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MEMORANDUM TO: James J. Jochum
Assistant Secretary
for Import Administration

FROM: Jeffrey May
Deputy Assistant Secretary
Import Administration

SUBJECT: Issues and Decision Memorandum for Final Results of the Antidumping Duty Administrative Review on Certain Preserved Mushroom from India - February 1, 2002, through January 31, 2003

Summary

We have analyzed the comments of the interested parties in the 2002-2003 administrative review of the antidumping duty order covering certain preserved mushrooms from India. As a result of our analysis of these comments, we have made changes in the margin calculations as discussed in the "Margin Calculations" section of this memorandum. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this administrative review for which we received comments from parties:

Company-Specific Comments:

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Background

On March 8, 2004, the Department of Commerce published the preliminary results of the fourth administrative review of the antidumping duty order on certain preserved mushrooms from India. See Certain Preserved Mushrooms from India: Preliminary Results of Antidumping Duty Administrative Review, 69 FR 10659 (Preliminary Results). The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced or as stems and pieces. The period of review (POR) is February 1, 2002, through January 31, 2003. We invited parties to comment on our preliminary results of review. The petitioner, Agro Dutch Industries Limited (Agro Dutch), Premier Mushroom Farms (Premier), and Weikfield Agro Products, Ltd. (Weikfield) filed case briefs on June 10, 2004. The petitioner and Agro Dutch filed rebuttal briefs on June 17, 2004. Agro Dutch withdrew its rebuttal brief on June 22, 2004, and submitted a replacement brief on June 24, 2004.[1]

Margin Calculations: Changes from the Preliminary Results

We calculated export price (EP), normal value (NV), and cost of production (COP) using the same methodology described in the preliminary results, except as explained below**:**

Agro Dutch

We relied on revised sales data bases submitted on June 2, 2004, which incorporated Agro Dutch's pre-verification revisions and verification corrections. We also made additional data corrections based on our verification findings. See Agro Dutch Final Results Notes and Margin Calculation, Memorandum to the File dated August 13, 2004 (Agro Dutch Memo). As a result, we found that all of Agro Dutch's sales to Israel were below the COP in the final results. Therefore, we compared all of Agro Dutch's U.S. sales to constructed value (CV).

Accordingly, we relied on the weighted-average selling expenses and profit ratios derived from Premier's and Weikfield's final results calculations to calculate CV for Agro Dutch. See also Comment 3. We revised our calculation of indirect selling expenses incurred on U.S. sales for returned merchandise to include the costs of returning all of the merchandise back to India, rather than limiting the expense to the un-resold portion of the returned products as we did in the preliminary results (see Comment 1). We corrected the programming language for the calculation of normal value in the comparison market and margin calculation programs to deduct third-country imputed credit expenses from the gross unit price, and to apply the commission offset based on CV selling expenses in the price-

[1] The circumstances regarding the withdrawal and replacement of the Agro Dutch rebuttal brief are discussed in a June 28, 2004, memorandum to the file.

to-CV comparisons (see Comment 4). We also corrected the margin calculation program to make the proper deduction for third-country commission expenses.

Premier

We corrected the margin calculation program to treat inventory carrying costs on U.S. sales as an Indian rupee expense, rather than a U.S. dollar expense. We also corrected the calculation of NV to deduct properly home market commissions from the gross unit price. See Comment 6.

Weikfield

We corrected the calculation of NV to deduct home market discounts and commissions paid to unaffiliated parties from the gross unit price in the COP test and the calculation of NV. These deductions were omitted inadvertently from the Preliminary Results (see Comment 7).

Discussion of the Issues

Comment 1: *Treatment of Agro Dutch's Expenses for Returned Shipments as Direct or Indirect Expenses*

As described at 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, during the POR, a large quantity of Agro Dutch's shipments to the United States were returned to India after testing of samples indicated the presence of a contaminant. A substantial portion of this merchandise was resold to third-country customers. In connection with these returns, Agro Dutch incurred outbound freight expenses to ship the goods to the United States, and return freight expenses to return the goods to India.

In the preliminary results, the Department included the expenses incurred to ship the rejected merchandise to the United States as an indirect selling expense on U.S. sales. As an additional indirect selling expense on U.S. sales, the Department included the expenses incurred to transport the products back to India, as adjusted to deduct an amount for the resales. That is, the additional indirect selling expense represented the costs of returning to India the rejected merchandise that was not resold to third-country customers.

The petitioner contends that the outbound shipment expenses and the return shipment expenses should be classified as direct selling expenses. According to the petitioner, these expenses were generated by the original shipment of a contaminated product to Agro Dutch's U.S. customers and the costs incurred to ship and return these goods are equivalent to quality control or warranty/guarantee costs, which the Department normally considers as direct selling expenses. But for the original sale to these customers, the petitioner continues, Agro Dutch would not have incurred the outbound shipment costs nor the return or disposal costs of the rejected sales. Moreover, because the rejected sales were destined to specific customers based on specific customer requirements, the petitioner asserts that the expenses in

question should be allocated on a customer-specific basis, rather than over all POR U.S. sales as calculated by the Department in the preliminary results.

Treating these expenses as indirect selling expenses fails to adequately reflect Agro Dutch's costs and precludes the recognition of these expenses in the margin calculation, according to the petitioner. The petitioner notes that, in EP comparisons, as is the case here, indirect selling expenses are not subtracted from the U.S. price, nor added to NV, nor included in the COP. The petitioner asserts further that the costs incurred related to the shipment and rejection of the sales in question should be directly attributable to Agro Dutch's U.S. sales and, in turn, should be reflected in the dumping calculation.

The petitioner also contends that the expense for returning the rejected shipments to India and reselling the merchandise to third-country customers should be accounted for as an indirect selling expense allocated to all third-country sales, including sales to Israel. As a final accounting for the rejected sales, the petitioner adds that the Department should consider the value of the unsold portion of the rejected sales as unmerchantable inventory. This cost, the petitioner continues, should be added to Agro Dutch's general and administrative (G&A) expenses.

Agro Dutch contends that the Department correctly classified these expenses as indirect selling expenses. According to Agro Dutch, the merchandise that was rejected or recalled from the United States was never ultimately sold to U.S. customers because Agro Dutch cancelled the sales following the rejection or return of the shipments in question. Agro Dutch continues that upon cancellation, there was no longer any sale against which to apply any direct selling expense. With respect to the expenses for returning the merchandise to India, Agro Dutch asserts that these were incurred solely to make sales to third countries and have no relation whatsoever to U.S. sales.

Agro Dutch also states that it did not have any "unmerchantable" product. Instead, Agro Dutch notes that it has sold most of the returned goods originally destined for the United States, and that it has the prospect of selling the remainder of these goods.

DOC Position:

We disagree with the petitioner that the outbound freight expenses should be classified as direct selling expenses akin to warranty expenses. Normally, in a warranty situation, the customer accepts the merchandise and later makes a claim on that merchandise to the manufacturer. In the instant case, the customer neither received nor rejected the merchandise in question. The mushroom products were returned because of FDA rejection or Agro Dutch recall and the merchandise never entered the commerce of the United States. Therefore, for the final results, we continue to assign them as indirect selling expenses to the market of the originating sales (i.e., the U.S. market).

However, with respect to the expenses associated with the return of the goods to India, we are revising our calculation to assign all of the costs to the U.S. market as an indirect selling expense. This approach is consistent with the determination in the antidumping duty investigation of color televisions

from Malaysia to assign all such expenses to the market of the originating sale. See Notice of Final Determination of Sales at Not Less Than Fair Value: Certain Color Television Receivers From Malaysia, 69 FR 20592 (April 16, 2004), Issues and Decision Memorandum at Comment 2. Agro Dutch did not ship the recalled sales directly to third-country customers, but rather returned them to India to replace the merchandise into its inventory. As the expense is associated with selling to the United States and the original place of shipment for sales in other markets does not become the United States, we cannot assign the movement expense for the return of the goods to the third-country resales.

We disagree with the petitioner with respect to the cost of the merchandise not resold. There is no information on the record that Agro Dutch did not continue to sell this merchandise after the submission of its last sales response in August 2003. Thus, there is no basis on the record to conclude that Agro Dutch has written off the value of the un-resold merchandise. Therefore, there is no basis to add that value to Agro Dutch's G&A expenses.

Comment 2: *Treatment of Inspection Expenses*

Agro Dutch reported that it incurs expenses for tests of random samples of its U.S. sales in order to meet U.S. Food and Drug Administration (FDA) requirements. In the preliminary results, we classified these inspection expenses as an indirect selling expense.

The petitioner argues that the inspection expenses should be treated as direct selling expenses. According to the petitioner, the Department defines indirect expenses as fixed expenses that are incurred whether or not a sale is made. The inspection expenses for FDA approval, the petitioner asserts, would not have been incurred but for the U.S. sales taking place. The petitioner states that the inspection expenses are directly connected to the sales to the United States because the tests would not have been conducted had it not been for the sales made to the United States. As these expenses are not incurred regardless of whether or not the U.S. sales are made, the petitioner asserts that they should not be treated as indirect selling expenses.

Agro Dutch responds that the testing expenses were incurred to demonstrate to the FDA that the shipments to the United States were free of contamination. Agro Dutch notes that, while only certain containers were selected for the test samples, the testing was performed for the benefit of all of Agro Dutch's shipments. Accordingly, Agro Dutch contends that it is proper to allocate these testing costs as indirect selling expenses incurred on all U.S. sales.

DOC Position:

We agree with Agro Dutch that these expenses should continue to be treated as indirect selling expenses. While certain products may be selected for testing, the results of sampling affect all sales to that market. The Department considers such testing expenses to be indirect selling expenses when the expenses are incurred whether or not a particular sale is made, and do not bear a direct relationship to a particular sale. See Final Results of Antidumping Duty Administrative Review: Honey from

Argentina, 69 FR 30283 (May 27, 2004), Issues and Decision Memorandum at Comment 7. Agro Dutch incurred the expenses for testing these samples whether it sold 10 containers to the United States or 1,000 containers. The results of any sample are applied to all of the sales it made during the period and cannot be assigned to any particular sales.

Comment 3: *Selling Expenses and Profit Ratio for Agro Dutch Constructed Value*

The petitioner contends that, if all of Agro Dutch's sales to Israel are below the COP and the Department must rely on CV for NV, the Department should use the weighted-average of Premier's and Weikfield's selling expenses and profit ratios to calculate Agro Dutch's CV.

Agro Dutch did not comment on this topic.

DOC Position:

We agree with the petitioner. All of Agro Dutch's sales to Israel were below the COP in the final results. Our calculation of the weighted-average selling expenses and profit ratio derived from Premier's and Weikfield's final results calculations are included in the Agro Dutch Memo.

Comment 4: *Corrections to the Calculation of Agro Dutch Normal Value*

Agro Dutch contends that the Department erred in its preliminary results by failing to deduct marine insurance and imputed credit in the calculation of NV based on Agro Dutch's sales to Israel. In addition, Agro Dutch states that the Department's preliminary results margin calculation program erroneously applied the commission offset calculated for price-to-price comparisons to the price-to-CV comparisons, rather than the offset calculated from the CV selling expenses. According to Agro Dutch, the Department must correct the programming instructions in the comparison market and margin calculation programs to properly account for these deductions.

The petitioner did not comment on these items.

DOC Position:

We disagree with Agro Dutch with respect to the marine insurance expense. As we stated at page 2 of the March 1, 2004, memorandum entitled Agro Dutch Preliminary Results Notes and Margin Calculation:

> Although Agro Dutch reported an amount for marine insurance in its third country sales listing, Agro Dutch states at page B-13 of the May 20, 2003, questionnaire response that its sales to Israel were made on an FOB Indian port basis, and at page B-33 of that response that it did not incur any marine insurance charges on sales to Israel. Accordingly, we made no adjustment for this expense.

The omission of the marine insurance expense from the NV calculation was intentional, and no information since the preliminary results has been placed on the record to alter this decision. Therefore, we have not made an adjustment for third-country marine insurance expenses.

We agree with Agro Dutch with respect to the imputed credit expense adjustment and the commission offset for price-to-CV comparisons. We have corrected the margin calculation program accordingly. See Agro Dutch Memo.

Comment 5: *Duty Absorption on Agro Dutch's Sales*

In the Preliminary Results, the Department stated that there was no information on the record to demonstrate that Agro Dutch passed on antidumping duties to its first unaffiliated customer on sales where Agro Dutch was the importer of record. The Department made the same conclusion on all of Premier's sales and on Weikfield's sales where Weikfield was the importer of record.

Agro Dutch asserts that, as a result of the Department's sales verification, the Department now has information on the record to establish that Agro Dutch passed on the antidumping duties to the first unaffiliated customer. Specifically, Agro Dutch cites two of the sales verification exhibits that allegedly show that Agro Dutch's customer paid all customs duties even on sales where Agro Dutch was the importer of record. Accordingly, Agro Dutch contends that the Department should find that Agro Dutch did not absorb antidumping duties on its sales to the United States.

The petitioner responds that the Department should affirm its preliminary finding of duty absorption by Agro Dutch. According to the petitioner, Agro Dutch failed to provide the requested information when requested, and duty absorption was not a subject that was specifically examined at verification; therefore, Agro Dutch cannot rely inferentially on the U.S. sales documentation gathered at verification to overcome the Department's preliminary results. In addition, the petitioner contends that the documents gathered at verification do not demonstrate that Agro Dutch's unaffiliated purchasers will ultimately pay the antidumping duties to be assessed on entries during the review period.

DOC Position:

We agree with the petitioner. In determining whether the antidumping duties have been absorbed by the respondent during the POR, we presume that the duties will be absorbed for those sales that have been made at less than NV. This presumption can be rebutted with evidence (e.g., an agreement between the affiliated importer and unaffiliated purchaser) that the unaffiliated purchaser will pay the full duty ultimately assessed on the subject merchandise. See Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Wire Rod From the Republic of Korea, 68 FR 57879 (October 7, 2003); see also Final Results of Antidumping Duty Administrative Reviews, and Determination Not To Revoke in Part: Certain Corrosion-Resistant Carbon Steel Flat Products and Certain

Cut-to-Length Carbon Steel Plate From Canada, 65 FR 9243 (February 24, 2000). Agro Dutch failed to provide such evidence in response to the Department's request for it.

Moreover, it is inappropriate for Agro Dutch to cite a document from the verification exhibit as evidence that it did not absorb antidumping duties. We cannot accept the use of data collected at verification for an entirely different verification purpose as a tardy substitute for timely submitted information. Agro Dutch did not respond in a timely manner to the Department's specific request for duty absorption information. As a result, the Department relied on the facts available to make its finding. In the May 5, 2004, letter accompanying the verification outline, the Department advised Agro Dutch that

> ...verification is not intended to be an opportunity for submitting new factual information. We will accept new information at verification only when (1) the need for that information was not evident previously, (2) the information makes minor corrections to information already on the record, or (3) the information corroborates, supports, or clarifies information already on the record. (*Emphasis in original*)

Because the appropriate information was not submitted in a timely manner for the record, the information was not subject to verification and thus cannot be considered in our final results. Notwithstanding this fact, however, it does not appear that this information would be sufficient to demonstrate that Agro Dutch did not absorb antidumping duties even if it were timely submitted. Contrary to Agro Dutch's assertions in its case brief, there is no documentation in the cited verification exhibits regarding the payment of antidumping duties. With respect to duties, the exhibits only support Agro Dutch's claim in its response that it did not incur regular customs duties on these sales.

Comment 6: *Errors in Premier Margin Calculation*

Premier states that the Department erred in its preliminary results by treating inventory carrying costs on U.S. sales as a U.S. dollar expense, rather than an Indian rupee expense, and by failing to deduct home market commissions properly in the calculation of NV. According to Premier, the Department must correct the programming instructions in the margin calculation program in order to properly account for these items.

The petitioner did not comment on these items.

DOC Position:

We agree with Premier and have corrected the margin program accordingly, as identified in Final Results Calculation Memorandum for Premier Mushroom Farms, Memorandum to the File dated August 13, 2004.

Comment 7: *Corrections to Calculation of Weikfield Normal Value*

Weikfield states that the Department erred in its preliminary results by failing to deduct home market discounts and commissions in the calculation of normal value. According to Weikfield, the Department must correct the programming instructions in the margin calculation program in order to properly account for these deductions.

While the petitioner acknowledges that the preliminary results calculation did not include a deduction for home market commissions, the petitioner notes that the preliminary results calculation defined home-market commissions to include both unaffiliated and affiliated commissions. The petitioner points out that the Department expressly rejected a deduction for affiliated commissions in the Preliminary Results. Accordingly, the petitioner asserts that any correction to the program to deduct home market commissions should be limited to unaffiliated commissions only.

DOC Position:

We agree with Weikfield with respect to home market discounts. We agree with the petitioner that the correction for the home market commission deduction should be limited to deductions only for commissions to unaffiliated selling agents. We have corrected the comparison market and margin program accordingly, as explained in Weikfield Final Results Notes and Margin Calculation, Memorandum to the File dated August 13, 2004. In revising the programs for the home market commission expense deduction, we also corrected the net home market price calculation for comparison to the COP to exclude a deduction for commissions paid to Weikfield's affiliate.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review and the final weighted-average dumping margins for the reviewed firms in the Federal Register.

Agree ___ Disagree ____

_____
James J. Jochum
Assistant Secretary
for Import Administration

_____
(Date)