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March 2, 2016

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

FROM: Christian Marsh   
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Results of Antidumping  
Duty Administrative Review: Certain Preserved Mushrooms  
from India; 2014-2015

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## I. SUMMARY

The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty (AD) order on certain preserved mushrooms (mushrooms) from India. The review covers one producer/exporter of the subject merchandise, Himalya International, Ltd. (Himalya). The period of review (POR) is February 1, 2014, through January 31, 2015. We preliminarily determine that Himalya did not make sales below normal value (NV) during this POR.

## II. BACKGROUND

In response to the Department's notice of opportunity to request an administrative review,<sup>1</sup> on March 2, 2015, Monterey Mushrooms Inc. (the petitioner) and Sunny Dell Foods Inc. (Sunny Dell), domestic producers of the subject merchandise, requested an administrative review with respect to Himalya.<sup>2</sup> Accordingly, on April 3, 2015, in accordance with 19 CFR

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<sup>1</sup> See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity To Request Administrative Review, 80 FR 5509 (February 2, 2015).

<sup>2</sup> See letter from the petitioner, "Sixteenth Administrative Review of the Antidumping Duty Order on Certain Preserved Mushrooms from India – Petitioner's Request for Initiation of Annual Administrative Reviews," dated March 2, 2015; and letter from Sunny Dell, "Certain Preserved Mushrooms from India: Request for Sixteenth Administrative Review (2014-2015)," dated March 2, 2015. We note that the petitioner and Sunny Dell requested an administrative review of five companies (including Himalya). Subsequently, the petitioner and Sunny Dell withdrew their request for review on all companies except Himalya, and the Department rescinded the review with respect to all companies except Himalya. See Certain Preserved Mushrooms from India: Partial Rescission of Antidumping Duty Administrative Review: 2014-2015, 80 FR 43065 (July 21, 2015).

351.221(c)(1)(i), we published a notice of initiation of an administrative review of the AD order on mushrooms from India.<sup>3</sup>

On April 30, 2015, we issued the AD questionnaire to Himalya. On July 13, 2015, the petitioner requested that the Department conduct verification of the questionnaire responses submitted in this review by Himalya, pursuant to 19 CFR 351.307(b)(1)(v). In July 2015, Himalya timely submitted its responses to sections A-C of our questionnaire.

On August 10, 2015, the petitioner filed a company-specific sales-below-cost allegation against Himalya, and comments regarding Himalya's questionnaire responses.<sup>4</sup> On September 14, 2015, Himalya filed rebuttal comments to the petitioner's submission. On October 5, 2015, we initiated a sales-below-cost investigation and instructed Himalya to respond to section D of the Department's questionnaire.<sup>5</sup> See "Cost of Production Analysis" section below.

On October 13, 2015, we extended the time period for issuing the preliminary results of this review until February 29, 2016.<sup>6</sup> On October 26, 2015, we issued a section A-C supplemental questionnaire to Himalya. On November 30, 2015, Himalya timely submitted its responses to section D and the section A-C supplemental questionnaire. On January 21, 2016, we issued a section A-D supplemental questionnaire to Himalya, to which it timely responded on February 10, 2016.

As explained in the memorandum from the Acting Assistant Secretary for Enforcement & Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government. All deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the preliminary results of this review is now March 4, 2016.<sup>7</sup>

### **III. 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

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<sup>3</sup> See Initiation of Antidumping and Countervailing Duty Administrative Reviews, 80 FR 18202 (April 3, 2015) (Initiation Notice).

<sup>4</sup> See letter from the petitioner, "16<sup>th</sup> Administrative Review of Certain Preserved Mushrooms from India – Petitioner's Comments on Deficiencies in the Initial Questionnaire Response of Himalya International, Ltd. ('Himalya')," dated August 10, 2015 (Petitioner's COP Allegation).

<sup>5</sup> See Memorandum entitled "The Petitioners' Allegation of Sales Below the Cost of Production by Himalya International, Ltd.," dated October 5, 2015 (COP Initiation Memo).

<sup>6</sup> See Memorandum entitled "Certain Preserved Mushrooms from India: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated October 13, 2015.

<sup>7</sup> See Memorandum to the Record from Ron Lorentzen, Acting A/S for Enforcement & Compliance, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas," dated January 27, 2016.

sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are “brined” mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including “refrigerated” or “quick blanched mushrooms”; (3) dried mushrooms; (4) frozen mushrooms; and (5) “marinated,” “acidified” or “pickled” mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this order is classifiable under subheadings: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153, 0711.51.0000, 0711.90.4000, 2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043 and 2003.10.0047 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.

#### **IV. DISCUSSION OF THE METHODOLOGY**

We are conducting this administrative review of the order in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

##### **A. Comparisons to Fair Value**

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1), in order to determine whether Himalya’s sales of the subject merchandise from India to the United States were made at less than NV, the Department compared the constructed export price (CEP) to the NV as described in the “Constructed Export Price” and “Normal Value” sections of this memorandum, below.

##### **1. Determination of Comparison Method**

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average export prices (EPs) (or CEPs) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, the Department examines whether to compare weighted-average NVs with the EPs (or CEPs) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department’s examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.<sup>8</sup>

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<sup>8</sup> See Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011, 77 FR 73415 (December 10, 2012) and the accompanying Issues and Decision Memorandum at Comment 1; see also JBF RAK LLC v. United States, 790 F.3d 1358, 1363–65 (Fed. Cir. 2015) (“{t}he fact that the statute is silent with regard to administrative reviews does not preclude Commerce from filling gaps in the statute to properly calculate and assign antidumping duties”) (citations omitted).

In recent investigations, the Department applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.<sup>9</sup> The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department’s additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating a respondent’s weighted-average dumping margin.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of EPs (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchaser, region and time period to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, state) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the period of review based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the

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<sup>9</sup> See, *e.g.*, Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair, 78 FR 33351 (June 4, 2013); Steel Concrete Reinforcing Bar From Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, 79 FR 54967 (September 15, 2014); and Welded Line Pipe From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value, 80 FR 61362 (October 13, 2015).

difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (i.e., 0.8) threshold.

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (i.e., the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, the Department examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative comparison method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the de minimis threshold, or 2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the de minimis threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

## 2. **Results of the Differential Pricing Analysis**

For Himalya, based on the results of the differential pricing analysis, the Department preliminarily finds that 46.34 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>10</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that there is no meaningful

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<sup>10</sup> See Memorandum to the File, "Preliminary Results Margin Calculation for Himalya International Limited," dated March 4, 2016 (Preliminary Results Calculation Memo).

difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for these preliminary results, the Department is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Himalya.

## **B. Product Comparisons**

In accordance with section 771(16) of the Act, we considered all products produced and sold by Himalya in India during the POR that fit the description in the "Scope of the Order" section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. 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. Pursuant to 19 CFR 351.414(f), we compared U.S. sales of mushrooms to sales of mushrooms made in the home market within the contemporaneous window period, which extends from three months prior to the month of the first U.S. sale until two months after the month of the last U.S. sale.

In making the product comparisons, we matched foreign like products based on the physical characteristics reported by Himalya in the following order of importance: preservation method, container type, mushrooms style, weight, container solution, and label type.

With respect to Himalya's sales of defective merchandise (*i.e.*, non-prime merchandise) in the U.S. market, the Department's normal practice is to match sales of non-prime merchandise in the U.S. market with sales of non-prime merchandise in the home market.<sup>11</sup> If there are no comparable sales in the home market, the U.S. sales of non-prime merchandise are matched to constructed value (CV). Himalya did not sell non-prime merchandise in the home market. Accordingly, we compared Himalya's non-prime merchandise sales in the U.S. market to CV.

## **C. Constructed Export Price**

In accordance with section 772(b) of the Act, we calculated CEP for those sales where the subject merchandise was first sold or agreed to be sold in the United States before or after the date of importation by or for the account of the producer or exporter or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. We based CEP on packed prices to unaffiliated purchasers in the United States. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, international freight, inland freight, insurance, warehousing expenses, brokerage and handling, and customs duties. In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted selling expenses associated with economic

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<sup>11</sup> See, e.g., Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products From The Netherlands, 66 FR 50408 (October 3, 2001), and accompanying Issues and Decision Memorandum at Comment 9.

activities occurring in the United States, including direct selling expenses (*i.e.*, imputed credit expenses) and indirect selling expenses (including inventory carrying costs). We also deducted from CEP an amount for profit in accordance with section 772(d)(3) of the Act. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Himalya International Limited (HIL) (Himalya's U.S. affiliate) on its sales of the subject merchandise in the United States and the profit associated with those sales.

## **D. Normal Value**

### **1. Home Market Viability and Selection of Comparison Market**

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the 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 and 19 CFR 351.404. Based on this comparison, we determined that, pursuant to 19 CFR 351.404(b), Himalya had a viable home market during the POR because the volume of Himalya's 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. Consequently, pursuant to section 773(a)(1)(B)(i) of the Act and 19 CFR 351.404(c)(1)(i), we based NV on home market sales.

### **2. 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 of the foreign like product at the same level of trade (LOT) as U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).<sup>12</sup> Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.<sup>13</sup> To determine whether the comparison-market 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 LOTs for EP and comparison market sales (*i.e.*, where NV is based on either home market or third country prices),<sup>14</sup> we consider the starting prices before any adjustments. For CEP sales, we consider only the selling

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<sup>12</sup> See 19 CFR 351.412(c)(2).

<sup>13</sup> *Id.*; see also Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part, 75 FR 50999 (August 18, 2010), and accompanying Issues and Decision Memorandum at Comment 7 (OJ from Brazil).

<sup>14</sup> Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, general and administrative (SG&A) expenses, and profit for CV, where possible. See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from Brazil, 69 FR 47081 (August 4, 2004), unchanged in Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil, 69 FR 76910 (December 23, 2004).

activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.<sup>15</sup>

When the Department is unable to match sales of the foreign like product in the comparison market at the same LOT as the EP or CEP sale, the Department may compare the U.S. sales 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 possible, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP sale and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (i.e., no LOT adjustment is possible), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.<sup>16</sup>

In this administrative review, we obtained information from Himalya regarding the marketing stages involved in making its reported home market and U.S. sales, including a description of the selling activities performed for each channel of distribution. Generally, if the reported LOTs are the same, the functions and activities of the seller at each level should be similar. Conversely, if a party reports that LOTs are different for different groups of sales, the selling functions and activities of the seller for each group should be dissimilar.<sup>17</sup>

We preliminarily determine that there is one LOT in the home market because all home market sales are made through a single distribution channel and the selling activities do not vary within the channel.<sup>18</sup> Similarly, we preliminarily determine that there is only one LOT in the U.S. market because all U.S. sales were made through a single distribution channel to the affiliate (i.e., HIL) and the selling activities do not vary within the channel.<sup>19</sup>

We compared the NV LOT (based on the selling activities associated with the transactions between Himalya and its home market customer) to the CEP LOT (based on the selling activities associated with the transactions between Himalya and its affiliated importer, HIL). Based on our review of the selling functions described in Himalya's questionnaire responses, we do not find the selling functions performed by Himalya for its home market customers to be significantly different from those performed for its U.S. customers, such that they would constitute a different marketing stage. Therefore, we preliminarily determined that Himalya made home market and CEP sales at the same LOT. Accordingly, all comparisons of CEP to NV are at the same LOT, and neither a LOT adjustment pursuant to section 773(a)(7)(A) of the Act nor a CEP offset pursuant to section 773(a)(7)(B) of the Act is warranted.<sup>20</sup>

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<sup>15</sup> See Micron Technology, Inc. v. United States, 243 F.3d 1301, 1314 (Fed. Cir. 2001).

<sup>16</sup> See, e.g., OJ from Brazil at Comment 7.

<sup>17</sup> See Himalya's July 17, 2015, Section A response, September 14, 2015, Revised Section B response, and February 10, 2016, supplemental response (SQR2) at Exhibit S-4.

<sup>18</sup> Id.

<sup>19</sup> See Himalya's July 17, 2015, Section C response at 11, and SQR2 at Exhibit S-4.

<sup>20</sup> See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27372 (May 19, 1997) (“{t}he Department will not make a CEP offset where the Department bases NV on home market sales at the same LOT as the CEP”).



## **E. Cost of Production Analysis**

Based on our analysis, we found that Himalya's home-market sales which allegedly fell below the COP were representative of the broader range of sales which may be used as a basis for NV. Therefore, we determined that there were reasonable grounds to believe or suspect that Himalya's sales of mushrooms in the home market were made at prices below its COP.<sup>21</sup> Accordingly, pursuant to section 773(b) of the Act, we initiated a sales-below-cost investigation to determine whether Himalya's sales were made at prices below its COP.<sup>22</sup> We examined Himalya's cost data and determined that our quarterly cost methodology is not warranted, and, therefore, we applied our standard methodology of using annual costs based on the reported data.

### **1. Calculation of COP**

In accordance with section 773(b)(3) of the Act, we calculated the respondent's COP based on the sum of its costs of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) expenses and interest expenses (see "Test of Comparison Market Sales Prices" section, below, for treatment of home market selling expenses).

Himalya reported raw material costs by allocating the costs for mushrooms consumed in the production of canned mushrooms on a fresh mushroom-equivalent basis.<sup>23</sup> For the preliminary results, we revised Himalya's direct material cost allocation to apply our normal methodology<sup>24</sup> of allocating growing material input costs using the actual quantities of fresh mushrooms sold and fresh mushrooms consumed in the production of canned mushrooms.<sup>25</sup> We will examine Himalya's reporting methodology further at verification for consideration in the final determination.

### **2. Test of Comparison Market Sales Prices**

On a product-specific basis, pursuant to section 773(a)(1)(B)(i) of the Act, we compared the adjusted weighted-average COP to the home market sales prices of the foreign like product, in

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<sup>21</sup> On June 29, 2015, President Obama signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the AD and countervailing duty law, including amendments to section 773(b)(2) of the Act, regarding the Department's requests for information on sales at less than COP. See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for certain amendments to the Act. See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015, 80 FR 46793 (August 6, 2015). Section 773(b)(2)(A) of the Act, as amended by the TPEA, controls all determinations in which the complete initial questionnaire had not been issued as of August 6, 2015. Because the complete initial questionnaire in this review was issued prior to August 6, 2015, section 773(b)(2)(A) of the Act, as amended by the TPEA, does not apply to these preliminary results.

<sup>22</sup> See COP Initiation Memo.

<sup>23</sup> See SQR2 at 9-13.

<sup>24</sup> See Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review, 70 FR 37757 (June 30, 2005); Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from India, 63 FR 72246, 72249 (December 31, 1998); and Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Indonesia, 63 FR 72268 (December 31, 1998).

<sup>25</sup> See Preliminary Results Calculation Memo.

order to determine whether the sales prices were below the COP. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices (inclusive of billing adjustments, where appropriate) were exclusive of any applicable movement charges, direct and indirect selling expenses, and packing expenses.

### **3. Results of the COP Test**

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act 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 in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's comparison market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales when: 1) they were made within an extended period of time in substantial quantities, in accordance with sections 773(b)(2)(B) and (C) of the Act, and 2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

In this case, we found that less than 20 percent of Himalya's sales were at prices less than the COP. Therefore, we used all of Himalya's home-market sales as the basis for determining NV.

### **F. Calculation of NV Based on Comparison Market Prices**

We based NV for Himalya on packed prices to unaffiliated customers in the home market. We made adjustments, where appropriate, from the starting price for billing adjustments, in accordance with 19 CFR 351.401(c). We made deductions, where appropriate, from the starting price for movement expenses, including inland freight and inland insurance, under section 773(a)(6)(B)(ii) of the Act. Pursuant to section 773(a)(6)(C) of the Act and 19 CFR 351.410, we made deductions for direct selling expenses (*i.e.*, imputed credit). Furthermore, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted home market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act.

### **G. Calculation of NV Based on Constructed Value**

In accordance with section 773(e) of the Act, and where applicable, we calculated CV based on the sum of Himalya's material and fabrication costs, SG&A expenses, profit and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by Himalya in connection with the production and sale of the foreign like product at the same LOT as the U.S. sale, in the ordinary course of trade, for consumption in the comparison market. We made adjustments to CV for differences in

circumstances of sale, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410.

**H. Verification**

As provided in section 782(i) of the Act, we intend to verify information relied upon for our final results.

**I. Currency Conversion**


We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

**V. RECOMMENDATION**

We recommend applying the above methodology for these preliminary results.

  
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Agree

\_\_\_\_\_  
Disagree

  
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Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

2 MARCH 2016  
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(Date)