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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-851]

Certain Preserved Mushrooms from the People's Republic of China: Final Rescission of Antidumping Duty New Shipper Review; 2011-2012

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

SUMMARY: On January 18, 2013, the Department of Commerce (the Department) published in the Federal Register the preliminary rescission of this new shipper review (NSR) of Shandong Yinfeng Rare Fungus Corporation Ltd. (Yinfeng) under the antidumping duty order on certain preserved mushrooms from the People's Republic of China (PRC) covering the period of review (POR) February 1, 2011, through January 31, 2012.¹ The Preliminary Rescission invited interested parties to comment. No comments were received from any party. As discussed below, based on our analysis of the record, the Department has determined that Yinfeng did not satisfy the regulatory requirements for a NSR. Therefore, we are rescinding this NSR.

EFFECTIVE DATE: [Insert date of publication in Federal Register.]

FOR FURTHER INFORMATION CONTACT: Mark Flessner or Robert James, AD/CVD

Operations, Office 7, Import Administration, International Trade Administration, U.S.

Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230;

telephone: (202) 482-6312 or (202) 482-0649, respectively.

¹ See Certain Preserved Mushrooms from the People's Republic of China: Preliminary Rescission of Antidumping Duty New Shipper Review; 2011-2012, 78 FR 4126 (January 18, 2013) (Preliminary Rescission).

SUPPLEMENTARY INFORMATION:

Background

In the Preliminary Rescission, the Department determined that Yinfeng did not meet the minimum requirements in its request for a NSR under 19 CFR 351.214(b)(2)(iv)(C) and 19 CFR 351.214(c) because the Department could not determine whether Yinfeng had reported its first shipment of subject merchandise to the United States and, thus, whether Yinfeng requested a NSR within one year of the date of first entry.² The complete discussion of the Department's decision to preliminarily rescind the NSR was set forth in its preliminary analysis memorandum, dated January 18, 2013.³ We invited interested parties to comment on the Preliminary Rescission of this NSR. No party submitted comments.

Period of Review

Pursuant to 19 CFR 351.214(g), the POR for this NSR is February 1, 2011, through January 31, 2012.

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

² See Preliminary Rescission, 78 FR at 4127; see also "Decision Memorandum for Preliminary Results of Antidumping Duty New Shipper Review: Certain Preserved Mushrooms from the People's Republic of China," from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration (Preliminary Decision Memorandum), dated January 10, 2013, at 4.

³ See generally Preliminary Decision Memorandum.

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.⁴

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.

⁴ 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).

Rescission of New Shipper Review

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. See 19 CFR 351.214(b)(2)(iv)(A)-(C). The regulations also state that the entity requesting the NSR must make the request within one year of the date of first entry. See 19 CFR 351.214(c). The Department has not acquired or received any additional information that would alter our preliminary determination that Yinfeng did not satisfy the minimum regulatory requirements in its request for a NSR under 19 CFR 351.214(b)(2)(iv)(C) and 19 CFR 351.214(c). Furthermore, since the publication of the Preliminary Rescission, the Department solicited comments from interested parties regarding the intended rescission of the NSR for Yinfeng, but received no such comments.

Because we find that Yinfeng did not satisfy the requirements of 19 CFR 351.214(b)(2)(iv)(C) and 19 CFR 351.214(c), we are rescinding this NSR. Consequently, we are not calculating a company-specific rate for Yinfeng, and Yinfeng will remain a part of the PRC-wide entity.

Assessment Rate

Yinfeng remains under review as part of the PRC-wide entity in the ongoing administrative review covering the 2011-2012 POR.⁵ Accordingly, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend entries of subject merchandise produced and/or exported by Yinfeng during the period February 1, 2011, through January 31, 2012, until CBP receives instructions relating to the administrative review covering the period February 1, 2011, through January 31, 2012.

Cash Deposit

The Department will notify CBP that bonding is no longer permitted to fulfill security requirements for subject merchandise produced and/or exported by Yinfeng that is entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this rescission notice in the Federal Register. The Department will notify CBP that a cash deposit rate of 198.63 percent should be collected for all shipments of subject merchandise by Yinfeng entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this rescission notice.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

⁵ See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, and Deferral of Administrative Review, 77 FR 19179 (March 30, 2012).

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this rescission and notice in accordance with sections 751(a)(2)(B) and 777(i) of the Act and 19 CFR 351.214(f)(3).

Paul Piquado
Assistant Secretary
for Import Administration

March 19, 2013 _____
Date

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