DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–813]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from India

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

EFFECTIVE DATE: December 31, 1998.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Everett D. Kelly, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4136 or (202) 482–4194, respectively.

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 (''Department'') regulations are to the regulations at 19 CFR Part 351, 62 FR 27296 (May 19, 1997).

FINAL DETERMINATION:

We determine that certain preserved mushrooms (''mushrooms'') from India are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 735 of the Act. The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the preliminary determination (*Preliminary Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from India,* 63 FR 41789, August 5, 1998), the following events have occurred.

On August 7, 1998, the petitioners in this investigation (L.K. Bowman, Inc., Modern Mushroom Farms, Inc., Monterey Mushrooms, Inc., Mount Laurel Canning Corp., Mushroom Canning Company, Southwood Farms, Sunny Dell Foods, Inc., and United Canning Corp.), requested a public hearing. This request was withdrawn on October 29, 1998.

We conducted verifications of the data submitted by respondents, Agro Dutch Foods (India) (''Agro Dutch'') and Ponds India Ltd. (''Ponds''), during August and September. We issued our verification reports in October (*see* Memorandum to the File dated October 20, 1998 (Ponds) and Memorandum to the File dated October 21, 1998 (Agro Dutch)). The petitioners and the two respondents submitted case briefs on October 28, 1998, and rebuttal briefs on November 4, 1998.

Facts Available

As discussed in the preliminary determination, we did not receive a questionnaire response from two Indian companies, Alpine Biotech and Mandeep. In accordance with Section 776 and 782 of the Act, we determined that the use of facts available is appropriate for both of these companies. We have again made that determination for the final determination, and continue to use the corroborated petition rate of 243.87 percent as the facts available margin for the two nonresponding companies (*see* Memorandum to the File dated July 27, 1998).

Scope of Investigation

For purposes of this investigation, the products covered are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this investigation 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 the investigation 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 investigation 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 investigation 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''). Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (POI) is January 1, 1997 through December 31, 1997.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Agro Dutch and Ponds covered by the description in the ''Scope of Investigation'' section, above, and sold by Agro Dutch to the Netherlands and sold by Ponds to Denmark (*see* ''Home Market Viability'' section below) during the POI to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the third country to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product. For those U.S. sales of mushrooms for which there were no comparable third country sales in the ordinary course of trade (*i.e.*, above-cost) , we compared U.S. sales to constructed value (''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. Although Agro Dutch has suggested that the Department consider whole mushroom size as a product characteristic, we have not included it as a product matching characteristic (*see* Comment 8 in the ''Interested Party Comments'' section below).

Fair Value Comparisons

To determine whether sales of certain preserved mushrooms from India to the United States were made at less than fair value, we compared the export price (EP) to the Normal Value (NV), as described in the ''Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs for comparison to weighted-average NVs.

On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *CEMEX* v. *United States*, 1998 WL 3626 (Fed Cir.). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using constructed

value (CV) as the basis for foreign market value when the Department finds home market sales of physically identical merchandise to be outside the ''ordinary course of trade.'' This issue was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the ''ordinary course of trade'' to include sales below cost. *See* Section 771(15) of the Act. Consequently, the Department has reconsidered its practice in accordance with this court decision and has determined that it would be inappropriate to resort directly to CV, in lieu of foreign market sales, as the basis for NV if the Department finds foreign market sales of merchandise identical or most similar to that sold in the United States to be outside the ''ordinary course of trade.'' Instead, the Department will use sales of similar merchandise, if such sales exist. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison. Therefore, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the ''Scope of Investigation'' section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. 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, based on the characteristics listed in Sections B and C of our antidumping questionnaire.

Level of Trade

In the preliminary determination, we determined that all comparisons are at the same level of trade for both respondents and an adjustment pursuant to section 773(a)(7)(A) of the Act is not warranted. We find no basis to change this determination for the final determination.

Export Price

For Agro Dutch and Ponds, we used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise indicated.

Agro Dutch

We calculated EP based on the same methodology used in the preliminary determination, with revisions to movement expenses as a result of the Department's verification findings (*see* Agro Dutch Sales and Cost Verification Report dated October 21, 1998 for specific details).

Ponds

We calculated EP based on the same methodology used in the preliminary determination, with revisions to foreign movement expenses and packing as a result of the Department's verification findings (*see* Ponds' Sales and Cost Verification Report dated October 20, 1998 for specific details).

Normal Value

After testing (1) home market and third country market viability and (2) whether third country sales were at below-cost prices, we calculated NV as noted in the ''Price-to-Price Comparisons'' and ''Price-to-CV Comparisons'' sections of this notice.

1. Home and Third Country Market Viability

As discussed in the preliminary determination, we examined whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, in accordance with section 773(a)(1)(C) of the Act. We verified that the aggregate volume of POI home market sales of the foreign like product for both respondents was less than five percent of its aggregate volume for POI U.S. sales for the subject merchandise; and therefore, the home market was not viable for either respondent. We also verified that the Netherlands, Agro Dutch's largest third country market, and Denmark, Ponds' largest third country market, were viable for the respective respondents in accordance with section 773(a)(1)(B)(ii) of the Act. Therefore, in accordance with section 773(a)(1)(C) of the Act, we determined that the Netherlands is the appropriate third country market for calculating Agro Dutch's NV, and Denmark is the appropriate third country market for calculating Ponds' NV.

2. Cost of Production Analysis

As discussed in the preliminary determination, we conducted an investigation to determine whether each respondent made sales of the foreign like product in the respective third country during the POI at prices below its cost of production (''COP''). In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP, by model, based on the sum of the respondent's cost of materials, fabrication, and general expenses. We relied on the submitted COPs except in the following specific instances where the submitted costs were not appropriately quantified or valued.

Agro Dutch

(1) We recalculated Agro Dutch's cost worksheets using a weight based allocation method instead of relying on Agro Dutch's per-unit costs derived from hypothetical yields (*see* Comment 9 in the ''Interested Party Comments'' section below for further discussion).

(2) In order to put both the general and administrative (''G&A'') rate and the financial expense rate on the same basis as the per-unit cost of manufacturing, we excluded certain expense items from the cost of goods sold used by Agro Dutch as the denominator in its calculations. (*See* December 18, 1998 Calculation Memorandum.)

(3) Finally, we have not included the startup period adjustment amounts claimed by Agro Dutch in the COP calculations (*see* Comment 8 in the ''Interested Party Comments'' below for further discussion).

Ponds

(1) We calculated COP using the average direct materials expense reported by Ponds instead of Ponds' reported direct material costs, which were derived using a net realizable value (''NRV'') allocation (*see* Comment 1 in the ''Interested Party Comments'' section below).

(2) We increased the cost of manufacturing for certain minis to include an amount for expenses incurred on the reprocessing of minis (*see* Comment 3 ''Interested Party Comments'' section below for further discussion).

(3) We also revised per-unit variable overhead costs to exclude the Indian export duty, which we have recalculated as a movement expense.

(4) We recalculated Ponds' financial expense rate to exclude financial income (*see* Comment 4 in the ''Interested Party Comments'' section below).

B. Test of Third Country Sales Prices

As in our preliminary determination, we compared the weighted-average COPs for Agro Dutch and Ponds, adjusted where appropriate, to third country sales prices of the foreign like product, as required under section 773(b) of the Act. In determining whether to disregard third country sales made at prices less than 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 (exclusive of selling expenses) to the third country prices (net of selling expenses), less any applicable movement charges, rebates, discounts, and direct and indirect selling expenses.

Results of the COP Test

As in our preliminary determination, pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'' within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. In such cases, because we compared prices to weighted-average COPs for the POI, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product. For those U.S. sales of preserved mushrooms for which there were no comparable (above-cost) third country sales in the ordinary course of trade, we compared EP to CV, in accordance with section 773(a)(4) of the Act.

We found that, for certain mushroom products sold by Agro Dutch, more than 20 percent of third country sales were sold at below COP prices within an extended period of time in substantial quantities. We therefore excluded these sales and used the remaining above-cost sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. For Ponds, we found that all third country sales were at prices less than the COP. Thus, in the absence of any above-cost third country sales, we compared EP to CV in accordance with section 773(a)(4) of the Act.

D. Calculation of CV

As in our preliminary determination, we calculated CV for Ponds based on the sum of its cost of materials, fabrication, selling, general, and administrative (''SG&A'') expenses, interest, U.S. packing costs, and profit, in accordance with section 773(e) of the Act. We made the same adjustments to the reported costs for the CV calculation as discussed above for the COP calculation.

For Agro Dutch, all comparisons were made on a price-to-price basis. Thus, it was not necessary to calculate CV.

As stated above with regard to Ponds, since there were no above-cost Danish sales and, hence, no actual company-specific profit data available for Ponds' sales of the foreign like product to Denmark, we calculated profit 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. 316, 103d Cong., 2d Sess. at 841 (1994) (''SAA''). Section 773(e)(2)(B)(iii) states that profit may be determined under any reasonable method with the appropriate ''profit cap.''

In the preliminary determination, we used Ponds' actual selling expenses incurred in India on Danish sales. No party to this investigation has commented on this determination. Therefore, we have continued to use these selling expense amounts in this final determination. As in the preliminary determination, we have used a profit rate calculated from Ponds' 1996 financial statements for mushrooms as facts available under section 773(e)(2)(B)(iii) of the Act.

Price-to-Price Comparisons

We calculated NV for Agro Dutch respondent based on the same methodology applied in the preliminary determination, with the following exceptions: for Agro Dutch we made revisions to specific sales transactions for foreign movement expenses based on findings at verification (*see* Agro Dutch Sales and Cost Verification report dated October 21,1998); and for Ponds we made revisions to specific sales transactions for reported gross unit prices, foreign movement expenses and packing costs. For price-to-price comparisons we applied the same methodology used in the preliminary determination. In making circumstance of sale adjustments we made revisions to credit expenses based on verification findings for both respondents.

Price-to-CV Comparisons

For price-to-CV comparisons, we applied the same methodology used in the preliminary determination, with the revisions noted above for credit expenses.

Currency Conversion

For Agro Dutch, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank, in accordance with section 773A of the Act. For Ponds, we made currency conversions into U.S. dollars based on the exchange rates specified in Ponds' forward sales agreements instead of the actual exchange rate on the date of the U.S. sale (*see* Comment 5 below for discussion)

Ponds' Comments

Comment 1: Alternative Cost Allocation Methods: Net Realizable Value, Treating Certain Sales as By-Products, Averaging U.S. Prices

Ponds argues that the Department should allocate mushroom growing costs based on a NRV methodology, rather than the weight-based methodology used in the preliminary determination. Ponds states that there are physical differences between mushrooms suitable for preserving as whole and sliced mushrooms, and other mushrooms preserved as ''minis'' or pieces and stems (PNS). In turn, Ponds argues, whole and sliced mushrooms command higher NRVs per kilogram. Accordingly, Ponds states that its production process is designed to maximize its production of mushrooms suitable for whole and sliced products. To reflect this business practice, Ponds argues that the Department should follow its case precedents set forth in the *Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand*, 60 FR 29553, June 5, 1995 (''*CPF from Thailand*''), and the *Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan*, 61 FR 14064, March 29, 1996 (''*PVA from Taiwan*''), where cost allocations were made based on sales values, and apply the NRV methodology to Ponds' costs.

Alternatively, Ponds proposes a second methodology that would consider minis and PNS as a by-product of whole and sliced mushrooms. Based on this methodology, all costs of producing mushrooms would be allocated to whole and sliced mushrooms, and the revenue received from sales of minis and PNS would be deducted from those costs.

Finally, Ponds suggests that the Department should average the EPs for all products, and then compare the average prices to average costs, as it did in past cases such as *Final Results of Administrative Review: Certain Fresh Cut Flowers from Colombia*, 63 FR 31724, June 10, 1998 (''*Flowers from Colombia*''). Ponds states that this approach is appropriate, should the Department reject its NRV methodology, because a weight-based allocation

effectively calculates an average CV for preserved mushrooms and thus the fair comparison would be to average U.S. prices.

The petitioners contend that the Department should continue to allocate costs on the basis of weight, as in the preliminary determination and in the companion investigation of preserved mushrooms from Chile (*Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Chile,* 63 FR 56613, October 22, 1998) (''*Mushrooms from Chile*''). The petitioners state that Ponds' financial accounting system tracks costs and sales on the basis of weight, not NRV, as shown in the questionnaire responses and at verification. Citing section 773(f)(1)(A) of the Act, the petitioners assert that the Department relies on data from a respondent's normal books and records where those records are prepared in accordance with the home country's general accounting practices (''GAAP'') and reasonably reflect the cost of producing the subject merchandise. Petitioners argue that the cost of producing mushrooms are reasonably reflected using a weight-based allocation because all of the preserved mushroom products utilize the same input material, fresh mushrooms.

The petitioners continue that the references to *CPF from Thailand* and *PVA from Taiwan* are inappropriate in this case. According to the petitioners, the Department determined that the NRV methodology was appropriate in *CPF from Thailand* because the pineapple fruit and pineapple juice were completely distinguishable co-products. In instances where the juice was produced from the remains of the fruit canning process, such as shells, cores and ends, a weight-based cost methodology would assign a distortive amount of costs to the various parts of the pineapple. In *PVA from Taiwan,* the PVA production process resulted in two different co-products with different end uses. Thus, the petitioners assert that a weight-based methodology would have been distortive in that instance as well. In this proceeding, the petitioners argue, fresh mushrooms are not a co-product of preserved mushrooms, and the same material—fresh mushrooms—is used in producing all varieties of preserved mushrooms. Similarly, the petitioners reject Ponds' contention that minis and PNS should be considered a by-product or scrap, as ''scrap'' is considered by the industry to be tiny mushroom fragments which are too small to even to be processed as PNS and is typically resold as fertilizer or discarded. The petitioners assert that PNS and minis, on the other hand, are part of the same like product and sold in the same channels of trade as other preserved mushrooms.

DOC Position:

We agree with the petitioners that, in this case, a weight-based allocation methodology is appropriate. In accordance with section 773(f)(1)(A) of the Act, the Department normally relies on data from a respondent's normal books and records where those records are prepared in accordance with the home country's GAAP, and where they reasonably reflect the costs of producing the merchandise. Normal GAAP accounting practices provide both respondents and the Department with a reasonably objective and predictable basis by which to compute costs for the merchandise under investigation. However, in those instances where it is determined that a company's normal accounting practices result in a mis-allocation of production costs, the Department will adjust the respondent's costs or use alternative calculation methodologies that more accurately capture the actual costs incurred to produce the merchandise. *See, e.g., Final Determination of Sales at Less Than Fair Value: New Minivans from Japan,* 57 FR 21937, 21952, May 26, 1992, (adjusting a respondent's U.S. further manufacturing costs because the company's normal accounting methodology did not result in an accurate measure of production costs); and *CPF from Thailand* at 29559.

Furthermore, as described in section 773(f)(1)(A) of the Act, the Department must consider whether reported allocations ''have been historically used by the exporter or producer.'' In the instant case, Ponds does not have an established cost accounting system that allocates costs between products and, therefore, for purposes of this investigation, Ponds and Agro Dutch developed a reporting methodology. In Ponds' Section D questionnaire response, it chose to allocate costs between products based on their relative sales values. At the request of the Department, Ponds submitted a revised response which allocated costs using a weight-based method. For purposes of the final determination, we have relied on the costs derived from a weight-based allocation methodology as explained below, with the specific adjustments noted elsewhere in this notice.

Section 351.407(c) of the Department's regulations states that ''[i]n determining the appropriate method for allocating costs among products, the Secretary may take into account production quantities, relative sales values, and other quantitative and qualitative factors associated with the manufacture and sale of the subject merchandise and the foreign like product.'' We rejected Ponds' sales-value-based methodology because it relies on the faulty premise that minis and PNS are joint products of mushrooms.

A comparison of the Department's approach in responding to certain types of allocation questions in past cases is helpful in illustrating why minis and PNS are not joint products. In *Final Administrative Review of Canned Pineapple Fruit from Thailand,* 63 FR 7392, February 13, 1998, the Department stated that ''a joint production process produces *two distinct products* and the essential point of that process is that the raw material, labor and overhead costs prior to the initial split-off requires an allocation to the final products. *See Management Accountants' Handbook* at 11:1. CPF and juice result from a joint production process because they both rely on the use of a single raw material, pineapple fruit'' (emphasis added). In *PVA from Taiwan* at 14071 the Department stated that, ''like other joint production processes, PVA production is characterized by certain joint costs which cannot readily be identified or traced to the individual products resulting from the joint processing performed in the manufacture of PVA. In PVA production, chemical inputs are mixed together in a process that results in *two distinct products:* PVA and acetic acid.'' (*Id.* at 7399) (emphasis added). In CPF and PVA production, two or more distinct products (*i.e.,* products having significantly different physical characteristics) result from the processing of the raw materials. In contrast, the mushroom growing process results in only one product, *i.e.,* mushrooms. While the Department concedes that mushrooms will vary in size and aesthetics, these minor quality differences do not render them separate and distinct products. Such minor differences do not rise to the level where distinct products exist. The opposite situation, for example, occurs in *CPF from Thailand,* where a liquid fruit drink and a solid fruit product are derived from a whole pineapple. On the other hand, while mushrooms may be sliced or chopped, sold as fresh or canned, they remain mushrooms.

Ponds' proposal that a sales-based method be used in this case relies heavily on the fact that certain aesthetic and quality differences in mushrooms command higher prices in the market. We note that Ponds' claim that minis are

a substandard product are seriously undercut by Agro Dutch's argument that mini mushrooms are a premium product (*See* Comment 7 below for further discussion). However, as the cases cited above demonstrate, it is not the difference in market price that indicates whether the use of a value-based cost methodology is warranted, but rather the existence of two distinct products and the inherent difficulties therein of assigning common production costs between the jointly produced products. It is only when a common production process gives rise to separate and distinct products that a value-based method may be a more appropriate means to allocate costs than a method based on physical measure. Indeed, the Department has been upheld in its practice of ignoring market price differences when two grades of the same pipe had identical costs, but commanded different market prices. In *Ipsco* v. *United States,* 965 F2d 1056 (Fed. Cir. 1992) (''IPSCO''), where there were no physical differences between the two grades of pipe, only differences in quality and market value and the same materials, labor, and overhead went into the manufacturing lot that yielded both grades of pipe, the court upheld the Department's use of a methodology that allocated costs equally between two grades of the same pipe. Moreover, in *Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Ecuador* 60 FR 7038 February 6, 1995 (''*Roses from Ecuador*''), the Department also chose not to distinguish between minor aesthetic and quality differences within the broad export quality category, but treated as by-products all roses in the national quality category. In that case, the Department allocated total net cultivation costs over the total quantity of non-reject product actually sold.

Perhaps the most comparable case to mushrooms is the *Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile,* 63 FR 31411, June 9, 1998 (''*Salmon from Chile*''). Salmon, like mushrooms, are grown in batches where the natural process results in products of varying size and quality. Products can both be sold either directly after harvest or be processed further and sold in several different forms and containers. Furthermore, the production processes of both products may be manipulated by the producer, within the confines of the natural growing process to obtain different yields on certain sizes and qualities. Moreover, both salmon and mushrooms are sold by weight and the aesthetic qualities of the individual units impact their market price. For both products, the Department has found that the actual cost per kilogram of the product, *i.e.,* mushroom or salmon, is the same regardless of whether it is sold fresh or processed further in a variety of forms. In *Salmon from Chile,* as in the instant case, the Department found that ''with minor exceptions, each company's recorded costs of the subject merchandise did not vary by grade or weight band [(i.e., size)] . . . and that the costs of certain of these matching groups are the same (*Id.* at 31416).'' Also in *Salmon from Chile,* the Department even rejected ''petitioners'' arguments that the respondents should have been required to report costs based on methodologies that deviate from their normal accounting practices, *e.g.,* through the use of feed conversion ratios, in order to estimate differences in costs (*Id.* at 31416). In citing to *IPSCO* in the *Salmon from Chile* case, the Department stated that ''as with premium salmon, prime-grade pipe was of higher quality and, as such, commanded a higher price in the marketplace. In the proceeding underlying the IPSCO decision, the Department compared U.S. sales of prime-and limited service grade pipe to CVs based on the actual costs of each grade, which were identical. The respondents objected to this methodology vis-a-vis comparisons involving U.S. sales of lower grades of merchandise. The Court of Appeals for the Federal Circuit (CAFC) rejected this claim, ruling that the Department had ''calculated constructed value precisely as the statute directs'' in basing CV on the actual cost of production for each grade.'' *See Salmon from Chile* at 31416—31417.

Consistent with *Mushrooms from Chile,* we have determined that an allocation methodology based on weight is reasonable for the following reasons: (1) both Ponds and Agro Dutch track the mushrooms through the production process by weight, not by number of mushrooms or by relative sales value; (2) mushrooms are sold by weight; (3) virtually the same activities and expenses are incurred in growing each kilogram; and, (4) regardless of whether the mushrooms are sold as preserved or fresh product, wholes or PNS, they are substantially the same product (*i.e.,* they are not joint products). Simply stated, the cost-generating elements of growing mushrooms for both preserved and fresh, whole or pieces, large or small mushrooms are identical, as evidenced by the fact that a considerable quantity of mushrooms initially selected for the fresh sales market were eventually canned, and canned whole mushrooms may be re-processed into pieces and stems. Additionally, the Department has accounted for specific cost differences, such as differences in picking costs, supported by its observations at verification of Agro Dutch, that additional compensation for picking specific sizes of mushrooms was required. (*See* Comment 9 below for further discussion) On this basis, we continue to rely upon a weight-based methodology because it reasonably reflects the costs of producing the subject merchandise.

We also disagree with Ponds respondents that PNS and minis could alternatively be considered by-products of whole and sliced mushrooms. In the mushroom growing process, the closest output material to a by-product is the sale of compost. By-products, as opposed to primary products, ''have low relative total sales values,'' resulting from either ''a small output or low unit selling prices or both.'' *See Cost Accounting, Processing, Evaluating, and Using Cost Data* at 157 (Morse & Roth, Third Edition, 1986). Minis and PNS are identical to the primary product (*i.e.,* mushrooms) and, as such, should be treated in the same manner. Furthermore, minis and PNS are not incidental to Ponds' mushroom selling activities, and represent a significant portion of Ponds' sales. In addition, a significant percentage of Ponds' POI mushroom production was sold as either minis or PNS. In *Roses from Ecuador,* the Department also chose not to distinguish between minor aesthetic and quality differences within the broad export quality category, but treated as by-products all roses in the national quality category. This practice was consistent with the court's decision in *Association Colombiana de Exportadores v. United States,* 704 F. Supp. 1114, 1125–26 (CIT 1989), where the court found that ''culls were often disposed of as waste, or if saleable, were sold for low prices in the local markets.'' As petitioners pointed out in their briefs, mushrooms that ultimately become minis and PNS are processed further, exported to the United Sates, and represent a significant portion of Ponds' sales.

We also disagree with Ponds' assertion that, if the actual cost of producing the mushrooms is used as the basis of COP and CV, then when relying on CV as the basis for normal value, the Department should average U.S. sale prices for all products. Ponds errs in citing to *Flowers from Colombia* to support its proposed method. There were case-specific reasons in *Flowers from Colombia* as to why the

Department compared CV to average U.S. prices, such as the fact that flowers are a perishable product. The Department rejected a similar argument in *Salmon from Chile,* where the respondent asserted that the ''Department should average all U.S. prices by form only and not by grade or weight band, such that a form-specific price is compared to a form-specific CV (*see Salmon from Chile* at page 31416).'' In that case, the respondent reasoned that the Department erred ''by comparing U.S. prices . . . by form, grade, and weight band to CVs that, due to the nature of the product, essentially do not vary except by form (*Id.* at 31416).'' In rejecting respondent's assertion that the U.S. prices should be averaged for the comparison to CV, the Department noted that ''while making the same complaint as that made by the respondent in IPSCO, the respondent in the instant proceeding has proposed a different solution. Rather than arguing for an adjustment to CV, the respondent suggests that the Department average the reported U.S. prices without respect to two of the three matching characteristics . . . for comparisons involving CV (*Id.* at 31416).'' The Department went on to explain that ''no change to either side of the antidumping analysis (EP/CEP and normal value) is necessary because, in accordance with IPSCO and with the basic tenet of the antidumping law, the Department's methodology in this case properly compares the price of U.S. sales of a given product with the actual cost of that product where normal value is based on CV, without regard as to whether that product's actual costs are the same as, or different from, other products under investigation (*Id.* at 31417).'' In *Salmon from Chile,* the Department argued further that the proposed methodological changes would ''reduce the accuracy of that analysis and, depending on the manner employed, would either eliminate price-based matches entirely, or would result in inconsistent matching groups depending on whether a U.S. Sale is matched to comparison market sales or CV (*Id.* at 31417).''

Based on the foregoing discussion, for purposes of the final determination we have used a weight-based allocation methodology for all mushroom growing costs, with the exception of picking labor. Furthermore, we have used weighted-average US prices, by product type, in our comparisons to NV (*i.e.*, CV).

Comment 2: Yield Adjustment to Costs for Extraordinary Events

Ponds claims that the Department should consider Ponds' low mushroom yield in 1997 as a highly unusual event generated by extraordinary circumstances that occurred during the year. Ponds cites a major flood, ''wet bubble disease,'' and the death of its experienced plant manager as the extraordinary events that caused its depressed yield in 1997, the POI. Pointing to such cases as *Flowers from Colombia* and the decision in *Floral Trade Council of Davis, Calif. v. United States,* 16 CIT 1014, 1016–17 (1992), Ponds contends that the Department should take into account these extraordinary events, which are infrequent in occurrence, unusual in nature, and cause an unforeseen disruption in production that is beyond management's control, and make an appropriate adjustment to its costs. To make this adjustment, Ponds proposes applying a yield factor based on its mushroom yield history exclusive of 1997.

The petitioners respond that the events cited by Ponds are neither infrequent nor outside management's control and, therefore, the Department should continue to reject Ponds' claim. Petitioners contend that, as various parts of India are subject to seasonal flooding, mushroom diseases are an expected risk to the mushroom growing process, and staffing changes are a normal part of business operations. Thus, according to petitioners, management reasonably should have foreseen these possibilities and taken necessary steps to avoid production problems. Petitioners assert that the POI drop in production yield is the result of inadequate management control, rather than extraordinary events.

DOC Position:

We disagree with Ponds' claim for adjustments to its cost calculation based on the ''alleged'' extraordinary events that occurred during the POI. The SAA at 162 states that ''when unforeseen disruption in production occurs which is beyond management's control. . ., Commerce will continue its current practice, such as using the costs incurred for production prior to such unforeseen event.'' The Department's long-standing practice with regard to ''unforeseen events'' is to treat expense items as extraordinary only when they are both unusual in nature and infrequent in occurrence. *See Final Determination of Sales at Less than Fair Value: Static Access Memory Semiconductors From Taiwan,* 63 FR 8909, February 23, 1998 (''*SRAMS from Taiwan*'') (where the Department rejected respondent's claim for an offset due to losses incurred because of a fire); *Final Determination of Sales at Less than Fair Value: Oil Country Tubular Goods From Argentina,* 60 FR 33539, June 28, 1995 (where the Department rejected respondent's claim for an offset due to restructuring costs); and *Roses from Ecuador* at page 7038 (where the Department allowed an offset for damage due to hurricane-force winds). Because adjustments of this type are by definition extraordinary, the Department has made its decisions regarding these adjustments on a case-by-case basis. Moreover, in our review of the case-specific facts, it is incumbent upon the respondent, as the party knowledgeable about the industry and country, to provide evidence supporting its claim. Ponds did not provide any evidence that heavy rains were abnormal and thus unexpected. In the *Final Determination of Sales at Less than Fair Value: Fresh and Chilled Atlantic Salmon from Norway,* 56 FR 7661 February 25, 1991 (''*Salmon from Norway*''), the Department rejected a respondent's claimed offset for costs related to a disease affecting its salmon harvest by stating that ''[i] In the fish farming industry, disease is an expected occurrence. Respondent submitted no independent data regarding ILA disease in general or the extent to which other farmers in Norway suffered from this disease, and no data was submitted regarding ordinary or abnormal levels of disease.'' Similarly, in this case, Ponds has provided no evidence to demonstrate that the mushroom crop disease experienced during the POI was abnormal or unforseen.

With regard to the death of a production manager, the flooding, and the crop disease experienced by Ponds during the POI, we find none of these events to be extraordinary or unforeseen. We note that India experiences heavy rainfall each year and that Ponds' management had taken steps to prevent the next occurrence by building drainage ditches. We also note that various climate phenomena, from weather to diseases, effect agricultural crops and, therefore, only truly unusual climatic events relative to the geographical area in question would be considered extraordinary. At verification in India, we observed various disease prevention measures in place at both respondents' facilities, which indicates that disease is not an unusual or unforseen occurrence. Finally, we find that the loss of an employee, whether through a tragic death or resignation, is neither unusual or infrequent. Accordingly, we disallowed Ponds' yield adjustment factor for purposes of the final determination.

Comment 3: Reprocessing Costs for Mini Mushrooms

The petitioners contend that the Department should adjust Ponds' reported costs to account for raw material expenses incurred on canned mushrooms reprocessed into minis which Ponds did not include in its questionnaire response. The petitioners methodology for adjusting for reprocessing costs is outlined in their October 29, 1998, case brief.

Ponds contends that the costs of these minis produced in 1996 and repackaged in 1997 should not be considered part of the cost of minis produced in 1997. Ponds explains that the repackaging was performed to mitigate its 1996 losses for failing to sell these products in larger cans, and that including the repackaging costs for the POI merchandise would unfairly inflate those costs for an aberrant, extraordinary situation that is not a normal component of its COP. Should the Department determine that repackaging costs should be included as part of the POI costs, Ponds contends that the Department should allocate the reprocessing costs over the total production of all minis.

DOC Position:

We disagree with Ponds that the costs of the minis produced in 1996 and repackaged in 1997 should not be considered part of the cost of minis produced in 1997. First, approximately two-thirds of minis canned in 1997 were from these reprocessed cans. Second, the cost of reprocessing that took place in 1997 must be accounted for in 1997. However, we agree with Ponds that the Department erred in allocating the total reprocessing costs only over 1997 production of 6 oz. jars. Therefore, for purposes of the final determination, reprocessing costs have been allocated over the total production of all types of product (*i.e.*, container size) into which the original containers were reprocessed during 1997.

Comment 4: SG&A Calculation

The petitioners claim that Ponds' SG&A calculation is incorrect because it includes net financial income and the Department allows short-term interest income as an offset only up to the amount of financial expense. The petitioners argue that the Department should adjust the reported SG&A expenses using the methodology outlined in its October 29, 1998, case brief.

Ponds asserts that its SG&A calculation is correct because it would be unfair to include the costs of managing certain investments in its SG&A expenses, but then exclude the income generated by the investments. Thus, Ponds argues that the Department should either exclude both the costs and the revenues associated with these investments in the SG&A expense, or include both items.

DOC Position:

We agree with petitioners that only the short-term portion of financial income should be included in Ponds' financial expense calculation. Therefore, for purposes of the final determination, we have revised Ponds' combined G&A and financial expense rate. First, we calculated separate rates for G&A and financial expense. Second, we excluded Ponds' financial income because Ponds failed to provide a breakdown of the long-or short-term portions. Third, we excluded the claimed income related to dividends and investments. The Department includes financial expense in its calculation of cost in order to account for the company's cost of financing its activities. In calculating the company's cost of financing, we recognize that in order to maintain its operations and business activities, a company is required to maintain a working capital reserve to meet its daily cash requirements (*e.g.*, payroll, suppliers, etc.). The Department recognizes that the company normally maintains this working capital reserve in interest bearing accounts. The Department, therefore, allows a company to offset its financial expense with the short-term interest income earned on these working capital accounts. The Department does not allow a company to offset its financial expense with the income earned from investment activities (*e.g.*, long-term interest income, capital gains, dividend income). *See Gulf States Tube Division Of Quanex Corp.* v. *United States*, 981 F.Supp 630 (CIT 1997).

Comment 5: Forward Cover Exchange Rates

Ponds contends that the forward cover contracts Ponds made with its bank should be used to calculate the foreign currency exchange rate used to convert Ponds' sales revenues, expenses and costs from Indian rupees to US dollars, in accordance with 19 CFR 351.415(b). In meeting this regulation, Ponds states that its forward cover contracts were verified as clearly linked to its sales and thus it meets the necessary criteria for applying the contract exchange rate in lieu of the actual exchange rate on the date of sale.

DOC Position:

We agree with Ponds' contention that the exchange rate noted on Ponds' forward cover contracts is the appropriate exchange rate for converting Ponds' Indian rupee sales revenues and expenses into US dollars. At verification, we found that Ponds' foreign cover contracts were directly related to its sales. Specifically, we traced each contract to invoices, bills of lading and bank advices (*see* Ponds' Verification Report at 29–30 and Verification Exhibit 33). Therefore, according to the Departments' practice, in the final determination we have used the exchange rate specified in the forward sales agreement instead of the actual exchange rate on the date of sale in making all currency conversions (*see Final Determination of Sales at Less than Fair Value: Large Power Transformers from France*, 60 FR 62808–809, December 7, 1995).

Comment: Facts Available for Packing Costs

The petitioners claim that the Department found various discrepancies in Ponds' sales reporting that reflect systematic errors which undermine the reliability of Ponds' data. In particular, the petitioners cite an allegedly significant, systematic error in the reporting of Ponds' packing costs, and argue that the Department should reject the reported costs and instead apply adverse facts available.

Ponds replies that the petitioners have exaggerated minor, innocuous corrections that Ponds presented to the Department at the commencement of verification. According to Ponds, verification demonstrated that its data is reliable and contained very few errors. Ponds states that the packing cost correction cited by the petitioners resulted from a single error involving a single number, and not any ''systematic'' unreliability; therefore, Ponds maintains that petitioners' assertions should be rejected.

DOC Position:

We disagree with petitioners. For purposes of the final determination, we have used Ponds' sales data in general and packing costs in particular, as revised based on verification findings and noted elsewhere in this notice, rather than facts available as argued by petitioner. At the request of the Department (see Ponds Verification Outline at page 2 dated August 27, 1998), Ponds presented corrections to minor errors found during preparation for verification. Department officials were able to verify all corrections noted including those related to packing costs (*see* Ponds' October 21, 1998 Verification Report at page 2 and at Verification Exhibit 1). Accordingly, the Department has determined that the application of adverse facts available for Ponds' identified packing costs or otherwise is not warranted.

Agro Dutch Comments

Comment 7: Whole Mushroom Size as a Product Matching Characteristic

Agro Dutch argues that the Department should include whole mushroom size as a product matching criterion. Agro Dutch states that it considers mini mushrooms to be a premium product and while Ponds may consider these mushrooms to be a substandard product, both Indian respondents agree that the size of the whole mushroom affects pricing and marketing. In support of its contention, Agro Dutch points to its sales reporting, which shows that its mini mushrooms sales prices are higher than its other mushroom prices. Thus, Agro Dutch argues, the Department should not compare mini mushrooms to larger mushrooms.

The petitioners contend that Agro Dutch's claims are not supported by the record as there is no record evidence that the actual size of the fresh mushroom is a significant characteristic of preserved mushrooms. The petitioners state that the mushroom style, *i.e.*, whole, sliced, or PNS, already incorporates the important and relevant size characteristics for the preserved mushroom product.

DOC Position:

We disagree with Agro Dutch and continue to find an insufficient basis on the record to include whole mushroom size as a product matching criterion. Of all of the respondents in the three concurrent preserved mushrooms investigations from India, Chile, and Indonesia, we note that only Agro Dutch has argued that mushroom size must be accounted for in the product matching characteristics. Moreover, we have determined that there are no cost differences associated with the physical size of the mushroom. Rather, we found that Agro Dutch prices its mushrooms based on the physical size of the mushroom because of the labor involved. While Ponds does identify minis as a product type, as noted above in Comment 1, Ponds considers these mushrooms to be substandard products, in contrast to Agro Dutch's classification of minis as premium product. As also noted in Comment 1, we found no basis on which to treat minis differently with regard to cost accounting, and that mushroom growing costs (with the exception of packing labor) should be allocated on a weight-basis, rather than NRV. Thus, there is no reason to assign different costs to a whole mushroom solely for its different physical size. While one respondent out of all of the respondents involved in the market economy preserved mushroom investigations sells minis at higher prices relative to other mushrooms, the development of a successful market niche for one company is not, in itself, a basis for establishing a separate product characteristic.

Comment 8: Startup Adjustment

Agro Dutch claims that the Department should grant it a startup cost adjustment in accordance with Section 773(f)(1)(C) of the Act for its 50 percent expansion of growing rooms in a stand-alone facility during the POI. Agro Dutch states that these additional growing rooms began production during the POI and their construction constitutes the ''major undertaking'' contemplated in the SAA at 166 for granting the startup adjustment.

The petitioners state that Agro Dutch has failed to demonstrate its eligibility for a startup adjustment because the claim is based on the expansion of its existing mushroom growing facilities, rather than on a new production facility or production of a new product, as required under section 773(f)(1)(C) of the Act. In addition, the petitioners argue that the decline in production levels experienced at that time were related to ongoing improvements to existing facilities, rather than adjustments for the operation of a new facility. Further, the petitioners contend that Agro Dutch has failed to demonstrate that the lower mushroom yield rates it may have experienced were the result of technical factors associated with the allegedly new facility, as required by the statute.

DOC Position:

We disagree with Agro Dutch that a startup adjustment is warranted in this case. Section 773(f)(1)(C)(ii) of the Act authorizes adjustments for start-up operations ''only where (I) a producer is using new production facilities or producing a new product that requires substantial additional investment, and (II) production levels are limited by technical factors associated with the initial phase of production'' during the POI. Based on our analysis of the information Agro Dutch submitted to support its claim, we have determined that Agro Dutch's production expansion of its operations does not satisfy these criteria.

Agro Dutch's production operations were only expanded by one third during the POI. The SAA at 166 states that ''[m]ere improvements to existing products or *ongoing improvements* to existing facilities will not qualify for a startup adjustment'' (emphasis added). Agro Dutch's original production operations were several years old at the start of the POI. Agro Dutch added two new sections of growing houses, only one of which was used for production during the POI. Agro Dutch made no claim that commercial production levels at the preexisting operations were limited by any technical factors associated with the new capacity. In addition, Agro Dutch's start-up claim is addressed only with respect to the first of the two new sections of growing houses.

Furthermore, Agro Dutch claims that commercial production levels in the new sections were limited by technical factors. First, we do not think that the expansion of capacity by one third rises to the level of expansion contemplated by the language in the SAA. The SAA at 166 states that ''Commerce also will not consider an expansion of the capacity of an existing production line to be a start-up operation unless the expansion constitutes such a major undertaking that it requires the construction of a new facility and results in a depression of production levels due to technical factors associated with the initial phase of commercial production of the expansion facilities.'' Second, the technical factors cited by Agro Dutch did not appear to limit commercial production levels. Agro Dutch argues that after the new sections were completed, the environmental conditions inside the growing houses had to be adjusted in order for production levels to rise to the levels of the preexisting growing houses. While we do not take issue with this assertion, we note that the SAA states that ''the attainment of peak production levels will not be the standard for identifying the end of the start-up period, because the start-up period may end well before a company achieves optimum capacity utilization.'' Although production levels at the growing houses in question were not at their peak levels, Agro Dutch was able to produce sizable quantities of mushrooms.

We note that Agro Dutch failed to establish that its production levels during the POI were limited by technical factors associated with the initial phase of production in accordance with section 773(f)(1)(C)(ii)(II) of the Act. Specifically, Agro Dutch has provided insufficient evidence to support a claim that production levels were limited by technical factors. The only information provided by Agro Dutch to support its claim that POI production levels were limited is a comparison of its production yields to yields of its preexisting growing houses. The SAA, however, does not refer to quality of merchandise produced or the efficiency

of production operations as a criterion for measuring production levels. The SAA at 166 directs the Department to examine the number of units processed as a primary indicator of production levels in determining the end of the start-up period. *See* also *SRAMS from Taiwan* at 8930. In other words, the Department must look at processed units, not output yields. Agro Dutch provided no information, for example, on historical production or capacity usage at its facilities to serve as a benchmark for measuring commercial production levels during the POI. The only evidence Agro Dutch submitted was a comparison of its yields to the yields at its pre-existing growing houses, asserting that such levels are not indicative of commercial production levels. Moreover, we note that under a comparative yield approach, a respondent may never leave the start-up phase because it may never reach comparative yields.

Section 773(f)(1)(C)(ii) of the Act establishes that both prongs of the startup test must be met to warrant a startup adjustment. In this case, we find that Agro Dutch has failed both prongs of the test and, accordingly, we have denied Agro Dutch's claim for a start-up adjustment.

Comment 9: Allocation of Costs Based on Mushroom Size-Based Yields

Agro Dutch contends that its COP should be allocated based on yield factors reflecting the various mushrooms it grows. Specifically, Agro Dutch contends that higher harvesting and material costs should be allocated to mini mushrooms which have a smaller yield than the larger mushrooms. In support of its argument, Agro Dutch refers to on-site experiments conducted at verification which it claims demonstrated the different yield factors based on whole mushroom size.

The petitioners claim that a yield factor reported by Agro Dutch derived from an experiment solely for the purpose of this investigation does not demonstrate that yield factors have any impact on raw material costs. While the petitioners may agree that labor costs may differ depending on the size of the fresh mushroom picked, they contend that Agro Dutch provided no evidence that the cost of production for any of the growing materials varies by the size of the mushroom. Moreover, the petitioners state that, as indicated in the verification report, Agro Dutch's financial records do not rely on yield factors to allocate costs in its normal course of business; rather, Agro Dutch tracks costs on an overall basis without regard to per-unit costs for any specific type of preserved mushroom product.

DOC Position:

We agree with Agro Dutch, in part. Agro Dutch argues that it is more efficient to grow the larger size mushrooms than it is for them to grow smaller mushrooms. Therefore, Agro Dutch reasons that a greater amount of costs must be allocated to smaller sized mushrooms. Agro Dutch accomplishes this shifting of costs through the use of estimated growing yields. While we agree with Agro Dutch that, as demonstrated at verification, the time required to pick the smaller mushrooms was longer than the time needed to pick the larger sizes, we disagree that there is a significant, if any, growing cost difference between sizes of mushrooms.

As discussed in *Comment 1*, above, in accordance with section 773(f)(1)(A) of the Act, the Department normally relies on data from a respondent's books and records where those records are prepared in accordance with the home country's GAAP, and where they reasonably reflect the costs of producing the merchandise. However, in those instances where it is determined that a company's normal accounting practices result in a mis-allocation of production costs, the Department will adjust the respondent's costs or use alternative calculation methodologies that more accurately capture the actual costs incurred to produce the merchandise. Agro Dutch does not have an established cost accounting system that allocates costs between products and, therefore, for purposes of this investigation, Agro Dutch developed a reporting methodology. Agro Dutch chose to allocate costs to different size ranges of mushrooms produced based on certain estimated product yield factors. At the request of the Department, Agro Dutch submitted a revised response which allocated costs using a weight-based methodology.

As also noted in *Comment 1*, ''when determining the appropriate method for allocating costs among products, the Department may take into account production quantities, relative sales values, and other quantitative and qualitative factors associated with the manufacture and sale of the subject merchandise and the foreign like product.'' For purposes of the final determination, we rejected Agro Dutch's yield-based allocation methodology for materials and other non-picking labor costs because the method relies purely on estimates of the mushroom yield factors for each size range, and because the cost per kilogram of growing a large or small mushroom is identical. We disagree with Agro Dutch that it is more efficient to grow a larger versus a smaller mushroom. Mushrooms in India are grown in large bags that contain the compost, mushroom fungus and other necessary materials. These bags are stored in large growing houses where the climate is controlled. Since three to four pickings can be made from any given bag, a company like Ponds' may choose to have shorter periods of time between the picking of each ''flush,'' in order to ensure that the harvests are predominantly small-to-medium sized mushrooms. Alternatively, a company like Agro Dutch may choose to wait longer between pickings, in order to ensure that the harvests are predominantly medium-to-large sized mushrooms. Thus, companies have some control over the relative sizes of mushrooms produced. While a weight-based allocation may not be perfect (*i.e.*, because on a per-mushroom basis slightly more costs are applied to a larger mushroom, given that a larger mushroom will produce more kilograms of products) we do not find this to be a substantial problem. Within the normal mushroom size ranges and given the nature of the production growing process, we consider weight-based allocation reasonable.

Therefore, it is the Department's position that the per-kilogram materials, non-picking labor, and overhead costs, within the normal ranges of mushroom sizes, are virtually identical, irrespective of the minor variations in the size of the specific mushroom. First, there is very little growing time difference between a 15–20 millimeter mushroom and a 35–45 millimeter mushroom. Second, different size mushrooms grow side-by-side, incurring the identical costs (*i.e.*, materials, non-picking labor, and overhead). Third, the mushroom companies limit the outlying sizes (*i.e.*, under 15 mm and over 45 mm) because smaller than 15 mm is considered scrap and greater than 45 mm have open gills and become too fibrous. Furthermore, it is reasonable to derive cost on the basis of weight because: (1) both Ponds and Agro Dutch track the mushrooms through the production process by weight, not by number of mushrooms, estimated yields, or by relative sales value; (2) mushrooms are sold by weight; (3) virtually the same activities and expenses are incurred in growing each kilogram; and (4) regardless of whether the mushrooms are sold as preserved or fresh product, wholes or PNS, they are substantially the same product. Simply stated, the cost-generating elements of growing mushrooms for both preserved and fresh, whole or pieces, large or small mushrooms are identical as evidenced

by the fact that a considerable quantity of mushrooms initially selected for the fresh sales market were eventually canned, and canned whole mushrooms may be re-processed into PNS.

Finally, the Department has accounted for specific cost differences, such as differences in picking costs, supported by our observations that additional time was required to harvest the smaller mushrooms. On this basis, consistent with *Mushrooms from Chile*, we continue to rely upon a weight-based methodology because, while ignoring differences in aesthetics and quality, it reasonably reflects the costs of producing the subject merchandise. *See IPSCO, Salmon from Chile, Flowers from Colombia* as cited in Comment 1.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after August 5,1998 (the date of publication of the preliminary determination in the **Federal Register**). The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. The suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Agro Dutch Foods Limited	6.28
Ponds India, Ltd.	14.19
Alpine Biotech Ltd.	243.87
Mandeep Mushrooms Ltd.	243.87
All Others	10.87

Note: The margins based on facts available were not included in the calculation of the All Others rate in accordance with 735(c)(5)(A) of the Act.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: December 18, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–34703 Filed 12–30–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China

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

EFFECTIVE DATE: December 31, 1998.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Kate Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4136 or (202) 482–4929, respectively.

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 (''Department'') regulations are to the regulations at 19 CFR Part 351 (April 1998).

Final Determination

We determine that certain preserved mushrooms (''mushrooms'') from the People's Republic of China are being sold in the United States at less than fair value (''LTFV''), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the preliminary determination (*Preliminary Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 41794, August 5, 1998), the following events have occurred:

The respondent exporters in this investigation, China Processed Food Import & Export Company (''China Processed'') and its affiliate Xiamen Jiahua Import & Export Trading Company, Ltd. (''Xiamen Jiahua''), Shenzhen Cofry Cereals, Oils, & Foodstuffs Company, Ltd. (''Shenzhen Cofry''), and Tak Fat Trading Corporation Co. (''Tak Fat''), submitted revisions and corrections to their questionnaire responses in August 1998. An importer of the subject merchandise, Gerber Food (Yunnan) Co., Ltd. (''Gerber''), submitted shipment data on August 12, 1998.

On August 7, 1998, the petitioners in this investigation, L.K. Bowman, Inc., Modern Mushroom Farms, Inc., Monterey Mushrooms, Inc., Mount Laurel Canning Corp., Mushroom Canning Company, Southwood Farms, Sunny Dell Foods, Inc., and United Canning Corp., requested a public hearing. An importer of the subject merchandise, Hop Chong Trading Company, Inc. (''Hop Chong''), and the respondents subsequently requested a public hearing on August 17 and August 25, 1998, respectively.

We issued supplemental questionnaires to the respondents, the China Chamber of Commerce of Importers and Exporters of Foodstuffs, Native Produce and Animal By-Products (''China Chamber''), and the PRC Ministry of Foreign Trade and Economic Cooperation (''MOFTEC'') on August 7 and 10, 1998. We received responses to these questionnaires from the respondents and the China Chamber on August 21, 1998, and from MOFTEC on September 2, 1998.

In August and September 1998, we conducted verifications of the respondents' questionnaire responses, including information provided by the producers who supplied the subject merchandise during the POI—Dongya Food Company Ltd. (''Dongya''), Longhai Cannery Inc. (''Longhai''), Mei Wei Foods Industrial Co. Ltd. (''Mei Wei''), Fujian Province Putian Cannery (''Putian Cannery''), Fujian Zhaoan Canned Food Factory (''Zhaoan''); and Fujian Zishan Group Co., Ltd. (''Zishan'')—as well as Zhaoan's affiliated can producer Zhangzhou