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November 2, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Results of Antidumping
Duty Administrative Review: Certain Preserved Mushrooms from
the People's Republic of China; 2014-2015

Summary

In response to requests from interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (PRC) covering the period of review (POR) of February 1, 2014, through January 31, 2015. We preliminarily determine that the only mandatory respondent, Linyi City Kangfa Drinkable Co., Ltd. (Kangfa) is not eligible for a separate rate and is part of the PRC-wide entity. We also preliminarily determine that during the POR 1) Dezhou Kaihang Agricultural Science Technology Co., Ltd. (Dezhou Kaihang)/Shandong Fengyu Edible Fungus Corporation Ltd. (Fengyu), 2) Fujian Haishan Foods Co., Ltd. (Fujian Haishan)/Zhangzhou Hongda Import & Export Trading Co., Ltd. (Hongda), 3) Xiamen International Trade & Industrial Co., Ltd. (XITIC), 4) Zhangzhou Gangchang Canned Foods Co., Ltd. (Gangchang); and 5) Guangxi Jisheng Foods, Inc. (Guangxi Jisheng) had no reviewable shipments.¹

If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. Unless extended, we intend to issue the final results of this review no later than 120 days from the date of publication of the preliminary results notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).

¹ See "Discussion of Preliminary Determination of No Shipments", *infra*.

Background

On February 19, 1999, the Department published in the Federal Register the antidumping duty order on certain preserved mushrooms from the PRC.² On February 2, 2015, the Department published in the Federal Register its notice of opportunity to request an administrative review of the antidumping duty order on certain preserved mushrooms from the PRC.³

On April 3 2015, the Department published in the Federal Register a notice of initiation of the antidumping duty administrative review of certain preserved mushrooms from the PRC for the period February 1, 2014, through January 31, 2015, with respect to the 63 companies named in the Initiation Notice.⁴

On May 1, 2015, 1) Dezhou Kaihang, 2) Fujian Haishan, 3) Inter-Foods, 4) Fengyu, 5) XITIC, 6) Gangchang and 7) Hongda submitted no shipment certifications. Additionally, on June 3, 2015, Guangxi Jisheng submitted a no shipments certification.

Respondent Selection

On April 29, 2015, the Department released CBP data for entries of the subject merchandise during the POR under administrative protective order (APO) to all interested parties having an APO inviting comments regarding the CBP data and respondent selection. The Department received no comments concerning the CBP data.

Moreover, based on our review of the CBP data, the Department determined that only Kangfa had reviewable entries.⁵ Accordingly, the Department issued a questionnaire to Kangfa given that Kangfa was the only company named in the Initiation Notice having reviewable entries during the POR.⁶ On June 11, 2015, we issued our antidumping questionnaire to Kangfa. On July 6, 2015, Kangfa filed a letter withdrawing from this administrative review.⁷

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

² 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) (the Order).

³ See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review, 80 FR 5509 (February 2, 2015). The review requests received in this review are set forth in Appendix 1 to this Memorandum.

⁴ See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part, 80 FR 18202, 18207-08 (April 3, 2015) (Initiation Notice).

⁵ See June 10, 2015 Memorandum from Michael J. Heaney, International Trade Compliance Analyst to Abdelali Elouaradia, Acting Director Antidumping and Countervailing Duty Operations at 1.

⁶ Id. at 2.

⁷ See July 6, 2015 letter from Kangfa to Secretary of Commerce: Re: Certain Preserved Mushrooms from China Withdrawal from Administrative Review (Kangfa Withdrawal Letter).

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.⁸

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.

Preliminary Determination of No Shipments

On May 1, 2015, (1) Dezhou Kaihang, (2) Fujian Haishan, (3) Inter-Foods (Dongshan) Co., Ltd. (Inter-Foods), (4) Fengyu, (5) XITIC, (6) Gangchang and Hongda submitted no shipment certifications.⁹ On June 3, 2015, Guangxi Jisheng Foods, Inc. (Guangxi Jisheng) did so as well. On August 20, 2015, the Department sent inquiries to U.S. Customs and Border Protection (CBP) to confirm the no shipments certifications received from the following companies: 1) the exporter/producer combination of Dezhou Kaihang/Fengyu; 2) the exporter/producer combination of Fujian Haishan/Hongda; 3) XITIC; and 4) Gangchang.¹⁰ On October 22, 2015, the Department sent an additional inquiry to CBP regarding the certification provided by Guangxi Jisheng.¹¹ To date, the Department has received no information contrary to the no shipment claims submitted.

⁸ 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).

⁹ The Department assigned separate “combination” rates to 1) Dezhou Kaihang/Fengyu and 2) Fujian Haishan/Hongda as the result of new shipper reviews. See *Certain Preserved Mushrooms From the People’s Republic of China: Final Results of Antidumping Duty New Shipper Review* 80 FR 32352, (June 8, 2015) (Dezhou Kaihang /Fengyu); see also *Certain Preserved Mushrooms From the People’s Republic of China: Final Results of Antidumping Duty New Shipper Reviews* 76 FR 67146, (October 31, 2011) (Fujian Haishan/Hongda).

¹⁰ Inter-Foods currently does not have separate rate status, and did not have separate rate status during the POR. Therefore, the Department did not send an inquiry to CBP with regard to Inter-Foods.

¹¹ To date, we have received no response from CBP related to any entries for Guangxi Jisheng. We intend to revisit our preliminary determination of no shipments for Guangxi Jisheng should any information provided by CBP warrant such reconsideration.

Based on the no-shipment certifications and our analysis of the CBP information, we preliminarily determine that Dezhou Kaihang/Fengyu, Fujian Haishan/Hongda, XITIC, Gangchang, and Guangxi Jisheng did not have any reviewable transactions during the POR. In addition, for Dezhou Kaihang/Fengyu, Fujian Haishan/Hongda, XITIC, Gangchang, and Guangxi Jisheng, the Department finds that consistent with its refinement to its assessment practice in non-market economy (NME) cases, it is appropriate not to rescind the review in part in this circumstance but, rather, to complete the review with respect to these companies and issue appropriate instructions to CBP based on the final results of the review.¹² If the Department continues to determine in the final results of this review that these companies have no reviewable transactions, we intend to instruct CBP to continue to collect cash deposits of estimated antidumping duties at the current rate in effect for those companies.¹³

Partial Rescission

Section 351.213(d)(1) of the Department's regulations provides that the Department will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation of the requested review. The Department initiated this administrative review on April 3, 2015.¹⁴

On July 2, 2015, Monterey Mushrooms withdrew its request for review of 27 companies, including (1) Fujian Tongfa Foods Group Co., Ltd. (Fujian Tongfa), (2) Mikado Food China Co., Ltd. (Mikado), (3) Xiamen Hua Min Import & Export Co., Ltd., (4) Zhangzhou Tan Co. Ltd., Fujian, China and (5) Zhangzhou Yuxing Import & Export Trading Co., Ltd. No other party has requested a review of any of the five companies indicated above. Because all review requests have been timely withdrawn, we are rescinding this review with respect to (1) Fujian Tongfa, (2) Mikado, (3) Xiamen Hua Min Import & Export Co., Ltd., (4) Zhangzhou Tan Co. Ltd., Fujian, China, and (5) Zhangzhou Yuxing Import & Export Trading Co., Ltd. For the remaining 22 companies, there continue to be active review requests; therefore, we are not rescinding the review for those companies.

DISCUSSION OF THE METHODOLOGY

Non-Market Economy Country Status

The Department considers the PRC to be an NME country.¹⁵ In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall

¹² See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties, 76 FR 65694, 65694-95 (October 24, 2011).

¹³ We note that the current rate in effect for the Guangxi Jisheng is the rate applicable to the PRC-wide entity.

¹⁴ See Initiation Notice.

¹⁵ See, e.g., Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Results of the First Administrative Review, Preliminary Rescission, in Part, and Extension of Time Limits for the Final Results, 76 FR 62765, 62767-68 (October 11, 2011), unchanged in Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review, 77 FR 21734 (April 11, 2012).

remain in effect until revoked by the administering authority. Therefore, we continue to treat the PRC as an NME country for purposes of these preliminary results.

Separate Rates Determination

There is a rebuttable presumption that all companies within the PRC are subject to government control, and, thus, should be assessed a single antidumping duty rate.¹⁶ In the Initiation Notice, the Department notified parties of the application process by which exporters may obtain separate rates.¹⁷ It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in Sparklers, as amplified by Silicon Carbide.¹⁸ However, if the Department determined that a company is wholly foreign-owned or located in a market economy, then a separate rate analysis is not necessary to determine whether it is independent from government control.¹⁹

Companies That Did Not Establish Their Eligibility for a Separate Rate

On July 6, 2015, Kangfa withdrew from participation in this review prior to responding to the Department's questionnaire issued on June 10, 2015. Although the Department received a complete separate rate certification from Kangfa prior to its withdrawal from the review, Kangfa failed to respond to any portions of the Department's questionnaire. In our Initiation Notice, we stated, "For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents."²⁰ Based on the foregoing, the Department preliminarily finds that Kangfa is no longer eligible for separate rate status and is considered part of the PRC-wide entity. Moreover, we note that no other companies have demonstrated eligibility for a separate rate in this review.

¹⁶ See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079, 53082 (September 8, 2006); Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China, 71 FR 29303, 29307 (May 22, 2006).

¹⁷ See Initiation Notice, 80 FR at 18202-03.

¹⁸ See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China, 56 FR 20588 (May 6, 1991) (Sparklers) and Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China, 59 FR 22585 (May 2, 1994) (Silicon Carbide).

¹⁹ See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China, 72 FR 52355, 52356 (September 13, 2007).

²⁰ See Initiation Notice, 80 FR at 18203.

The Department's change in policy regarding conditional review of the PRC-wide entity applies to this administrative review.²¹ Under this policy, the PRC-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. No party requested a review of the PRC-wide entity in the instant review. Pursuant to our change in policy regarding conditional review of the PRC-wide entity, the entity, which includes Kangfa, is not currently under review. As such, the PRC-wide rate remains unchanged. The rate applicable to the PRC-wide entity is 308.33 percent.²²

Conclusion

We recommend the above methodology for these preliminary results.

Agree ✓ Disagree _____

Paul Piquado

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

30 October 2015
Date

²¹ See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings, 78 FR 65963, 65970 (November 4, 2013).

²² See Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014; and Partial Rescission of Administrative Review, 80 FR 32355, 32357 (June 8, 2015).