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Sunset Reviews
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MEMORANDUM TO: Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

FROM: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Expedited Sunset
Reviews of the Antidumping Duty Orders on Certain Preserved
Mushrooms from Chile, India, Indonesia, and the People's
Republic of China

Summary

We have analyzed the responses of the interested parties in the sunset reviews of the antidumping duty orders covering certain preserved mushrooms from Chile, India, Indonesia, and the People's Republic of China (PRC). We recommend that you approve the positions described in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in these sunset reviews for which we received substantive responses:

1. Likelihood of continuation or recurrence of dumping
2. Magnitude of the margin likely to prevail

History of the Orders

Chile

On October 22, 1998, the Department of Commerce (the Department) published its final determination in the less-than-fair-value (LTFV) investigation of certain preserved mushrooms from Chile.¹ On December 2, 1998, the Department published the antidumping duty order on certain preserved mushrooms from Chile.² For Chile, the Department found the following antidumping duty margins:

¹ See Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Chile, 63 FR 56613 (October 22, 1998).

² See Notice of Antidumping Duty Order: Certain Preserved Mushrooms from Chile, 63 FR 66529 (December 2, 1998).

Nature's Farm Products (Chile) S.A.	148.51
All-Others Rate	148.51

India

On December 31, 1998, the Department published its final determination in the LTFV investigation of certain preserved mushrooms from India.³ On February 19, 1999, the Department published the amended final determination and antidumping duty order on certain preserved mushrooms from India.⁴ For India, the Department found the following antidumping duty margins:

Agro Dutch Foods Ltd.	6.28
Ponds (India) Ltd.	14.91
Alpine Biotech Ltd.	243.87
Mandeep Mushrooms Ltd.	243.87
All-Others Rate	11.30

Indonesia

On December 31, 1998, the Department published its final determination in the LTFV investigation of certain preserved mushrooms from Indonesia.⁵ On February 19, 1999, the Department published the antidumping duty order on certain preserved mushrooms from Indonesia.⁶ On July 2, 2003, the Department published the revocation of the antidumping duty order with respect to PT Zeta Agro Corporation.⁷ For Indonesia, the Department found the following antidumping duty margins:

PT Dieng Djaya/PT Surya Jaya Abadi Perkasa	7.94
PT Zeta Agro Corporation	revoked
All-Others Rate	11.26

³ See Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from India, 63 FR 72246 (December 31, 1998).

⁴ See Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms from India, 64 FR 8311 (February 19, 1999).

⁵ See Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Indonesia, 63 FR 72268 (December 31, 1998).

⁶ See Notice of Antidumping Duty Order: Certain Preserved Mushrooms from Indonesia, 64 FR 8310 (February 19, 1999).

⁷ See Final Results of Antidumping Duty Administrative Review: Certain Preserved Mushrooms from Indonesia and Final Determination to Revoke Order in Part, 68 FR 39521 (July 2, 2003).

PRC

On December 31, 1998, the Department published its final determination in the LTFV investigation of certain preserved mushrooms from the PRC.⁸ On February 19, 1999, the Department published an amended final determination and antidumping duty order on certain preserved mushrooms from the PRC.⁹ For the PRC, the Department found the following antidumping duty margins:

China Processed Food I&E Co./Xiamen Jiahua I&E Trading Company, Ltd.	121.47
Tak Fat Trading Co.	162.47
Shenzhen Cofry Cereals, Oils, & Foodstuffs Co., Ltd.	151.15
Gerber (Yunnan) Food Co.	142.11
Jiangsu Cereals,Oils & Foodstuffs Group Import & Export Corporation	142.11
Fujian Provincial Cereals, Oils & Foodstuffs I&E Corp.	142.11
Putian Cannery Fujian Province	142.11
Xiamen Gulong I&E Co., Ltd.	142.11
General Canned Foods Factory of Zhangzhou	142.11
Zhejiang Cereals,Oils & Foodstuffs I&E Corp.	142.11
Shanghai Foodstuffs I&E Corp.	142.11
Canned Goods Co. of Raoping	142.11
PRC-wide Rate	198.63

Administrative and New Shipper Reviews

Since the issuance of the antidumping duty orders, the Department has completed one administrative review with respect to certain preserved mushrooms from Chile, seven administrative reviews with respect to certain preserved mushrooms from India, three administrative reviews and one new shipper review with respect to certain preserved mushrooms from Indonesia, and ten administrative reviews and fourteen new shipper reviews with respect to certain preserved mushrooms from the PRC. The fifteenth new shipper review with respect to certain preserved mushrooms from the PRC is ongoing.

Scope Inquiries, Changed Circumstances Reviews, and Duty Absorption

The Department has conducted a scope inquiry with respect to certain preserved mushrooms from the PRC, in which the Department found that certain preserved mushrooms produced, exported, or imported by Mei Wei, Tak Fat, Leung Mi International, Tak Yeun Corp., and the U.S. Importer Genex International Corporation, and identified as marinated or acidified with an acetic acid content under 0.5 percent are within the scope of the antidumping duty order.¹⁰ In

⁸ See Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China, 63 FR 72255 (December 31, 1998).

⁹ See Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms from the People's Republic of China, 64 FR 8308 (February 19, 1999).

¹⁰ See Notice of Scope Rulings, 65 FR 52409 (August 29, 2000).

addition, the Department determined that retorted preserved mushrooms produced in third countries from provisionally preserved mushrooms produced in Chile are within the scope of the antidumping duty order.¹¹ The Department has conducted a changed circumstances review with respect to certain preserved mushrooms from India, where the Department found that KICM (Madras) Limited was the successor-in-interest to Hindustan Lever Limited.¹² There have been no duty absorption findings concerning certain preserved mushrooms from Chile or Indonesia. We found duty absorption in the fourth administrative reviews of certain preserved mushrooms from India and the PRC. However, the Court of Appeals for the Federal Circuit directed the Department to annul all findings and conclusions made pursuant to the duty absorption inquiry in its fourth administrative review of the India order.¹³

Background

In 2003-2004, the Department conducted the first sunset review on imports of certain preserved mushrooms from Chile, India, Indonesia, and the PRC, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act), and found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the same rates as found in the original investigations.¹⁴ In November 2004, the U.S. International Trade Commission (ITC) determined, pursuant to section 751(c) of the Act, that revocation of these antidumping duty orders would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.¹⁵ Also in November 2004, the Department published a notice of continuation of these antidumping duty orders.¹⁶

On October 1, 2009, the Department published the notice of initiation of the second sunset review of the antidumping duty orders on certain preserved mushrooms from Chile, India, Indonesia, and the PRC, pursuant to section 751(c) of the Act.¹⁷ The Department received a notice of intent to participate from the Coalition for Fair Preserved Mushroom Trade (the “Coalition”), a domestic interested party, which is comprised of L.K. Bowman Company, a division of Hanover Foods Corporation, Monterey Mushrooms, Inc., The Mushroom Company (formerly Mushroom Canning Company), and Sunny Dell Foods, Inc., within the deadline

¹¹ See Notice of Scope Rulings, 65 FR 41957 (July 7, 2000).

¹² See Certain Preserved Mushrooms from India: Final Results of Changed-Circumstances Review, 68 FR 6884 (February 11, 2003).

¹³ See Certain Preserved Mushrooms from the People’s Republic of China: Final Results of Sixth Antidumping Duty New Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review, 69 FR 54635, 54641 (September 9, 2004); See Certain Preserved Mushrooms from India: Final Results of Antidumping Duty Administrative Review, 69 FR 51630 (August 20, 2004); See Agro Dutch Industries Limited v. United States, Appeal No. 2007-1011, 508 F.3d 1024 (Fed. Cir. 2007); See Certain Preserved Mushrooms from India: Notice of Amended Final Results Pursuant to Final Court Decision, 73 FR 11869 (March 5, 2008).

¹⁴ See Certain Preserved Mushrooms from Chile, India, Indonesia and the People’s Republic of China: Final Results of Expedited Sunset Reviews of Antidumping Duty Orders, 69 FR 11384 (March 10, 2004).

¹⁵ See Certain Preserved Mushrooms from Chile, China, India, and Indonesia, 69 FR 63408 (November 1, 2004).

¹⁶ See Continuation of Antidumping Duty Orders on Certain Preserved Mushrooms from Chile, the People’s Republic of China, India, and Indonesia, 69 FR 67308 (November 17, 2004).

¹⁷ See Initiation of Five-Year (“Sunset”) Reviews, 74 FR 50776 (October 1, 2009).

specified in 19 CFR 351.218(d)(1)(i). The Coalition claimed interested party status under section 771(9)(C) of the Act as a manufacturer of a domestic like product in the United States.

The Department received a complete substantive response to the notice of initiation from the domestic interested party within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no substantive responses from respondent interested parties with respect to any of the orders covered by these sunset reviews, nor was a hearing requested. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), the Department is conducting expedited (120-day) sunset reviews of the antidumping duty orders on certain preserved mushrooms from Chile, India, Indonesia, and the PRC.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department is conducting these sunset reviews to determine whether revocation of the antidumping duty orders would be likely to lead to a continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making these determinations, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the periods before and the periods after the issuance of the antidumping duty orders. In addition, section 752(c)(3) of the Act provides that the Department shall provide to the ITC the magnitude of the margins of dumping likely to prevail if the orders were revoked. Below we address the comments of the interested parties.

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments

The domestic interested party believes that revocation of these antidumping duty orders would likely lead to a continuation or recurrence of dumping by the manufacturers/producers and exporters of the subject merchandise, as well as material injury to the U.S. industry. See substantive responses of the domestic interested party for Chile, India, Indonesia, and the PRC (November 2, 2009).

With respect to volume of imports, the domestic interested party asserts that the imposition of the orders has had a dramatic impact on the volume of imports of certain preserved mushrooms from foreign producers and exporters. The domestic interested party points to the record history of the orders to demonstrate that the discipline of the orders has forced foreign producers of subject merchandise either to increase their prices, to reduce dumping levels or to significantly reduce their volume of sales to the United States. See the November 2, 2009, responses. Nonetheless, the domestic interested party states that the administrative reviews conducted by the Department reveal that the foreign producers and exporters have continued to sell subject merchandise in the United States at less than fair value. See id.

Citing to the Department's Policy Bulletin, the domestic interested party concludes that the Department should determine that revocation of an antidumping duty order is inappropriate

where dumping continued at any level above *de minimis* after the issuance of the order.¹⁸ In sum, the domestic interested party argues that record evidence strongly supports the conclusion that dumping of certain preserved mushrooms by producers, manufacturers, and exporters from Chile, India, Indonesia, and the PRC would be likely to continue or recur if the orders were to be revoked.

Department's Position:

Consistent with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (URAA), specifically the Statement of Administrative Action (SAA), H. Doc. No. 103-316, vol. 1 (1994), the House Report, H. Rep. No. 103-826, pt. 1 (1994) (House Report), and the Senate Report, S. Rep. No. 103-412 (1994) (Senate Report), the Department's determinations of likelihood will be made on an order-wide basis.¹⁹ In addition, the Department normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.²⁰ In addition, pursuant to section 752(c)(1)(B) of the Act, the Department considers the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping duty order.

Chile: Subsequent to the imposition of the antidumping duty order, imports from Chile ceased and have remained nonexistent to this day. The complete withdrawal by the Chilean respondents from the U.S. market indicates that the Chilean producers/exporters are not able to sell subject merchandise in any volumes in the U.S. market under the discipline of the order. Accordingly, the Department determines that dumping is likely to recur if the order is revoked.

India: The Department examined the ITC data for the relevant periods which show that imports of certain preserved mushrooms from India fluctuated between 9,346,717 kilograms and 13,207,449 kilograms after the completion of the sunset review in 2004. Although import volumes have increased from pre-order levels, the results of the seven administrative reviews conducted as part of this proceeding indicate that Indian producers have continued to engage in significant levels of dumping when selling their product in the U. S. market during the post-order period, in some instances at levels higher than initially determined. Therefore, the Department determines that dumping is likely to recur if the order is revoked.

Indonesia: The Department examined the ITC data for the relevant periods which show that imports of certain preserved mushrooms from Indonesia fluctuated between 6,972,089 kilograms and 10,848,054 kilograms after the completion of the sunset review in 2004. Given the continued existence of dumping margins for certain Indonesian producers as well as lower import volumes since the imposition of the order, it is unlikely that respondents would be able to

¹⁸ See Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin, 63 FR 18871 (April 16, 1998) (Policy Bulletin).

¹⁹ See SAA at 879 and House Report at 56.

²⁰ See SAA at 889 and 890, House Report at 63-64, and Senate Report at 52. 1

sell at pre-order volumes without dumping. Accordingly, the Department determines that dumping is likely to continue or recur if the order were revoked.

PRC: The Department examined the ITC data for the relevant periods which show that imports of certain preserved mushrooms from the PRC fluctuated between 22,094,050 kilograms and 37,857,066 kilograms after the completion of the sunset review in 2004. Subsequent to the imposition of the antidumping duty order, respondents reduced their sales to the United States. Although sales have increased in recent years (reflecting, in part, increased sales by certain new shippers that received zero dumping margins), PRC producers/exporters have continued to sell at less than fair value. The existence of continued dumping margins throughout the life of the order demonstrates that if the order is revoked, it is likely that PRC producers/exporters would continue dumping and sell in higher volumes.

2. Magnitude of the Margin Likely to Prevail

Interested Party Comments

The domestic interested party requests that the Department report to the ITC the antidumping duty margins that were determined in the investigation, as amended, in accordance with the Policy Bulletin. These rates are set forth in the “History of the Orders” section, above.

Department’s Position:

Normally, the Department will provide to the ITC the company-specific margin from the investigation for each company. See *Eveready Battery Co. v. United States*, 77 F. Supp. 2d 1327, 1333 (CIT 1999). For companies not investigated specifically, or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the “All-Others” rate from the investigation. See *Certain Hot-Rolled Carbon Steel Flat Products from Argentina, the People’s Republic of China, India, Indonesia, Kazakhstan, Romania, South Africa, Taiwan, Thailand, and Ukraine; Final Results of Expedited Sunset Reviews of the Antidumping Duty Orders*, 71 FR 70506 (December 5, 2006) (*Hot-Rolled*), and accompanying Issues and Decision Memorandum at Comment 2. The Department’s preference for selecting a margin from the investigation is based on the fact that it is the only calculated rate that reflects the behavior of manufacturers, producers, and exporters without the discipline of an order or suspension agreement in place. See *Hot-Rolled* at Comment 2. Under certain circumstances, however, the Department may select a more recently calculated margin to report to the ITC. See section 752(c)(3) of the Act. See also *Final Results of Full Sunset Review: Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands*, 65 FR 65294 (November 1, 2000), and accompanying Issues and Decision Memorandum at Comment 3.

We find it appropriate to provide the ITC with the final (or amended final) determination rates from the LTFV investigations of certain preserved mushrooms from Chile, India, Indonesia, and the PRC. Although administrative reviews have been conducted, exports from Indonesia are significantly below pre-order levels, while exports from Chile have ceased. These results indicate that the order has imposed a discipline on exports. With respect to India and the PRC, while import levels have fluctuated since the imposition of the respective orders, the existence of continued dumping margins throughout the life of the orders demonstrates that if the orders are

revoked, it is likely that the Indian and PRC producers/exporters would continue dumping and selling in significant volumes. Thus, the final or amended final determination rates from the LTFV investigations reflect the behavior of manufacturers, producers, and exporters without the discipline of an order in place.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on certain preserved mushrooms from Chile, India, Indonesia, and the PRC would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/Exporters/Producers	Weighted-Average Margin (percent)
<u>Chile</u>	
Nature's Farm Products (Chile) S.A.	148.51
All-Others Rate	148.51
<u>India</u>	
Agro Dutch Foods Ltd.	6.28
KICM (Madras) Ltd.*	14.91
Alpine Biotech Ltd.	243.87
Mandeep Mushrooms Ltd.	243.87
All-Others Rate	11.30
*The Department conducted a changed circumstances review and found that KICM (Madras) Limited was the successor-in-interest to Hindustan Lever Limited (formerly known as Ponds (India) Ltd.). See <u>Certain Preserved Mushrooms from India: Final Results of Changed Circumstances Review</u> , 68 FR 6884 (February 11, 2003); <u>Certain Preserved Mushrooms from India: Preliminary Results of Antidumping Duty Administrative Review</u> , 67 FR 10371 (March 7, 2002), unchanged in <u>Certain Preserved Mushrooms from India: Final Results of Antidumping Duty Administrative Review</u> , 67 FR 46172 (July 12, 2002).	
<u>Indonesia</u>	
PT Dieng Djaya/PT Surya Jaya Abadi Perkasa	7.94
PT Zeta Agro Corporation	revoked
All-Others Rate	11.26
*Effective February 1, 2002, the antidumping duty order with respect to PT Zeta Agro Corporation was revoked. See <u>Final Results of Antidumping Duty Administrative Review: Certain Preserved Mushrooms from Indonesia and Final Determination to Revoke Order in Part</u> , 68 FR 39521 (July 2, 2003).	
<u>PRC</u>	
China Processed Food I&E Co./Xiamen Jiahua I&E Trading Company, Ltd.	121.47
Tak Fat Trading Co.	162.47
Shenzhen Cofry Cereals, Oils, & Foodstuffs Co., Ltd.	151.15
Gerber (Yunnan) Food Co.	142.11

Jiangsu Cereals,Oils & Foodstuffs Group Import & Export Corporation	142.11
Fujian Provincial Cereals, Oils & Foodstuffs I&E Corp.	142.11
Putian Cannery Fujian Province	142.11
Xiamen Gulong I&E Co., Ltd.	142.11
General Canned Foods Factory of Zhangzhou	142.11
Zhejiang Cereals,Oils & Foodstuffs I&E Corp.	142.11
Shanghai Foodstuffs I&E Corp.	142.11
Canned Goods Co. of Raoping	142.11
PRC-wide Rate	198.63

Recommendation

Based on our analysis of the response received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish these final results of sunset reviews in the Federal Register.

Agree _____

Disagree _____

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

Date