

raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. Parties will be notified of the time and location. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief, not later than 120 days after publication of these preliminary results, unless extended.

#### Notice to Importers

This notice serves as a preliminary reminder to importers of their responsibility under section 351.402(f) of the Department's regulations 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 issued in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. § 1675(a)(1) and 19 U.S.C. 1677f(i)(1)).

Dated: March 1, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 04-5139 Filed 3-5-04; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

A-533-813

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

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

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

**SUMMARY:** In response to timely requests by three manufacturers/exporters and the petitioner,<sup>1</sup> the Department of

Commerce is conducting an administrative review of the antidumping duty order on certain preserved mushrooms from India with respect to five companies. The period of review is February 1, 2002, through January 31, 2003.

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 Customs and Border Protection to assess antidumping duties on all appropriate entries.

**EFFECTIVE DATE:** March 8, 2004.

#### FOR FURTHER INFORMATION CONTACT:

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

#### SUPPLEMENTARY INFORMATION:

#### Background

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

In response to timely requests by three manufacturers/exporters, Agro Dutch Foods Ltd. (Agro Dutch), Saptarishi Agro Industries, Ltd. (Saptarishi Agro), and Weikfield Agro Products, Ltd. (Weikfield), as well as the petitioner, the Department published a notice of initiation of an administrative review with respect to the following companies: Agro Dutch, Alpine Biotech, Ltd. (Alpine Biotech), Dinesh Agro Products, Ltd. (Dinesh Agro), Flex Foods, Ltd. (Flex Foods), Himalya International, Ltd. (Himalya), Mandeep Mushrooms, Ltd. (Mandeep Mushrooms), Premier Mushroom Farms (Premier), Saptarishi Agro, and Weikfield (68 FR 14399, March 25, 2003). The period of review (POR) is February 1, 2002, through January 31, 2003.

On March 28, 2002, the Department issued antidumping duty questionnaires to the above-mentioned companies. On April 7, 2003, the petitioner timely withdrew its request for review with respect to Alpine Biotech and Mandeep Mushrooms, and on July 14, 2003, the petitioner withdrew its request for

review of Himalya. In addition, Flex Foods reported that it had no sales of the subject merchandise during the POR, which we confirmed by reviewing data from Customs and Border Protection (CBP) (*see* Memorandum to the File dated June 6, 2003).

Accordingly, we published a *Notice of Partial Rescission of Antidumping Duty Administrative Review* with respect to Alpine Biotech, Mandeep Mushrooms, Flex Foods, and Himalya on August 18, 2003 (68 FR 49435). While Saptarishi Agro withdrew its request for a review on May 13, 2003, the petitioner did not withdraw its request for a review of this company, therefore, we did not rescind the review with respect to Saptarishi Agro.

We received responses to the original questionnaire during the period May through July 2003 from Agro Dutch, Premier, and Weikfield. We issued supplemental questionnaires in July, September, and October 2003, and received responses from these companies during the period August through October 2003. We did not receive a response from either Dinesh Agro or Saptarishi Agro.

On June 6, 2003, the petitioner made an allegation that Agro Dutch sold certain preserved mushrooms in its third country market at prices below the COP. On July 8, 2003, the Department initiated a cost investigation of Agro Dutch's third country sales (*see Petitioners' Allegation of Sales Below the Cost of Production for Agro Dutch*, Memorandum to the File dated July 8, 2003 (*Agro Dutch COP Initiation Memo*)).

On July 15, 2003, the petitioner made an allegation that Premier sold certain preserved mushrooms in its home market at prices below the COP. On August 1, 2003, the Department initiated a cost investigation of Premier's home market sales (*see Petitioners' Allegation of Sales Below the Cost of Production for Premier*, Memorandum to the File dated August 1, 2003 (*Premier COP Initiation Memo*)).

On October 3, 2003, the Department extended the time limit for the preliminary results in this review until March 1, 2004. *See Certain Preserved Mushrooms from India and the People's Republic of China: Notice of Extension of Time Limit for Preliminary Results in Antidumping Duty Administrative Reviews and New Shipper Review*, 68 FR 57424.

In November 2003, we conducted on-site verifications of Premier's and Weikfield's questionnaire responses, in accordance with 19 CFR 351.307. The results of these verifications are described in *Sales and Cost of*

<sup>1</sup> The petitioner is the Coalition for Fair Preserved Mushroom Trade which includes the American Mushroom Institute and the following domestic companies: L.K. Bowman, Inc., Modern Mushroom Farms, Inc., Monterey Mushrooms, Inc., Mount Laurel Canning Corp., Mushrooms Canning

Company, Southwood Farms, Sunny Dell Foods, Inc., and United Canning Corp.

*Production Verification in Secunderabad, India of Premier Mushroom Farms*, Memorandum to the File dated January 23, 2004 (*Premier Verification Report*), and *Sales and Cost of Production Verification in Pune, India of Weikfield Agro Products, Ltd.*, Memorandum to the File dated December 23, 2003 (*Weikfield Verification Report*).

As instructed by the Department, Weikfield and Premier submitted revised U.S. and home market sales data pursuant to verification findings on January 20, 2004, and February 6, 2004, respectively.

On February 12, 2004, the petitioner submitted comments on Premier and Weikfield for purposes of the preliminary results. The petitioner submitted comments on Agro Dutch on February 13, 2004.

### 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 currently 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>2</sup> (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this order dispositive.

### Use of Facts Available

As noted above in the "Background" section, neither Dinesh Agro nor Saptarishi Agro submitted a response to the Department's antidumping questionnaire. Because of Dinesh Agro's and Saptarishi Agro's refusal to cooperate in this review, we determine that the application of facts available is appropriate, pursuant to section 776(a)(2) of the Tariff Act of 1930 (the Act).

Section 776(a)(2) of the Act provides that "if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title."

Because these two companies refused to participate in this administrative review, we find that, in accordance with sections 776(a)(2)(A), (B), and (C) of the Act, the use of total facts available is appropriate (*see, e.g., Final Results of Antidumping Duty Administrative Review for Two Manufacturers/Exporters: Certain Preserved Mushrooms from the People's Republic of China*, 65 FR 50183, 50184 (August 17, 2000) (for a more detailed discussion, *see Preliminary Results of Antidumping Duty Administrative Review for Two Manufacturers/Exporters: Certain Preserved Mushrooms from the People's Republic of China*, 65 FR 40609, 40610–40611 (June 30, 2000)).

Section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate "to

<sup>2</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.

ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 103–316, at 870 (1994). Furthermore, "an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference." *See Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27340 (May 19, 1997).

Section 776(b) of the Act authorizes the Department to use as adverse facts available information derived from the petition, the final determination from the less-than-fair-value (LTFV) investigation, a previous administrative review, or any other information placed on the record. Under section 782(c) of the Act, a respondent has a responsibility not only to notify the Department if it is unable to provide requested information, but also to provide a "full explanation and suggested alternative forms." Neither company responded to the Department's request for information, thereby failing to comply with this provision of the statute. Therefore, we determine that Dinesh Agro and Saptarishi Agro failed to cooperate to the best of their ability, making the use of an adverse inference appropriate.

In this proceeding, consistent with Department practice (*see, e.g., Rescission of Second New Shipper Review and Final Results and Partial Rescission of First Antidumping Duty Administrative Review Brake Rotors From the People's Republic of China*, 64 FR 61581, 61584 (November 12, 1999)), as adverse facts available, we have preliminarily assigned to exports of the subject merchandise produced by Dinesh Agro and Saptarishi Agro the rate of 66.24 percent, the highest rate calculated for any cooperative respondent in the original LTFV investigation or the three previous administrative reviews. The rates assigned to respondents in the previous segments of the proceeding range from *de minimis* for cooperative respondents to a petition rate of 243.87 percent for non-cooperative respondents. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." *See Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR

8909, 8932 (February 23, 1998). Consistent with the previous administrative reviews, we find the application of a rate of 66.24 percent to Dinesh Agro and Saptarishi Agro to be sufficiently adverse in this case. Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. Secondary information is described in the SAA as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." See SAA at 870 and 19 CFR 351.308(c)(1). The SAA states that "corroborate" means to determine that the information used has probative value (*id.*). To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. See 19 CFR 351.308(d).

Unlike other types of information, such as input costs or selling expenses, there are no independent sources from which the Department can derive calculated dumping margins; the only source for margins is administrative determinations. In a previous segment of this proceeding, the Department determined that the petition rate of 243.87 percent could not be corroborated and thus no longer had probative value for use as an adverse facts available rate with respect to Saptarishi Agro. We found that the next highest rate, the calculated rate of 66.24 percent from a respondent in a previous review, was sufficiently adverse and that there was no impediment for its application to Saptarishi Agro in that review. See *Notice of Final Results of Administrative Review: Certain Preserved Mushrooms from India* 67 FR 46172 (July 12, 2002), and accompanying Issues and Decision Memorandum at Comment 8.

We preliminarily determine that the calculated margin of 66.24 percent selected, as adverse facts available, is relevant, reliable, and has probative value because it is based on verified data from a respondent in a previous administrative review. Furthermore, although this margin is the highest in the range of calculated margins, there is no basis to conclude that it is aberrational or is inappropriate as applied to Dinesh Agro and Saptarishi Agro. The rate used is also the rate

currently applicable to Saptarishi Agro. Accordingly, we determine that this rate is an appropriate rate to be applied in this review to exports of the subject merchandise produced by Dinesh Agro and Saptarishi Agro as facts otherwise available.

#### Duty Absorption

On February 28, 2003, the petitioner requested that the Department determine whether antidumping duties had been absorbed during the POR. Section 751(a)(4) of the Act provides for the Department, if requested, to determine during an administrative review initiated two or four years after the publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. Because this review was initiated four years after the publication of the order, and Agro Dutch, Premier, and Weikfield acted as importer of record for some or all of their U.S. sales, we must make a duty absorption determination in this segment of the proceeding within the meaning of section 751(a)(4) of the Act.

On September 30, 2003, the Department requested evidence from the respondents that unaffiliated purchasers will ultimately pay the antidumping duties to be assessed on entries during the review period. In determining whether the antidumping duties have been absorbed by the respondents during the POR on sales for which they were importer of record, we presume that the duties will be absorbed for those sales that have been made at less than normal value (NV). This presumption can be rebutted with evidence (*e.g.*, an agreement between the respondent/importer and unaffiliated purchaser) that the unaffiliated purchaser will pay the full duty ultimately assessed on the subject merchandise. None of the respondents responded to the Department's request for information. Accordingly, based on the record, we cannot conclude that the unaffiliated purchaser in the United States will pay the ultimately assessed duty. Therefore, we preliminarily find that antidumping duties have been absorbed by the producer or exporter during the POR on those sales for which the respondent was the importer of record. Premier was the importer of record for all of its sales to the United States, while Agro Dutch was the importer of record for 79.4 percent of its U.S. sales, and Weikfield was the importer of record for 71.7 percent of its U.S. sales. In addition, we find duty absorption for both Dinesh Agro and

Saptarishi Agro on all of their sales, based on adverse facts available, because neither company responded to the Department's questionnaire.

#### Fair Value Comparisons

To determine whether sales of certain preserved mushrooms by the respondents to the United States were made at less than NV, we compared export price (EP), as appropriate, 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 EPs of individual U.S. transactions to the weighted-average NV of the foreign like product where there were sales made in the ordinary course of trade, as discussed in the "Cost of Production Analysis" section below.

#### Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondents covered by the description in the "Scope of the Order" section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market (Premier and Weikfield) or third country market (Agro Dutch) 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 comparison 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.

Agro Dutch reported grade characteristics for its sales that departed from the criteria reported in previous reviews or by other respondents. Based on the explanations at pages 6 - 8 of the August 6, 2003, supplemental questionnaire response, we are not persuaded that a departure from the methodology established throughout this proceeding is warranted as Agro Dutch failed to demonstrate any meaningful differences in physical characteristics to require five rather than three grade designations. Further, we note that some of the grade differences claimed by Agro Dutch are already

defined by the mushroom style characteristic. Therefore, we have reclassified the products reported by Agro Dutch and reassigned product control numbers (CONNUMs) according to the methodology set forth in our questionnaire. See *Agro Dutch Preliminary Results Notes and Margin Calculation*, Memorandum to the File dated March 1, 2004, (*Agro Dutch Memo*) for a further discussion.

#### Export Price

For Agro Dutch, Premier, and Weikfield, we used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly by the producer/exporter in India to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise indicated. We based EP on packed prices to unaffiliated purchasers in the United States.

#### Agro Dutch

Agro Dutch reported its U.S. sales as sold on an FOB, C&F, or CIF basis. We made deductions from the starting price, where appropriate, for foreign inland freight, freight document charges, transportation insurance, foreign brokerage and handling, Indian export duty (CESS), and international freight in accordance with section 772(c)(2) of the Act and 19 CFR 351.402.

#### Premier

Premier reported its U.S. sales as sold on an FOB Hyderabad basis. We made a deduction from the starting price, where appropriate, for brokerage and handling expenses, in accordance with section 772(c)(2) of the Act and 19 CFR 351.402.

#### Weikfield

Weikfield reported its U.S. sales as sold on a FOB port Mumbai, delivered duty paid, or C&F basis. We made deductions from the starting price, where appropriate, for foreign inland freight, export inspection fees, foreign inland and marine insurance, foreign brokerage and handling expenses, CESS, international freight, and U.S. duty (including U.S. brokerage and handling expenses) in accordance with section 772(c)(2) of the Act and 19 CFR 351.402.

#### Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the respondents' volume of home market sales of the foreign like product to the volume of U.S. sales of the subject

merchandise, in accordance with section 773(a)(1)(C) of the Act.

With regard to Premier and Weikfield, the aggregate volume of home market sales of the foreign like product was greater than five percent of the aggregate volume of U.S. sales of the subject merchandise. Therefore, we determined that the home market provides a viable basis for calculating NV for Premier 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 Israel 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 NV for Agro Dutch. However, in certain cases, Agro Dutch did not have sales of comparable merchandise to Israel that were contemporaneous with sales to the United States. In those instances, we calculated NV based on constructed value (CV) in accordance with section 773(e) of the Act 19 CFR 351.405.

#### Level of Trade

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

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices<sup>3</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 match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if an 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 *Plate from South Africa* at 61731. We obtained information from the respondents regarding the marketing stages involved in making the reported foreign market and U.S. sales, including a description of the selling activities performed for each channel of distribution. Company-specific LOT findings are summarized below.

#### Agro Dutch

Agro Dutch sold to importers/traders through one channel of distribution in both the U.S. and Israeli markets. As described in its questionnaire response, Agro Dutch performs no selling functions in the United States or in any of the third countries to which it sells, including Israel. Therefore, these sales channels are at the same LOT. Accordingly, all comparisons are at the same LOT for Agro Dutch and an adjustment pursuant to section 773(a)(7)(A) is not warranted.

#### Premier

In the home market, Premier sold directly to small local distributors that sell to retailers or local hotels. We examined Premier's home market distribution system, including selling functions, classes of customers, and selling expenses, and determined that Premier offers the same support and assistance to all its home market customers. Accordingly, all of Premier's home market sales are made through the

<sup>3</sup> Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which

we derive selling expenses and profit for CV, where possible.

same channel of distribution and constitute one LOT.

With regard to sales to the United States, Premier made only EP sales to large distributors. We examined Premier's U.S. distribution system, including selling functions, classes of customers, and selling expenses, and determined that Premier offers the same support and assistance to all its U.S. customers. Accordingly, all of Premier's U.S. sales are made through the same channel of distribution and constitute one LOT. This EP LOT differed considerably from the home market LOT with respect to sales process, advertising, and inventory maintenance. Consequently, we could not match the EP LOT to sales at the same LOT in the home market. Since there was only one LOT in the home market, there was no pattern of consistent price differences between different LOTs in the home market, and we do not have any other information that provides an appropriate basis for determining a LOT adjustment. Accordingly, we have not made a LOT adjustment. See section 773(a)(7)(A) of the Act.

#### **Weikfield**

Weikfield's home market sales are made via two channels of distribution: a) direct sales to large quantity end-users, and b) sales to distributors and "carrying and forwarding" (C&F) agents, which either resell the merchandise to small quantity end-users, or act as Weikfield's agent in selling and distributing the merchandise to small quantity end-users. We examined Weikfield's home market distribution system, including selling functions, classes of customers, and selling expenses, and determined that Weikfield offers the same support and assistance to all its home market customers except with respect to sales promotion activities. In the Indian states of Maharashtra and Goa, Weikfield's affiliate WPCL includes Weikfield's preserved mushrooms products in its market development activities to promote sales.

With respect to such functions as sales negotiation, freight and distribution services, and inventory maintenance, the two channels involve the same services performed by Weikfield. With respect to sales promotion activities, the level of sales promotion activities performed by WPCL are not so extensive as to constitute a separate LOT. Accordingly, we consider all of Weikfield's home market sales to constitute one LOT.

With regard to sales to the United States, Weikfield made only EP sales to importers/traders. We examined

Weikfield's U.S. distribution system, including selling functions, classes of customers, and selling expenses, and determined that Weikfield offers the same support and assistance to all its U.S. customers. Accordingly, all of Weikfield's U.S. sales are made through the same channel of distribution and constitute one LOT.

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

#### **Cost of Production Analysis**

As stated in the "Background" section of this notice, based on timely allegations filed by the petitioner, the Department initiated investigations to determine whether Agro Dutch's third country sales and Premier's home market sales were made at prices less than the COP within the meaning of section 773(b) of the Act. See *Agro Dutch COP Initiation Memo* and *Premier COP Initiation Memo*.

In addition, the Department disregarded certain sales made by Weikfield in the 2001-2002 administrative review, pursuant to findings in that review that sales failed the cost test (see *Notice of Final Results of Antidumping Duty Administrative Review: Certain Preserved Mushrooms from India*, 68 FR 41303 (July 11, 2003)). Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that Weikfield made sales in the home market at prices below the cost of producing the merchandise in the current review period.

#### **A. Calculation of Cost of Production**

We calculated the COP on a product-specific basis, based on the sum of each company's respective costs of materials and fabrication for the foreign like product, plus amounts for selling, general and administrative (SG&A)

expenses, interest expense, and all expenses incidental to placing the foreign like product in a condition packed ready for shipment in accordance with section 773(b)(3) of the Act.

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

#### *Premier*

1. We included certain expenses which were omitted from variable overhead expenses, as discussed at page 16 of the *Premier Verification Report*.
2. We revised the per-kilogram fixed overhead cost to correct errors in allocating shared depreciation expenses, as discussed at page 17 of the *Premier Verification Report*.
3. We revised the reported labor expense to account for the reallocation of labor expenses to head office and sales employees, as discussed at page 15 of the *Premier Verification Report*, and to fully account for certain year-end adjustments to the reported cost of manufacture, as discussed at pages 6 and 15 of the *Premier Verification Report*.
4. We revised the financial expense ratio by excluding bank charges from the numerator of the calculation, as discussed at page 23 of the *Premier Verification Report*.
5. We revised the G&A expenses to account for changes in the G&A expense ratio due to the reallocation of a portion of labor expenses made at the commencement of verification, as discussed at page 22 of the *Premier Verification Report*.

#### **Weikfield**

1. We revised the reported direct material costs to include an offset for sales of spent compost recorded as "other income," as discussed at page 12 of the *Weikfield Verification Report*.
2. We revised the reported factory overhead expenses costs to reflect the revised depreciation expenses presented at the commencement of the verification and submitted for the record in the December 2, 2003, submission.
3. We revised the reported G&A expense to reflect the corrected ratio presented at the commencement of the verification and submitted for the record in the December 2, 2003, submission. In addition, we added the depreciation costs for "idled assets" excluded from Weikfield's reporting, as discussed at page 15 of the *Weikfield Verification Report*, to the G&A expense total, consistent with our treatment of these expenses in the previous review (see *Final Results of Antidumping Duty*

*Administrative Review: Certain Preserved Mushrooms From India*, 68 FR 41303 (July 11, 2003) (*AR3 Final Results*), Issues and Decision Memorandum at Comment 10). See *Weikfield Preliminary Results Notes and Margin Calculation*, Memorandum to the File dated March 1, 2004, for a further discussion of these adjustments.

#### B. Test of Home or Third Country Market Prices

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

#### C. Results of COP Test

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

The results of our cost test for Weikfield indicated that less than 20 percent of home market sales of any given product were at prices below COP. We therefore retained all sales in our analysis and used them as the basis for determining NV.

The results of our cost tests for Agro Dutch and Premier indicated that for certain products more than 20 percent of home market sales within an extended period of time were at prices below COP which would not permit the full recovery of all costs within a reasonable period of time. See 773(b)(2) of the Act. In accordance with section 773(b)(1) of the Act, we excluded these below-cost sales from our analysis and used the remaining sales as the basis for determining NV.

#### Price-to-Price Comparisons

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

Home market or third country prices were based on ex-Hyderabad, FOB Indian port, or delivered prices. We reduced the starting price for discounts (Weikfield), credit notes (Premier), and movement expenses (Agro Dutch, Premier and Weikfield), and increased the starting price for interest revenue (Premier), where appropriate, in accordance with section 773(a)(6) of the Act and 19 CFR 351.401. We treated Premier's discounts as commissions. See Memorandum to the File dated March 1, 2004, *Preliminary Results Calculation Memorandum for Premier Mushroom Farms (Premier)*. We also reduced the starting price for packing costs incurred in the home market, in accordance with section 773(a)(6)(B)(i), and increased NV to account for U.S. packing expenses in accordance with section 773(a)(6)(A). We made circumstance-of-sale adjustments for credit expenses, bank fees, and commissions, where appropriate, pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. In addition, we made adjustments to NV, where appropriate, for differences in costs attributable to differences in the physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. For Premier and Weikfield, we made an adjustment to NV to account for commissions paid in the home market but not in the U.S. market, in accordance with 19 CFR 351.410(e). As the offset for home market commissions, we applied the lesser of home market commissions or U.S. indirect selling expenses.

During the POR, a number of Agro Dutch's shipments to the United States were rejected and returned to India. A

large portion of these sales were resold to third country markets other than Israel. See page 15 and Exhibit Supp. C-1 of Agro Dutch's August 6, 2003, supplemental questionnaire response, and Agro Dutch's December 15, 2003, letter. To account for these expenses, we included the expenses incurred to ship the rejected sales to the United States as an indirect selling expense for U.S. sales. In addition, we also included as an indirect selling expense for U.S. sales the expenses incurred to return the rejected sales to India, less an amount for merchandise resold to third country customers. See *Agro Dutch Memo*, for a further discussion of these expenses.

We recalculated Premier's indirect selling expenses to include certain sales expenses incorrectly included in labor and G&A. See *Premier Verification Report* at page 26.

Consistent with our treatment in the previous review, we have not considered Weikfield's commission payments to WPCL on home market and U.S. sales to be at arm's length, and instead have included the selling expenses incurred by WPCL on Weikfield's behalf as part of Weikfield's indirect selling expenses. See *AR3 Final Results, Issues and Decision Memorandum* at Comments 4 and 7.

As discussed at page 22 of the *Weikfield Verification Report*, Weikfield was unable to demonstrate that it actually incurred a freight expense on sales made to customers near its production facility. Sales to these customers were shipped either by Weikfield's own trucks, or by local contractors for whom no payment records were maintained. Therefore, we did not deduct movement expenses from the starting price for these sales.

We recalculated Weikfield's home market imputed credit expense based on the methodology used in its questionnaire response to account for revisions to prices, discounts and payment dates made to the sales data base as a result of verification findings, and to deduct freight expenses from the price base for sales made on a freight-collect basis, where the cost of freight was deducted on the invoice, but not from the price base used to calculate imputed credit.

To calculate U.S. indirect selling expenses, we used the U.S. indirect selling expense ratio Weikfield calculated at verification because Weikfield did not include a U.S. indirect selling expense in its reported sales listing. See *Weikfield Verification Report* at page 29.

### Calculation of Constructed Value

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

#### Premier

We made the same adjustments to the CV data as we made to the COP data, as discussed above under "Calculation of Cost of Production."

#### Weikfield

We made the same adjustments to the CV data as we made to the COP data, as discussed above under "Calculation of Cost of Production."

#### Price-to-Constructed Value Comparisons

For Agro Dutch, we based NV on CV for comparison to certain U.S. sales, in accordance with section 773(a)(4) of the Act. For comparisons to Agro Dutch's EP sales, we made circumstance-of-sale adjustments by deducting from CV the weighted-average direct selling expenses of Agro Dutch's above-cost third country sales, and adding the U.S. direct selling expenses, in accordance with section 773(a)(8) of the Act and 19 CFR 351.410.

#### Currency Conversion

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

#### Preliminary Results of Review

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

Manufacturer/Exporter	Percent margin
Agro Dutch Foods, Ltd .....	8.41
Dinesh Agro Products, Ltd. ....	66.24
Premier Mushroom Farms .....	27.30
Saptarishi Agro Industries, Ltd.	66.24
Weikfield Agro Products, Ltd. ...	12.45

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

after determination of the briefing schedule.

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

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

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

#### Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. The Department will issue appropriate appraisal instructions for the companies subject to this review directly to CBP within 15 days of publication of the final results of this review.

For assessment purposes, we do not have the actual entered values for certain sales made by Weikfield because Weikfield was not the importer of record on some of its U.S. sales and it did not obtain the entered value data for those sales. Accordingly, we intend to calculate importer-specific assessment rates by aggregating the dumping margins calculated for all of Weikfield'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 are *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. With respect to Agro Dutch and Premier, we intend to calculate importer-specific assessment rates for the subject merchandise by

aggregating the dumping margins calculated for all of the U.S. sales examined and dividing this amount by the total entered value of the sales examined.

The Department will issue appropriate appraisal instructions directly to CBP upon completion of this review. We will instruct CBP 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 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: March 1, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 04-5137 Filed 3-5-04; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-533-810]

#### **Stainless Steel Bar From India; Preliminary Results of Antidumping Duty Administrative Review, Notice of Partial Rescission of Administrative Review, and Notice of Intent To Revoke in Part**

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

**SUMMARY:** In response to requests from interested parties, the Department of Commerce is conducting an administrative review of the antidumping duty order on stainless steel bar from India with respect to Chandan Steel Limited; Ferro Alloys Corp. Ltd.; Isibars Limited; Mukand, Ltd.; Jyoti Steel Industries; Venus Wire Industries Limited; and the Viraj Group, Ltd. (Viraj Alloys, Ltd.; Viraj Forgings, Ltd.; and Viraj Impoexpo, Ltd). This review covers sales of stainless steel bar to the United States during the period February 1, 2002, through January 31, 2003.

We have preliminarily determined that sales have been made below normal value by three of the respondents in this proceeding, Chandan Steel Limited, Isibars Limited, and Jyoti Steel Industries. In addition, we have preliminarily determined to rescind the review with respect to Ferro Alloys Corp., Ltd. and Mukand, Ltd. because they withdrew their requests for review within the time limit specified under 19 CFR 351.213(d)(1). Finally, we have preliminarily determined to revoke the antidumping duty order with respect to the Viraj Group, Ltd. If these

preliminary results are adopted in the final results of this review, we will instruct Customs and Border Protection to assess antidumping duties on all appropriate entries.

We invite interested parties to comment on these preliminary results. Parties who wish to submit comments in this proceeding are requested to submit with each argument: (1) A statement of the issue; and (2) a brief summary of the argument.

**EFFECTIVE DATE:** March 8, 2004.

**FOR FURTHER INFORMATION CONTACT:**

Michael Strollo or Irina Itkin, Office 2, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482-0629 or (202) 482-0656 respectively.

**SUPPLEMENTARY INFORMATION:**

#### **Background**

On February 3, 2003, the Department of Commerce (the Department) published a notice in the **Federal Register** (68 FR 5272) of the opportunity for interested parties to request an administrative review of the antidumping duty order on stainless steel bar (SSB) from India.

In accordance with 19 CFR 351.213(b)(1), on February 26, 2003, the Department received a request for an administrative review from Venus Wires Industries Ltd. (Venus), an Indian producer/exporter of SSB in India. On February 27, 2003, in accordance with 19 CFR 351.213(b)(1), the Department received a request for an administrative review from the petitioners (*i.e.*, Carpenter Technology Corp., Crucible Specialty Metals Division of Crucible Materials Corp., Electralloy Corp., Slater Steels Corp., Empire Specialty Steel and the United Steelworkers of America (AFL-CIO/CLC)), for the following producers/exporters of stainless steel bar in India: Chandan Steel Limited (Chandan), Isibars Limited (Isibars), Jyoti Steel Industries (Jyoti), Venus, and the Viraj Group, including but not necessarily limited to Viraj Alloys, Ltd. (VAL), Viraj Forgings, Ltd. (VFL), Viraj ImpoExpo Ltd., Viraj Smelting, and Viraj Profiles (collectively, Viraj). Finally, in accordance with 19 CFR 351.213(b)(2), on February 28, 2003, the Department received additional requests to conduct an administrative review from four Indian exporters (*i.e.*, Ferro Alloys Corp. Ltd. (FACOR), Isibars, Mukand, Ltd. (Mukand), and Viraj). As part of its request, Viraj also requested that the Department revoke the antidumping duty order with regard to

its sales of subject merchandise, in accordance with 19 CFR 351.222(b).

On March 25, 2003, the Department initiated an administrative review of the antidumping duty order on SSB from India for the following companies: Chandan, FACOR, Isibars, Jyoti, Mukand, Venus, and Viraj. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 68 FR 14394 (Mar. 25, 2003). We issued questionnaires to each of these companies on April 4, 2003.

On April 7, 2003, and May 9, 2003, respectively, Mukand and FACOR withdrew their requests for review. For further discussion, see the "Partial Rescission of Review" section of this notice, below.

In May 2003, we received responses to section A of the Department's questionnaire from Chandan, Isibars, Jyoti, Venus, and Viraj. (Because Isibars improperly filed its section A questionnaire response, we did not place this information on the record until August 11, 2003.)

Also in May 2003, respectively, we issued supplemental section A questionnaires to Chandan and Venus. We received responses to those supplemental questionnaires on May 30 and June 24, 2003, respectively.

In May and June 2003, we received responses to sections B and C of the questionnaire from Chandan, Isibars, Jyoti, Venus, and Viraj. (Because Isibars improperly filed its sections B and C questionnaire responses, we did not place this information on the record until August 11, 2003.)

In June 2003, we received section D responses from Isibars and Venus.

On June 23, 2003, the petitioners submitted timely allegations that Chandan and Viraj made sales below the cost of production (COP). With respect to Viraj, we found that the petitioners' allegation provided a reasonable basis to believe or suspect that sales in the home market by Viraj had been made at prices below the COP. Consequently, on July 1, 2003, pursuant to section 773(b) of the Tariff Act of 1930, as amended (the Act), we initiated an investigation to determine whether Viraj made home market sales during the period of review (POR) at prices below the COP, within the meaning of section 773(b) of the Act. *See* the July 1, 2003, memorandum to Louis Apple from the Team entitled, "Antidumping Duty Administrative Review on Stainless Steel Bar from India: Analysis of the Petitioner's Allegation of Sales Below the Cost of Production for Viraj ImpoExpo Ltd." (sales below cost allegation memo—Viraj). Accordingly, we notified Viraj