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DATE: January 10, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

SUBJECT: Decision Memorandum for Preliminary Rescission of
Antidumping Duty New Shipper Review: Certain Preserved
Mushrooms from the People's Republic of China

SUMMARY

The Department of Commerce (the Department) is conducting a new shipper review (NSR) of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (PRC), covering the period February 1, 2011, through January 31, 2012. As explained below, the Department recommends preliminarily rescinding this NSR.

BACKGROUND

On February 19, 1999, the Department published the antidumping duty order on certain preserved mushrooms from the PRC.¹ On February 29, 2012, the Department received a NSR request from Shandong Yinfeng Rare Fungus Company, Ltd. (Yinfeng), in accordance with section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(c).² The Department determined that the request submitted by Yinfeng met the threshold requirements for initiation of a NSR. Therefore, on April 2, 2012, the Department initiated a NSR for this company.³

¹ 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).

² See letter from Yinfeng to Secretary of Commerce dated February 29, 2012 (Yinfeng NSR Request).

³ See Certain Preserved Mushrooms from the People's Republic of China: Initiation of Antidumping Duty New Shipper Review, 77 FR 19620 (April 2, 2012).

On April 13, 2012, the Department issued its standard NSR Request for Information (standard NSR questionnaire) to Yinfeng.⁴ On May 4, 2012, Yinfeng timely filed its response to section A of the Department's standard NSR questionnaire.⁵ On June 11, 2012, Yinfeng timely filed its response to sections C and D of the Department's standard NSR questionnaire.⁶

On July 26, 2012, the Department issued a supplemental section A questionnaire to Yinfeng,⁷ and on August 3, 2012, it timely filed its response.⁸ On August 27, 2012, Department issued the second supplemental section A questionnaire to Yinfeng.⁹ Yinfeng attempted three times to file its response to the second supplemental section A questionnaire, but failed each time to comply with the Department's filing requirements. Despite the Department's repeated efforts and deadline extensions to help Yinfeng to cure all the deficiencies, Yinfeng did not timely respond to the Department's second supplemental section A questionnaire.¹⁰ Yinfeng has not submitted any further documentation to the record.

⁴ See letter from Robert M. James to Yinfeng entitled, "Certain Preserved Mushrooms from the People's Republic of China," dated April 13, 2012.

⁵ See letter from Yinfeng to the Secretary of Commerce entitled, "Certain Preserved Mushroom {sic} from the People's Republic of China," dated May 4, 2012.

⁶ See letter from Yinfeng to the Secretary of Commerce entitled, "Certain Preserved Mushroom {sic} from the People's Republic of China," dated June 11, 2012.

⁷ See letter from Robert M. James to Yinfeng entitled, "Certain Preserved Mushrooms from the People's Republic of China," dated July 26, 2012.

⁸ See letter from Yinfeng to the Secretary of Commerce entitled, "Certain Preserved Mushroom {sic} from the People's Republic of China," dated August 3, 2012.

⁹ See letter from Robert M. James to Yinfeng entitled "Certain Preserved Mushrooms from the People's Republic of China," dated August 27, 2012.

¹⁰ See letter from Robert M. James to Yinfeng entitled, "Certain Preserved Mushroom from the People's Republic of China: Failure of Yinfeng to Fulfill Conditions of Provisional Granting of Extension for Response to the Department's Second Supplemental Questionnaire," dated September 26, 2012 (detailing multiple reasons why the Department was repeatedly forced to reject Yinfeng's submissions such as, *inter alia*: failure to format documents for use by the IA ACCESS system; failure to properly bracket business proprietary information (BPI); failure to properly designate documents with respect to BPI; failure to provide public versions of BPI; failure to provide reasons for bracketing; and failure to provide valid certifications); see also memorandum from Mark Flessner to the File entitled, "Certain Preserved Mushroom from the People's Republic of China: Failure of Yinfeng to Submit Extension Request and Response to the Department's Second Supplemental Questionnaire by Deadline," dated October 1, 2012; see also memorandum from Mark Flessner to the File entitled, "Certain Preserved Mushrooms from the People's Republic of China: Electronic Mail communication from Shandong Yinfeng Rare Fungus Corporation, Ltd., Dated October 7, 2012," dated October 10, 2012; see also letter from Robert M. James to Yinfeng entitled, "Certain Preserved Mushrooms from the People's Republic of China: Shandong Yinfeng Rare Fungus Co., Ltd., Response to the Department's Second Supplemental Questionnaire," dated October 10, 2012.

On September 14, 2012, the Department extended the deadline for the preliminary results of this NSR by 120 days.¹¹ As explained in the memorandum from the Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 29, through October 30, 2012. Thus, all deadlines in this segment of the proceeding have been extended by two days.¹² The revised deadline for the preliminary results of this review is now January 24, 2013.

SCOPE OF THE ORDER

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The certain preserved mushrooms covered under this order are the species Agaricus bisporus and Agaricus bitorquis. "Certain Preserved Mushrooms" refers 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. Certain preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.¹³

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

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

¹¹ See memorandum from Mark Flessner to Christian Marsh entitled, "Certain Preserved Mushrooms from the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping New Shipper Review," dated September 14, 2012.

¹² See memorandum for the Record from Paul Piquado, Assistant Secretary for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Hurricane," dated October 31, 2012.

¹³ On June 19, 2000, the Department affirmed that "marinated," "acidified," or "pickled" mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order. See "Recommendation Memorandum – Final Ruling of Request by Tak Fat, et al., for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China," dated June 19, 2000. On February 9, 2005, the United States Court of Appeals for the Federal Circuit upheld this decision. See Tak Fat v. United States, 396 F.3d 1378 (Fed. Cir. 2005).

DISCUSSION OF THE METHODOLOGY

We preliminarily find that Yinfeng does not meet the Department's requirements for conducting a NSR. The NSR provisions of the Department's regulations require that the entity making a request for a NSR must document and certify, among other things: (1) the date on which subject merchandise of the exporter or producer making the request was first entered or withdrawn from warehouse, for consumption, or, if it cannot establish the date of first entry, the date on which the exporter or producer first shipped the merchandise for export to the United States; (2) the volume of that and subsequent shipments; and (3) the date of the first sale to an unaffiliated customer in the United States.¹⁴ If these provisions, among others, are met, the Department will initiate a NSR to establish an individual weighted-average dumping margin for the new shipper.¹⁵ Further, an exporter or producer must request a NSR within one year of the date of entry (or if appropriate, first shipment for export to the United States).¹⁶

The Department is preliminarily rescinding the review because it cannot determine whether Yinfeng has reported its first shipment of subject merchandise to the United States. During the course of this review, the Department discovered certain evidence indicating that Yinfeng may be the same entity as Shandong Jiufa Edible Fungus Corporation, Ltd. (Jiufa), another exporter that had entries of subject merchandise more than one year prior to Yinfeng's request for a NSR.¹⁷ The Department sought to address this record evidence in a supplemental questionnaire, but Yinfeng failed to respond in a timely manner in accordance with the Department's filing requirements. Yinfeng's failure to do so prevented the Department from being able to conclude that Yinfeng reported its first shipment of subject merchandise in its request for a NSR; as a result, we cannot conclude that Yinfeng meets the requirements of 19 CFR 351.214(c) to request a NSR within one year of the date of first entry. Therefore, the Department has preliminarily found that Yinfeng's request does not satisfy the regulatory requirements for a NSR.

¹⁴ See 19 CFR 351.214(b)(2)(iv).

¹⁵ See generally 19 CFR 351.214(b)(2).

¹⁶ See 19 CFR 351.214(c) (referring to the date in 19 CFR 351.214(b)(iv)(A)).

¹⁷ See, e.g., Notice of Amended Final Results of Antidumping Duty Administrative Review: Certain Preserved Mushrooms from the People's Republic of China, 70 FR 60280 (October 17, 2005); see also Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 77 FR 55808 (September 11, 2012); see also letter from Robert M. James to Yinfeng entitled, "Certain Preserved Mushroom from the People's Republic of China: Shandong Yinfeng Rare Fungus Co., Ltd., Response to the Department's Second Supplemental Questionnaire," dated October 10, 2012; see also: memorandum from Mark Flessner to the File entitled, "Certain Preserved Mushroom from the People's Republic of China: Electronic Mail Communication from Shandong Yinfeng Rare Fungus Corporation, Ltd., Dated October 7, 2012," dated October 10, 2012; memorandum from Mark Flessner to the File entitled, "Certain Preserved Mushroom from the People's Republic of China: Failure of Yinfeng to Submit Extension Request and Response to the Department's Second Supplemental Questionnaire by Deadline," dated October 1, 2012; and letter from Robert M. James to Yinfeng entitled, "Certain Preserved Mushroom from the People's Republic of China: Failure of Yinfeng to Fulfill Conditions of Provisional Granting of Extension for Response to the Department's Second Supplemental Questionnaire," dated September 26, 2012; memorandum from Mark Flessner to the File entitled, "Certain Preserved Mushrooms from the People's Republic of China: Transfer of Information from the 2004-2005 Administrative Review to the Record of the New Shipper Review of Shandong Yinfeng Rare Fungus Company, Ltd.," dated January 10, 2013.

Consequently, the Department preliminarily determines that it is appropriate to rescind the NSR for Yinfeng.¹⁸

On this basis, the Department is preliminarily rescinding the NSR of Yinfeng. Following these preliminary results, the Department will give Yinfeng an opportunity to comment on this preliminary decision. The Department, however, will not retain or consider any submissions containing new factual information.

RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

Agree Disagree



Paul Piquado
Assistant Secretary
for Import Administration

10 JANUARY 2013

Date

¹⁸ See, e.g., Fresh Garlic from the People's Republic of China: Preliminary Rescission of Antidumping Duty New Shipper Reviews; 2010-2011, 77 FR 65171 (October 25, 2012), and accompanying Decision Memorandum at 3-4; Wooden Bedroom Furniture from the People's Republic of China: Final Rescission of Antidumping Duty New Shipper Review, 77 FR 21536 (April 10, 2012); see also Honey From Argentina: Preliminary Rescission of Antidumping Duty New Shipper Review, 77 FR 45334 (July 31, 2012).