

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

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

The merchandise subject to this order is classifiable under subheadings: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153 and 0711.51.0000 of the Harmonized Tariff Schedule of the United States<sup>2</sup> (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this order dispositive.

#### 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 (NV), we compared constructed export price (CEP) or export price (EP), as appropriate, to the NV, as described in the "Export Price/Constructed Export Price" and "Normal Value" sections of this notice.

Pursuant to section 777A(d)(2) of the Tariff Act of 1930 (the Act), we compared the EPs of individual U.S. transactions to the weighted-average NV of the foreign like product where there were sales made in the ordinary course of trade, as discussed in the "Cost of Production Analysis" section below.

In this review, Agro Dutch did not have a viable home or third country market. Therefore, as the basis for NV, we used constructed value (CV) 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 and Weikfield, 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. For Agro Dutch, where there were no sales of identical or similar merchandise made in the ordinary course of trade in the home market or a third country to compare to U.S. sales, we compared U.S. sales to CV. 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.

#### Export Price/Constructed Export Price

For Agro Dutch and Weikfield, we used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly by the producer/exporter in India to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise indicated. With respect to Himalya, we calculated CEP in accordance with section 772(b) of the Act, because the subject merchandise was first sold by Him Infotech dba Transatlantic Marketing, Himalya's affiliated importer in the United States, after importation into the United States. We based EP and CEP on packed prices to unaffiliated purchasers in the United States.

#### Agro Dutch

Agro Dutch reported its U.S. sales as sold on an FOB, C&F, or CIF basis. We made deductions from the starting price, where appropriate, for foreign inland freight, freight document charges, insurance, foreign brokerage and handling, Indian export duty (CESS), and international freight in accordance with section 772(c)(1) of the Act and 19 CFR 351.402.

As discussed at page 20 of the *Agro Dutch Verification Report*, Agro Dutch incurred brokerage and handling expenses on all of its U.S. sales, but did not report this expense for certain sales due to an unspecified error that was discovered at verification. Because Agro Dutch did not provide the Department with all of the requested expense data,

use of facts available is appropriate pursuant to section 776(a)(2)(A) of the Act. Furthermore, because Agro Dutch withheld this information and was unable to provide any explanation regarding this omission, we find that Agro Dutch failed to cooperate by not acting to the best of its ability to comply with a request for information, within the meaning of section 776(b) of the Act. Under such circumstances, section 776(b) of the Act permits the Department to use an inference which is adverse to the party. Accordingly, we have applied the highest reported brokerage and handling expense amount to those sales where brokerage and handling was not reported, as adverse facts available. *See Agro Dutch Sales Data Adjustments for the Preliminary Results*, Memorandum to the File dated February 28, 2003 (*Agro Dutch Sales Memo*), for the identification of this amount.

#### Himalya

Himalya reported its U.S. sales as sold on an ex dock/FOB U.S. warehouse, ex-factory or delivered basis. 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. 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. 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)* 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.

#### Weikfield

Weikfield reported its U.S. sales as sold on a FOB port Mumbai, delivered duty paid, or C&F basis. We made deductions from the starting price, where appropriate, for foreign inland freight, foreign inland and marine insurance, foreign brokerage and handling expenses, CESS, international freight, and U.S. duty (including U.S. brokerage and handling expenses) in accordance with section 772(c)(1) of the Act and 19 CFR 351.402.

For certain sales, Weikfield reported that it arranged export financing through its affiliate, Weikfield Products

<sup>2</sup> Prior to January 1, 2002, the HTS codes were as follows: 2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000.