

### 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The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the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.*

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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").<sup>1</sup> The petitioner, the Coalition for Fair Preserved Mushroom Trade,<sup>2</sup> 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

<sup>1</sup> 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)).

<sup>2</sup> 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.

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 1, 2002, the Department published in the **Federal Register** a notice advising of the opportunity to request an administrative review of this order for the period February 1, 2001, through January 31, 2002 (67 FR 4945). On February 28, 2002, in accordance with 19 CFR 351.213(b), we received timely requests from Indo Evergreen, Zeta and Dieng/Surya that the Department conduct an administrative review of their exports to the United States. In addition, Dieng/Surya and Zeta requested that the Department revoke the antidumping duty order with respect to them. We published a notice of initiation of the review on March 27, 2002 (67 FR 14696).

On April 15, 2002, we issued antidumping questionnaires to Dieng/Surya, Indo Evergreen, and Zeta. On May 20, 2002, Dieng/Surya timely withdrew their request for an administrative review. We issued Sections A through D supplemental questionnaires to Indo Evergreen and Zeta in July 2002; additional Section D supplemental questionnaires were issued to Indo Evergreen and Zeta in August 2002. We received timely responses to our original and supplemental questionnaires from Indo Evergreen and Zeta in June, August and September 2002.

On August 16, 2002, due to the reasons set forth in the *Certain Preserved Mushrooms from India, Indonesia, and the People's Republic of China: Notice of Extension of Time Limit for Preliminary Results in Antidumping Duty Administrative Reviews*, 67 FR 53565 (August 16, 2002), we extended the due date for the preliminary results. In accordance with section 751(a)(3)(A) of the Act, we extended the due date for the preliminary results by the maximum 120 days allowable or until February 28, 2003.

On January 9, 2003, we published a notice of rescission with respect to Dieng/Surya. See *Certain Preserved Mushrooms from Indonesia: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 68 FR1177 (January 9, 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, 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<sup>3</sup> (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

### Fair Value Comparisons

To determine whether sales to the United States of certain preserved mushrooms by Indo Evergreen and Zeta were made at less than NV, we compared export price to the NV, as described in the "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 NV of the foreign like product where there were sales made in the ordinary course of trade at prices above the cost of production ("COP"), as discussed in the "Cost of Production Analysis" section below.

### Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Indo Evergreen and Zeta, covered by the description in the

<sup>3</sup> 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.

"Scope of the Order" section, above, and sold by the respondents in the home market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. 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.

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. See "Normal Value" section below for further discussion.

### Export Price

For both respondents we used the export price calculation methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly by the producer/exporter in Indonesia to the first unaffiliated purchaser in the United States prior to importation and constructed export price ("CEP") treatment was not otherwise indicated.

We calculated export price based on the packed FOB seaport prices charged to the first unaffiliated customer in the United States. We made deductions, where appropriate, for foreign inland freight, foreign inland insurance, and brokerage and handling, in accordance with section 772(c)(2)(A) of the Act. As a result of verification, we made adjustments to the companies' data where applicable, with respect to discounts, packing and shipment dates. See the Memorandum to the File: Preliminary Results of Third Administrative Review for Zeta ("Zeta's Preliminary Calculation Memorandum") and Memorandum to the File: Preliminary Results of Third Administrative Review for Indo Evergreen, both dated February 28, 2003, on file in the Central Records Unit (CRU), Room B099 of the Main Commerce building.

### 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 each respondent's volume of home market

sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in accordance with section 773(a)(1) of the Act.

Indo Evergreen's and Zeta's aggregate volumes of home market sales of the foreign like product were greater than five percent of their aggregate volumes of U.S. sales of the subject merchandise. Therefore, we determined that the home market provides a viable basis for calculating NV for both Indo Evergreen and Zeta, in accordance with section 773(a)(1)(B)(ii)(II) of the Act.

#### Arm's-Length Sales

Indo Evergreen and Zeta each reported sales of the foreign like product to affiliated customers. To test whether these sales to affiliated customers were made at arm's length, where possible, we compared the prices of sales to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts, and packing. Where the price to the affiliated party was on average 99.5 percent or more of the price to the unaffiliated parties, we determined that the sales made to the affiliated party were at arm's length. See *Antidumping Duties; Contervailing Duties; Final Rule*, 62 FR 27296, 27355 (May 19, 1997) (preamble to the Department's regulations). Consistent with 19 CFR 351.403(c), we excluded from our analysis those sales where the price to the affiliated parties was less than 99.5 percent of the price to the unaffiliated parties.<sup>4</sup>

#### Verification

As provided in section 782(i) of the Act, we conducted verifications of the information provided by Indo Evergreen and Zeta. Because of the political instability in Indonesia, verification took place in Singapore. We used standard verification procedures including examination of relevant sales and financial records, and selection of relevant source documentation as exhibits. Our verification findings are detailed and on file in the CRU.

#### 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 export price 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) (*Cut-to-Length Plate from South Africa*). 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 incurred for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for export price and comparison market sales (*i.e.*, NV based on either home market or third country prices<sup>5</sup>), 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 find 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 export price 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 *Cut-to-Length Plate from South Africa*, 62 FR 61731 (November 19, 1997).

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

*Indo Evergreen:* All of Indo Evergreen's sales in the home market are through distributors who resell the merchandise to wholesalers for distribution, with the exception of a small amount of sales to its employees for consumption. We examined those two channels of distribution and the selling activities associated with home market sales through these channels of distribution, and determined that there was little difference in the relevant selling functions provided by Indo Evergreen. Specifically, Indo Evergreen does not provide inventory maintenance, after-sale services, technical advice, advertising, or sales support for any of its home market customers. Indo Evergreen does perform some sales activity related to pre-delivery inspection. Indo Evergreen stated that these services are provided to all home market customers regardless of the channels of distribution or customer categories. Because Indo Evergreen has the same selling functions for both channels of distribution (*i.e.*, pre-delivery inspections), we find that both channels of distribution constitute one LOT.

In the U.S. market, Indo Evergreen made only export price sales through two channels of distribution: (1) Through trading companies, and (2) through distributors who resold the merchandise to wholesalers for distribution either to supermarket chains or food service distributors. Similar to the home market LOT, Indo Evergreen does not provide inventory maintenance, after-sale services, technical advice, advertising, or sales support in selling to its U.S. customers. In addition, Indo Evergreen does perform some sales activity related to pre-delivery inspection. Indo Evergreen stated that these services are provided equally to all customers regardless of the channels of distribution or customer categories. Accordingly, there is only one LOT for U.S. sales.

We compared the export price LOT to the home market LOT and concluded that the selling functions performed for home market customers are the same as those performed for U.S. customers (*i.e.*, pre-delivery inspection). Accordingly, we consider the export price and home market LOTs to be the same. Consequently, we are comparing export price sales to sales at the same LOT in the home market.

*Zeta:* Zeta reported sales in the home market through two channels of distribution: (1) Unaffiliated distributors, and (2) unaffiliated end-users. We examined the chain of distribution and the selling activities associated with home market sales through these

<sup>4</sup> We have not applied the new calculation methodology for the arm's-length test, as set out in *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, as this review was initiated prior to the November 23, 2002, date stipulated in that notice.

<sup>5</sup> Where NV is based on constructed value, we determine the NV LOT based on the LOT of the sale from which we derive selling, general and administrative ("SG&A") expenses and profit for constructed value, where possible.

channels of distribution, and determined that there was little difference in the relevant selling functions provided by Zeta. Specifically, Zeta made only delivery arrangements for distributors and trading companies. Zeta does not maintain inventory or provide technical advice, warranty service or advertising for home market sales. Zeta did not indicate that there are any differences with respect to freight and delivery services between these channels of distribution or customer categories. Therefore, we find that the home market channels of distribution do not differ significantly from each other with respect to selling activities and, therefore, constitute one LOT.

In the U.S. market, Zeta made only export price sales through one channel of distribution: sales to distributors shipped directly to the United States. Zeta incurred freight costs in delivering the product to the port. Zeta provided no technical advice or warranty services in the U.S. market, nor did it provide inventory maintenance, advertising, or sales support in selling to its U.S. customers. Accordingly, there is only one LOT for U.S. sales.

We compared the export price LOT to the home market LOT and concluded that the selling functions performed for home market customers are the same as those performed for U.S. customers (*i.e.*, freight/delivery services). Accordingly, we consider the export price and home market LOTs to be the same. Consequently, we are comparing export price sales to sales at the same LOT in the home market.

#### Cost of Production Analysis

Because we disregarded sales that failed the cost test for Indo Evergreen and Zeta in the last completed segment of the proceeding (*see Certain Preserved Mushrooms From Indonesia: Final Results of Antidumping Duty Administrative Review*, 67 FR 32014 (May 13, 2002)), we had reasonable grounds to believe or suspect that the respondents' sales of the foreign like product under consideration for the determination of NV in this review may have been made at prices below the cost of production (COP), as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of home market sales made by Indo Evergreen and Zeta.

#### A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of Indo Evergreen's and Zeta's cost of materials and fabrication for the

foreign like product, plus amounts for general and administrative expenses ("G&A"), interest expenses, and home market packing costs (*see* "Test of Home Market Sales Prices" section below for treatment of home market selling expenses).

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 portion of foreign exchange gains and losses generated by debt or cash deposits was 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 financial 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 financial 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 will address such comments in the final results of this review.

We relied on the COP information the respondents provided in their

questionnaire responses, except for the following adjustments:

*Indo Evergreen:* We revised the reported costs to allocate the change in work-in-progress, the used compost offset and additional plantation costs to all fresh mushroom production rather than only fresh mushrooms sent to the cannery. We disallowed Indo Evergreen's claimed offset for refunded import duties that were paid on the raw materials used in the manufacture of cans used for export sales. We revised direct materials, direct labor, variable overhead and fixed overhead to account for the cost of manufacturing of fresh mushrooms sold as fresh, as Indo Evergreen had incorrectly reduced direct materials for the entire cost of manufacturing of fresh mushrooms sold as fresh. We reclassified a portion of utilities and gas and oil expenses as variable overhead costs, rather than fixed overhead costs as reported. We revised general and administrative expenses to exclude an offset for sales revenue adjustments and to exclude the double-counting of the used compost revenue offset. We also revised both the financial and general and administrative expense rates to include the additional plantation expense in the denominator of the calculations. Finally, we revised the reported costs to account for all foreign exchange gains and losses in the financial expense rate. For further details, *see* Preliminary Calculation Memorandum from Heidi Schriefer, Senior Accountant, to Neal Halper, Director, Office of Accounting, Import Administration, dated February 28, 2003.

*Zeta:* We disallowed Zeta's claimed offset for refunded import duties paid on the raw materials used in the manufacture of cans used for export sales. We increased Zeta's G&A expenses to include all the G&A expenses incurred by Zeta's parent company. We included the total amount of the parent's G&A because Zeta was unable to demonstrate which G&A expenses had been incurred by the parent on Zeta's behalf. For further details, *see* Preliminary Calculation Memorandum from LaVonne Jackson, Senior Accountant, to Neal Halper, Director, Office of Accounting, Import Administration, dated February 28, 2003.

#### B. Test of Home Market Prices

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. The

prices were exclusive of any applicable movement charges, discounts, and direct and indirect selling 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. We adjusted Zeta's reported home market indirect selling expenses to exclude certain misclassified expenses. For further details, see Zeta's Preliminary Calculation Memorandum.

### 3. 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 tests for Indo Evergreen and Zeta indicated for certain home market products that less than 20 percent of Indo Evergreen's and Zeta's home market sales were at prices less than the COP. We therefore retained all sales of these models in our analysis and used them as the basis for determining NV.

Our cost tests also indicated, for Zeta, 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 from our analysis and used the remaining sales as the basis for determining NV.

### Price-to-Price Comparisons

For Indo Evergreen and Zeta, we based NV on the price at which the foreign like product is first sold for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade, and at the same LOT as the export price, 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 NV for home market movement expenses, where appropriate, in accordance with section 773(a)(6)(B)(ii). We also reduced NV 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 also made adjustments for differences in circumstances of sale (COS) in accordance with 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, by deducting home market direct selling expenses (*i.e.*, imputed credit) and adding U.S. direct selling expenses (*i.e.*, imputed credit and bank charges), where applicable.

Finally, 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.

### Currency Conversion

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

### Revocation

The Department "may revoke, in whole or in part" an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia*, that a company requesting revocation must submit the following: (1) A certification that the company has sold the subject merchandise at not less than NV in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold the subject merchandise in commercial quantities in each of the three years forming the basis of the revocation request; and (3) an agreement to reinstatement in the order or suspended investigation, as long as any exporter or producer is subject to the order (or suspended investigation), if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than NV. See 19 CFR 351.222(e)(1). Upon receipt of such a request, the

Department will consider the following in determining whether to revoke the order in part: (1) Whether the producer or exporter requesting revocation has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) whether the continued application of the antidumping duty order is otherwise necessary to offset dumping; and (3) whether the producer or exporter requesting revocation in part has agreed in writing to the immediate reinstatement of the order, as long as any exporter or producer is subject to the order, if the Department concludes that the exporter or producer, subsequent to revocation, sold the subject merchandise at less than NV. See 19 CFR 351.222(b)(2); see also *Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Intent to Revoke Antidumping Duty Order in Part: Certain Pasta From Italy*, 66 FR 34414, 34420 (June 28, 2001).

On February 28, 2002, Zeta submitted a request that the Department revoke the order covering certain preserved mushrooms from Indonesia with respect to its sales of subject merchandise in accordance with 19 CFR 351.222. In accordance with 19 CFR 351.222(e)(1), the request was accompanied by certifications from Zeta that, for a consecutive three-year period, including this review period, it sold the subject merchandise in commercial quantities at not less than NV, and would continue to do so in the future. Zeta also agreed to its immediate reinstatement in this antidumping order, as long as any company is subject to the order, if the Department concludes that, subsequent to revocation, Zeta sold the subject merchandise at less than NV. We received no comments from the petitioner on Zeta's request for revocation.

Based on the preliminary results of this review and the final results of the two preceding reviews, Zeta has preliminarily demonstrated three consecutive years of sales at not less than NV. Further, in determining whether three years of no dumping establish a sufficient basis to make a revocation determination, the Department must be able to determine that the company continued to participate meaningfully in the U.S. market during each of the three years at issue. See 19 CFR 351.222(d)(1), which states that, "before revoking an order or terminating a suspended investigation, the Secretary must be satisfied that, during each of the three (or five) years, there were exports to the United States in commercial quantities of the subject

merchandise to which a revocation or termination will apply." 19 CFR 351.222(d)(1) (emphasis added); *see also* 19 CFR 351.222(e)(1)(ii). For purposes of revocation, the Department must be able to determine that past margins are reflective of a company's normal commercial activity. *See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada; Final Results of Antidumping Duty Administrative Reviews and Determination To Revoke in Part*, 64 FR 2173, 2175 (January 13, 1999); *see also Pure Magnesium From Canada; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke Order in Part*, 64 FR 12977, 12979 (March 16, 1999); and *Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Order: Brass Sheet and Strip from the Netherlands*, 65 FR 742 (January 6, 2000). Sales during the POR which, in the aggregate, are of an abnormally small quantity do not provide a reasonable basis for determining that the discipline of the order is no longer necessary to offset dumping.

We preliminarily find that Zeta's aggregate sales to the United States were made in commercial quantities during the past three consecutive years. *See* Zeta's Preliminary Calculation Memorandum. Therefore, we can reasonably conclude that the zero and *de minimis* margins calculated for Zeta in each of the last three administrative reviews are reflective of the company's normal commercial experience.

Zeta also agreed in writing that it will not sell subject merchandise at less than NV in the future and to the immediate reinstatement of the antidumping order, as long as any exporter or producer is subject to the order, if the Department concludes that, subsequent to the partial revocation, Zeta has sold the subject merchandise at less than NV. Thus, in light of the above and pursuant to 19 CFR 351.222, we preliminarily find that the subject merchandise produced and exported by Zeta was sold at not less than NV for a period of at least three consecutive years and that dumping is not likely to resume in the future. Consequently, the continuing imposition of an antidumping duty is not necessary to offset dumping.

Therefore, if these preliminary results are affirmed in our final results, we intend to revoke the order in part with respect to merchandise produced and exported by Zeta. In accordance with 19 CFR 351.222(f)(3), we will terminate the suspension of liquidation for any such

merchandise entered, or withdrawn from warehouse, for consumption on the first day after the period under review, and will instruct the Customs Service to refund any cash deposits.

#### Preliminary Results of the 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:

Manufacture/exporter	Margin (percent)
PT Indo Evergreen Agro Business Corp.	0.30 ( <i>de minimis</i> )
PT Zeta Agro Corporation .....	0.00

We will disclose 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 date of publication of this notice, or the first work day thereafter.

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. 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 and rebuttal 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.

#### 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 Indo Evergreen and Zeta because these respondents are not the importers of record for the subject merchandise. Accordingly, we intend to calculate importer-specific assessment rates by aggregating the dumping margins calculated for all of Indo Evergreen's and Zeta's U.S. sales examined and dividing the respective amount by the total quantity of the sales examined. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we will calculate importer-specific *ad valorem* ratios based on export prices.

The Department will issue appropriate appraisal 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-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.*, less than 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 rate for Indo Evergreen (Zeta is exempted due to revocation) will be that 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 11.26 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) 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. 03-5492 Filed 3-6-03; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-806]

#### **Silicon Metal from the People's Republic of China: Notice of Rescission of New Shipper Review and Administrative Review for China Shanxi Province Lin Fen Prefecture Foreign Trade Import and Export Corp.**

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

**SUMMARY:** In response to timely requests from respondent, China Shanxi Province Lin Fen Prefecture Foreign Trade Import and Export Corp. (Lin Fen), the Department of Commerce (the Department) initiated a new shipper review of the antidumping duty order on silicon metal from the People's Republic of China (PRC), covering the period of June 1, 2001 through November 30, 2001, and an administrative review covering the period of June 1, 2001 through May 31, 2002. *See Silicon Metal from the People's Republic of China (PRC): Initiation of Antidumping Duty New Shipper Review*, 67 FR 5966 (February 8, 2002), and *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 48435 (July 24, 2002). Since Lin Fen has withdrawn its requests for

a new shipper review and an administrative review, and there was no request for review from any other interested party, the Department is rescinding these reviews in accordance with section 351.302(b) and section 351.213 (d)(1) of the Department's regulations, respectively.

**EFFECTIVE DATE:** March 7, 2003.

#### **FOR FURTHER INFORMATION CONTACT:**

Christian Hughes or Matthew Renkey, AD/CVD Enforcement Group III, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482-0190 and (202)482-2312.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On November 30, 2001, Lin Fen requested that the Department initiate a new shipper review of its sales of silicon metal from PRC to the United States pursuant to section 351.214 of the Department's regulations. On December 26, 2001, the Department sent a letter informing Lin Fen that its request was deficient. On December 31, 2001, Lin Fen submitted a revised request for the Department to initiate a new shipper review (December is the semi-annual anniversary month of this order). On January 31, 2002, the Department found that Lin Fen's new shipper review request met all of the regulatory requirements in accordance with section 351.214 (b) of the Department's regulations and, therefore, initiated this new shipper review. *See Silicon Metal from the People's Republic of China (PRC): Initiation of Antidumping Duty New Shipper Review*, 67 FR 5966 (February 8, 2002).

On June 28, 2002, Lin Fen submitted a timely request for the Department to conduct an administrative review covering the period June 1, 2001 through May 31, 2002, in accordance with section 351.213 (b)(2) of the Department's regulations. In the request, Lin Fen stated that it had one sale to the United States of the subject merchandise during this period of review. In furtherance of the request, Lin Fen stated that this sale was already subject to the ongoing new shipper review of Lin Fen and stated that Lin Fen had no other sales of subject merchandise to the United States during this period of review. On July 18, 2002, the Department initiated Lin Fen's administrative review request. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 48435 (July 24, 2002).

On October 2, 2002, Lin Fen requested an expansion of the six-month period of review in the new shipper review in order to include both a sale to an unaffiliated customer and an entry of subject merchandise into the United States in the new shipper review. In furtherance of the request, and in accordance with section 351.214 (j)(3) of the Department's regulations, Lin Fen also agreed to waive the time limits of 351.214 (i) so that the Department might conduct the new shipper review concurrently with the administrative review for the period June 1, 2001 through May 31, 2002. The Department granted this request and extended the review period for the new shipper review from June 1, 2001 through November 30, 2001 to June 1, 2001 through January 14, 2002, and it also postponed the time limit for the preliminary results of the new shipper review in conjunction with the administrative review. *See Silicon Metal From the People's Republic of China (PRC): Postponement of Time Limit for Preliminary Results of New Shipper Antidumping Review in Conjunction with Administrative Review*, 67 FR 70403 (November 22, 2002).

On December 31, 2002, Lin Fen submitted a letter withdrawing its request for the new shipper review and administrative review. On February 4, 2003, the Department issued a memorandum to the parties analyzing these withdrawals and stating that it intended to rescind these reviews (*see Memorandum to File through Maureen Flannery, Program Manager, Office of AD/CVD Enforcement VII, from Christian Hughes, Analyst: Silicon Metal from the People's Republic of China: Release of Intent to Rescind Memorandum for New Shipper Review and Administrative Review for China Shanxi Province Lin Fen Prefecture Foreign Trade Import and Export Corp.*, dated February 4, 2003). We received no comments from any parties on this memorandum.

#### **Rescission of Antidumping Duty New Shipper Review and Rescission, in Part, of Administrative Review**

The Department is rescinding the antidumping duty new shipper review of Lin Fen covering the period June 1, 2001 through January 14, 2002, and the administrative review covering the period June 1, 2001 through May 31, 2002, in accordance with section 351.302(b) and section 351.213(d)(1) of the Department's regulations, respectively. Although Lin Fen's withdrawals from these reviews were not within the normal time limits prescribed in section 351.214(f) and