



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

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NSR February 2009-January 2010

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MEMORANDUM TO:

Kim Glas
Acting Deputy Assistant Secretary
for Import Administration

FROM:

Christian Marsh *CM*
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT:

Issues and Decision Memorandum for the Final Results of
the New Shipper Reviews of the Antidumping Duty Order
on Certain Preserved Mushrooms from the People's
Republic of China (PRC)

Summary

On February 9, 2011, subsequent to the publication of the preliminary results of these new shipper reviews (NSRs), the Department of Commerce (the Department) announced its intent to rescind the NSR of Fengyu for the period February 1, 2009, through January 31, 2010, because the Department was unable to make an affirmative determination of the existence of a consumption entry of subject merchandise produced and exported by Fengyu during the period of review (POR). In response, Fengyu submitted comments on March 15, 2011.¹

Based on our analysis of Fengyu's submission, we have determined that Fengyu has not demonstrated that merchandise it shipped to the United States entered for consumption during the POR. We recommend that you approve the position developed in the Discussion of the Interested Party Comments section of this memorandum.

I. Background

The Department initiated this NSR of Fengyu on March 31, 2010. See Certain Preserved Mushrooms from the People's Republic of China: Notice of Initiation of Antidumping Duty New Shipper Reviews, 75 FR 16075 (March 31, 2010). The review covers the period February 1, 2009, through January 31, 2010.

¹ Fengyu originally submitted comments on February 11, 2011, but pursuant to 19 CFR 351.302(d) we returned the submission to Fengyu because it contained new, unsolicited factual information that, pursuant to 19 CFR 351.301(b)(2) we determined was untimely. After removing the unsolicited information, Fengyu resubmitted its comments on March 15, 2011.



We published the preliminary results on October 29, 2010. See Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Reviews, 75 FR 66729 (October 29, 2010). We preliminarily found Fengyu's sale to be bona fide, and its dumping margin to be zero; however, we also found that there were some unresolved issues concerning the Customs Form (CF) 7501 (i.e., the entry summary) submitted by Fengyu and that we required additional information before making our final determination. The deadline for the final results is March 21, 2011.

II. Discussion of Interested Party Comments

Comment: Rescission of Review

In this proceeding, the Department's determination of whether Fengyu produced and exported a shipment of subject merchandise that entered U.S. Customs territory during the POR is based upon numerous discrepancies that exist among various versions of the CF 7501 that had been placed on the record. The CF 7501 is an entry document that records all essential features of a shipment, including the type of entry, the manufacturer, the importer, the entry date, the entry number, and the value and quantity of the merchandise.

Before announcing our intent to rescind the review with respect to Fengyu, Fengyu had placed two CF 7501 forms on the record. The first, signed on February 25, 2010 by the Customs broker for Fengyu's U.S. importer ("Fengyu's entry summary"), was submitted by Fengyu with its request for NSR. See Fengyu's March 23, 2010, submission.² This entry summary had the anomalous feature of listing the "type code" of the entry as "99 Live," rather than "type 3" as would be expected for a consumption entry of subject merchandise. Furthermore, as explained in the Department's February 9, 2011, notice-of-intent-to-rescind memorandum, Customs and Border Protection (CBP) did not have this CF 7501 in its possession. Instead, CBP had a CF 7501 ("CBP entry summary") that, based on the export date, the quantity and value of the product, and the importer, appeared to be identical to the shipment at issue, but which had a different entry number for the shipment, identified a different producer as the manufacturer of the shipment, and had a different type code than the "99 Live" listed on Fengyu's entry summary. After obtaining this document from CBP, the Department placed it on the record of this review on September 16, 2010.

Because Fengyu's entry summary was not identical to the CBP entry summary, the Department later asked Fengyu if there had ever been any other CF 7501s in existence with respect to the shipment it had reported to the Department. See November 5, 2010, supplemental questionnaire at 1. Fengyu responded affirmatively, and submitted a draft of a CF 7501 signed by the customs broker for Fengyu's U.S. importer on January 28, 2010 ("Fengyu's draft entry summary"). See Fengyu's November 15, 2010, submission at 1 and Exhibit 1. However, Fengyu's draft entry summary was also not identical to the CBP entry summary. For example,

² Fengyu originally submitted its request in a timely manner on February 28, 2010, but we returned it because it was not in proper form. We gave Fengyu an opportunity to correct its submission, and it therefore resubmitted its request on March 23, 2010.

- Fengyu's draft entry summary (like Fengyu's entry summary), listed the type code as "99 Live," which is not the type code that appeared in the CBP entry summary.
- Fengyu's draft entry summary (like Fengyu's entry summary) had a different broker from that listed on the CBP entry summary.
- Fengyu's draft entry summary (like Fengyu's entry summary) did not provide an entry date in box 7 of the form, whereas the CBP entry summary did provide such a date.

Furthermore, Fengyu's draft entry summary and the CBP entry summary both identified an entity other than Fengyu as the producer of the shipment.

Given the above discrepancies, we announced in our February 9, 2011, memorandum that we were unable to make an affirmative determination that subject merchandise produced and exported by Fengyu entered the United States for consumption during the POR because:

- CBP has no record of the existence of any shipment having entered under the entry number shown on Fengyu's CF 7501s.
- CBP does not have in its possession Fengyu's entry summary, which is the only CF 7501 on the record that shows Fengyu as the manufacturer of a consumption entry during the POR.

We also gave Fengyu an opportunity to comment on our intent to rescind. Accordingly, as summarized immediately below, Fengyu submitted comments on March 15, 2011.

In its March 15, 2011, submission, Fengyu explained that there were two customs brokers involved with its shipment. The first broker (broker A)³ was the broker Fengyu's U.S. importer originally employed to draft the CF 7501 and submit it to CBP. However, because, according to Fengyu, broker A is not qualified to serve as the broker for a shipment to the customer's destination, broker A employed broker B (allegedly without the knowledge of either Fengyu or Fengyu's importer until February 10, 2011) to prepare the final draft of the CF 7501 and submit it to CBP. The rest of Fengyu's narrative proceeds as follows:

- Broker A prepared Fengyu's draft entry summary and sent it to broker B for submission to CBP. This was the CF 7501 that Fengyu submitted to the record in its November 15, 2010, submission at Exhibit 1 and in its March 15, 2011, submission at Exhibit 1. According to Fengyu, this CF 7501 contained two errors. First, in the "Entry Type Code" box, it listed "99 Live," rather than "type 3." Second, it listed the producer as a company other than Fengyu.
- Upon receipt of this draft CF 7501, broker B changed the "Entry Type Code" to "Type 3," but did not correct the identity of the producer. Thus, a producer other than Fengyu is again listed as the producer on this CF 7501. Broker B also changed the entry number from that contained on Fengyu's draft entry summary. This CF 7501 was signed by broker B on

³ We refer to the brokers as "broker A" and "broker B" because Fengyu has requested proprietary treatment for the identity of its brokers.

February 1, 2010, and Fengyu presumes that this CF 7510 is the one that CBP has in its possession (i.e., CBP entry summary). Fengyu also submitted this CF 7501 to the record in its March 15, 2011 submission at Exhibit 1.

- During February 2010, Fengyu's importer noticed the error with respect to the identity of the manufacturer listed on the CF 7501 that broker A had submitted to CBP. It therefore asked broker A to correct it. Broker A therefore prepared another draft CF 7501 and submitted this summary to broker B for filing a re-entry with respect to Fengyu's shipment. This entry summary listed Fengyu as the manufacturer. Fengyu argues that the CF 7501 filed by broker B proves that an entry was input into CBP's system, and that this entry solely relates to the shipment made by Fengyu. This is the entry summary contained in Fengyu's March 23, 2010 request for NSR, and is Fengyu's entry summary.

Fengyu's comments closed with the conclusions that all of the CF7501s it placed on the record should clarify all of the prior discrepancies the Department found among the various entry summaries. Specifically, Fengyu claims that the entry summaries, taken as a whole, plainly show the following:

1. The shipment of the subject merchandise was exported by Fengyu on January 14, 2010;
2. The shipment was imported by Fengyu's importer on January 25, 2010;
3. The original entry date of such shipment is February 1, 2010;
4. The shipment is correctly declared under the name of Fengyu and the importer has paid the cash deposit at the PRC-wide rate of 198.63 percent;
5. The correct entry form and import data have been filed and entered into the CBP system.

Department's Position

Fengyu's first conclusion is that the shipment of the subject merchandise was exported on January 14, 2010. Fengyu's draft entry summary, the CBP entry summary, and Fengyu's entry summary indeed give the export date as January 14, 2010. However, neither the Fengyu's draft entry summary nor the CBP entry summary list Fengyu as the producer of the shipment, and the Fengyu entry summary lists the type code as "99 Live." Thus, even though all CF 7501s give an export date of January 14, 2010, we find that there is no conclusive evidence on the record indicating whether Fengyu was the producer of the shipment or that the shipment was entered or withdrawn from warehouse for consumption.⁴

Fengyu's second conclusion is that the shipment was imported by its importer on January 25, 2010. The same documentary fact pattern with respect to this conclusion holds true as with respect to Fengyu's first conclusion. Specifically, although Fengyu's draft entry summary,

⁴ We note that, pursuant to 19 CFR 351.214(b)(2)(iv)(A), for purposes of initiating a NSR, a non-market economy exporter or producer is required to provide documentation establishing the date on which the merchandise was first entered, or withdrawn from warehouse, for consumption, or, if it cannot do so, the date on which it first shipped the subject merchandise to the United States. However, for the purposes of rescinding a NSR, the Department looks to whether there was an actual consumption entry. See 19 CFR 351.214(f)(2)(i).

Fengyu's entry summary, and the CBP entry summary all include January 25, 2010, as the import date, the first two documents lack an actual entry date. Furthermore, although the CBP entry summary includes an entry date of February 1, 2010, as noted above, the manufacturer listed on this form is a company other than Fengyu. Accordingly, we find that the record also does not support Fengyu's third conclusion. Consequently, we are unable to determine that subject merchandise produced and exported by Fengyu entered the United States for consumption during the POR.

Fengyu's fourth conclusion is that the shipment is correctly declared under the name of Fengyu, and the importer paid the cash deposit at the PRC-wide rate of 198.63 percent. However, the only CF 7501 on the record that supports the conclusion that Fengyu was the producer of a shipment to the United States for which the importer paid a cash deposit of 198.63 percent is the Fengyu entry summary, and it lists the entry type as "99 Live," rather than a "type 3" consumption entry. Furthermore, the Fengyu entry summary gives an entry number for which CBP has said it does not have any record.

Fengyu's final conclusion is that the correct entry form and import data have been filed and entered into the CBP system. However, we find that the CBP entry summary is the only CF 7501 on the record of this NSR ever submitted to CBP, and it does not list Fengyu as the manufacturer.

After reviewing the totality of the record, we conclude that there is no affirmative evidence demonstrating that subject merchandise produced and exported by Fengyu entered the United States for consumption during the POR. As such, we have determined that the NSR should be rescinded with respect to Fengyu in accordance with 19 C.F.R. 351.214(f)(2)(i).

Recommendation

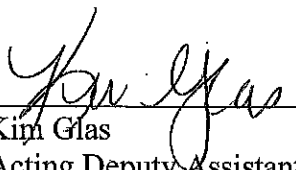
We recommend that we rescind the NSR of Fengyu in accordance with 19 C.F.R. 351.214(f)(2)(i) because there is no affirmative record evidence that subject merchandise produced and exported by Fengyu entered the United States for consumption during the POR. Accordingly, as noted in the Federal Register notice accompanying this memorandum, we will

instruct CBP to continue to assess the PRC-wide cash deposit rate to entries of subject merchandise produced and exported by Fengyu until further notice.



Agree

Disagree



Kim Glas
Acting Deputy Assistant Secretary
for Import Administration