

DEPARTMENT OF COMMERCE

International Trade Administration

[A-560-802]

Certain Preserved Mushrooms From Indonesia: Preliminary Results of Antidumping Duty New Shipper Review

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

ACTION: Notice of Preliminary Results of Antidumping Duty New Shipper Review.

SUMMARY: In response to timely requests by two manufacturers/exporters, the Department of Commerce is conducting a new shipper review of the antidumping duty order on certain preserved mushrooms from Indonesia. The respondents in this review are PT Eka Timur Rays ("Etira") and PT Karya Dompos Bagas ("KKB"). The petitioner, the Coalition for Fair Preserved Mushroom Trade,¹ did not comment. The period of review is February 1, 2002, through July 31, 2002.

The Department preliminarily determines that, during the period of review ("POR"), neither Etira nor KKB made sales of the subject merchandise at less than normal value ("NV") (*i.e.*, they made sales at zero or *de minimis* dumping margins). If these preliminary results are adopted in the final results of this new shipper review, we will instruct the U.S. Customs Service to liquidate appropriate entries without regard to antidumping duties.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: April 4, 2003.

FOR FURTHER INFORMATION CONTACT:

Sophie Castro or Rebecca Trainor, Office 2, AD/CVD Enforcement Group I, Import Administration-Room B-099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-0588 or (202) 482-4007, respectively.

SUPPLEMENTARY INFORMATION:

¹ The Coalition for Fair Preserved Mushroom Trade includes the American Mushroom Institute and the following domestic companies: L.K. Bowman, Inc., Nottingham, PA; Modern Mushrooms Farms, Inc., Toughkernamon, PA; Monterrey Mushrooms, Inc., Watsonville, CA; Mount Laurel Canning Corp., Temple, PA; Mushrooms Canning Company, Kennett Square, PA; Southwood Farms, Hockessin, DE; Sunny Dell Foods, Inc., Oxford, PA; United Canning Corp., North Lima, OH.

Background

On December 31, 1998, the Department published in the **Federal Register** (63 FR 72268), the final affirmative antidumping duty determination of sales at less than fair value ("LTFV") on certain preserved mushrooms from Indonesia. We published an antidumping duty order on February 19, 1999 (64 FR 8310). On August 29, 2002, we received properly filed requests from Etira and KKB for a new shipper review of the antidumping order on certain preserved mushrooms from Indonesia.

Section 351.214(b) of the Department's regulations requires that the exporter or producer requesting a new shipper review include the following in its request: (i) A statement from such exporter or producer that it did not export subject merchandise to the United States during the period of investigation (POI); (ii) certification that, since the investigation was initiated, such exporter or producer has never been affiliated with any exporter or producer who exported the subject merchandise to the United States during the POI; and documentation establishing: (a) The date on which the subject merchandise was first entered, or withdrawn from warehouse, for consumption, or, if this date cannot be established, the date on which the exporter or producer first shipped the subject merchandise for export to the United States; (b) the volume of that shipment and subsequent shipments; and (c) the date of the first sale to an unaffiliated customer in the United States. Etira's and KKB's new shipper review requests were accompanied by information and certifications establishing the date on which they first shipped and entered preserved mushrooms for consumption in the United States, the volume of the shipments, and the dates of first sale to unaffiliated customers in the United States. They also certified that they did not export preserved mushrooms to the United States during the POI and were not affiliated with any company that had done so during the POI. Consequently, on September 30, 2002, we initiated a new shipper review of Etira and KKB covering the period February 1, 2002, through July 31, 2002. See *Certain Preserved Mushrooms From Indonesia: Initiation of New Shipper Antidumping Duty Review*, 67 FR 62437 (October 7, 2002).

On October 3, 2002, we issued antidumping questionnaires to Etira and KKB. We issued supplemental questionnaires on December 26, 2002. We received timely responses to our

original and supplemental questionnaires on November 27, 2002, and January 28, 2003, respectively.

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.

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 States² (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Fair Value Comparisons

To determine whether sales to the United States of certain preserved mushrooms by Etira and KKB were made at less than NV, we compared export price to the NV, as described in the "Export Price" and "Normal Value" sections of this notice.

Pursuant to section 777A(d)(2) of the Act, we compared the export prices of individual U.S. transactions to the weighted-average NV of the foreign like

² Prior to January 1, 2002, the HTS codes 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.

product where were sales made in the ordinary course of trade.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Etira and KKB, covered by the description in the "Scope of the Order" section, above, and sold by the respondents in the home market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market within the contemporaneous window period, which extends from three months prior to the first U.S. sale until two months after the last sale in the POR. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order: Preservation method, container type, mushroom style, weight, grade, container solution and label type. See "Normal Value" section below for further discussion.

Export Price

For both respondents, we used the export price calculation methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly by the producer/exporter in Indonesia to the first unaffiliated purchaser in the United States prior to importation and constructed export price ("CEP") treatment was not otherwise indicated.

We calculated export price based on the packed FOB seaport prices charged to the first unaffiliated customer in the United States. We made deductions, where appropriate, for foreign inland freight and brokerage and handling, in accordance with section 772(c)(2)(A) of the Act.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in accordance with section 773(a)(1) of the Act.

Etira's and KKB's aggregate volumes of home market sales of the foreign like product were greater than five percent

of their respective aggregate volumes of U.S. sales of the subject merchandise. Therefore, we determined that the home market provides a viable basis for calculating NV for both companies, in accordance with section 773(a)(1)(B)(ii)(II) of the Act.

Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the export price or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). See 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.*; see also, *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997) (*Cut-to-Length Plate from South Africa*). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the "chain of distribution"), including selling functions, class of customer ("customer category"), and the level of selling expenses incurred for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for export price and comparison market sales (*i.e.*, NV based on either home market or third country prices³), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. See *Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001).

When the Department is unable to find sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing export price or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if a NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in

LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. See *Cut-to-Length Plate from South Africa*, 62 FR 61731 (November 19, 1997).

We obtained information from Etira and KKB regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed for each channel of distribution. Company-specific LOT findings are summarized below.

All of Etira's sales in the home market were to distributors, comprising a single LOT. Etira provided no services such as inventory maintenance, technical advice, warranty services, or advertising for home market customers.

In the U.S. market, Etira made only export price sales to trading companies. As in the home market, Etira did not provide any services, such as inventory maintenance, technical advice, or advertising to its U.S. customers, but did incur expenses to transport the merchandise to the port of exportation. Accordingly, there is only one LOT for U.S. sales.

KKB's home market sales were exclusively to trading companies, constituting a single LOT. KKB provided no services such as inventory maintenance, technical advice, warranty services, or advertising for home market customers.

In the U.S. market, KKB made only export price sales to trading companies. Although KKB incurred freight costs in delivering the product to the port, it did not provide any other services, such as inventory maintenance, technical advice, or advertising in selling to its U.S. customers. Accordingly, there is only one LOT for U.S. sales.

For both companies, we compared the export price LOT to the home market LOT and concluded that the selling functions performed for home market customers were essentially the same as those performed for U.S. customers. Accordingly, we considered the export price and home market LOTs to be the same. Consequently, we compared export price sales to sales at the same LOT in the home market of both companies.

Price-to-Price Comparisons

For Etira and KKB, we based NV on the price at which the foreign like product is first sold for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade, and at the same LOT as the export price, as

³ Where NV is based on constructed value, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses and profit for constructed value, where possible.

defined by section 773(a)(1)(B)(i) of the Act.

Home market prices were based on ex-factory prices. We reduced NV for packing costs incurred in the home market, in accordance with section 773(a)(6)(B)(i), and increased NV to account for U.S. packing expenses in accordance with section 773(a)(6)(A). We also made adjustments for differences in circumstances of sale (COS) in accordance with 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, by deducting home market direct selling expenses (*i.e.*, imputed credit) and adding U.S. direct selling expenses (*i.e.*, imputed and bank charges, where applicable).

Currency Conversion

We made currency conversions in accordance with section 773A of the Act based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the weighted-average dumping margins for the period February 1, 2002, through July 31, 2002, are as follows:

Manufacture/exporter	Margin (percent)
PT Eka Timur Raya	0.00
PT Karya Kompos Bagas	0.00

We will disclose calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. See 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication. See 19 CFR 351.310(c). If requested, a hearing will be held 44 days after the date of publication of this notice, or the first work day thereafter.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B-099. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. See 19 CFR 351.310(c).

Issues raised in the hearing will be limited to those raised in the respective case briefs and rebuttal briefs. Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted not later than 30 days and 37 days, respectively, from the date of publication of these preliminary results. See 19 CFR 351.309(c) and (d). Parties who submit case briefs or rebuttal briefs

in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will issue the final results of this new shipper review, including the results of its analysis of issues raised in any written briefs, not later than 90 days after the date of publication of this notice.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. For assessment purposes, we do not have the actual entered values for all sales made by Etira. Accordingly, we intend to calculate customer-specific assessment rates by aggregating any dumping margins calculated for all of Etira's U.S. sales examined and dividing the respective amount by the total quantity of the sales examined. To determine whether the duty assessment rates are *de minimis* (*i.e.*, less than 0.50 percent), in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we will calculate importer-specific *ad valorem* ratios based on export prices. With respect to KKB, we intend to calculate importer-specific assessment rates for the subject merchandise by aggregating any dumping margins calculated for the examined sales and dividing this amount by the total entered value of the sales examined.

The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review. We will instruct the Customs Service to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.*, less than 0.50 percent). See 19 CFR 351.106(c)(1). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

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

the new shipper review. Furthermore, the following cash deposit requirements will be effective upon publication of the final results of the new shipper review for all shipments of subject merchandise from Etira or KKB entered, or withdrawn from warehouse, for consumption on or after the publication date: (1) for subject merchandise manufactured and exported by Etira or KKB, no cash deposit will be required if the cash deposit rates calculated in the final results are zero or *de minimis*; and (2) for subject merchandise exported by Etira or KKB but not manufactured by them, the cash deposit rate will be 11.26 percent, the "All Others" rate made effective by the LTFV investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary 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 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.

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

Dated: March 27, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and