

DEPARTMENT OF COMMERCE

International Trade Administration

(A-570-851)

Certain Preserved Mushrooms from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review

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

SUMMARY: On October 3, 2008, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (PRC) for Zhangzhou Golden Banyan Foodstuffs Industrial Co., Ltd. (Golden Banyan). See *Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review*, 73 FR 57597 (October 3, 2008) (*Preliminary Results*). We gave interested parties an opportunity to comment on the *Preliminary Results*, but we received no comments. Therefore, the final results do not differ from the preliminary results.

EFFECTIVE DATE: December 10, 2008.

FOR FURTHER INFORMATION CONTACT: Fred Baker 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) 482-2924 or (202) 482-0649, respectively.

SUPPLEMENTARY INFORMATION: The *Preliminary Results* for this administrative review were published on October 3, 2008. In the *Preliminary Results*, the Department stated that interested parties were to submit case briefs within 30 days of publication of the preliminary results and rebuttal briefs within five days after the due date for filing case briefs. See *Preliminary Results* at 57601. No interested party submitted a case or rebuttal brief.

As noted in the *Preliminary Results*, at the time Golden Banyan submitted its request for new shipper review it was in the process of seeking government approval to change its name from Zhangzhou Golden Banyan Foodstuffs Industrial Co., Ltd. to Fujian Golden Banyan Foodstuffs Industrial Co., Ltd. At that time, Golden Banyan had received preliminary approval for the name change, but was still waiting for the change to apply to its certificate of approval and business license. See

Preliminary Results at 57597. Therefore, Golden Banyan submitted its request for new shipper review under both names. See *Certain Preserved Mushrooms from the People's Republic of China: Initiation of New Shipper Review*, 73 FR 18772, at footnote 1 (April 7, 2008) (*Initiation*). On November 12, 2008, Golden Banyan submitted evidence that a new certificate of approval was issued on March 12, 2008, and a new business license on September 28, 2008, both of which reflect the new name. This name change became effective February 26, 2008. See Golden Banyan's November 12, 2008, submission at 1 and Exhibit 2. Therefore, these final results shall apply to Golden Banyan under its new name, Fujian Golden Banyan Foodstuffs Industrial Co., Ltd.

Period of Review

The period of review (POR) is February 1, 2007, through February 29, 2008.¹

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.²

Excluded from the scope of this order are the following: (1) All other species

¹ As indicated in the initiation notice, Golden Banyan's shipment entered the United States shortly after the anniversary month. Therefore, for the reasons given in the initiation notice, we extended the POR to include Golden Banyan's shipment. See *Initiation* at 18772-18773.

² 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, this decision was upheld by the United States Court of Appeals for the Federal Circuit. See *Tak Fat v. United States*, 396 F.3d 1378 (Fed. Cir. 2005).

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 the order is dispositive.

Separate Rates

In proceedings involving non-market economy (NME) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

In the *Preliminary Results*, we found that Golden Banyan demonstrated its eligibility for separate rate status. We received no comments from interested parties regarding Golden Banyan's separate rate status. In these final results of review, we continue to find the evidence placed on the record by Golden Banyan demonstrates an absence of government control, both in law and in fact, with respect to Golden Banyan's exports of the merchandise under review. Thus, we have determined that Golden Banyan is eligible to receive a separate rate.

Changes Since the Preliminary Results

As we received no comments, we made no changes to the Preliminary Results.

Combination Rate

In new shipper reviews, the Department may, pursuant to 19 CFR 351.107(b), establish a combination cash deposit rate for each combination of the exporter and its supplying producer(s). See *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 67 FR 72139 at 72140 (December 4, 2002); *Notice of Final Results of Antidumping Duty New Shipper Review*:

Certain In-Shell Raw Pistachios From Iran, 68 FR 353 at 354 (January 3, 2003); and *Certain Forged Stainless Steel Flanges From India: Final Results of Antidumping Duty New Shipper Review*, 68 FR 351 (January 3, 2003). The Department has determined that a combination rate is appropriate in this case, as Golden Banyan is both the producer and exporter of the subject merchandise. Therefore, the Department will include in its cash deposit instructions to U.S. Customs and Border Protection (CBP) appropriate language to enforce these final results of new shipper review on the basis of a combination rate involving Golden Banyan as both the producer and exporter of the subject merchandise.

Final Results of Review

The Department has determined that the following margin exists for the period February 1, 2007, through February 29, 2008:

Exporter/Manufacturer	Weighted-Average Margin (Percentage)
Fujian Golden Banyan Foodstuffs Industrial Co., Ltd.	0.00

Assessment Rates

Pursuant to these final results, the Department determined, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions for Golden Banyan to CBP 15 days after the date of publication of these final results of new shipper review. Pursuant to 19 CFR 351.212(b)(1), we calculated importer-specific (or customer) *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific (or customer) assessment rate calculated in the final results of this review is above *de minimis*.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results of the new shipper review for all shipments of subject merchandise by Golden Banyan under its new name Fujian Golden Banyan Foodstuffs Industrial Co., Ltd. (Golden Banyan), entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Tariff Act

of 1930, as amended (the Act): (1) for subject merchandise produced and exported by Golden Banyan, the cash deposit rate will be zero; (2) for subject merchandise exported by Golden Banyan, but not manufactured by Golden Banyan, the cash deposit rate will continue to be the PRC-wide rate (*i.e.*, 198.63 percent); and (3) for subject merchandise manufactured by Golden Banyan, but exported by any party other than Golden Banyan, the cash deposit rate will be the rate applicable to the exporter. These cash deposit requirements will remain in effect until further notice.

Reimbursement of Duties

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

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. 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 terms of an APO is a violation which is subject to sanction.

This new shipper review and notice are in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act and 19 CFR 351.214(h).

Dated: December 3, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XM16

Marine Mammals; File No. 13927

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Associated Scientists at Woods Hole (ASWH) (Dr. James Hain, Principal Investigator), Box 721, Woods Hole, MA 02543, has applied in due form for a permit to conduct research on North Atlantic right whales (*Eubalaena glacialis*) and other cetacean species.

DATES: Written, telefaxed, or e-mail comments must be received on or before January 9, 2009.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713-2289; fax (301)427-2521; Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298; phone (978)281-9300; fax (978)281-9394; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727)824-5312; fax (727)824-5309.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427-2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is NMFS.Pr1Comments@noaa.gov. Include in the subject line of the e-mail comment the following document identifier: File No. 13927.

FOR FURTHER INFORMATION CONTACT:

Carrie Hubard or Amy Hapeman, (301)713-2289.