

(Shandong) People's Republic of China, the producer/exporter of the merchandise.

Pursuant to 19 CFR 351.214(b)(2)(i) and 19 CFR 351.214(b)(2)(iii)(A), Groupstars' January 30, 2001 request for review, as corrected in its February 22, 2001 submission, certified that it did not export the subject merchandise to the United States during the POI and that it is not affiliated with any company which exported subject merchandise to the United States during the POI. Pursuant to 19 CFR 351.214(b)(2)(iii)(B), Groupstars' corrected request certified that its export activities are not controlled by the central government of the PRC.

In addition, pursuant to 19 CFR 351.214(b)(2)(iv), Groupstars' request contained documentation establishing: the date after the POI on which Groupstars first shipped the subject merchandise for export to the United States, the volume of that shipment, and the date of the first sale to an unaffiliated customer in the United States.

It is the Department's usual practice in cases involving non-market economies to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide de jure and de facto evidence of an absence of government control over the company's export activities. See *Certain Preserved Mushrooms from the People's Republic of China: Initiation of New Shipper Antidumping Duty Review*, 65 FR 17257 (March 31, 2000). Accordingly, we will issue a separate rates questionnaire to the above-named respondent. If the respondent provides sufficient evidence that it is not subject to either de jure or de facto government control with respect to its exports of potassium permanganate, this review will proceed. If, on the other hand, Groupstars does not meet its burden to demonstrate its eligibility for a separate rate, then Groupstars will be deemed to be affiliated with other companies that exported during the POI. This review will then be terminated due to failure of the exporter or producer to meet the requirements of section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(B).

#### Initiation of Review

The antidumping duty order on potassium permanganate from the PRC has a January anniversary month. See *Antidumping Duty Order: Potassium Permanganate From the People's Republic of China*, 49 FR 3897 (January 31, 1984). The Department received Groupstars' request for review on

January 30, 2001. The Department's regulations provide that it will initiate a new shipper review in the calendar month immediately following the anniversary month if the request for the review is made during the six-month period ending with the end of the anniversary month. See 19 CFR 351.214(d)(1).

Although Groupstars' request may have been deficient in some respects, at the Department's request, Groupstars promptly clarified and corrected the deficiencies in its request prior to the Department's deadline for initiating this review, i.e. prior to the end of the month immediately following the anniversary month (February). With respect to petitioner's allegation of affiliation, the Department will examine this issue during the course of this review.

In accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(d), we are initiating a new shipper review of the antidumping duty order on potassium permanganate from the PRC. We intend to issue the preliminary results of this review not later than 180 days after the date on which the review is initiated.

Pursuant to 19 CFR 351.214(g)(1)(i)(A) of the Department's regulations, the period of review ("POR") for a new shipper review initiated in the month immediately following the anniversary month will be the twelve-month period immediately preceding the anniversary month. Therefore, the POR for this new shipper is:

| Antidumping duty proceeding                                                                      | Period to be reviewed |
|--------------------------------------------------------------------------------------------------|-----------------------|
| Potassium Permanganate from the PRC, A-570-001: Groupstars Chemical, Co. Ltd. ("Shandong") ..... | 1/1/00-12/31/00       |

Subject to receipt of an adequate separate rates questionnaire response from the respondent, we will instruct the U.S. Customs Service to suspend liquidation of unliquidated entries of subject merchandise from the above company and 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 must submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the

Act (19 U.S.C. 1675(a)) and 19 CFR 351.214.

Dated: February 28, 2001.

**Holly A. Kuga,**

*Acting Deputy Assistant Secretary, For Import Administration.*

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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.

**SUMMARY:** In response to timely requests by three manufacturer/exporters and petitioners,<sup>1</sup> on March 30, 2000, the Department of Commerce published a notice of initiation of an administrative review of the antidumping duty order on certain preserved mushrooms from India with respect to twelve companies: Agro Dutch Foods Ltd., Alpine Biotech Ltd., Dinesh Agro Products Ltd., Flex Foods Ltd., Himalya International Ltd., Hindustan Lever Ltd. (formerly Ponds India Ltd.), Mandeep Mushrooms Ltd., Premier Mushroom Farms, Saptarishi Agro Industries Ltd., Techtran Agro Industries Limited, Transchem Ltd., and Weikfield Agro Products Ltd.

On June 22, 2000, we received a timely submission from the petitioners to withdraw their request for administrative review for Alpine Biotech, Ltd., Dinesh Agro Products Ltd., Flex Foods Ltd., Mandeep Mushrooms Ltd., Premier Mushroom Farms, Saptarishi Agro Industries Ltd., and Transchem Ltd. On July 18, 2000, the Department published a notice of partial rescission of the antidumping duty administrative review with respect to the above-mentioned companies (65 FR 44522). The period of review is August 5, 1998, through January 31, 2000.

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

<sup>1</sup> The petitioners are 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.

our final results of administrative review, we will instruct the Customs Service to assess antidumping duties on all appropriate entries.

**EFFECTIVE DATE:** March 8, 2001.

**FOR FURTHER INFORMATION CONTACT:**

David J. Goldberger, Katherine Johnson, or Dinah McDougall, 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, (202) 482-4929, or (202) 482-3773, respectively.

**SUPPLEMENTARY INFORMATION:**

**The Applicable Statute**

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (April 1999).

**Background**

On December 31, 1998, the Department published in the **Federal Register** (63 FR 72246) the final affirmative antidumping duty determination on certain preserved mushrooms from India. On February 19, 1999, the Department published an amended final determination and antidumping duty order (64 FR 8311).

On February 14, 2000, 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 (65 FR 7348). In response to timely requests by three manufacturer/exporters, Agro Dutch Foods Ltd. (Agro Dutch), Himalya International Ltd. (Himalya), and Hindustan Lever Ltd. (formerly Ponds India Ltd.) (HLL), and the petitioners, the Department published a notice of initiation of an administrative review with respect to twelve companies: Agro Dutch, Alpine Biotech Ltd. (Alpine Biotech), Dinesh Agro Products Ltd. (Dinesh Agro), Flex Foods Ltd. (Flex Foods), Himalya, HLL, Mandeep Mushrooms Ltd. (Mandeep), Premier Mushroom Farms (Premier), Saptarishi Agro Industries Ltd. (Saptarishi), Techtran Agro Industries Limited (Techtran), Transchem Ltd. (Transchem), Weikfield Agro Products Ltd. (Weikfield) (65 FR 16875, March 30, 2000). The period of review (POR) is August 5, 1998, through January 31, 2000.

On March 29, 2000, the Department issued antidumping duty questionnaires to the above-mentioned twelve companies. We received responses to the original questionnaire during the period March 2000 through May 2000. We issued supplemental questionnaires to the five respondents for which the reviews were not rescinded (see below) and received responses for them during the period August 2000 through February 2001.

On June 16, 2000, the Department received allegations from the petitioners that Techtran and Weikfield sold certain preserved mushrooms in India at prices below the cost of production (COP). On July 18, 2000, the Department initiated cost investigations of Techtran's and Weikfield's home-market sales of this merchandise.

On June 22, 2000, we received a timely submission from the petitioners withdrawing their request for administrative review for Alpine Biotech, Dinesh Agro, Flex Foods, Mandeep, Premier, Saptarishi, and Transchem. On July 18, 2000, the Department published a notice of partial rescission of the antidumping duty administrative review with respect to the above-mentioned companies (65 FR 44522).

On July 28, 2000, the Department extended the time limit for the preliminary results in this review until February 28, 2001. *See Certain Preserved Mushrooms from India and Indonesia: Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 65 FR 46426.

We conducted verification of Weikfield's, Techtran's, and Himalya's questionnaire responses during the period November 2000 through January 2001. The verification reports are on file in Room B-099 of the Commerce Department. The Department is conducting this review in accordance with section 751(a) of the Act.

**Scope of the Review**

The products covered by this review are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this review 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, brine, butter, or butter sauce. Preserved

mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this review 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 review 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 review is classifiable under subheadings 2003.10.00.27, 2003.10.0031, 2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000 of the Harmonized Tariff Schedule of the United States (HTS). Although the HTS subheadings are provided for convenience and Customs purposes, our written description of the scope of this review is dispositive.

**Verification**

As provided in section 782(i) of the Act, we conducted verifications of Himalya, Techtran, and Weikfield from November 2000 through January 2001. We conducted the verifications using standard verification procedures including on-site inspection of the manufacturers' facilities, the examination of relevant accounting, sales, and other financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports which are on file in the Central Records Unit (CRU) in room B-099 of the Main Commerce Building.

Based on verification, we made certain changes to data in the sales listings submitted by Himalya, Techtran, and Weikfield used to calculate the preliminary margins (see below and the company-specific calculation memoranda dated February 28, 2001).

**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, we compared constructed export price (CEP) or export price, as appropriate, to the normal value, as described in the "Export Price/Constructed Export Price" and "Normal Value" sections of this notice.

Pursuant to section 777A(d)(2) of the Act, we compared the export prices of individual U.S. transactions to the weighted-average normal value 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 proceeding, neither HLL nor Himalya had a viable home or third country market. Therefore, as the basis for normal value, we used constructed value 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 Review" section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. With respect to Agro Dutch, Techtran, and Weikfield, we compared U.S. sales to sales made in the home or third country 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 or third country 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 those U.S. sales of mushrooms for which there were no comparable home or third country market sales in the ordinary course of trade (*i.e.*, above cost), we compared U.S. sales to constructed value.

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.

For HLL and Himalya, we compared U.S. sales to constructed value because these respondents had insufficient home market and/or third country sales during the POR. See "Normal Value" section below for further discussion.

#### Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine normal value based on sales in the comparison market at the same level of trade (LOT) as the export price or CEP transaction. The normal value LOT is that of the starting-price sales in the comparison market or, when normal value is based on constructed value, that of the sales from

which we derive selling, general and administrative (SG&A) expenses and profit. For export price, the U.S. LOT is also the level of the starting-price sale, which is usually from the exporter to an unaffiliated U.S. customer. For CEP, it is the level of the constructed sale from the exporter to an affiliated importer, after the deductions required under section 772(d) of the Act. To determine whether normal value sales are at a LOT different from export price or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which normal value is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the normal value level is more remote from the factory than the CEP level, and there is no basis for determining whether the difference in the levels between normal value and CEP affects price comparability, we adjust normal value under section 773(a)(7)(B) of the Act (the CEP offset provision). 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 note that the U.S. Court of International Trade (CIT) has held that the Department's practice of determining LOTs for CEP transactions after CEP deductions is an impermissible interpretation of section 772(d) of the Act. See *Borden, Inc. v. United States*, 4 F. Supp. 2d 1221, 1241-42 (CIT 1998) (*Borden*). The Department believes, however, that its practice is in full compliance with the statute. On June 4, 1999, the CIT entered final judgement in *Borden* on the LOT issue. See *Borden Inc. v. United States*, Court No. 96-08-01970, Slip Op. 99-50 (CIT June 4, 1999). The government has filed an appeal of *Borden* which is pending before the U.S. Court of Appeals for the Federal Circuit. Consequently, the Department has continued to follow its normal practice of adjusting CEP under section 772(d) prior to starting a LOT analysis, as articulated by the Department's regulations at § 351.412.

Both Techtran and Weikfield claimed that they were unable to calculate a LOT adjustment and, instead, reported home market indirect selling expenses as a surrogate LOT adjustment. We have undertaken an evaluation to determine

whether such an adjustment is necessary. In so doing, we examined both respondents' distribution systems, including selling functions, classes of customers, and selling expenses. Techtran sold to distributors in both markets. Weikfield provided no basis in its questionnaire responses to establish that it had multiple levels of trade in either market for purposes of this adjustment. With regard to Agro Dutch, all sales in both markets are made through one channel of distribution. Accordingly, all comparisons are at the same level of trade for Agro Dutch, Techtran and Weikfield and an adjustment pursuant to section 773(a)(7)(A) is not warranted.

With regard to HLL and Himalya, we compared all U.S. sales to constructed value, as noted above. As we could not determine the LOT of the sales from which we derived the profit for constructed value, we could not determine whether there is a difference in LOT between any U.S. sales and constructed value. Therefore, we made no LOT adjustment nor a CEP offset (in the case of Himalya) to normal value.

#### Export Price/Constructed Export Price

For Agro Dutch, HLL, Techtran and Weikfield, we used export price methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly 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 Trans Atlantic or Global Reliance after importation into the United States. We based export price and CEP on packed prices to unaffiliated purchasers in the United States. For all respondents, for those sales for which the payment date was not reported, we calculated credit based on the higher of either the average number of days between shipment and payment using the sales for which payment information was reported, or the most recent questionnaire response date.

#### Agro Dutch

We were unable to determine the appropriate date of sale for certain U.S. sales because Agro Dutch failed to provide the requested sales documentation for these sales. Section 776(a)(2)(B) of the Act provides that the Department will, subject to section 782(d), use the facts otherwise available in reaching a determination if a respondent fails to provide necessary information "by the deadlines for

submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782" (of the Act). In accordance with section 776(a)(2)(B) of the Act, in these preliminary results we find it necessary to use partial facts available where Agro Dutch did not provide us with information necessary to conduct our date of sale analysis. Section 782(c)(1) does not apply because Agro Dutch did not provide a full explanation of why it was not able to submit this information on time. Moreover, pursuant to section 782(d), Agro Dutch was specifically informed that it was required to submit this information, yet it failed to do so and failed to provide any explanation for this deficiency. Finally, under section 782(e), the Department concludes that Agro Dutch did not act to the best of its ability in responding to requests for this information (see discussion below).

The date of sale affects the contemporaneous pool of home market sales to which the U.S. sale is to be compared, and the exchange rate for converting costs and expenses in foreign currencies. Because we cannot identify the appropriate date of sale for the transactions in question, we are unable to determine the appropriate contemporaneous home market comparison sales. Therefore, as facts available, we have compared these U.S. sales to a normal value based on constructed value. As we cannot identify the date of sale for purposes of currency conversions, we have applied the highest exchange rate during the POR for all currency conversions involving these sales, as facts available.

The Department is authorized, under section 776(b) of the Act, to use an inference that is adverse to the interest of a party if the Department finds that the party has failed to cooperate by not acting to the best of its ability to comply with the Department's request for information. In both the March 29, 2000, questionnaire and the July 18, 2000, supplemental questionnaire, we specifically requested copies of any sales contracts or agreements with its U.S. customers. At page 1 of the business proprietary version of the August 15, 2000, supplemental questionnaire response, Agro Dutch indicates that a relevant sales document exists with respect to these sales, but did not include it in its response. Accordingly, we find that Agro Dutch has not cooperated with respect to providing this information and an adverse inference is warranted in applying facts available for the dates of sale for these transactions.

Agro Dutch reported the per-unit expense incurred for the Indian Customs fee "CESS," which is incurred as a percentage of sales value, on a weight-basis. We recalculated this expense on a value basis using the 0.5% rate reported in the response.

Agro Dutch reported its U.S. sales as sold on an FOB, C&F, or CIF basis, indicating that, at a minimum, it was responsible for all movement expenses necessary to transport the goods to the Indian port and load them onto a vessel. However, Agro Dutch did not report foreign inland freight, foreign inland insurance, and foreign brokerage and handling on its FOB sales. As a result, pursuant to section 776(a)(2)(B) of the Act, it was necessary to use partial facts available to conduct our analysis. Since this information was missing for only a few sales, and we did not determine that the company did not act to the best of its ability, we applied the average expense incurred on the U.S. sales for which these expenses were reported as non-adverse facts available.

We made deductions from the starting price, where appropriate, for foreign inland freight, insurance and brokerage, export duty (CESS), and international freight in accordance with section 772(c)(1) of the Act and 19 CFR 351.402(a).

#### **Himalya**

We made deductions from the starting price, where appropriate, for foreign inland freight, brokerage and handling expenses, international freight, 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(a). We also deducted indirect selling expense, credit expense, and inventory carrying costs pursuant to section 772(d)(1) of the Act and 19 CFR 351.402(b). We made an adjustment for profit in accordance with section 773(d)(3) of the Act.

At the beginning of the sales verification, Himalya provided new information on U.S. brokerage and handling expenses, which were previously unreported in the response. As explained above, section 776(a)(2)(B) of the Act provides that the Department will, subject to section 782(d), use the facts otherwise available in reaching a determination if a respondent fails to provide necessary information "by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782" of the Act. Himalya neglected to submit this information in a timely manner. Section 782(c)(1) does not apply because Himalya did not provide a full

explanation of why it was not able to submit this information on time. Moreover, pursuant to section 782(d), Himalya was specifically informed that it was required to submit this information, yet it failed to do so and failed to provide any explanation for this deficiency. Finally, under section 782(e), the Department concludes that Himalya did not act to the best of its ability in responding to requests for this information. Where a party has not acted to the best of its ability to comply with the Department's requests for information, the Department is authorized to use an inference that is adverse to the interest of that party, pursuant to section 776(b). Accordingly, as partial adverse facts available, we applied the highest brokerage and handling expense for any entry of subject merchandise made by Himalya during the POR. We recalculated imputed credit expenses using a single interest rate for all sales, as Himalya had calculated this expense using various interest rates. We also recalculated Himalya's home market and U.S. inventory carrying costs to reflect the Department's standard methodology. Finally, we recalculated the reported indirect selling expenses incurred in the United States by collapsing the revenues and expenses of Himalya's two affiliated U.S. importers, rather than using an average of the two companies' individual rates, as reported by Himalya. (See the Himalya Preliminary Results Calculation Memorandum dated February 28, 2001, for further detail).

#### **HLL**

We made deductions from the starting price, where appropriate, for foreign inland freight, foreign brokerage and handling, export duty, and international freight in accordance with section 772(c)(1) of the Act and 19 CFR 351.402(a). We recalculated export duty using the 0.5% rate reported in the response.

#### **Techtran**

We made deductions from the starting price, where appropriate, for foreign inland freight (includes brokerage and handling), export duty, international freight, and marine insurance in accordance with section 772(c)(1) of the Act and 19 CFR 351.402(a). We revised international freight expenses incurred on certain sales, based on our verification findings. (See the Techtran Preliminary Results Calculation Memorandum dated February 28, 2001, for further detail.)

## Weikfield

We made deductions from the starting price, where appropriate, for foreign inland freight, foreign brokerage and handling, international freight, CESS, U.S. duty, and other U.S. transportation expenses in accordance with section 772(c)(1) of the Act and 19 CFR 351.402(a). Weikfield reported the per-unit expense incurred for CESS, which is incurred as a percentage of sales value, on a weight-basis. We recalculated this expense on a value basis using the 0.5% rate reported in the response. We also revised the U.S. duty and transportation expenses incurred on certain sales, based on our verification findings.

## 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 normal value, 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.

Techtran's and Weikfield's aggregate volume of home market sales of the foreign like product was greater than five percent of their aggregate volume of U.S. sales of the subject merchandise. Therefore, we determined that the home market provides a viable basis for calculating normal value for both Techtran and Weikfield.

With regard to Agro Dutch, we determined that the home market was not viable because Agro Dutch's aggregate volume of home market sales of the foreign like product was less than five percent of its aggregate volume of U.S. sales of the subject merchandise. However, we determined that the third country market of the Netherlands was viable, in accordance with section 773(a)(1)(B)(ii) of the Act. Therefore, pursuant to section 773(a)(1)(C) of the Act, we have used third country sales as a basis for normal value for Agro Dutch.

Both Himalya and HLL reported that during the POR they made no home market sales. Himalya did not make third country sales during the POR, while HLL's sales to third countries constituted less than five percent of its U.S. sales. Therefore, we determined that neither the home market nor any third country market was a viable basis for calculating normal value for HLL and Himalya. As a result, we used constructed value as the basis for calculating normal value for these two respondents, in accordance with section 773(a)(4) of the Act.

## Cost of Production Analysis

The Department disregarded certain sales made by Agro Dutch and HLL in the less-than-fair-value (LTFV) investigation pursuant to a finding in that review that sales failed the cost test (*see Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Preserved Mushrooms from India*, 63 FR 41789 (August 5, 1998)). Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that respondents Agro Dutch and HLL made sales in the home market or third country at prices below the cost of producing the merchandise in the current review period. However, in the instant review, HLL's third country market was not viable. See "Normal Value" section, above. Accordingly, we cannot perform a cost test with regard to HLL. In addition, as stated in the "Background" section of this notice, based on a timely allegation filed by the petitioners, the Department initiated an investigation to determine whether Techtran's and Weikfield's home market sales were made at prices less than the cost of production. As a result, the Department initiated investigations to determine whether the respondents made home market or third country sales during the POR at prices below their COP within the meaning of section 773(b) of the Act.

### A. Calculation of COP

We calculated the COP on a product-specific basis, based on the sum of the respondents' cost of materials and fabrication for the foreign like product, plus amounts for SG&A, interest expense, and the cost of 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.

We relied on COP information submitted by the respondents, except for the following adjustments:

### Agro Dutch

We revised the general and administrative (G&A) expense rate calculation to include certain expenses that were written off. We adjusted the cost incurred used as the denominator in the calculation to exclude those expenses written off and to account for the change in work-in-process inventory.

We revised the interest expense rate to include interest expenses on working capital. We increased the denominator used in this calculation based on the same adjustments made in calculating

the G&A expense rate. (*See* February 28, 2001, Calculation Memorandum to Neal Halper for a discussion of the above-referenced adjustments).

### Techtran

We disallowed Techtran's capitalization of all its costs incurred from the beginning of the POR through October 13, 1999, and the claimed start-up adjustment that was calculated based on the same period. We revised Techtran's reported costs by allowing Techtran a start-up adjustment only for the period August 1998 through October 1998.

We adjusted Techtran's reported cost of manufacturing (COM) to reflect differences in its allocation methodologies from one period versus the other and to include costs related to the auditor's adjustments.

We revised the G&A expense rate calculation to include the auditor's adjustments and capitalized G&A expenses. We adjusted the cost incurred used as the denominator in the calculation to (1) include depreciation expenses; (2) include capitalized COM; (3) exclude packing costs; and (4) account for work-in-process inventory.

We revised the financial expense rate calculation to include capitalized interest expense. We increased the denominator used in this calculation based on the same adjustments made in calculating the G&A expense rate. (*See* February 28, 2001, Calculation Memorandum to Neal Halper for a discussion of the above-referenced adjustments).

### Weikfield

We disallowed Weikfield's capitalization of production costs incurred during the POR by including the total capitalized amount net of related depreciation in the reported costs.

We adjusted Weikfield's reported COM to account for the change in the work-in-process inventory.

We revised the G&A expense rate calculation to include capitalized G&A expenses and exclude certain selling expenses. We adjusted the cost incurred used as the denominator in the calculation to include depreciation expense and exclude antidumping expenses and the change in work-in-process inventory.

We revised the financial expense rate calculation to include capitalized interest expenses, interest on affiliated party loans and exchange rate differences. We made the same adjustments to the denominator of this calculation that were made in calculating the G&A expense rate. (*See*

February 28, 2001, Calculation Memorandum to Neal Halper for a discussion of the above-referenced adjustments).

#### B. Test of Home Market Prices

For all respondents except Himalya and HLL, we compared the weighted-average, per-unit COP figures for the POR to home market or third country 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. In determining whether to disregard home market or third country sales made at prices below the COP, we examined whether: (1) Within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP, consisting of the COM, G&A and interest expenses, to the net home market or third country prices, less any applicable movement charges, rebates, discounts, and direct and indirect selling expenses.

#### C. Results of COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of the 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 twenty percent or more of the respondent's sales of a given product during the POR were at prices less than the COP, we disregarded the below-cost sales where such sales were found to be made at prices which would not permit the recovery of all costs within a reasonable period of time (in accordance with section 773(b)(2)(D) of the Act).

The results of our cost tests for all three of these companies indicated for certain home market products, less than twenty percent of the sales of the model were at prices below COP. We therefore retained all sales of these models in our analysis and used them as the basis for determining normal value.

Our cost tests also indicated that for certain other home market products more than twenty percent of home market sales within an extended period of time were at prices below COP and would not permit the full recovery of all costs within a reasonable period of time. In accordance with section 773(b)(1) of the Act, we excluded these below-cost sales of these models from our analysis and used the remaining sales as the basis for determining normal value.

#### Price-to-Price Comparisons

For Agro Dutch, Techtran, and Weikfield, we based normal value on the price at which the foreign like product is first sold for consumption in the home market or third country, in the usual commercial quantities and in the ordinary course of trade, and at the same LOT as the export price or CEP, as defined by section 773(a)(1)(B)(i) of the Act.

We reduced normal value for inland freight, insurance and brokerage, and early payment and quantity discounts, where appropriate, in accordance with section 773(a)(6) of the Act and 19 CFR 351.401.

Agro Dutch reported the per-unit expense incurred for CESS on its Dutch sales, which is incurred as a percentage of sales value, on a weight-basis. We recalculated this expense on a value basis using the 0.5% rate reported in the response.

For comparisons to Agro Dutch's, Techtran's, and Weikfield's export price sales, we made a circumstance-of-sale adjustment, where appropriate, for differences in credit and commission expenses pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410.

Techtran and Weikfield reported an imputed credit expense on U.S. sales based on the letter of credit settlement date. At verification, we found that these respondents incur actual bank financing expenses and fees for discounting the letters of credit issued on U.S. sales. Accordingly, we have recalculated the imputed credit expense and added the bank's letter of credit fee based on our verification findings, as detailed in the February 28, 2001, Memorandum entitled *Weikfield Preliminary Results Margin Calculation* (Weikfield Margin Memo) and the February 28, 2001, Techtran Preliminary Results Calculation Memorandum (Techtran Calculation Memo).

For these same respondents, the reported imputed credit expenses on home market sales were based on specific periods from shipment to payment. At verification, we were unable to support this reporting as Techtran's and Weikfield's customers generally pay on a line of credit system, which was not previously described to the Department (see January 16, 2001, Weikfield Sales Verification Report at page 5 and February 2, 2001, Techtran Sales Verification Report at page 6). Because we were unable to tie Techtran's and Weikfield's home market payment methodology to any information submitted in the questionnaire responses, we have

disallowed a circumstance-of-sale adjustment for home market imputed credit expenses.

Weikfield reported commissions paid to both affiliated and unaffiliated parties in the home market. 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 *Final Results of Administrative Review: Large Newspaper Printing Presses from Germany*, 66 FR 11557 (February 26, 2001), and accompanying Decision Memorandum at Comment 5. To establish whether commissions are made at arm's-length, the Department normally compares the commissions paid to affiliated selling agents to those paid by the respondent to any unaffiliated selling agents in the same market (exporting or U.S.) or in any third-country market (see *Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Finland, France, Germany and the United Kingdom*, 56 FR 56359, 56363 (November 4, 1991)).

In this case, we have no evidence suggesting that the affiliated party payments at issue are intra-company transfers, as they are actual expenditures tied to specific sales. Therefore, we are accepting them as commissions and must determine their arm's-length nature in accordance with our normal practice. As there are no commissions paid in the U.S. market, and we have no information on any commissions paid in third country markets, the only comparison we can make is between the two sets of commissions paid in the home market. The unaffiliated commissions are paid at a significantly different rate than the affiliated commissions, but the responsibilities of each type of commissionaire are different, which may account for the difference in the commission rates (see sample commission agreements at Exhibit 5 of Weikfield's August 9, 2000, response). Since we have no other basis to determine the arm's-length nature of the affiliated commissions, for purposes of the preliminary results, we have accepted the affiliated commissions to the extent that the amount paid does not exceed the rate paid to unaffiliated commissions.

Weikfield did not report its indirect selling expenses separately from the G&A expenses reported with the COP and constructed value data.

Accordingly, we recalculated the G&A expenses and calculated an indirect selling expense for this purpose (*see* February 28, 2001, Calculation Memorandum to Neal Halper and Weikfield Margin Memo).

We also reduced normal value for packing costs incurred in the home or third country market, in accordance with section 773(a)(6)(B)(i), and increased normal value to account for U.S. packing expenses in accordance with section 773(a)(6)(A). With regard to Techtran, we revised U.S. and home market packing costs in accordance with verification findings. *See* Techtran Calculation Memo.

Finally, we made adjustments to normal value, 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.

#### Calculation of Constructed Value

We calculated constructed value in accordance with section 773(e) of the Act, which indicates that constructed value shall be based on the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for SG&A expenses, profit and U.S. packing costs. We made the same adjustments to constructed value that were made to COP as described above for Agro Dutch, Techtran, and Weikfield.

Because Himalya and HLL had no viable home or third country market, we derived SG&A and profit for Himalya and HLL 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 SG&A 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 Himalya's and HLL's SG&A and profit as a weighted average of the SG&A and profit amounts incurred on home market sales by Techtran and Weikfield during the cost reporting period. For further details *see* Memorandum to Neal Halper, dated February 28, 2001, for Himalya and HLL.

#### Himalya

We relied on the constructed value data submitted by Himalya, except for the following adjustments:

We revised the production quantities for the different can types to correct for reporting errors made by Himalya.

We revised the direct material cost to reflect the cost of materials consumed during the entire POR.

We revised Himalya's allocation of variable and fixed costs to products by revising the fixed asset base used in the allocation formula.

We adjusted Himalya's reported COM to account for the change in work-in-process inventory.

We disallowed the start-up adjustment claimed by Himalya. (*See* the February 28, 2001, Calculation Memorandum from Laurens Van Houten to Neal Halper for a discussion of the above-referenced adjustments.)

#### HLL

For HLL we have requested, but will not receive in time for the preliminary results, the reconciliation of the submitted costs to the audited financial statements costs. As stated by the Department in *Certain Cut-to-Length Carbon Steel Plate From Mexico: Final Results of Antidumping Duty Administrative Review*, 64 FR 76, 78, (January 4, 1999) "[a]lthough the format of the reconciliation of submitted costs to actual financial statement costs depends greatly on the nature of the accounting records maintained by the respondent, the reconciliation represents the starting point of a cost response because it assures the Department that the respondent has accounted for all costs before allocating those costs to individual products." Therefore, due to the critical nature of this reconciliation, it is imperative that HLL provide the requested information. In order to minimize the burden placed on the respondent, in a supplemental questionnaire we agreed to allow HLL to provide the cost reconciliation for one fiscal year rather than for two fiscal years. In accordance with section 776 and 782 of the Act, failure to provide this information timely may result in the use of facts available for the final results.

#### Price-to-Constructed Value Comparisons

For Himalya and HLL, we based normal value on constructed value, in accordance with section 773(a)(4) of the Act. For comparisons to HLL's export price sales, and in those instances where we compared Agro Dutch's, Techtran's and Weikfield's export prices

to constructed value, we made circumstance-of-sale (COS) adjustments by deducting from constructed value the weighted-average home market direct selling expenses and adding the U.S. direct selling expenses, in accordance with section 773(a)(8) of the Act and section 19 CFR 351.410. For comparisons to Himalya's CEP sales, we also deducted credit expenses from normal value.

#### Currency Conversion

We made currency conversions in accordance with section 773A of the Act using the rates posted at [www.ita.doc.gov](http://www.ita.doc.gov). With respect to Agro Dutch, we have applied the highest exchange rate during the POR for all currency conversions involving certain U.S. sales, as facts available. *See* "Export Price/Constructed Export Price" section, above.

#### Preliminary Results of Review

As a result of this review, we preliminarily determine that the weighted-average dumping margins for the period August 5, 1998, through January 31, 2000, are as follows:

| Manufacturer/Exporter                | Percent margin    |
|--------------------------------------|-------------------|
| Agro Dutch Foods, Ltd .....          | <sup>1</sup> 0.03 |
| Himalya International, Ltd .....     | 26.34             |
| Hindustan Lever, Ltd .....           | 42.08             |
| Techtran Agro Industries Limited ... | 66.24             |
| Weikfield Agro Products, Ltd .....   | 26.44             |

<sup>1</sup>De minimus.

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 held 44 days after the publication of this notice, or the first workday thereafter.

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 not later than 30 days and 37 days, respectively, from the date of publication of these preliminary results. *See* 19 CFR 351.309(c) and (d). 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.

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).

#### Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisal instructions directly to the Customs Service upon completion of this review. 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. We will instruct the Customs Service to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis* (i.e., 19 CFR 351.106(c)(1)). For assessment purposes, we intend to calculate importer-specific assessment rates for the subject merchandise by aggregating the dumping margins calculated for all U.S. sales examined and dividing this amount by the total entered value of the sales examined.

#### 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

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. 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) of the Act and 19 CFR 351.221. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: February 28, 2001.

**Bernard T. Carreau,**  
Deputy Assistant Secretary, Import  
Administration.

[FR Doc. 01-5620 Filed 3-7-01; 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

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

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

**SUMMARY:** In response to a request by three manufacturers/exporters of the subject merchandise: PT Dieng Djaya and PT Surya Jaya Abadi Perkasa,<sup>1</sup> PT

<sup>1</sup> In accordance with 19 CFR 351.401(f), PT Dieng Djaya and PT Surya Jaya Abadi Perkasa were determined to be affiliated companies in the original less-than-fair-value investigation, and

Indo Evergreen Agro Business Corp., and PT Zeta Agro Corporation, and by The Pillsbury Company, an importer of the merchandise under review, the Department of Commerce is conducting an administrative review of the antidumping duty order on certain preserved mushrooms from Indonesia. The periods of reviews are August 5, 1998, through January 31, 2000, for PT Indo Evergreen Agro Business Corp. and PT Zeta Agro Corporation, and December 31, 1998 through January 31, 2000, for PT Dieng Djaya and PT Surya Jaya Abadi Perkasa<sup>2</sup>.

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 8, 2001.

**FOR FURTHER INFORMATION CONTACT:** David J. Goldberger or Sophie E. Castro, 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) 482-4136 or (202) 482-0588, respectively.

#### SUPPLEMENTARY INFORMATION:

##### The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the U.S. Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (2000).

##### Background

On December 31, 1998, the Department published in the **Federal Register** (63 FR 72268), the final affirmative antidumping duty determination of sales at less than fair value (LTFV) on certain preserved mushrooms from Indonesia. We published an antidumping duty order on February 19, 1999 (64 FR 8310).

On February 14, 2000, the Department published in the **Federal Register** a notice advising of the opportunity to

therefore the two companies submitted a combined review request and questionnaire response.

<sup>2</sup> See Notice of Antidumping Duty Order: Certain Preserved Mushroom from Indonesia, 64 FR 8310 (February 19, 1999).