

merchandise, a new company essentially operates as the same business entity as the former company, the Department will assign the new company the cash deposit rate of its predecessor.

In its March 28, 2003, request for a changed circumstances review, TIL advised the Department that, on December 31, 2002, it purchased NEC's (a wholly owned subsidiary of ICI) INC and energetic technologies businesses. TIL notes that the energetic technologies business is unrelated to INC. NEC was the sole producer of INC in the United Kingdom, and therefore, the only respondent in prior administrative reviews. TIL was formed to acquire NEC's INC and energetic technologies businesses.

According to TIL, the transfer of ownership of the INC business resulted in no material changes in the management, production facilities, suppliers of raw materials, or customers of NEC's former INC business. While the managing director of NEC's INC business has been replaced, TIL states that all of the other management personnel of the former entity are now employed by TIL. See TIL's March 28, 2003 submission to the Department at 5. Also, TIL notes that it operates the factory formerly operated by NEC using the same equipment and production process used by NEC. Furthermore, TIL reports that it uses the suppliers of raw materials used by NEC (and currently plans no changes to those suppliers) and sells to the former customers of NEC, in the United States and the United Kingdom, on the same basis as NEC sold to these customers. See TIL's July 18, 2003 questionnaire response at 4-5. TIL notes that there have been no changes in the customer base since the acquisition and none are currently anticipated. See TIL's March 28, 2003 submission to the Department at 7. Moreover, TIL points out that since the acquisition, there have been no changes in INC sales personnel, no material changes in the marketing of INC in the United States and the United Kingdom, and no systemic modifications in INC selling prices in either the U.S. or U.K. market. See *id.*

In its April 11, 2003, submission, the petitioner contends that the change in ownership of the INC business has resulted in a change in the business' cost of capital (which affects the Department's interest expense calculation), management, and sales distribution channels. Specifically, the petitioner points out that, recently, in addressing whether NEC's cost of production should include its interest expenses or those of its parent, the

Department found that NEC's parent, ICI, "determined the capital structure of its group companies involved in the production of the subject merchandise." See *Industrial Nitrocellulose From the United Kingdom; Final Results of Antidumping Duty Administrative Review*, 67 FR 77747 (December 19, 2002) and accompanying Issues and Decision Memorandum. Thus, the petitioner concludes that the cost of capital for the new entity will differ from that of its predecessor. In addition to different capital costs, the petitioner points out that, under TIL, the managing director of the INC business is not the managing director formerly employed by NEC. The petitioner finds this significant because it is the managing director who has decision-making authority. Further, the petitioner states that with new ownership and senior management, there can be no assurance that pricing will have the same objectives or follow the same pattern as when NEC was owned by ICI. Finally, the petitioner claims that the sales structure changed after TIL acquired the INC business. Specifically, the petitioner notes that NEC's U.S. affiliate, ICI Americas, Inc., carried out many sales functions for NEC. Based on the foregoing, the petitioner contends that TIL should not be allowed to take advantage of ICI's current cash deposit rate.

As noted above, in determining whether a new company's operations are essentially the same as those of its predecessor, the Department examines whether there have been changes in management, production facilities, supplier relationships, or the customer base. Our review of the record indicates that the change in ownership of the INC business has not resulted in changes to the production facilities or production processes used to manufacture INC, nor has it resulted in material changes in supplier relationships or customer base. Although TIL replaced the managing director of the INC business, there is no indication that this action resulted in significant changes to the INC operations. Furthermore, while the petitioner expressed concern over a possible difference between the cost of capital for the new entity and its predecessor, the record indicates that many of the significant factors that affect costs, with the possible exception of those that affect capital costs, have not changed (e.g., no changes in production process, suppliers of raw materials, and management and sales personnel). Finally, even though there has been a change in the legal entity performing U.S. selling functions (i.e.,

ICI Americas Inc. has ceased performing selling functions), with respect to U.S. sales of INC, the record indicates that there have been no significant changes in the order process, movement of INC from the United Kingdom, customer base, or sales terms, and no systematic price changes. See TIL's July 18, 2003 submission at 6. Thus, the record shows that TIL's operations are essentially the same as those of its predecessor. Therefore, we preliminarily determine that TIL is the successor-in-interest to ICI and should receive the same antidumping duty cash deposit rate as ICI, i.e., 3.06 percent. As a result, if these preliminary results are adopted in our final results of this changed circumstances review, we will instruct the U.S. Bureau of Customs and Border Protection to suspend shipments of subject merchandise made by TIL at ICI's cash deposit rate (i.e., 3.06 percent). Until that time, the cash deposit rate assigned to TIL's entries is the rate in effect at the time of entry (i.e., the "all others" rate).

#### Public Comment

Any interested party may request a hearing within 30 days of publication of this notice. See 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of this notice. See 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, which must be limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication of this notice. See 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.

Consistent with 19 CFR 351.216(e), we will issue the final results of this changed circumstances review no later than 270 days after the date on which this review was initiated. We are issuing and publishing this determination and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216.

Dated: October 9, 2003.

Jeffrey May,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03-26209 Filed 10-15-03; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

## International Trade Administration

[A-570-851]

**Certain Preserved Mushrooms from the People's Republic of China: Notice of Partial Rescission of Sixth New Shipper Review**

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

**ACTION:** Notice of Partial Rescission of Sixth New Shipper Review.

**EFFECTIVE DATE:** October 16, 2003.

**FOR FURTHER INFORMATION CONTACT:**

Brian Smith or Jim Mathews, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-1766 or (202) 482-2778, respectively.

**SUPPLEMENTARY INFORMATION:****Background**

On February 28, 2003, Primera Harvest (Xiangfan) Co., Ltd. (Primera Harvest) and Xiamen International Trade & Industrial Co., Ltd. (XITIC) requested a new shipper review of their sales. On March 28, 2003, the Department published a notice of initiation of an antidumping duty new shipper review on certain preserved mushrooms from the People's Republic of China with respect to these companies. *See Certain Preserved Mushrooms from the People's Republic of China: Initiation of Antidumping Duty New Shipper Review*, 68 FR 15152.

After analyzing XITIC's May 23, 2003, questionnaire responses, the Department determined that XITIC did not produce the subject merchandise that it exported. Rather, XITIC exported subject merchandise that was produced by Inter-Foods D.S. Co., Ltd. Therefore, pursuant to CFR 351.214(b)(ii)(B), XITIC failed to provide the proper new shipper certification. (*See Memorandum to the File from Brian Smith and Jim Mathews, International Trade Compliance Analysts, dated August 7, 2003*). On August 7, 2003, the Department sent copies of this memorandum to the interested parties. The memorandum stated that the parties had two weeks from the date of receipt to comment on the Department's decision to rescind this new shipper review. No party filed comments during the period stipulated the memorandum. Accordingly, we are rescinding the new shipper review with respect to XITIC.

**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 preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis*. "Preserved mushrooms" refer 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. 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.

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.<sup>1</sup>

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<sup>2</sup> ("HTS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

**Period of Review**

The period of review is February 1, 2002, through January 31, 2003.

**Partial Rescission of Review**

Section 351.214(b)(ii)(B) states that a request for a new shipper review must contain a certification from the person

that produced or supplied the subject merchandise to the person requesting the review that that producer or supplier did not export the subject merchandise to the United States during the period of investigation. Due to XITIC's failure to provide the necessary certification from the producer or supplier of the subject merchandise and its misleading statements in the submitted certification that suggested that it was both the exporter and producer of subject merchandise, we are rescinding, in part, this new shipper review on certain preserved mushrooms from the People's Republic of China as to XITIC. This review will continue with respect to Primera Harvest.

**Notification**

Bonding will no longer be permitted to fulfill security requirements for shipments from XITIC of certain preserved mushrooms from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results.

This notice also serves as a final 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 doubled antidumping duties.

This notice also serves as the only 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(a). 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.

We are issuing and publishing these determinations and notice in accordance with sections 751(a)(2)(B)(iv) and 777(i) of the Act, as amended, and 19 CFR 351.214(f)(3).

Dated: October 9, 2003.

**Jeffrey May,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 03-26211 Filed 10-15-03; 8:45 am]

**BILLING CODE 3510-DS-S**

<sup>1</sup> 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.*

<sup>2</sup> Prior to January 1, 2002, the HTS subheadings were as follows: 2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000.