: L.K. Bowman, Inc., Modern Mushroom Farms, Inc., Monterey Mushrooms, Inc., Mount Laurel Canning Corp., Mushrooms Canning Company, Southwood Farms, Sunny Dell Foods, Inc., and United Canning Corp.

brine, butter or butter sauce. Preserved mushrooms may be imported whole, 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.

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 [2] (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this order dispositive.

Fair Value Comparisons

To determine whether sales of certain preserved mushrooms by the respondents to the United States were made at less than normal value (NV), we compared constructed export price (CEP) or export price (EP), as appropriate, to the NV, as described in the ''Export Price/Constructed Export Price'' and ''Normal Value'' sections of this notice.

Pursuant to section 777A(d)(2) of the Tariff Act of 1930 (the Act), we compared the EPs of individual U.S. transactions to the weighted-average NV of the foreign like product where there were sales made in the ordinary course of trade, as discussed in the ''Cost of Production Analysis'' section below.

In this review, Agro Dutch did not have a viable home or third country market. Therefore, as the basis for NV, we used constructed value (CV) when making comparisons in accordance with section 773(a)(4) of the Act.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondents covered by the description in the ''Scope of the Order'' section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. With respect to Himalya and Weikfield, we compared U.S. sales to sales made in the home market within the contemporaneous window period, which extends from three months prior to the U.S. sale until two months after the sale. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. For Agro Dutch, where there were no sales of identical or similar merchandise made in the ordinary course of trade in the home market or a third country to compare to U.S. sales, we compared U.S. sales to CV. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order: preservation method, container type, mushroom style, weight, grade, container solution, and label type.

Export Price/Constructed Export Price

For Agro Dutch and Weikfield, we used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly by the producer/exporter in India to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise indicated. With respect to Himalya, we calculated CEP in accordance with section 772(b) of the Act, because the subject merchandise was first sold by Him Infotech dba Transatlantic Marketing, Himalya's affiliated importer in the United States, after importation into the United States. We based EP and CEP on packed prices to unaffiliated purchasers in the United States.

Agro Dutch

Agro Dutch reported its U.S. sales as sold on an FOB, C&F, or CIF basis. We made deductions from the starting price, where appropriate, for foreign inland freight, freight document charges, insurance, foreign brokerage and handling, Indian export duty (CESS), and international freight in accordance with section 772(c)(1) of the Act and 19 CFR 351.402.

As discussed at page 20 of the *Agro Dutch Verification Report*, Agro Dutch incurred brokerage and handling expenses on all of its U.S. sales, but did not report this expense for certain sales due to an unspecified error that was discovered at verification. Because Agro Dutch did not provide the Department with all of the requested expense data, use of facts available is appropriate pursuant to section 776(a)(2)(A) of the Act. Furthermore, because Agro Dutch withheld this information and was unable to provide any explanation regarding this omission, we find that Agro Dutch failed to cooperate by not acting to the best of its ability to comply with a request for information, within the meaning of section 776(b) of the Act. Under such circumstances, section 776(b) of the Act permits the Department to use an inference which is adverse to the party. Accordingly, we have applied the highest reported brokerage and handling expense amount to those sales where brokerage and handling was not reported, as adverse facts available. *See Agro Dutch Sales Data Adjustments for the Preliminary Results*, Memorandum to the File dated February 28, 2003 (*Agro Dutch Sales Memo*), for the identification of this amount.

Himalya

Himalya reported its U.S. sales as sold on an ex dock/FOB U.S. warehouse, ex-factory or delivered basis. We made deductions from the CEP starting price, where appropriate, for foreign inland freight, brokerage and handling expenses, international freight, marine insurance, U.S. duty, U.S. inland freight, and U.S. warehousing expenses in accordance with section 772(c)(1) of the Act and 19 CFR 351.402. We also deducted indirect selling expenses, credit expenses, and inventory carrying costs pursuant to section 772(d)(1) of the Act and 19 CFR 351.402. We recalculated credit expenses and inventory carrying costs using a public-source U.S. interest rate. *See* February 28, 2002 Memorandum to the File *Preliminary Results Calculation Memorandum for Himalya International Ltd. (Himalya)* for specifics as to why Himalya's reported U.S. interest rate data was insufficient. We made an adjustment for CEP profit in accordance with section 773(d)(3) of the Act.

Weikfield

Weikfield reported its U.S. sales as sold on a FOB port Mumbai, delivered duty paid, or C&F basis. We made deductions from the starting price, where appropriate, for foreign inland freight, foreign inland and marine insurance, foreign brokerage and handling expenses, CESS, international freight, and U.S. duty (including U.S. brokerage and handling expenses) in accordance with section 772(c)(1) of the Act and 19 CFR 351.402.

For certain sales, Weikfield reported that it arranged export financing through its affiliate, Weikfield Products

[2] Prior to January 1, 2002, the HTS codes 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.

Co. Ltd. (WPCL), under which WPCL paid Weikfield in advance for the shipment, less a fee, and WPCL assumed the financial risk of the sale. As the credit expense for these sales, Weikfield reported the amount of the fee paid to WPCL. However, as Weikfield and WPCL are affiliated parties, we believe it is appropriate to calculate imputed credit based on the period from shipment to the date that a member of the Weikfield Group first receives payment from an unaffiliated party (*i.e.*, the unaffiliated bank used by the Weikfield Group). Accordingly, we have recalculated imputed credit to reflect the period from shipment to bank payment, and made a further circumstance-of-sale adjustment for the bank fee paid by Weikfield or WPCL, based on the information in the December 4, 2002, submission.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the respondents' volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

With regard to Himalya and Weikfield, the aggregate volume of home market sales of the foreign like product was greater than five percent of the aggregate volume of U.S. sales of the subject merchandise. Therefore, we determined that the home market provides a viable basis for calculating NV for Himalya and Weikfield.

Agro Dutch reported that during the POR it made no home market or third country sales. Therefore, we determined that neither the home market nor any third country market was a viable basis for calculating NV for Agro Dutch. As a result, we used CV as the basis for calculating NV for this respondent, in accordance with section 773(a)(4) of the Act.

Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing (*id.*); *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa,* 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the ''chain of distribution''), including selling functions, class of customer (''customer category''), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices [3]), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc.* v. *United States,* 243 F. 3d 1301, 1314–1315 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if a NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

We obtained information from the respondents regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed for each channel of distribution. Company-specific LOT findings are summarized below.

Agro Dutch

We compared all U.S. sales to CV, as noted above. Because Agro Dutch has no viable comparison market, we derived the selling expenses and profit from the above-cost home market sales of Himalya and Weikfield, as discussed below under ''Calculation of Constructed Value.'' Consistent with our normal practice where NV is based on CV, we must consider the NV LOT based on the LOT of both sets of sales used to derive the weighted-average selling expenses and profit in this case. These sales (and the resulting weighted averages) are based on the different customer bases, channels of distribution, and selling functions of Himalya and Weikfield, as described below. As we cannot determine a specific LOT from the two sets of sales from which we derived the selling expenses and profit for CV, we cannot determine whether there is a difference in LOT between U.S. sales and CV. Therefore, we made no LOT adjustment to NV.

Himalya

Himalya sold directly to institutional customers/wholesalers/distributors, and consumers in the home market. We examined Himalya's home market distribution system, including selling functions, classes of customers, and selling expenses, and determined that Himalya offers the same support and assistance to all its home market customers. Accordingly, all of Himalya's home market sales are made through the same channel of distribution and constitute one LOT.

With regard to sales to the United States, Himalya had only CEP sales, through its affiliated importer, Him InfoTech dba Transatlantic Marketing, to wholesalers/distributors/trading companies. We examined Himalya's U.S. distribution system, including selling functions, classes of customers, and selling expenses, and determined that Himalya offers the same support and assistance to all its U.S. customers. Accordingly, all of Himalya's U.S. sales are made through the same channel of distribution and constitute one LOT.

To determine whether sales in the comparison market were at a different LOT than CEP sales, we examined the selling functions performed at the CEP level, after making the appropriate deductions under section 772(d) of the Act, and compared those selling functions to the selling functions performed in the home market LOT.

In the comparison market, Himalya sold subject merchandise directly to institutional customers/wholesalers/distributors and consumers. In the United States, Himalya sold subject merchandise to its affiliate, Him InfoTech dba Transatlantic Marketing, which then resold the subject merchandise directly to unaffiliated purchasers. Therefore, we compared the

[3] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses and profit for CV, where possible.

CEP LOT to the home market LOT and concluded that most of the functions performed by Himalya in making the starting-price sale in the comparison market (*e.g.*, order solicitation, price negotiation, payment, transportation arrangements) were not performed in connection with CEP sales (*e.g.*, order solicitation, price negotiation, payment). Accordingly, different LOTs exist between comparison-market and CEP sales, and the comparison-market sales are made at a more advanced LOT than are the CEP sales.

Because there is only one LOT in the home market, it is not possible to determine if there is a pattern of consistent price differences between the sales on which NV is based and home market sales at the LOT of the export transaction. Accordingly, because the data available do not form an appropriate basis for making a LOT adjustment, but the LOT in the home market is at a more advanced stage of distribution than the CEP LOT, we have made a CEP offset to NV in accordance with section 773(a)(7)(B) of the Act. The CEP offset is calculated as the lesser of:

1. The indirect selling expenses on the comparison-market sale, or
2. The indirect selling expenses deducted from the starting price in calculating CEP.

Weikfield

Weikfield's home market sales are made via one of two channels of distribution: a) direct sales to distributors in the Indian states of Maharashtra and Goa (Channel 1), and b) sales to ''carrying and forwarding'' (C&F) agents, which perform a role similar to that of distributors, in the rest of India (Channel 2). We examined Weikfield's home market distribution system, including selling functions, classes of customers, and selling expenses, and determined that Weikfield offers the same support and assistance to all its home market customers except with respect to sales promotion activities.

In Channel 1, Weikfield's affiliate WPCL engages in market development activities to promote Weikfield's sales of preserved mushrooms and further develop its market. Weikfield reports that WPCL participates in sales exhibitions and consumer shows, and it creates and supplies in-store promotions and displays (see August 23, 2002, supplemental questionnaire response at page S–12). For sales in Maharashtra, Weikfield also pays a commission to a logistics agent. In Channel 2, Weikfield does not undertake any sales promotion activities to support its sales to C&F agents. Weikfield pays its unaffiliated C&F agents a commission for providing logistics and distribution services to the ultimate customer (*i.e.*, the C&F agent's customer).

Although Weikfield's sales through Channel 1 involve a set of selling activities not performed for Channel 2 sales, we have not considered these sales promotion activities to be extensive enough by themselves to classify Channel 1 as a separate LOT from Channel 2. In all other areas of our analysis, including sales negotiation, freight and distribution services, inventory maintenance, and customer class, the two channels involve the same services performed by Weikfield. Accordingly, we consider all of Weikfield's home market sales to constitute one LOT. This determination is consistent with our finding in the 1998–2000 administrative review, in which Weikfield had a viable home market and a similar fact pattern with respect to its two home market channels of distribution, which we found to constitute the same LOT.

With regard to sales to the United States, Weikfield made only EP sales to importers/traders. We examined Weikfield's U.S. distribution system, including selling functions, classes of customers, and selling expenses, and determined that Weikfield offers the same support and assistance to all its U.S. customers. Accordingly, all of Weikfield's U.S. sales are made through the same channel of distribution and constitute one LOT.

We compared the EP LOT to the home market LOT and concluded that the selling functions performed for home market customers are sufficiently similar to those performed for U.S. customers because the same services are offered in both markets. Apart from the promotion activities conducted by WPCL in the home market, Weikfield does not perform different selling activities in either the U.S. or home markets. Weikfield's selling activities undertaken in both markets are limited to responding to infrequent product complaints and, in the home market, arranging for domestic freight on certain sales. Accordingly, we consider the EP and home market LOTs to be the same. Consequently, we are comparing EP sales to sales at the same LOT in the home market.

Cost of Production Analysis

As stated in the ''Background'' section of this notice, based on timely allegations filed by the petitioner, the Department initiated investigations to determine whether Himalya's and Weikfield's home market sales were made at prices less than the COP within the meaning of section 773(b) of the Act.

A. Calculation of Cost of Production

We calculated the COP on a product-specific basis, based on the sum of Himalya's and Weikfield's respective costs of materials and fabrication for the foreign like product, plus amounts for selling, general and administrative (SG&A) expenses, interest expense, and all expenses incidental to placing the foreign like product in a condition packed ready for shipment in accordance with section 773(b)(3) of the Act.

For these preliminary results, we have implemented a change in practice regarding the treatment of foreign exchange gains and losses. The Department's previous practice was to have respondents identify the source of all foreign exchange gains and losses (*e.g.*, debt, accounts receivable, accounts payable, cash deposits) at both a consolidated and unconsolidated corporate level. At the consolidated level, the current portion of foreign exchange gains and losses generated by debt or cash deposits were included in the interest expense rate computation. At the unconsolidated producer level, foreign exchange gains and losses on accounts payable were either included in the G&A rate computation, or under certain circumstances, in the cost of manufacturing. Gains and losses on accounts receivable at both the consolidated and unconsolidated producer levels were excluded from the COP and CV calculations.

Instead of splitting apart the foreign exchange gains and losses as reported in an entity's financial statements, we will normally include in the interest expense computation all foreign exchange gains and losses. In doing so, we will no longer include a portion of foreign exchange gains and losses from two different financial statements (*i.e.*, consolidated and unconsolidated producer). Instead, we will only include the foreign exchange gains and losses reported in the financial statement of the same entity used to compute each respondent's net interest expense rate. This approach recognizes that the key measure is not necessarily what generated the exchange gain or loss, but rather how well the entity as a whole was able to manage its foreign currency exposure in any one currency. As such, for these preliminary results, we included all foreign exchange gains or losses in the interest expense rate computation. We note that there may be unusual circumstances in certain cases which may cause the Department to deviate from this general practice. We will address exceptions on a case-by-case basis.

As this is a change in practice, we invite the parties to the proceeding to comment on this issue.

We relied on the COP information submitted by Himalya and Weikfield, except for the following adjustments:

Himalya

- We revised Himalya's fixed overhead (FOH) per-unit amounts to exclude certain products from both "mushroom growing" and "mushroom canning and IQF only" asset categories in allocating the depreciation expense to subject merchandise.
- We revised Himalya's G&A expense ratio calculation to exclude expenses related to Him Infotech dba Transatlantic Marketing, a separate subsidiary, and to include amortized expenses.
- We revised the interest expense ratio calculation to include net foreign exchange gains.

See Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination Memorandum to Neal Halper dated February 28, 2003, for a further discussion of these adjustments.

Weikfield

- We revised the reported direct labor and variable overhead costs to reflect changes in the allocation of manufacturing costs to the mushroom division (PMD) during the POR.
- We revised the reported FOH costs to include all depreciation costs experienced during the POR.
- We revised the G&A expense rate calculation to include all depreciation costs in the costs of goods sold amount used as the denominator in the calculation of the rate.
- We revised the financial expenses to exclude long-term financial income and the gain on debt restructuring. In addition, we included all depreciation costs in the costs of goods sold amount used as the denominator in calculating the financial expense ratio.

See Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination, Memorandum to Neal Halper dated February 28, 2003, for a further discussion of these adjustments.

B. Test of Home Market Prices

For Himalya and Weikfield, on a product-specific basis, we compared the weighted-average COP to the prices of home market sales of the foreign like product, as required by section 773(b) of the Act, in order to determine whether these sales were made at prices below the COP. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices were exclusive of any applicable movement charges, discounts, direct and indirect selling expenses and packing expenses. In determining whether to disregard home market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made: (1) Within an extended period of time, (2) in substantial quantities; and (3) at prices which did not permit the recovery of all costs within a reasonable period of time.

C. Results of COP Test

Pursuant to section 773(b)(2)(c) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we disregarded the below-cost sales because we determined that they represented "substantial quantities" within an extended period of time, and were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1) of the Act.

The results of our cost test for Himalya indicated all sales were at prices above COP. We therefore retained all sales in our analysis and used them as the basis for determining NV.

The results of our cost test for Weikfield indicated that for certain products more than twenty percent of home market sales within an extended period of time were at prices below COP which would not permit the full recovery of all costs within a reasonable period of time. *See* 773(b)(2) of the Act. In accordance, with section 773(b)(1) of the Act, we excluded these below-cost sales from our analysis and used the remaining sales as the basis for determining NV.

Price-to-Price Comparisons

For both Himalya and Weikfield, we based NV on the price at which the foreign like product is first sold for consumption in the home market, in the usual commercial quantities and in the ordinary course of trade, and at the same LOT as EP or CEP, as defined by section 773(a)(1)(B)(i) of the Act.

Home market prices were based on either ex-factory or delivered prices. We reduced the starting price for discounts (Himalya and Weikfield) and movement expenses (Weikfield only as Himalya's sales are ex-factory), where appropriate, in accordance with section 773(a)(6) of the Act and 19 CFR 351.401. We also reduced the starting price for packing costs incurred in the home market, in accordance with section 773(a)(6)(B)(i), and increased NV to account for U.S. packing expenses in accordance with section 773(a)(6)(A). We made circumstance-of-sale adjustments for credit expenses and commissions, where appropriate, pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. In addition, we made adjustments to NV, where appropriate, for differences in costs attributable to differences in the physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. For Weikfield, we made an adjustment to NV to account for commissions paid in the home market but not in the U.S. market, in accordance with 19 CFR 351.410(e). As the offset for home market commissions, we applied the lesser of home market commissions or U.S. indirect selling expenses. See below for a discussion of the calculation of U.S. indirect selling expenses. Finally, for comparisons to CEP sales (Himalya only), we made a CEP offset pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). We calculated the CEP offset as the lesser of the indirect selling expenses on the comparison-market sales or the indirect selling expenses deducted from the starting price in calculating CEP.

Weikfield reported home market commissions paid to its affiliate, WPCL, and to unaffiliated parties. In its supplemental questionnaire response, Weikfield claims that the commissions paid to WPCL are actual payments resulting from specific sales and not intracompany transfers. Weikfield states that the commissions paid to WPCL are at a different rate than those commissions paid to unaffiliated parties because of the services provided by WPCL in procuring business for Weikfield.

With respect to commissions paid to affiliated parties, the Department's practice is to treat payments to affiliated parties providing services that relate to the sale of merchandise as commissions if they are actual expenditures resulting from specific sales and are not intra-company transfers. The Department allows these expenses as direct deductions to price if they are at arm's length and tie directly to sales (*see, e.g., Final Results of Antidumping Duty Administrative Review, Large Newspaper Printing Presses and Components Thereof, Whether*

Assembled or Unassembled, from Germany, 66 FR 11557, (February 26, 2001), accompanying Issues and Decision Memorandum at Comment 5).

Based on our analysis of Weikfield's questionnaire responses in this review, and WPCL's sales and marketing activities in support of its sister company, we have rejected Weikfield's claim that the payments made to WPCL are arm's-length commissions. We are not persuaded based on the information in the questionnaire responses comparing the payments to WPCL to those made to unaffiliated C&F agents that the payments to WPCL are at arm's length. Moreover, WPCL's activities to promote Weikfield's preserved mushroom sales appear integrated with WPCL's own sales promotion efforts for its product line. The expenses incurred in support of these sales promotion activities would be incurred whether or not a specific sale is made. Accordingly, we have not deducted the reported commissions to WPCL from the home market price.

However, we are accounting for the costs incurred in support of the sales promotion activities by treating them as indirect selling expenses. Weikfield did not report a separate amount for indirect selling expenses; therefore, we have calculated these expenses based on the consolidated Weikfield Group Financial Statement submitted as Exhibit S–3 to the supplemental questionnaire response (*see Weikfield Sales Data Adjustments for the Preliminary Results*, Memorandum to the File dated February 28, 2003). Accordingly, we made an adjustment to the home market price for commissions paid only to unaffiliated parties for home market sales.

Calculation of Constructed Value

We calculated CV in accordance with section 773(e) of the Act, which indicates that CV shall be based on the sum of each respondent's cost of materials and fabrication for the subject merchandise, plus amounts for SG&A expenses, profit and U.S. packing costs. We relied on the submitted CV information except for the following adjustments:

Agro Dutch

We adjusted the submitted total cost of manufacturing to include a recalculation of the work-in-process offset. We recalculated work in process by applying a ratio to total manufacturing costs that includes the number of days remaining in the year after all theoretically possible mushroom growing cycles have been completed rather than using a ratio, as Agro Dutch did, that includes the total number of days in the mushrooms cycle.

Because Agro Dutch had no viable home or third country market, we derived selling expenses and profit for Agro Dutch in accordance with section 773(e)(2)(B)(ii) of the Act and the Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 103–316, Vol.1 at 169–171 (SAA). *See* 19 CFR 351.405(b)(2) (clarifying that under section 773(e)(2)(B) of the Act, ''foreign country'' means the country in which the merchandise is produced). Under this provision, we may use an amount which reflects selling expenses and profit based on actual amounts incurred or realized by other investigated companies on home market sales in the ordinary course of trade of the foreign like product. *See* section 773(e)(2)(B)(ii) of the Act. As a result, we calculated Agro Dutch's selling expenses and profit as a weighted average of the selling expense and profit amounts incurred on home market sales by Himalya and Weikfield during the cost reporting period. For further details *see Agro Dutch Sales Memo*.

Price-to-Constructed Value Comparisons

For Agro Dutch, we based NV on CV, in accordance with section 773(a)(4) of the Act. For comparisons to Agro Dutch's EP sales, we made circumstance-of-sale adjustments by deducting from CV the weighted-average direct selling expenses derived from Himalya's and Weikfield's home market data, as noted above, and adding the U.S. direct selling expenses, in accordance with section 773(a)(8) of the Act and section 19 CFR 351.410.

At verification, Agro Dutch was unable to fully reconcile the expenses incurred for packing materials. As described at page 24 of the *Agro Dutch Verification Report*, we found an unreconciled difference equal to 14.36 percent of the total cost of packing material reported in the questionnaire response. Pursuant to section 782(e)(2) of the Act, because we could not verify the reported packing material cost, we cannot accept the reported amount. Furthermore, in providing unverifiable information, Agro Dutch failed to cooperate to the best of its ability with respect to this expense. Because Agro Dutch provided the Department with information that could not be verified, use of facts available is appropriate pursuant to section 776(a)(2)(D) of the Act. Under such circumstances, section 776(b) of the Act further permits the Department to use an inference which is adverse to the party. Thus, to account for this unreconciled difference, we increased the reported packing material amounts by 14.36 percent. *See Agro Dutch Sales Memo* for an explanation of the methodology used to revise the packing material expense.

Currency Conversion

We made currency conversions in accordance with section 773A of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the weighted-average dumping margins for the period February 1, 2001, through January 31, 2002, are as follows:

Manufacturer/exporter	Percent margin
Agro Dutch Foods, Ltd	2.85
Himalya International, Ltd	0.08 (*de minimis*)
Weikfield Agro Products, Ltd.	45.21

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication. *See* 19 CFR 351.310(c). If requested, a hearing will be scheduled after determination of the briefing schedule.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c).

Issues raised in the hearing will be limited to those raised in the respective case briefs. Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted in accordance with a schedule to be determined. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. For assessment purposes, we do not have the actual entered values for Agro Dutch or Weikfield because these respondents are not the importers of record for the subject merchandise. Accordingly, we intend to calculate customer-specific assessment rates by aggregating the dumping margins calculated for all of Agro Dutch's and Weikfield's U.S. sales examined and dividing the respective amount by the total quantity of the sales examined. With respect to Himalya, we intend to calculate importer-specific assessment rates for the subject merchandise from Himalya by aggregating the dumping margins calculated for all of Himalya's U.S. sales examined and dividing this amount by the total entered value of the sales examined. To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we will calculate customer- or importer-specific *ad valorem* ratios based on export prices.

The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review. We will instruct the Customs Service to assess antidumping duties on all appropriate entries covered by this review if any importer- or customer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.,* at or above 0.50 percent). *See* 19 CFR 351.106(c)(1). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be those established in the final results of this review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 11.30 percent, the "All Others" rate made effective by the LTFV investigation (*see Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms From India*, 64 FR 8311 (February 19, 1999)). These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: February 28, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–5490 Filed 3–6–03; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–802]

Certain Preserved Mushrooms From Indonesia: Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke Order in Part

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

ACTION: Notice of preliminary results of antidumping duty administrative review and notice of intent to revoke order in part.

SUMMARY: In response to timely requests by three manufacturers/exporters, the Department of Commerce is conducting an administrative review of the antidumping duty order on certain preserved mushrooms from Indonesia. The respondents in this proceeding are PT Indo Evergreen Agro Business Corp. ("Indo Evergreen"), and PT Zeta Agro Corporation ("Zeta").[1] The petitioner, the Coalition for Fair Preserved Mushroom Trade,[2] did not comment. The period of review is February 1, 2001, through January 31, 2002.

The Department preliminarily determines that, during the period of review ("POR"), Zeta and Indo Evergreen did not make sales of the subject merchandise at less than normal value ("NV") (*i.e.*, they made sales at zero or *de minimis* dumping margins). If these preliminary results are adopted in the final results of this administrative review, we will instruct the U.S. Customs Service to liquidate appropriate entries without regard to antidumping duties.

In addition, we preliminarily intend to revoke the order with respect to Zeta, because we find that Zeta has met all of the requirements for revocation, as set forth in section 351.222(b) of the Department's regulations.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 7, 2003.

FOR FURTHER INFORMATION CONTACT: Sophie Castro or Rebecca Trainor, Office 2, AD/CVD Enforcement Group I, Import Administration-Room B–099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone : (202) 482–0588 or (202) 482–4007, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 31, 1998, the Department published in the **Federal Register** (63 FR 72268), the final

[1] PT Dieng Djaya ("Dieng") and PT Surya Jaya Abadi Perkasa ("Dieng/Surya") also requested an administrative review but timely withdrew their request (*see Certain Preserved Mushrooms from Indonesia: Notice of Partial Rescission of Antidumping Duty Administrative Review,* 68 FR1177 (January 9, 2003)).

[2] The Coalition for Fair Preserved Mushroom Trade includes the American Mushroom Institute and the following domestic companies: L.K. Bowman, Inc., Nottingham, PA; Modern Mushrooms Farms, Inc., Toughkernamon, PA; Monterrey Mushrooms, Inc., Watsonville, CA; Mount Laurel Canning Corp., Temple, PA; Mushrooms Canning Company, Kennett Square, PA; Southwood Farms, Hockessin, DE; Sunny Dell Foods, Inc., Oxford, PA; United Canning Corp., North Lima, OH.