

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-533-813]

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

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

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

SUMMARY: On March 7, 2002, the Department of Commerce published the preliminary results of the second administrative review of the antidumping duty order on certain preserved mushrooms from India (67 FR 10371). The review covers four manufacturers/exporters. The period of review is February 1, 2000, through January 31, 2001.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: July 12, 2002.

FOR FURTHER INFORMATION CONTACT:

David J. Goldberger, Katherine Johnson, or Margarita Panayi, 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) 482-0049, 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 of Commerce's (the "Department's") regulations are to 19 CFR Part 351 (2000).

Background

The review covers four manufacturers/exporters: Agro Dutch

Foods Ltd. ("Agro Dutch")¹, Himalya International Ltd. ("Himalya"), Saptarishi Agro Industries, Inc. ("Saptarishi"), and Weikfield Agro Products Ltd. ("Weikfield"). The period of review is February 1, 2000, through January 31, 2001.

On March 7, 2002, the Department of Commerce published the preliminary results of the second administrative review of the antidumping duty order on certain preserved mushrooms from India (67 FR 10371). We invited parties to comment on the preliminary results of review. On March 20 and 26, 2002, we received requests for a public hearing from respondent Agro Dutch and the petitioners², respectively. We received case briefs from the petitioners and Agro Dutch on May 10, 2002. We received rebuttal briefs from the petitioners, Agro Dutch and Weikfield on May 17, 2002. We held a public hearing at the Department on May 22, 2002. We have conducted this administrative review in accordance with section 751 of the Act.

Scope of the Order

The products covered by the order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under the 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, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of the 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 the 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

¹ Effective January 8, 2001, Agro Dutch changed its name from "Agro Dutch Foods Limited" Agro Dutch Industries Limited."

² 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 Mushrooms Farms, Inc.; Monterey Mushrooms, Inc.; Mount Laurel Canning Corp.; Mushrooms Canning Company; Southwood Farms; Sunny Dell Foods, Inc.; and United Canning Corp.

(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 the order is classifiable under subheadings 2003.10.0027, 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* ("HTSUS").³ Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Allegation of Duty Reimbursement

In its January 30, 2002, comments, the petitioners allege that because Agro Dutch and Weikfield are the importers of record for the preserved mushrooms they produce and export to the United States, and, therefore, pay all applicable antidumping cash deposits and duties on this merchandise, they are paying duties on behalf of their respective importers within the meaning of the Department's reimbursement regulation. See 19 CFR 351.402(f). In numerous cases, the Department has held that reimbursement within the meaning of the regulation does not occur when the importer and exporter are the same legal entity. Because Agro Dutch and Weikfield function both as the exporter and U.S. importer of the preserved mushrooms they produce, there is no basis for reducing U.S. price under the Department's reimbursement regulation. See, e.g., *Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 66 FR 53388 (October 22, 2001), and accompanying Issues and Decision Memorandum at Comment 1. No parties have commented on this issue in the context of this review since the allegation was made on January 30, 2002.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this antidumping duty administrative review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Richard W. Moreland, Deputy Assistant Secretary for Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated July 5, 2002, which is hereby adopted by this notice. A list of the issues which parties have

³ As of January 1, 2002, the HTSUS numbers are as follows: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153, and 0711.51.0000.

raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B-099 of the main Department building. In addition, a complete version of the Decision Memo can be accessed directly on the Web at <http://ia.ita.doc.gov/>. The paper copy and electronic version of the Decision Memo are identical in content.

Changes From the Preliminary Results

Based on our analysis of comments received, we have made certain changes to the margin calculations, including:

- The application of adverse facts available to certain Agro Dutch sales;
- The revision of Agro Dutch's imputed credit expense calculation to include commissions Agro Dutch deducted from the gross price in the calculation;
- The change in the payment date used for calculating imputed credit expenses on unpaid sales made by Agro Dutch and Weikfield from the preliminary results date to the final results date; and
- The revision of the assessment rate calculation for Agro Dutch's and Weikfield's export price sales from a percentage to a per-unit basis.

For a discussion of these changes, see the "Margin Calculations" section of the Decision Memo.

Final Results of Review

We determine that the following weighted-average margin percentages exist:

| Manufacturer/exporter | Margin (percent) |
|--|------------------|
| Agro Dutch Foods Ltd/Agro Dutch Industries Ltd | 27.80 |
| Himalya International Ltd | 0.68 |
| Saptarishi Agro Industries, Ltd | 66.24 |
| Weikfield Agro Products Ltd | 0.00 |

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated importer-specific assessment rates. We will direct the Customs Service to assess the resulting rates against the entered units or customs values of the subject merchandise on each importer's entries under the relevant order during the review period. In accordance with 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties all entries

of subject merchandise for which the importer-specific assessment rate is zero or *de minimis* (i.e., less than 0.50 percent).

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of the administrative review for all shipments of certain preserved mushrooms from India entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for Agro Dutch, Himalya, Saptarishi, and Weikfield will be the rates shown above; (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. This rate is the "All Others" rate from the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final 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 doubled antidumping duties.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 777(i) of the Act.

Dated: July 5, 2002.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix—List of Issues

General Comment

Comment 1: Profit Rate for Constructed Value

Company-Specific Comments

Agro Dutch

Comment 2: Application of Facts Available for Certain U.S. Sales

Comment 3: Treatment of Rejected U.S. Sales
Comment 4: Classification of "Expenses Written Off"

Comment 5: Classification of Exchange Rate Losses for Notes Payable

Comment 6: Agro Dutch Name Change

Weikfield

Comment 7: Inclusion of Parent Company G&A Expenses in Weikfield's G&A Rate

Saptarishi

Comment 8: Selection of Facts Available Rate

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-851]

Certain Preserved Mushrooms From the People's Republic of China: Final Results of Third New Shipper Review and Final Results and Partial Rescission of Second Antidumping Duty Administrative Review

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

ACTION: Notice of final results of third new shipper review and final results and partial rescission of second antidumping duty administrative review.

SUMMARY: On March 6, 2002, the Department of Commerce published the preliminary results of the third new shipper review and second antidumping duty administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China. *See Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of New Shipper Review and Preliminary Results and Partial Rescission of Second Antidumping Duty Administrative Review*, 67 FR 10128 (March 6, 2002) (*Preliminary Results*). The new shipper review covers two respondents and the administrative review covers two respondents (*see* "Background" section below for further discussion). The