

collapsed entity), we will instruct CBP to assess antidumping duties on these company's entries equal to the margin these companies receive in the final results, regardless of the importer or customer.

The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. If these preliminary results are adopted in the final results of review, we will direct CBP to assess the resulting assessment amounts, calculated as described above, on each of the applicable entries during the review period.

### Cash Deposit Requirements

The following deposit requirements will apply to all shipments of certain preserved mushrooms from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the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 named above will be the rates for those firms established in the final results of this administrative review; (2) for any previously reviewed or investigated PRC or non-PRC exporter, not covered in this review, with a separate rate, the cash deposit rate will be the company-specific rate established in the most recent segment of this proceeding; (3) for all other PRC exporters, the cash deposit rate will be the PRC-wide rate established in the final results of this review; and (4) the cash deposit rate for any non-PRC exporter of subject merchandise from the PRC will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

### Notification to Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) 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.

We are issuing and publishing the preliminary results determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 31, 2006.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E6-18662 Filed 11-3-06; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-533-813]

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

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

**SUMMARY:** In response to timely requests by Agro Dutch Industries, Ltd. (Agro Dutch) and the petitioner,<sup>1</sup> the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain preserved mushrooms from India with respect to Agro Dutch. The period of review (POR) is February 1, 2005, through January 31, 2006.

We preliminarily determine that sales have been made below normal value (NV). 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 U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries.

**DATES:** *Effective Date:* November 6, 2006.

**FOR FURTHER INFORMATION CONTACT:** Terre Keaton Stefanova or David J. Goldberger AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-1280 or (202) 482-4136, 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. See *Notice of Amendment of Final Determination of Sales at Less Than*

<sup>1</sup> The petitioner is the Coalition for Fair Preserved Mushroom Trade which includes the following domestic companies: L.K. Bowman, Inc., Monterey Mushrooms, Inc., Mushroom Canning Company, and Sunny Dell Foods, Inc.

*Fair Value and Antidumping Duty Administrative Order: Certain Preserved Mushrooms from India*, 64 FR 8311 (February 19, 1999).

In response to timely requests by a manufacturer/exporter, Agro Dutch, and the petitioner, the Department published a notice of initiation of an administrative review with respect to the following companies: Agro Dutch and Himalya International, Ltd. (Himalya), 71 FR 17077 (April 5, 2006). The POR is February 1, 2005, through January 31, 2006.

On April 5, 2006, the Department issued antidumping duty questionnaires to the above-mentioned companies. We received responses to these questionnaires in May 2006.

On July 10, 2006, the petitioner withdrew its request for review with respect to Himalya. Accordingly, we published a *Notice of Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 42801 (July 28, 2006), with respect to this company.

We issued supplemental questionnaires to Agro Dutch in July and September 2006, and received responses in July, August and October 2006.

#### 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* (HTSUS). Although the HTSUS 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 of certain preserved mushrooms by the respondent to the United States were made below 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 Tariff Act of 1930, as amended (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 respondent 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. Pursuant to 19 CFR 351.414(e)(2), we compared Agro Dutch's U.S. sales to sales made in the third-country market within the contemporaneous window period, which extends from three months prior to the U.S. sale until two months after the sale. Where there were no sales of identical merchandise in the 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, container solution, and label type.

#### Export Price

We used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly by Agro Dutch to the first unaffiliated purchaser in the United States prior to importation and constructed export price (CEP)

methodology was not otherwise indicated. We based EP on packed prices to unaffiliated purchasers in the United States.

Agro Dutch reported its U.S. sales on a CIF or ex-dock duty paid basis. We made deductions from the starting price, where appropriate, for international freight, foreign inland freight, transportation insurance, foreign and U.S. brokerage and handling, and U.S. duty, in accordance with section 772(c)(2) of the Act and 19 CFR 351.402.

Agro Dutch claimed a freight expense offset for some of the freight expenses associated with its export shipments to the United States and Israel, the third-country market upon which we based NV. Based on the information submitted for the record of this review and consistent with our findings in the previous administrative review, we did not make this adjustment because it is not contemplated by the Act or the Department's regulations. See *Certain Preserved Mushrooms from India: Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 67440, 67441 (November 7, 2005). These findings were upheld in the final results (see *Certain Preserved Mushrooms from India: Final Results of Antidumping Duty Administrative Review*, 71 FR 10646 (March 2, 2006)).

#### 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 Agro Dutch's 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.

We determined that the home market was not viable for Agro Dutch 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 used third-country sales as a basis for NV for Agro Dutch.

#### 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. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa* 62 FR 61731, 61732 (November 19, 1997) (*Plate from South Africa*). In order to determine whether the comparison sales were at different stages in the marketing process from 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>2</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, 1314–15 (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 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, and where the difference affects price comparability, we make an 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*, 62 FR at 61732–33.

We obtained information from Agro Dutch regarding the marketing stages involved in sales to the reported comparison market and U.S. sales, including a description of the selling activities performed for each channel of distribution. Agro Dutch sold to importers/distributors through one channel of distribution in both the U.S.

<sup>2</sup> Where NV is based on constructed value (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.

and Israeli markets. As described in its questionnaire response, Agro Dutch performs limited selling activities for its U.S. and third-country sales.

Furthermore, any selling activities performed (e.g., sales negotiation and transportation arrangement) do not vary by channel of distribution, type of customer, or market. Therefore, Agro Dutch's sales channels are at the same LOT. Accordingly, all sales comparisons are at the same LOT for Agro Dutch and an adjustment pursuant to section 773(a)(7)(A) of the Act is not warranted.

#### Cost of Production Analysis

In the most recently completed administrative review as of April 5, 2006, when the questionnaire was issued (i.e., the 2004–2005 review), we found that Agro Dutch had made sales below the cost of production. See *Certain Preserved Mushrooms from India: Final Results of Antidumping Duty Administrative Review*, 71 FR 10646 (March 2, 2006). Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that Agro Dutch made sales in the third country at prices below the cost of producing the merchandise in the current review period. Accordingly, we instructed Agro Dutch to respond to the section D (Cost of Production) questionnaire.

#### A. Calculation of Cost of Production

We calculated the cost of production (COP) on a product-specific basis, based on the sum of Agro Dutch'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 and ready for shipment in accordance with section 773(b)(3) of the Act.

We relied on the COP information submitted by Agro Dutch, except for the direct material cost. We adjusted the can costs portion of the direct material cost to reconcile the work-in-process inventory amount reported in the response to the work-in-process inventory amount in the audited financial statements. Because the reported general and administrative expense and interest expense amounts were based on an amount that included the unadjusted direct material costs, we recalculated these expenses to incorporate the adjustment to the can costs. For further details regarding this adjustment, see "Cost of Production and Constructed Value Calculation Adjustment for the Preliminary Results—Agro Dutch Industries

Limited." Memorandum from Michael Harrison, Senior Accountant, to Neal M. Halper, Director of Accounting.

On a product-specific basis, we compared Agro Dutch's weighted-average COP to the prices of 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 billing adjustments, movement charges, discounts, direct and indirect selling expenses and packing. In determining whether to disregard third-country 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 in substantial quantities; and (2) at prices which did not permit the recovery of all costs within a reasonable period of time.

#### B. Results of COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of the respondent's sales of a given product during the POR were at prices less than the COP, we disregarded the below-cost sales 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 Agro Dutch indicated that, for one or more products, more than 20 percent of home market or third country 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 section 773(b)(2) of the Act. Therefore, 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

We based NV on the price at which the foreign like product is first sold for consumption in the third country market, in the usual commercial

quantities and in the ordinary course of trade, and at the same LOT as EP, where possible, as defined by section 773(a)(1)(B)(ii) of the Act.

Third country prices were based on FOB, CIF, and CFR Indian port prices. We reduced the starting price for billing adjustments and movement expenses, and increased the starting price for interest revenue, where appropriate, in accordance with section 773(a)(6)(B) of the Act and 19 CFR 351.401(c) and (e).

We disregarded Agro Dutch's claimed freight expense offset for certain third country sales granted under the Indian government program discussed in the "Export Price" section above, because this type of adjustment to NV is not contemplated by section 773(a)(6) of the Act or the Department's regulations.

We also reduced the starting price for packing costs incurred in the comparison market, in accordance with section 773(a)(6)(B)(i) of the Act, and increased NV to account for U.S. packing expenses, in accordance with section 773(a)(6)(A) of the Act. We made circumstance-of-sale adjustments for credit expenses and bank fees, 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.

#### Currency Conversion

We made currency conversions in accordance with section 773A(a) 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 margin for the period February 1, 2005, through January 31, 2006, is as follows:

Manufacturer/exporter	Percent margin
Agro Dutch Industries, Ltd	0.61

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. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Unless the time period is extended by the Department, case briefs are to be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, are to be submitted no later than five days after the time limit for filing case briefs.

Parties who submit arguments in this proceeding are requested to submit with the argument: (1) A statement of the issues, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties, in accordance with 19 CFR 351.303(f).

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 intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review.

With respect to Agro Dutch, 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. We will instruct CBP 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., 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. The Department clarified its "automatic assessment" regulation on May 6, 2003.

See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (Assessment Policy Notice). This clarification will apply to entries of subject merchandise during the period of review produced by companies included in these final results of reviews for which the reviewed companies did not know that the merchandise it sold to the intermediary (e.g., a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediary involved in the transaction. See Assessment Policy Notice for a full discussion of this clarification.

#### 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 the reviewed company 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 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: October 31, 2006.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 102706B]

#### Fisheries of the Northeastern United States; Northeast Multispecies Fishery, Scoping Process

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; intent to prepare a supplemental environmental impact statement (SEIS) and hold scoping meetings; request for comments.

**SUMMARY:** The New England Fishery Management Council (Council) announces its intent to prepare, in cooperation with NMFS, a supplemental environmental impact statement (SEIS) to assess the potential effects on the human environment of alternative measures for managing the Northeast (NE) multispecies fishery pursuant to the Magnuson-Stevens Fishery Conservation and Management Act. This notice announces a public process for determining the scope of issues to be addressed and for identifying the significant issues relating to management of the multispecies fishery. The Council will use the scoping process and the SEIS to develop Amendment 16 to the NE Multispecies Fishery Management Plan (FMP).

**DATES:** The Council will discuss and take scoping comments at public meetings in November and December 2006 (see **SUPPLEMENTARY INFORMATION**). Written scoping comments must be received on or before 5 p.m., local time, December 29, 2006.