February 28, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–813]

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

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

SUMMARY: In response to timely requests by four manufacturer/exporters and the petitioner,[1] on March 22, 2001, the Department of Commerce published a notice of initiation of an administrative review of the antidumping duty order on certain preserved mushrooms from India with respect to twelve companies. The period of review is February 1, 2000, through January 31, 2001.

We preliminarily determine that sales have been made below normal value. Interested parties are invited to comment on these preliminary results. If these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service to assess antidumping duties on all appropriate entries.

EFFECTIVE DATE: March 7, 2002.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger, Kate Johnson, or Margarita Panayi, Office 2, AD/CVD Enforcement Group I, Import Administration-Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4136, (202) 482–4929, or (202) 482–0049, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (April 2001).

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).

On February 14, 2001, the Department published a notice advising of the opportunity to request an administrative review of the antidumping duty order on certain preserved mushrooms from India (66 FR 10269). In response to timely requests by four manufacturer/exporters, Agro Dutch Foods Ltd. (Agro Dutch), Himalya International Ltd. (Himalya), Hindustan Lever Ltd. (formerly Ponds India Ltd.) (HLL), and Weikfield Agro Products, Ltd. (Weikfield), and the petitioner, the Department published a notice of initiation of an administrative review with respect to twelve companies: Agro Dutch, Alpine Biotech Ltd. (Alpine Biotech), Dinesh Agro Products Ltd. (Dinesh Agro), Flex Foods Ltd. (Flex Foods), Himalya, HLL, Mandeep Mushrooms Ltd. (Mandeep), Premier Mushroom Farms (Premier), Saptarishi Agro Industries Ltd. (Saptarishi), Techtran Agro Industries Limited (Techtran), Transchem Ltd.(Transchem), and Weikfield (66 FR 16037, March 22, 2001). The period of review (POR) is February 1, 2000, through January 31, 2001.

On March 30, 2001, the Department issued antidumping duty questionnaires to the above-mentioned twelve companies. We received responses to the original questionnaire during the period May through July 2001. We issued supplemental questionnaires in August 2001 and January 2002, and received responses during the period August through September 2000 and February 2002.

On April 23, 2001, we received a timely submission from HLL to withdraw its request for an administrative review. On April 24, 2001, we received a timely submission from the petitioner to withdraw its request for administrative reviews of HLL and Transchem.

In June 2001, counsel for Saptarishi informed the Department that the company would no longer participate in the 2000–2001 administrative review. On June 14, 2001, we received a timely submission from the petitioner to withdraw its request for administrative review of Alpine Biotech, Dinesh Agro, Flex Foods, Mandeep, Premier, and Techtran. On July 13, 2001, the Department published a notice of partial recission of the antidumping duty administrative review with respect to Alpine Biotech, Dinesh Agro, Flex Foods, HLL, Mandeep, Premier, and Techtran, and Transchem (66 FR 36753). Therefore, the Department is reviewing only Agro Dutch, Himalya, Saptarishi and Weikfield in this administrative review.

On July 11, 2001, the Department received an allegation from the petitioner that Himalya sold certain preserved mushrooms in India at prices below the cost of production (COP). On August 9, 2001, the Department initiated a cost investigation of Himalya's home-market sales of this merchandise. See August 9, 2001, Memorandum to Louis Apple from The Team Regarding ''Allegation of Sales Below the Cost of Production for Himalya International Limited (Himalya).'' On July 19, 2001, the Department extended the time limit for the preliminary results in this review until February 28, 2002. See 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, 66 FR 37640.

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

[1] 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.

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 2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000 of the Harmonized Tariff Schedule of the United States (HTS)[2]. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Use of Facts Otherwise Available

As noted above in the ''Background'' section, Saptarishi informed the Department in June 2001 that it would no longer participate in this review. Because of Saptarishi'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 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 Saptarishi refused to participate in this administrative review, we find that, in accordance with sections 776(a)(2)(A) 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)); Notice of Final Determination of Sales at Less Than Fair Value: Persulfates from the People's Republic of China, 62 FR 27222, 27224 (May 19, 1997); and Certain Grain-Oriented Electrical Steel from Italy: Final Results of Antidumping Duty Administrative Review, 62 FR 2655 (January 17, 1997) (for a more detailed discussion, see Preliminary Results of Antidumping Duty Administrative Review: Certain Grain-Oriented Electrical Steel from Italy, 61 FR 36551, 36552 (July 4, 1996)).

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 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 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.'' Saptarishi informed the Department of its unwillingness to participate in this review, thereby failing to comply with this provision of the statute. Therefore, we determine that Saptarishi failed to cooperate to the best of its ability, making the use of an adverse inference appropriate.

In this proceeding, in accordance 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); and Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 65 FR 33295 (May 23, 2000) (for a more detailed discussion, see Preliminary Results of Antidumping Duty Administrative Review: Fresh Garlic From the People's Republic of China, 64 FR 39115 (July 21, 1999)), as adverse facts available, we have preliminarily assigned to exports of the subject merchandise produced by Saptarishi the rate of 66.24 percent, the highest rate calculated for any cooperative respondent in the original less-than-fair-value (LTFV) investigation or the 1998–2000 administrative review. The rates assigned to respondents in the previous two segments of the proceeding range from single digits for cooperative respondents to a petition rate of 243.87 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). We find the application of a rate of 66.24 percent to Saptarishi 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 ''{i}nformation 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. 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.

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 an administrative review, if the Department chooses as facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period, because it was calculated in accordance with the statute.

[2] As of January 1, 2002, the HTS numbers are as follows: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153, and 0711.51.0000.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin may not be relevant, the Department will attempt to find a more appropriate basis for facts available. See, e.g., Final Results of Antidumping Duty Administrative Review: Fresh Cut Flowers from Mexico, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin as best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin).

We preliminarily determine that the calculated margin selected, as adverse facts available, is relevant, and has probative value because it is based on verified data from a respondent in the immediately preceding administrative review. 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 Saptarishi. Accordingly, we determine that this rate is an appropriate rate to be applied in this review to exports of the subject merchandise produced by Saptarishi as facts otherwise available.

Allegation of Duty Reimbursement

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

Fair Value Comparisons

To determine whether sales of certain preserved mushrooms by the respondents to the United States were made at less than normal value, we compared constructed export price (CEP) or export price, as appropriate, to the normal value, as described in the ''Export Price/Constructed Export Price'' and ''Normal Value'' sections of this notice.

Pursuant to section 777A(d)(2) of the Act, we compared the export prices of individual U.S. transactions to the weighted-average normal value of the foreign like product where there were sales made in the ordinary course of trade, as discussed in the ''Cost of Production Analysis'' section below.

In this review, neither Agro Dutch nor Weikfield had a viable home or third country market. Therefore, as the basis for normal value, we used constructed value when making comparisons in accordance with section 773(a)(4) of the Act.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondents covered by the description in the ''Scope of the Order'' section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. With respect to Himalya, 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. Where there were no sales of identical or similar merchandise made in the ordinary course of trade in the home market to compare to U.S. sales, we compared U.S. sales to constructed value. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order: preservation method, container type, mushroom style, weight, grade, container solution, and label type.

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

Export Price/Constructed Export Price

For Agro Dutch and Weikfield, we used export price methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold first to an unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise indicated. With respect to Himalya, we calculated CEP in accordance with section 772(b) of the Act, because the subject merchandise was first sold by Transatlantic or Global Reliance, Himalya's affiliated importers in the United States, after importation into the United States. We based export price and CEP on packed, FOB, C&F, CIF, ex port/warehouse, and delivered prices, as appropriate, to unaffiliated purchasers in the United States. For each respondent, for those U.S. sales for which the payment was not received as of the date of the last questionnaire response, we recalculated imputed credit for purposes of a circumstance-of-sale (COS) adjustment using the date of the preliminary results, February 28, 2002, as the date of the payment. We will provide the respondents an opportunity to provide updated payment data for use in the final results.

Agro Dutch

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

In a February 11, 2002, submission, Agro Dutch stated that it made data entry errors in reporting the per-unit expenses incurred on certain U.S. sales for foreign inland freight, foreign brokerage, and CESS. Agro Dutch provided a revised sales listing with that submission in which it claimed to correct these errors. However, this unsolicited sales data revision is incomplete, as the accompanying narrative lacks details about the nature of the errors and corrections made by Agro Dutch, and is untimely for analysis and use in the preliminary results. Accordingly, we are using the information in the previously submitted sales response for the preliminary results. However, we will provide Agro Dutch with an opportunity to resubmit sales expense corrections, along with detailed explanations, following the issuance of the preliminary results for consideration in the final results.

Also, in the February 11, 2002, submission, Agro Dutch advised the Department for the first time in this

segment of the proceeding that it received monetary advances from one of its customers in anticipation of future shipments for which the product and price were not determined at the time of the advance. This statement suggests that Agro Dutch may have a long-term contract or sales agreement with this customer, yet Agro Dutch claims that it had no binding contracts or agreements with any U.S. customers during the POR (see Agro Dutch's August 30, 2001, supplemental questionnaire response at page 1). Further, Agro Dutch's reporting of pre-payments appears inconsistent with its earlier statement that all of its U.S. sales are sold with payment terms of 90 days after the bill of lading date (see May 25, 2001, Section C questionnaire response at page C–12).

In the previous review, Agro Dutch reported that it had a sales agreement of some sort with this customer, but failed to provide it for the record despite specific requests from the Department. Because the Department could not adequately determine whether Agro Dutch had reported the correct date of sale without reviewing the sales agreement, the Department made an adverse inference in applying facts available to calculation factors affected by the date of sale. See Certain Preserved Mushrooms from India: Preliminary Results of Antidumping Duty Administrative Review, 66 FR 13896, 13899 (March 8, 2001) (1998–2000 Preliminary Results); and Certain Preserved Mushrooms from India: Final Results of Antidumping Duty Administrative Review, 66 FR 42507 (August 13, 2001), and accompanying Issues and Decision Memorandum at Comment 2.

Agro Dutch's February 11, 2002, description of its sales to this customer requires further explanation as to the existence of any sales agreement with this customer, the appropriate date of sale, and the relevant payment terms. However, we had insufficient time prior to the preliminary results to seek this clarification. Thus, for purposes of the preliminary results, we are relying on the same reasoning as in the 1998–2000 Preliminary Results and applying partial facts available under section 776(a) of the Act to the data affected by date of sale and payment terms, namely the exchange rate for currency conversions and imputed credit. Given the untimeliness and incompleteness of Agro Dutch's explanation of the sale terms to this customer in this review, we find that, for purposes of the preliminary results, Agro Dutch has not cooperated to the best of its ability to comply with the Department's requests in the questionnaire and supplemental questionnaire to supply full information of its payment terms and copies of any sales agreements. Thus, adverse inferences are warranted in applying facts available for the affected data pursuant to section 776(b) of the Act. As adverse facts available for the exchange rate, we are applying the highest exchange rate during the POR for all currency conversions involving these sales. As facts available for imputed credit, we are recalculating imputed credit for these sales by using the date of the preliminary results, February 28, 2002, as the payment date. We will provide Agro Dutch with the opportunity to provide further information on this topic after the issuance of the preliminary results for consideration in the final results.

Himalya

We made deductions from the CEP starting price, where appropriate, for foreign inland freight, brokerage and handling expenses, international freight, marine insurance, U.S. duty, U.S. inland freight, and U.S. warehousing expenses in accordance with section 772(c)(1) of the Act and 19 CFR 351.402(a). We also deducted indirect selling expenses, credit expenses, and inventory carrying costs pursuant to section 772(d)(1) of the Act and 19 CFR 351.402(b). We recalculated credit expenses and inventory carrying costs using a public-source U.S. interest rate. See February 28, 2002 Memorandum to the File Preliminary Results Calculation Memorandum for Himalya International Ltd. (Himalya) (Himalya Calculation Memo) for specifics as to why Himalya's reported U.S. interest rate data was insufficient. We made an adjustment for CEP profit in accordance with section 773(d)(3) of the Act. Finally, since there was insufficient time prior to the preliminary results to request additional information/clarification regarding certain expenses/adjustments, we will issue a supplemental questionnaire subsequent to the preliminary results. See Himalya Calculation Memo.

Weikfield

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

We revised Weikfield's reported discount amount granted to one customer based on information in the questionnaire responses to correct an allocation error acknowledged by Weikfield.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating normal value, we compared the respondents' volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

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

With regard to Weikfield, we determined that its home market was not viable because the aggregate volume of home market sales of the foreign like product was less than five percent of the aggregate volume of U.S. sales of the subject merchandise. Agro Dutch reported that during the POR it made no home market sales. Neither Agro Dutch nor Weikfield reported any third country sales during the POR. Therefore, we determined that neither the home market nor any third country market was a viable basis for calculating normal value for Agro Dutch and Weikfield. As a result, we used constructed value as the basis for calculating normal value for these two respondents, in accordance with section 773(a)(4) of the Act.

Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate normal value 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). 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 export price and comparison market sales (i.e., NV based on either home market or third country prices[3]), 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, Court Nos. 00–1058–1060 (Fed. Cir. March 7, 2001).

When the Department is unable to find sales of the foreign like product in the comparison market at the same LOT as the export price 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 normal value LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between normal value and CEP affected price comparability (i.e., no LOT adjustment is practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731 (November 19, 1997).

We examined Himalya's home market and U.S. distribution systems, including selling functions, classes of customers, and selling expenses. Himalya sold to wholesalers, retailers, caterers, canteens, and restaurants in the home market and through their affiliated importers to distributors and wholesalers in the United States. However, Himalya did not provide information on its selling activities for its transactions with its affiliated importers. Therefore, we are unable perform a LOT analysis comparing the selling functions provided by Himalya on its home market sales and those provided by Himalya on sales to its affiliated importers. Accordingly, an adjustment pursuant to sections 773(a)(7)(A) or 773(a)(7)(B) is not warranted.

For Agro Dutch and Weikfield, because we based normal value on constructed value, and are applying the profit rate and selling expense rates calculated for these respondents from the most recently completed segment of this proceeding, i.e., the 1998–2000 administrative review, as both of these respondents had viable foreign markets in that review (see ''Calculation of Constructed Value'' section below), we are also using the information from the previous review for our LOT analysis. In that review, we found a single LOT for both Agro Dutch and Weikfield. See 1998 - 2000 Preliminary Results, 66 FR at 13898. Therefore, we made neither a LOT adjustment nor a CEP offset (in the case of Himalya) to normal value for any of the companies in this review.

Cost of Production Analysis

The Department disregarded certain sales made by Agro Dutch and Weikfield in the 1998–2000 administrative review, pursuant to findings in that review that sales failed the cost test (see Certain Preserved Mushrooms from India: Preliminary Results of Antidumping Duty Administrative Review, 66 FR 13896 (March 8, 2001)). Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that respondents Agro Dutch and Weikfield made sales in the home market or third country at prices below the cost of producing the merchandise in the current review period. However, as discussed above in the ''Normal Value'' section of this notice, neither Agro Dutch nor Weikfield had a viable home or third country market during the POR. Accordingly, we cannot perform a cost test with regard to Agro Dutch or Weikfield. In addition, as stated in the ''Background'' section of this notice, based on a timely allegation filed by the petitioner, the Department initiated an investigation to determine whether Himalya's home market sales were made at prices less than the cost of production within the meaning of section 773(b) of the Act.

A. Calculation of COP

We calculated the COP on a product-specific basis, based on the sum of Himalya's cost of materials and fabrication for the foreign like product, plus amounts for selling, general and administrative (SG&A) expenses, interest expense, and the cost of all expenses incidental to placing the foreign like product in a condition packed ready for shipment in accordance with section 773(b)(3) of the Act.

We relied on COP information submitted by Himalya, except for the following adjustments: we recalculated G&A and interest expenses to include certain expenses which were not included in the original calculation. See Himalya Calculation Memo.

B. Test of Home Market Prices

For Himalya, we compared the weighted-average, per-unit COP figures for the POR to 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. In determining whether to disregard home market sales made at prices below the COP, we examined whether: (1) within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP, consisting of the cost of manufacturing, G&A and interest expenses, to the net home market prices, less any applicable movement charges, rebates, discounts, and direct and indirect selling expenses. We revised indirect selling expenses to allocate 12 months of expenses over 12 months of sales because Himalya reported a ratio of 12 months of expenses to ten months of sales (see Himalya Calculation Memo).

C. Results of COP Test

The results of our cost test for Himalya indicated all sales were at prices above COP. We therefore retained all sales in our analysis and used them as the basis for determining normal value.

Price-to-Price Comparisons

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

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

We also reduced normal value for packing costs incurred in the home market, in accordance with section 773(a)(6)(B)(i), and increased normal value to account for U.S. packing expenses in accordance with section 773(a)(6)(A). We made a deduction for credit expenses, where appropriate, pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. Finally, we made adjustments to normal value, where appropriate, for differences in costs attributable to differences in the physical characteristics of the

[3] Where normal value is based on constructed value, we determine the normal value LOT based on the LOT of the sales from which we derive selling expenses, general and administrative (G&A) and profit for constructed value, where possible.

merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

Calculation of Constructed Value

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

Agro Dutch

Agro Dutch revised its G&A and interest expense rates in its supplemental response but did not submit a revised constructed value data base reflecting these revisions. We recalculated the G&A and interest rates using this revised data.

Weikfield

We recalculated Weikfield's G&A rate using information based on its 2000–2001 audited financial statement. For an explanation of the recalculation, see the February 28, 2002, Memorandum to the File Weikfield Preliminary Results Calculation Notes.

Because Agro Dutch and Weikfield had no viable home or third country market during the POR, we derived profit and selling expenses for Agro Dutch and Weikfield in accordance with section 773(e)(2)(B)(iii) of the Act and the Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 103–316, Vol.1 at 839–841 (1994) (SAA). Section 773(e)(2)(B)(iii) of the Act allows the Department to calculate selling expenses and profit using any reasonable method, provided that the amount for profit does not exceed the amount normally realized by exporters or producers ''in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise,'' the so-called ''profit cap.'' See 19 CFR 351.405(b)(2) (clarifying that under section 773(e)(2)(B) of the Act, ''foreign country'' means the country in which the merchandise is produced). However, when the Department is unable to calculate a ''profit cap'' due to an absence of information on the record, it may calculate profit based on the facts otherwise available based on any reasonable method and without a profit cap. See the SAA at 841.

For this review, we are unable to determine the amounts that exporters and producers of merchandise that is in the same general category of products as the subject merchandise in the foreign market incurred and realized for selling expenses and profit (i.e., we are unable to calculate a ''profit cap'') due to insufficient information on the record. As facts available, we are applying the profit rates and selling expenses calculated for Agro Dutch and Weikfield, respectively, in the most recent segment of this proceeding. See February 28, 2002, Memoranda to the File Agro Dutch 1998–2000 Profit and Selling Expense Rate Calculations and Weikfield 1998–2000 Profit and Selling Expense Rate Calculations. This approach is consistent with that applied in Frozen Concentrated Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 66 FR 51008, (October 5, 2001), and accompanying Issues and Decision Memorandum at Comment 3.

Agro Dutch provided profit rate information on certain Indian food processors in its February 11, 2002, submission. This unsolicited new factual information was received too late for any consideration in the preliminary results. Further, it is incomplete as the information consists solely of the profit rates and sales results of certain Indian companies, without any supporting information such as complete annual reports or financial statements for these companies. We will provide Agro Dutch with an opportunity to supplement this information with supporting details in time for consideration in the final results. We will extend the same opportunity to the other parties in this segment of the proceeding to submit additional factual information relevant to the selection of the constructed value profit and selling rates for consideration in the final results.

Price-to-Constructed Value Comparisons

For Agro Dutch and Weikfield, we based normal value on constructed value, in accordance with section 773(a)(4) of the Act. For comparisons to Agro Dutch's and Weikfield's export price sales, we made COS adjustments by deducting from constructed value the weighted-average home market direct selling expenses and adding the U.S. direct selling expenses, in accordance with section 773(a)(8) of the Act and section 19 C.F.R. 351.410.

As noted above under the ''Export Price/Constructed Export Price'' section, for Agro Dutch and Weikfield, we recalculated imputed credit expenses used for COS adjustment purposes on U.S. sales unpaid as of the last questionnaire response. As discussed above, we also recalculated imputed credit expenses on U.S. sales made by Agro Dutch to a particular customer.

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, 2000, through January 31, 2001, are as follows:

Manufacturer/Exporter	Percent Margin
Agro Dutch Foods, Ltd.	1.54
Himalya International, Ltd.	0.68
Saptarishi Agro Industries, Inc. ..	66.24
Weikfield Agro Products, Ltd.	0.00

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 upon receipt of responses to supplemental questionnaires and determination of 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 upon the receipt of responses to supplemental questionnaires, which the Department will issue subsequent to the preliminary results. 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. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties. We will instruct the Customs Service to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above de minimis (i.e., less than 0.50 percent). See 19 CFR 351.106(c)(1). For assessment purposes, we intend to calculate importer-specific assessment rates for the subject merchandise by aggregating the dumping margins calculated for all U.S. sales examined and dividing this amount by the total entered value of the sales examined.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be those established in the final results of this review, except if the rate is less than 0.50 percent, and therefore, de minimis within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 11.30 percent, the ''All Others'' rate made effective by the LTFV investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with section 751(a)(1) of the Act and 19 CFR 351.221.

February 28, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–5475 Filed 3–6–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar from India; Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review

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

ACTION: Notice of preliminary results and partial rescission of 2000–2001 administrative review.

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 Viraj Group, Limited (''Viraj''). This review covers sales of stainless steel bar to the United States during the period February 1, 2000, through January 31, 2001.

We preliminarily find that, during the period of review, Viraj has not made sales below normal value. If these preliminary results are adopted in our final results of this administrative review, we will instruct the Customs Service not to assess antidumping duties. Interested parties are invited to comment on these preliminary results. Parties who submit arguments are also requested to submit (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: March 7, 2002.

FOR FURTHER INFORMATION CONTACT: Melanie Brown or Cole Kyle, Office 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–4987 or (202) 482–1503 respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended effective January 1, 1995 (''The Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department'') regulations are to 19 CFR part 351 (April 2001).

Background

On February 21, 1995, the Department published in the Federal Register (60 FR 9661) the antidumping duty order on stainless steel bar from India. The Department notified interested parties of the opportunity to request an administrative review of this order on February 14, 2001 (66 FR 10269). In February 2001, the Department received requests for review from five Indian producers of the subject merchandise: Shaw Alloys Corp., Ltd (''Shaw''); Ferro Alloys Corp. Ltd. (''FACOR''); Isibars Limited (''Isibars''); Viraj Group, Ltd. (''Viraj''); and Panchmahal Steel Limited (''Panchmahal''). Concurrent with their request for review, Isibars and Viraj also requested revocation from the antidumping duty order. In accordance with 19 CFR 351.221(b)(1), we published a notice of initiation of this antidumping duty administrative review on March 22, 2001 (66 FR 16037) with respect to Shaw, FACOR, Isibars, Viraj, and Panchmahal. The period of review (''POR'') is February 1, 2000, through January 31, 2001.

On March 30, 2001, Shaw Alloys withdrew its request for review. Panchmahal and FACOR withdrew their requests for review on June 1 and June 13, 2001, respectively. The above withdrawal requests were timely and no other interested party had requested a review of these companies. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding the reviews of Shaw, FACOR, and Panchmahal.

On December 20, 2001, Isibars withdrew its request for review. Although this withdrawal was received