

# Preserved Mushrooms From Chile, China, India, and Indonesia

Investigation Nos. 731-TA-776-779 (Second Review)

Publication 4135

April 2010

**U.S. International Trade Commission**



Washington, DC 20436

# U.S. International Trade Commission

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**Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.**



# UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation Nos. 731-TA-776-779 (Second Review)

PRESERVED MUSHROOMS FROM CHILE, CHINA, INDIA, AND INDONESIA

## DETERMINATIONS

On the basis of the record<sup>1</sup> developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)), that revocation of the antidumping duty orders on preserved mushrooms from Chile, China, India, and Indonesia would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>2</sup>

## BACKGROUND

The Commission instituted these reviews on October 1, 2009 (74 F.R. 50818) and determined on January 4, 2010 that it would conduct expedited reviews (75 F.R. 3756, January 22, 2010).

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<sup>1</sup> The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

<sup>2</sup> Vice Chairman Daniel R. Pearson determines that revocation of the antidumping duty order on preserved mushrooms from Indonesia would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.





## VIEWS OF THE COMMISSION

Based on the record in these five-year reviews, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the antidumping duty orders on preserved mushrooms from Chile, China, India, and Indonesia would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>1</sup>

### I. BACKGROUND

In November 1998, the Commission determined that an industry in the United States was materially injured by reason of less than fair value (LTFV) imports of preserved mushrooms from Chile.<sup>2</sup> In February 1999, the Commission determined that an industry in the United States was materially injured by reason of LTFV imports of preserved mushrooms from China, India, and Indonesia.<sup>3</sup> The U.S. Department of Commerce (Commerce) issued antidumping duty orders with respect to imports from Chile on December 2, 1998,<sup>4</sup> and with respect to imports from China, India, and Indonesia on February 19, 1999.<sup>5</sup> Commerce subsequently revoked the order with respect to imports from Indonesia in part.<sup>6</sup>

In October 2004, the Commission completed its first five-year reviews on the antidumping orders on preserved mushrooms from Chile, China, India, and Indonesia. After conducting full reviews, the Commission determined that revocation of the orders would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>7</sup> Commerce, which had previously made affirmative determinations on likely dumping, issued a continuation of the antidumping duty orders on preserved mushrooms from Chile, China, India, and Indonesia on November 8, 2004.<sup>8</sup>

The Commission instituted the instant reviews on October 1, 2009.<sup>9</sup> The sole response to the notice of institution was filed by the Coalition for Fair Preserved Mushroom Trade and its individual members L.K. Bowman Co., Monterey Mushrooms Inc., the Mushroom Co., and Sunny Dell Foods, Inc. (collectively “the Coalition”).<sup>10</sup> On January 4, 2010, the Commission determined that, for each of the reviews, the domestic interested party response was adequate and the respondent interested party response

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<sup>1</sup> Vice Chairman Daniel R. Pearson determines that revocation of the antidumping order on preserved mushrooms from Indonesia would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See Dissenting Views of Vice Chairman Daniel R. Pearson. He joins section I through III.D. of these Views and section IV except as indicated.

<sup>2</sup> Certain Preserved Mushrooms from Chile, Inv. No. 731-TA-776 (Final), USITC Pub. 3144 (Nov. 1998) (“Original Chile Determination”).

<sup>3</sup> Certain Preserved Mushrooms from China, India, and Indonesia, Inv. Nos. 731-TA-777-779 (Final), USITC Pub. 3159 (Feb. 1999) (“Original China/India/Indonesia Determinations”).

<sup>4</sup> 63 Fed. Reg. 66529 (Dec. 2, 1998).

<sup>5</sup> 64 Fed. Reg. 8308-12 (Feb. 19, 1999).

<sup>6</sup> 68 Fed. Reg. 39521 (July 2, 2003).

<sup>7</sup> Certain Preserved Mushrooms from Chile, China, India, and Indonesia, Inv. Nos. 731-TA-776-779 (Review), USITC Pub. 3731 (Oct. 2004) (“First Five-Year Review Determinations”). Commissioner Pearson made a negative determination on subject imports from Indonesia. As explained further below, individual Commissioners cumulated different combinations of subject imports.

<sup>8</sup> 69 Fed. Reg. 67308 (Nov. 17, 2004).

<sup>9</sup> 74 Fed. Reg. 50818 (Oct. 1, 2009).

<sup>10</sup> The Coalition was the petitioner in the original investigations. Each of the four members of the Coalition is a domestic producer of preserved mushrooms.

was inadequate. In the absence of an adequate respondent interested party group response or any other circumstances warranting full reviews, the Commission determined to conduct expedited reviews.<sup>11</sup>

## II. DOMESTIC LIKE PRODUCT AND INDUSTRY

### A. Domestic Like Product

In making its determination under section 751(c) of the Act, the Commission defines “the domestic like product” and the “industry.”<sup>12</sup> The Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.”<sup>13</sup> The Commission’s practice in five-year reviews is to look to the like product definition from the original determination and any completed reviews and consider whether the record indicates any reason to revisit the prior findings.<sup>14</sup>

The Department of Commerce has defined the scope of the imported merchandise subject to the antidumping duty orders under review as follows:

The “preserved mushrooms” covered under the orders 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 and 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. Included within the scope of the order are “brined” mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing. Also included within the scope of the orders, as of June 19, 2000, are marinated, acidified, or pickled mushrooms containing less than 0.5 percent acetic acid.

Excluded from the scope of the orders 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; and (4) frozen mushrooms.<sup>15</sup>

In the original investigations, the Commission found a single domestic like product coextensive with the scope definition. It rejected arguments that fresh mushrooms should be included in the domestic like product, finding that there were significant differences between fresh and preserved mushrooms with respect to appearance, flavor, shelf life, channels of distribution, production methods, customer

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<sup>11</sup> Explanation of Commission Determination of Adequacy, reprinted in Confidential Report (CR)/Public Report (PR), App. B.

<sup>12</sup> 19 U.S.C. § 1677(4)(A).

<sup>13</sup> 19 U.S.C. § 1677(10); see, e.g., Cleo, Inc. v. United States, 501 F.3d 1291, 1299 (Fed. Cir. 2007); NEC Corp. v. Department of Commerce, 36 F. Supp. 2d 380, 383 (Ct. Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996); Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991); see also S. Rep. No. 249, 96<sup>th</sup> Cong., 1<sup>st</sup> Sess. 90-91 (1979).

<sup>14</sup> See, e.g., Internal Combustion Industrial Forklift Trucks From Japan, Inv. No. 731-TA-377 (Second Review), USITC Pub. 3831 at 8-9 (December 2005); Crawfish Tail Meat From China, Inv. No. 731-TA-752 (Review), USITC Pub. 3614 at 4 (July 2003); Steel Concrete Reinforcing Bar From Turkey, Inv. No. 731-TA-745 (Review), USITC Pub. 3577 at 4 (February 2003).

<sup>15</sup> 74 Fed. Reg. 67170, 67170-71 (Dec. 18, 2009). This is the same scope definition that was applicable in the first five-year reviews.

perceptions, and price.<sup>16</sup> It rejected arguments that marinated mushrooms should be included in the domestic like product, finding significant differences between the end uses of marinated mushrooms and preserved mushrooms, very limited interchangeability between the two products, and differences in producer and customer perceptions and price.<sup>17</sup>

In the first five-year reviews, no party submitted any argument that the Commission should define the domestic like product differently than it did in the original investigations. The Commission again defined a single domestic like product coextensive with the scope definition.<sup>18</sup>

In its response to the notice of institution, the Coalition stated that it agreed with the domestic like product definition the Commission adopted in its prior determinations.<sup>19</sup> The record in these expedited reviews provides no basis for us to call into question the Commission's previous definition of the domestic like product. Accordingly, we again define a single domestic like product coextensive with the scope definition.

## **B. Domestic Industry**

Section 771(4)(A) of the Act defines the relevant industry as the domestic "producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."<sup>20</sup> In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.

In light of our definition of the domestic like product, there are two domestic industry issues in these five-year reviews. The first concerns whether growers of fresh mushrooms should be included in the domestic industry pursuant to the statutory grower/processor provision codified at section 771(4)(E) of the Act. The second concerns whether appropriate circumstances exist to exclude certain producers of preserved mushrooms from the domestic industry pursuant to the statutory related parties provision.

### **1. Grower/Processor Provision**

In cases involving processed agricultural products, section 771(4)(E) of the Act authorizes the Commission to include growers' agricultural input within the domestic industry producing the processed agricultural product if the processed agricultural product is produced from the raw product<sup>21</sup> through a single continuous line of production, and there is a substantial coincidence of economic interest between the growers and processors based upon relevant economic factors.<sup>22</sup> Under the Act, the processed product is considered to be processed from the raw product in a single continuous line of production if the raw agricultural product is substantially or completely devoted to the production of the processed agricultural product, and the processed agricultural product is produced substantially or completely from the raw product.<sup>23</sup>

The Commission did not include growers of fresh mushrooms in the domestic industry in either the original investigations or the first five-year reviews. In each of these proceedings, the Commission

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<sup>16</sup> Original Chile Determination, USITC Pub. 3144 at 4-5.

<sup>17</sup> Original Chile Determination, USITC Pub. 3144 at 5-6.

<sup>18</sup> First Five-Year Review Determinations, USITC Pub. 3731 at 5.

<sup>19</sup> Coalition Response to Notice of Institution at 26; see also Coalition Comments at 3-4.

<sup>20</sup> 19 U.S.C. § 1677(4)(A). The definitions in 19 U.S.C. § 1677 are applicable to the entire subtitle containing the antidumping and countervailing duty laws, including 19 U.S.C. §§ 1675 and 1675a. See 19 U.S.C. § 1677.

<sup>21</sup> "Raw agricultural product" is defined as any farm or fishery product. 19 U.S.C. § 1677(4)(E)(iv).

<sup>22</sup> 19 U.S.C. § 1677(4)(E)(i).

<sup>23</sup> 19 U.S.C. § 1677(4)(E)(ii).

determined that the statutory requirement that “the processed agricultural product [be] produced from the raw agricultural product through a single continuous line of production” was not satisfied.<sup>24</sup> This was because only a small percentage of fresh mushrooms was processed in any manner.<sup>25</sup>

It remains the case that only a small percentage of fresh mushrooms produced in the United States are processed in any manner. Eighty-five percent of the yield of the 2008-09 domestic mushroom crop was sold as fresh mushrooms, and the remaining 15 percent was processed.<sup>26</sup> Consequently, as in the original investigations and first reviews, the raw product is not substantially or completely devoted to the production of the processed product. Thus, the requirement of the statutory grower/processor provision that there be a single continuous line of production is not satisfied. Accordingly, we do not include growers of fresh mushrooms in the domestic industry.

## 2. Related Parties

Section 771(4)(B) of the Act allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers.<sup>27</sup> Exclusion of such a producer is within the Commission’s discretion based upon the facts presented in each case.<sup>28</sup> In the original investigations and the first five-year reviews, the Commission found that appropriate circumstances did not exist to exclude any related party.<sup>29</sup>

The limited information available in these expedited reviews indicates that two U.S. producers of preserved mushrooms have imported subject merchandise since 2004.<sup>30</sup> We conclude that appropriate circumstances do not exist to exclude either of these firms from the domestic industry pursuant to the related parties provision. Each of the related parties has a substantial presence in the industry, the record contains limited new information concerning the circumstances and quantity of importation, and \*\*\*

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<sup>24</sup> See 19 U.S.C. 1677(4)(E)(i)(I).

<sup>25</sup> The percentage was 23 percent in the original investigations. Original Chile Determination, USITC Pub. 3144 at 7. It was 16.9 percent in the first five-year reviews. First Five-Year Review Determinations, USITC Pub. 3731 at 6.

<sup>26</sup> CR at I-12 n.39, PR at I-10 n.39.

<sup>27</sup> 19 U.S.C. § 1677(4)(B).

<sup>28</sup> The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude a related party are as follows:

(1) the percentage of domestic production attributable to the importing producer;  
(2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and

(3) the position of the related producer vis-à-vis the rest of the industry, *i.e.*, whether inclusion or exclusion of the related party will skew the data for the rest of the industry.

See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161 (Ct. Int’l Trade 1992), aff’d without opinion, 991 F.2d 809 (Fed. Cir. 1993).

<sup>29</sup> Original Chile Determination, USITC Pub. 3144 at 7-9; First Five-Year Review Determinations, USITC Pub. 3731 at 6-8.

<sup>30</sup> Specifically, in its response to the notice of institution, the Coalition states that \*\*\*. Coalition Response to Notice of Institution at 19. \*\*\* is a member of the Coalition and was the \*\*\* largest U.S. producer of preserved mushrooms in 2008. Id. at 21. Additionally, \*\*\*. Id. at 19. \*\*\*, while not a member of the Coalition, did provide the Coalition with certain firm-specific data for inclusion in the response to the notice of institution. These data indicate that \*\*\* U.S. producer of preserved mushrooms in 2008. Id. at 21. The record does not contain any information about the quantity of each firm’s subject imports, or the firms’ reasons for importing subject merchandise.

importations were apparently limited in temporal scope \*\*\*. Accordingly, we define the domestic industry to encompass all U.S. producers of preserved mushrooms.

### III. CUMULATION

#### A. Prior Proceedings

In the original investigations, the Commission found a reasonable overlap of competition between the domestic like product and imports from all four subject countries. It also found a reasonable overlap of competition among all subject imports except those from Chile and Indonesia. The predominant share of subject imports from Chile was sold to food service users, with most of the rest being distributed to industrial users. Meanwhile, the overwhelming share of subject imports from Indonesia were sold to retail users, with a small share entering the food service channel. There were no common purchasers of mushrooms from Chile and Indonesia, and the Commission concluded that the record indicated only a minimal overlap of channels of distribution between subject imports from Chile and Indonesia.<sup>31</sup> Accordingly, for its original determination on subject imports from Chile, the Commission cumulated subject imports from Chile, China, and India.<sup>32</sup> For its original determinations on subject imports from China and India, the Commission cumulated imports from all four subject countries.<sup>33</sup> For its original determination on subject imports from Indonesia, the Commission cumulated subject imports from China, India, and Indonesia.<sup>34</sup>

In its first five-year review determinations, the Commission found that subject imports from each of the four subject countries would not be likely to have no discernible adverse impact on the domestic industry if the orders were revoked.<sup>35</sup> The Commission found a likely reasonable overlap of competition between the domestic like product and imports from all four subject countries, and with respect to all subject country combinations other than Chile/Indonesia. It found that there was not a likely reasonable overlap in channels of distribution between subject imports from Chile and Indonesia for much the same reasons it did not find a reasonable overlap in its original determinations.<sup>36</sup> Based on the record in the first reviews, the Commission exercised its discretion not to cumulate subject imports from Indonesia with those from China or India due to differences in current and likely conditions of competition.<sup>37</sup> Consequently, the Commission cumulated subject imports from Chile, China, and India for the determinations on those three countries and did not cumulate subject imports from Indonesia with those from any other subject country.<sup>38</sup>

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<sup>31</sup> Original Chile Determination, USITC Pub. 3144 at 13-14.

<sup>32</sup> Original Chile Determination, USITC Pub. 3144 at 15.

<sup>33</sup> Original China/India/Indonesia Determinations, USITC Pub. 3159 at 10.

<sup>34</sup> Original China/India/Indonesia Determinations, USITC Pub. 3159 at 10.

<sup>35</sup> First Five-Year Review Determinations, USITC Pub. 3731 at 10-13.

<sup>36</sup> First Five-Year Review Determinations, USITC Pub. 3731 at 13-16. Commissioner Lane found that there was a likely reasonable overlap of competition between imports from all four subject countries, and cumulated subject imports from all four subject countries.

<sup>37</sup> First Five-Year Review Determinations, USITC Pub. 3731 at 17-18. Commissioners Lane and Koplan did not exercise their discretion not to cumulate based on differences in likely conditions of competition.

<sup>38</sup> As previously stated, Commissioner Lane cumulated imports from all four subject countries. Commissioner Koplan used the same three cumulation combinations that the Commission used in the original determinations.

## B. Legal Standard

With respect to five-year reviews, section 752(a) of the Act provides as follows: the Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews under section 1675(b) or (c) of this title were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market. The Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry.<sup>39</sup>

Cumulation therefore is discretionary in five-year reviews, unlike original investigations, which are governed by section 771(7)(G)(I) of the Act.<sup>40</sup> The Commission may exercise its discretion to cumulate, however, only if the reviews are initiated on the same day, the Commission determines that the subject imports are likely to compete with each other and the domestic like product in the U.S. market, and imports from each such subject country are not likely to have no discernible adverse impact on the domestic industry in the event of revocation. Our focus in five-year reviews is not only on present conditions of competition, but also on likely conditions of competition in the reasonably foreseeable future.

The statutory threshold for cumulation is satisfied in these reviews, because all reviews were initiated on the same day: October 1, 2009.<sup>41</sup> We consider three issues in deciding whether to exercise our discretion to cumulate the subject imports as follows: (1) whether imports from any of the subject countries are precluded from cumulation because they are likely to have no discernible adverse impact on the domestic industry; (2) whether there is a likelihood of a reasonable overlap of competition among imports of preserved mushrooms from the subject countries and the domestic like product; and (3) other considerations, such as whether there are similarities and differences in the likely conditions of competition under which subject imports are likely to compete in the U.S. market for preserved

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<sup>39</sup> 19 U.S.C. § 1675a(a)(7).

<sup>40</sup> 19 U.S.C. § 1677(7)(G)(i); see also, e.g., Nucor Corp. v. United States, \_\_\_ F.3d \_\_\_, App. No. 2009-1234, Slip Op. at 7-8 (Fed. Cir. Apr. 7, 2010) (Commission may reasonably consider likely differing conditions of competition in deciding whether to cumulate subject imports in five-year reviews); Allegheny Ludlum Corp. v. United States, 475 F. Supp. 2d 1370, 1378 (Ct. Int'l Trade 2006) (recognizing the wide latitude the Commission has in selecting the types of factors it considers relevant in deciding whether to exercise discretion to cumulate subject imports in five-year reviews); Nucor Corp. v. United States, 569 F. Supp. 2d 1328, 1337-38 (Ct. Int'l Trade 2008).

<sup>41</sup> See 74 Fed. Reg. 50776 (Oct. 1, 2009).

mushrooms.<sup>42 43</sup> The Coalition contends that the Commission should exercise its discretion to cumulate imports from all four subject countries.<sup>44</sup>

### C. Likelihood of No Discernible Adverse Impact

The statute precludes cumulation if the Commission finds that subject imports from a country are likely to have no discernible adverse impact on the domestic industry.<sup>45</sup> Neither the statute nor the Uruguay Round Agreements Act (“URAA”) Statement of Administrative Action (“SAA”) provides specific guidance on what factors the Commission is to consider in determining that imports “are likely to have no discernible adverse impact” on the domestic industry.<sup>46</sup> With respect to this provision, the Commission generally considers the likely volume of subject imports and the likely impact of those imports on the domestic industry within a reasonably foreseeable time if the orders are revoked.

Based on the record, we do not find that imports from any of the subject countries are likely to have no discernible adverse impact on the domestic industry in the event of revocation of the orders or the finding. Our analysis for each of the subject countries takes into account the nature of the product and the behavior of subject imports in the original investigations. We recall that in both the original investigations and the first five-year reviews, the Commission found that price was an important factor in purchasing decisions. It further found that the subject imports, regardless of source, were at least moderate substitutes for the domestic like product.<sup>47</sup>

*Chile.* In the original investigations, the volume of subject imports from Chile declined from 10.7 million pounds in 1995 to 7.1 million pounds in 1996 and then to 5.4 million pounds in 1997, but was higher in interim (January-June) 1998 than in interim 1997.<sup>48</sup> During the original period of investigation, \*\*\* of exports of subject merchandise from Chile was directed to the U.S. market.<sup>49</sup> In 1998, there were 6.5 million pounds of subject imports from Chile. Since then, there have been no imports of subject merchandise from Chile.<sup>50</sup> United Nations data indicate that exports of canned mushrooms from Chile have fluctuated in recent years, but that export levels have generally remained below those reported

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<sup>42</sup> Vice Chairman Pearson and Commissioner Okun note that while they consider the same issues discussed in this section in determining whether to exercise their discretion to cumulate the subject imports, their analytical framework begins with whether imports from the subject countries are likely to face similar conditions of competition. For those subject imports which are likely to compete under similar conditions of competition, they next proceed to consider whether there is a likelihood of a reasonable overlap of competition whereby those imports are likely to compete with each other and with the domestic like product. Finally, if based on that analysis they intend to exercise their discretion to cumulate one or more subject countries, they analyze whether they are precluded from cumulating such imports because the imports from one or more subject countries, assessed individually, are likely to have no discernible adverse impact on the domestic industry. See Steel Concrete Reinforcing Bar From Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine, Invs. Nos. 731-TA-873 to 875, 877 to 880, and 882 (Review), USITC Pub. 3933 (July 2007) (Separate and Dissenting Views of Chairman Daniel R. Pearson and Commissioner Deanna Tanner Okun Regarding Cumulation). Accord Nucor Corp. v. United States, 605 F. Supp.2d 1361, 1372 (Ct. Int’l Trade 2009); Nucor Corp. v. United States, 594 F. Supp.2d 1320, 1345-47 (Ct. Int’l Trade 2008), aff’d, Slip Op. 2009-1234 (Fed Cir. April 7, 2010).

<sup>43</sup> As explained below, Commissioners Lane and Pinkert apply a different analytical framework in determining whether other considerations justify declining to exercise their discretion to cumulate the subject imports.

<sup>44</sup> Coalition Comments at 11-15.

<sup>45</sup> 19 U.S.C. § 1675a(a)(7).

<sup>46</sup> SAA, H.R. Rep. No. 103-316, vol. I at 887 (1994).

<sup>47</sup> Original Chile Determination, USITC Pub. 3144 at 18-20; Original China/India/Indonesia Determinations, USITC Pub. 3159 at 13-15, 18-20; First Five-Year Review Determinations, USITC Pub. 3731 at 25, 30.

<sup>48</sup> Original Chile Determination, USITC Pub. 3144, Table IV-1.

<sup>49</sup> INV-V-089, Table VII-1 (Nov. 5, 1998) (EDIS Doc. 415595).

<sup>50</sup> CR/PR, Table I-2.

during the original period of investigation.<sup>51</sup> We find that the cessation of subject imports from Chile after 1998 was a result of the order. We further find that subject imports from Chile are likely to return to the U.S. market if the order is revoked in light of the importance of the U.S. market to the Chilean industry during the original period of investigation and the industry's apparent inability since imposition of the order to export to other markets quantities of subject goods comparable to those that previously had been exported to the United States. We consequently do not find that subject imports from Chile would likely have no discernible adverse impact on the domestic industry if the order is revoked.

*China.* In the original investigations, subject import volume from China declined from 75.6 million pounds in 1995 to 72.8 million pounds in 1996, and then to 71.1 million pounds in 1997, but was higher in interim 1998 than in interim 1997.<sup>52</sup> Subject import volume from China was 48.0 million pounds in 1998. Subject import volume from China then declined sharply to 320,000 pounds in 1999. Volume subsequently increased in the next five years, reaching 61.0 million pounds in 2004. Volume then declined in the next two years, before increasing to 78.8 million pounds in 2007 and 83.5 million pounds in 2008.<sup>53</sup> United Nations data indicate that between 1999 and 2007 exports of canned mushrooms from China more than doubled.<sup>54</sup> In light of the large quantities of subject imports from China currently in the U.S. market, the export orientation of the Chinese industry, the substitutability of subject imports and the domestic like product, and the importance of price in purchasing decisions, we do not find that subject imports from China would likely have no discernible adverse impact on the domestic industry if the order is revoked.

*India.* In the original investigations, the volume of subject imports from India declined from 6.0 million pounds in 1995 to 4.4 million pounds in 1996, increased to 9.9 million pounds in 1997, and was higher in interim 1998 than in interim 1997.<sup>55</sup> The volume of subject imports from India was 12.6 million pounds in 1998. In 1999, the volume of subject imports from India jumped to 32.0 million pounds. Imports from India peaked in 2000 at 34.4 million pounds, declined the next three years, rose to 33.7 million pounds in 2004, and then declined irregularly through the remainder of the period for which data have been collected. Subject import volume from India in 2008 was 20.6 million pounds.<sup>56</sup> Available data indicate that the Indian industry's exports of preserved mushrooms to all markets were greater in 2008 than for any other year since 1995 for which data are available.<sup>57</sup> These data indicate that for every year from 1995 to 2008 for which data are available, the United States has been India's \*\*\* export market.<sup>58</sup> In light of the appreciable quantities of subject imports from India currently in the U.S. market, the heavy reliance of Indian producers on the U.S. market, the substitutability of subject imports and the domestic like product, and the importance of price in purchasing decisions, we do not find that subject imports from India would likely have no discernible adverse impact on the domestic industry if the order is revoked.

*Indonesia.* During the original period of investigation, the volume of subject imports from Indonesia declined from 30.8 million pounds in 1995 to 26.9 million pounds in 1996, increased to 31.8 million pounds in 1997, and was lower in interim 1998 than in interim 1997.<sup>59</sup> The volume of subject imports from Indonesia was 26.7 million pounds in 1998. It increased in 1999 to 29.1 million pounds, and then declined through 2003, when it reached \*\*\* million pounds. Some of the declines were

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<sup>51</sup> CR at I-27, PR at I-22.

<sup>52</sup> Original China/India/Indonesia Determinations, USITC Pub. 3159, Table IV-1. These volumes include imports transshipped from Hong Kong.

<sup>53</sup> CR/PR, Table I-2.

<sup>54</sup> CR at I-28-29, PR at I-23-24.

<sup>55</sup> Original China/India/Indonesia Determinations, USITC Pub. 3159, Table IV-1.

<sup>56</sup> CR/PR, Table I-2.

<sup>57</sup> CR/PR, Table I-4.

<sup>58</sup> CR/PR, Table I-4.

<sup>59</sup> Original China/India/Indonesia Determinations, USITC Pub. 3159, Table IV-1.



attributable to the revocation of the order with respect to PT Zeta Agro in February 2002, after which time imports from that firm became nonsubject. The volume of subject imports from Indonesia has fluctuated between \*\*\* and \*\*\* pounds during the most recent five years for which data are available; volume in 2008 was \*\*\* pounds.<sup>60</sup> Available data indicate that Indonesian subject producers' exports of preserved mushrooms to all markets were greater in 2008 than for any other year since 1995 for which data are available.<sup>61</sup> These data indicate that for every year from 1995 to 2008 for which data are available, the United States has been Indonesia's \*\*\* export market.<sup>62</sup> In light of the appreciable quantities of subject imports from Indonesia currently in the U.S. market, the heavy reliance of Indonesian producers on the U.S. market, the substitutability of subject imports and the domestic like product, and the importance of price in purchasing decisions, we do not find that subject imports from Indonesia would likely have no discernible adverse impact on the domestic industry if the order is revoked.<sup>63</sup>

#### **D. Likelihood of a Reasonable Overlap of Competition**

The Commission generally has considered four factors intended to provide a framework for determining whether the imports compete with each other and with the domestic like product.<sup>64</sup> Only a "reasonable overlap" of competition is required.<sup>65</sup> In five-year reviews, the relevant inquiry is whether there likely would be competition even if none currently exists because the subject imports are absent from the U.S. market.<sup>66</sup> We observe that the record of these expedited reviews contains very little new information about either the subject industries or the characteristics of the subject imports that have been present in the U.S. market since the period examined in the first five-year reviews. Consequently, most of the information available is from the original investigations and the first five-year reviews.

*Fungibility.* In the original investigations, the Commission found that subject imports from all four subject countries were fungible with both the domestic like product and with each other. This finding relied on market participants' reports that preserved mushrooms from the various sources were interchangeable. It also relied on the fact that there were purchaser overlaps encompassing all subject country combinations except Chile-Indonesia and India-Indonesia.<sup>67</sup>

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<sup>60</sup> CR/PR, Table I-2.

<sup>61</sup> CR/PR, Table I-5.

<sup>62</sup> CR/PR, Table I-5.

<sup>63</sup> Commissioner Lane does not join the remainder of section III of the opinion. See her Separate Views.

<sup>64</sup> The four factors generally considered by the Commission in assessing whether imports compete with each other and with the domestic like product are as follows: (1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions; (2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product; (3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and (4) whether the imports are simultaneously present in the market. See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

<sup>65</sup> See Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int'l Trade 1996); Wieland Werke, 718 F. Supp. at 52 ("Completely overlapping markets are not required."); United States Steel Group v. United States, 873 F. Supp. 673, 685 (Ct. Int'l Trade 1994), aff'd, 96 F.3d 1352 (Fed. Cir. 1996). We note, however, that there have been investigations where the Commission has found an insufficient overlap in competition and has declined to cumulate subject imports. See, e.g., Live Cattle From Canada and Mexico, Inv. Nos. 701-TA-386 and 731-TA-812 to 813 (Prelim.), USITC Pub. 3155 at 15 (Feb. 1999), aff'd sub nom. Ranchers-Cattlemen Action Legal Foundation v. United States, 74 F. Supp. 2d 1353 (Ct. Int'l Trade 1999); Static Random Access Memory Semiconductors from the Republic of Korea and Taiwan, Inv. Nos. 731-TA-761 to 762 (Final), USITC Pub. 3098 at 13-15 (Apr. 1998).

<sup>66</sup> See generally Cheflin Corp. v. United States, 219 F. Supp. 2d 1313, 1314 (Ct. Int'l Trade 2002).

<sup>67</sup> Original Chile Determination, USITC Pub. 3144 at 11-12; Original China/India/Indonesia Determinations,

(continued...)

The most recent information available concerning fungibility is from the first five-year reviews, in which a majority of purchasers and U.S. producers reported that U.S.-produced preserved mushrooms were always interchangeable with imports from each of the subject countries. A majority of U.S. importers reported that U.S.-produced preserved mushrooms were always or frequently interchangeable with imports from each of the subject countries. For each possible subject country combination, a majority of each type of market participant reported that imports from different subject countries were always or frequently interchangeable.<sup>68</sup>

Purchasers were asked in the first five-year reviews to compare preserved mushrooms from different sources on 22 factors, three of which (pertaining to discounts offered, extension of credit, and lowest price) were price-related. There were no comparisons involving subject imports from Chile and no comparisons of Indian product with Indonesian product. In every other possible combination of the domestic like product and subject imports, or between imports from different subject countries, a majority or plurality of purchasers reported that the products were comparable in at least 16 of the 19 non-price factors.<sup>69</sup>

*Geographic Overlap.* In the original investigations, the Commission found that the domestic like product and imports from each subject country were sold nationwide.<sup>70</sup> The most recent information available concerning this factor is from the period examined during the first five-year reviews. During that period, six of seven responding U.S. producers and 11 of 18 responding importers reported selling their product nationwide.<sup>71</sup>

*Channels of Distribution.* As discussed above, in the original investigations the Commission found that channels of distribution did not overlap for subject imports from Chile and Indonesia, but did overlap for all other possible subject country combinations. The data provided in the confidential version of the Commission's views indicate that, during the original period of investigation, \*\*\* percent of subject imports from Chile were distributed to food service users, \*\*\* percent were distributed to industrial users, and \*\*\* percent were distributed to retail users.<sup>72</sup> By contrast, \*\*\* percent of subject imports from Indonesia were distributed in the retail channel of distribution, and the remaining \*\*\* percent entered the food service channel.<sup>73</sup>

The most recent empirical information concerning channels of distribution was collected during the first five-year reviews. During the period examined in those reviews, U.S. producers had a significant presence in all three channels of distribution. The annual percentage of U.S. producers' U.S. shipments to the industrial channel ranged from \*\*\* percent to \*\*\* percent, shipments to the food service channel ranged from \*\*\* percent to \*\*\* percent, and shipments to the retail channel ranged from \*\*\* percent to \*\*\* percent.<sup>74</sup>

Subject imports from Chile were not in the U.S. market during the period examined during the first reviews. The record from the first five-year reviews indicated that distribution patterns of subject imports from China and India varied substantially. There were particular years when imports from China had substantial distribution in the food service and retail channels and shipments to the industrial channel never amounted to more than \*\*\* percent in any year.<sup>75</sup> There were particular years when a \*\*\* of Indian shipments were in the food service or retail channels; by contrast, the largest annual percentage of

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<sup>67</sup>(...continued)

USITC Pub. 3159 at 7-8.

<sup>68</sup> INV-BB-123, Tables II-4-6 (Oct. 4, 2004) (EDIS Doc. 415599).

<sup>69</sup> INV-BB-123, Table II-3.

<sup>70</sup> Original Chile Determination, USITC Pub. 3144 at 12.

<sup>71</sup> INV-BB-123 at II-3.

<sup>72</sup> Original China/India/Indonesia Determinations, confidential opinion at 10 (EDIS Doc. 415597).

<sup>73</sup> Original China/India/Indonesia Determinations, USITC Pub. 3159 at 8.

<sup>74</sup> INV-BB-123, Table F-1.

<sup>75</sup> INV-BB-123, Table F-1.

shipments to industrial users was \*\*\* percent.<sup>76</sup> Subject imports from Indonesia were concentrated in the retail channel throughout the period examined during the first five-year reviews, with between \*\*\* and \*\*\* percent of shipments directed to this channel. \*\*\* shipments were to food service users.<sup>77</sup> Additionally, the record contained information concerning overlaps among purchasers of product produced domestically and product from China, India, and Indonesia.<sup>78</sup>

*Simultaneous Presence in Market.* Subject imports from Chile were present in the U.S. market throughout the original investigation but left the market in 1998 and have not returned since. Imports from each of the other three subject countries have been present in the U.S. market for each year between 1995 and 2008, and have been present in non-trivial quantities for each year since 2000.<sup>79</sup>

*Conclusion.* The record in these expedited reviews concerning likely reasonable overlap of competition differs from the record in the first five-year reviews in only minor respects. That the findings the Commission made in the first five-year reviews concerning likely fungibility and geographic overlap are also applicable in these five-year reviews is not in dispute. The updated data concerning simultaneous presence in the market indicate a continuation of the patterns observed in the first five-year reviews.

We do not find what the Coalition contends is new information concerning likely Chilean channels of distribution to be either new or significant. The Coalition appended to its response to the notice of institution a printout of an undated article indicating the “strong development” in Chile of the retail market for mushrooms.<sup>80</sup> That the Chilean subject producer is capable of selling preserved mushrooms in the retail sector is not a new development. During the first five-year reviews, the Coalition submitted evidence showing that the Chilean producer marketed preserved mushrooms in the retail sector in Mexico. In the determination, the Commission acknowledged this evidence indicating that the Chilean producer theoretically had the ability to enter the U.S. retail channel of distribution, but found that “there is no information indicating that \*\*\* has a U.S. retail distribution network in place, or can reasonably establish such a network in light of its current lack of participation in the U.S. market and historic lack of participation in the retail channel.”<sup>81</sup> The record here supports the same finding. Accordingly, we find that there is not a likely reasonable overlap of channels of distribution between subject imports from Chile and Indonesia, but that a likely overlap exists between all other subject imports and between imports from each subject country and the domestic like product.

Consequently, we find a likely reasonable overlap of competition between the domestic like product and imports from all subject countries, and between all subject imports except subject imports from Chile and subject imports from Indonesia, for which there is not a likely reasonable overlap in channels of distribution. We therefore find, for subject imports from Chile, that there is a likely reasonable overlap of competition with the domestic like product and subject imports from China and India; for subject imports from China and India, that there is a likely reasonable overlap of competition between the domestic like product and with imports from all subject countries; and for subject imports from Indonesia, that there is a likely reasonable overlap of competition with the domestic like product and with subject imports from China and India.

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<sup>76</sup> INV-BB-123, Table F-1.

<sup>77</sup> INV-BB-123, Table F-1.

<sup>78</sup> INV-BB-123, Table E-1.

<sup>79</sup> CR/PR, Table I-2.

<sup>80</sup> Coalition Response to Notice of Institution, ex. 4, third page. These materials do not directly specify whether the growth in Chilean retail mushroom sales concerns fresh mushrooms, preserved mushrooms, or both. They indicate that the Chilean producer markets both fresh and preserved mushrooms in Chile, and that 80 percent of Chilean production is sold in the fresh market. *Id.*

<sup>81</sup> First Five-Year Review Determinations, USITC Pub. 3731 at 16.

## E. Other Considerations<sup>82 83</sup>

In determining whether to exercise our discretion to cumulate the subject imports, we assess whether the subject imports from each group of subject countries for which we have found there is a likely reasonable overlap of competition are likely to compete under similar or different conditions in the U.S. market in the event of revocation.<sup>84</sup> The record in these expedited reviews contains very little current information about the industries in any of the four subject countries. Each of the subject countries has exported appreciable quantities of preserved mushrooms to all markets throughout the period of review.<sup>85</sup> Moreover, as we previously found, preserved mushrooms are a fungible product. Based on the limited information in the current record, we do not find any significant differences in likely conditions of competition among imports from any of the subject countries for which we have found a likely reasonable overlap of competition.

Accordingly, for our determination concerning subject imports from Chile, we cumulate subject imports from Chile, China, and India. For our determinations on subject imports from China and India, we cumulate imports from all four subject countries. For our determination on subject imports from Indonesia, we cumulate subject imports from China, India, and Indonesia.

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<sup>82</sup> Vice Chairman Pearson and Commissioner Okun do not join this section of the opinion. See their separate views.

<sup>83</sup> Commissioner Pinkert explains his analysis of other considerations as follows. Where, in a five-year review, he does not find that the subject imports would be likely to have no discernible adverse impact on the domestic industry if the orders were revoked, and finds that such imports would be likely to compete with each other and with the domestic like product in the U.S. market, he cumulates such imports unless there is a condition or propensity – not merely a trend – that is likely to persist for a reasonably foreseeable time and that significantly limits competition such that cumulation is not warranted. Based on the record in these reviews, and parallel to the discussion in the text, he finds that there is no such condition or propensity with respect to the subject imports.

Consequently, for his determination concerning subject imports from Chile, he cumulates subject imports from Chile, China, and India. For his determinations on subject imports from China and India, he cumulates imports from all four subject countries. For his determination on subject imports from Indonesia, he cumulates subject imports from China, India and Indonesia.

<sup>84</sup> See, e.g., Nucor Corp. v. United States, \_\_\_ F.3d \_\_\_, App. No. 2009-1234, Slip Op. at 7-8 (Fed. Cir. Apr. 7, 2010) (Commission may reasonably consider likely differing conditions of competition in deciding whether to cumulate subject imports in five-year reviews); Allegheny Ludlum Corp., 475 F. Supp. 2d at 1378 (recognizing the wide latitude the Commission has in selecting the type of factors it considers relevant in deciding whether to exercise discretion to cumulate subject imports in five-year reviews); Nucor Corp., 569 F. Supp. 2d at 1337-38.

<sup>85</sup> CR/PR, Figures I-1, I-2, Tables I-4, I-5.

#### IV. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF MATERIAL INJURY IF THE ANTIDUMPING DUTY ORDERS ARE REVOKED

##### A. Legal Standards

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping or countervailing duty order unless (1) it makes a determination that dumping or subsidization is likely to continue or recur and (2) the Commission makes a determination that revocation of the antidumping or countervailing duty order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”<sup>86</sup> The SAA states that “under the likelihood standard, the Commission will engage in a counterfactual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation or termination of a proceeding and the elimination of its restraining effects on volumes and prices of imports.”<sup>87</sup> Thus, the likelihood standard is prospective in nature.<sup>88</sup> The U.S. Court of International Trade has found that “likely,” as used in the five-year review provisions of the Act, means “probable,” and the Commission applies that standard in five-year reviews.<sup>89 90 91</sup>

The statute states that “the Commission shall consider that the effects of revocation or termination may not be imminent, but may manifest themselves only over a longer period of time.”<sup>92</sup> According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ timeframe applicable in a threat of injury analysis in original investigations.”<sup>93</sup>

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<sup>86</sup> 19 U.S.C. § 1675a(a).

<sup>87</sup> SAA at 883-84. The SAA states that “{t}he likelihood of injury standard applies regardless of the nature of the Commission’s original determination (material injury, threat of material injury, or material retardation of an industry). Likewise, the standard applies to suspended investigations that were never completed.” *Id.* at 883.

<sup>88</sup> While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued {sic} prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

<sup>89</sup> See NMB Singapore Ltd. v. United States, 288 F. Supp. 2d 1306, 1352 (Ct. Int’l Trade 2003) (“‘likely’ means probable within the context of 19 U.S.C. § 1675(c) and 19 U.S.C. § 1675a(a)”), *aff’d mem.*, 140 Fed. Appx. 268 (Fed. Cir. 2005); Nippon Steel Corp. v. United States, 26 CIT 1416, 1419 (2002) (same); Usinor Industeel, S.A. v. United States, 26 CIT 1402, 1404 nn.3, 6 (2002) (“more likely than not” standard is “consistent with the court’s opinion”; “the court has not interpreted ‘likely’ to imply any particular degree of ‘certainty’”); Indorama Chemicals (Thailand) Ltd. v. United States, Slip Op. 02-105 at 20 (Ct. Int’l Trade Sept. 4, 2002) (“standard is based on a likelihood of continuation or recurrence of injury, not a certainty”); Usinor v. United States, 26 CIT 767, 794 (2002) (“‘likely’ is tantamount to ‘probable,’ not merely ‘possible’”).

<sup>90</sup> For a complete statement of Commissioner Okun’s interpretation of the likely standard, see Additional Views of Vice Chairman Deanna Tanner Okun Concerning the “Likely” Standard in Certain Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Argentina, Brazil, Germany, and Italy, Invs. Nos. 701-TA-362 (Review) and 731-TA-707 to 710 (Review)(Remand), USITC Pub. 3754 (Feb. 2005).

<sup>91</sup> Commissioner Lane notes that, consistent with her views in Pressure Sensitive Plastic Tape From Italy, Inv. No. AA1921-167 (Second Review), USITC Pub. 3698 (June 2004), she does not concur with the U.S. Court of International Trade’s interpretation of “likely,” but she will apply the Court’s standard in these reviews and all subsequent reviews until either Congress clarifies the meaning or the U.S. Court of Appeals for the Federal Circuit addresses this issue.

<sup>92</sup> 19 U.S.C. § 1675a(a)(5).

<sup>93</sup> SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts),  
(continued...)

Although the standard in a five-year review is not the same as the standard applied in an original antidumping duty investigation, it contains some of the same fundamental elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the orders are revoked or the suspended investigation is terminated.”<sup>94</sup> It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order or the suspension agreement under review, whether the industry is vulnerable to material injury if the orders are revoked or the suspension agreement is terminated, and any findings by Commerce regarding duty absorption pursuant to 19 U.S.C. § 1675(a)(4).<sup>95</sup> The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission’s determination.<sup>96</sup>

In evaluating the likely volume of imports of subject merchandise if the orders under review are revoked, the Commission is directed to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.<sup>97</sup> In doing so, the Commission must consider “all relevant economic factors,” including the following four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.<sup>98</sup>

In evaluating the likely price effects of subject imports if the orders under review are revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared to the domestic like product and whether the subject imports are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of the domestic like product.<sup>99</sup>

In evaluating the likely impact of imports of subject merchandise if the orders under review are revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to the following: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and

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<sup>93</sup>(...continued)

and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” Id.

<sup>94</sup> 19 U.S.C. § 1675a(a)(1).

<sup>95</sup> 19 U.S.C. § 1675a(a)(1). Commerce found duty absorption in its fourth administrative review of the antidumping duty order on subject imports from China. 69 Fed. Reg. 54635, 54637 (Sept. 9, 2004). Commerce has not made duty absorption findings with respect to the antidumping duty orders on subject imports from Chile or Indonesia. Commerce rescinded a duty absorption finding that it made concerning the antidumping duty order on subject imports from India pursuant to an order of the Federal Circuit. See Issues and Decision Memorandum from John M. Andersen to Ronald K. Lorentzen on Expedited Second Sunset Reviews (Dec. 14, 2009).

<sup>96</sup> 19 U.S.C. § 1675a(a)(5). Although the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

<sup>97</sup> 19 U.S.C. § 1675a(a)(2).

<sup>98</sup> 19 U.S.C. § 1675a(a)(2)(A-D).

<sup>99</sup> See 19 U.S.C. § 1675a(a)(3). The SAA states that “[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices.” SAA at 886.

production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.<sup>100</sup> All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry. As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the orders at issue and whether the industry is vulnerable to material injury if the orders were revoked.<sup>101</sup>

No respondent interested party participated in these reviews or provided information. Accordingly, when appropriate in these reviews, we have relied on the facts otherwise available, which consist of information from the original investigation and the first five-year reviews, as well as information submitted in these reviews, including information provided by the Coalition on behalf of the domestic industry, and information available from published sources.<sup>102 103</sup>

## **B. Conditions of Competition and Business Cycle**

In evaluating the likely impact of the subject imports on the domestic industry, the statute directs the Commission to consider all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>104</sup>

### **1. The Commission’s Original Determinations and Prior Reviews**

In the original investigations, the Commission identified two pertinent conditions of competition. The first condition was that apparent U.S. consumption of mushrooms had declined during the original period of investigation. Several witnesses attributed this decline to consumers switching from preserved mushrooms to fresh mushrooms, for which demand increased during the original period of

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<sup>100</sup> 19 U.S.C. § 1675a(a)(4).

<sup>101</sup> The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission “considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” SAA at 885.

<sup>102</sup> 19 U.S.C. § 1677e(a) authorizes the Commission to “use the facts otherwise available” in reaching a determination when (1) necessary information is not available on the record or (2) an interested party or any other person withholds information requested by the agency, fails to provide such information in the time or in the form or manner requested, significantly impedes a proceeding, or provides information that cannot be verified pursuant to 19 U.S.C. § 1677m(i). The verification requirements in 19 U.S.C. § 1677m(i) are applicable only to Commerce. See Titanium Metals Corp. v. United States, 155 F. Supp. 2d 750, 765 (Ct. Int’l Trade 2002) (“the ITC correctly responds that Congress has not required the Commission to conduct verification procedures for the evidence before it, or provided a minimum standard by which to measure the thoroughness of Commission investigations.”).

<sup>103</sup> Commissioner Okun notes that the statute authorizes the Commission to take adverse inferences in five-year reviews, but such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination. See 19 U.S.C. § 1677e. She generally gives credence to the facts supplied by the participating parties and certified by them as true, but bases her decision on the evidence as a whole, and does not automatically accept participating parties’ suggested interpretations of the record evidence. Regardless of the level of participation, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. “In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive.” SAA at 869.

<sup>104</sup> 19 U.S.C. § 1675a(a)(4).

investigation.<sup>105</sup> The second condition was the presence of three major types of purchasers in the marketplace – retail, food service, and industrial – each of which was associated with a different channel of distribution.<sup>106</sup>

In the first reviews, the Commission found that apparent U.S. consumption for the 1998-2003 period of review fluctuated; neither the data nor the reports of industry participants indicated that there was the type of steady decline in demand observed during the original period of investigation. The Commission observed that the types of purchasers and channels of distribution were unchanged from the original period of investigation. There had been several changes in the composition of the domestic industry, with the number of U.S. producers having declined since the original period of investigation. Imports not subject to the orders increased sharply after the orders were imposed and subsequently declined.<sup>107</sup>

## 2. The Current Reviews

*Demand Conditions.* Based on information the Coalition provided on the domestic industry's U.S. shipments and official import data, apparent U.S. consumption of preserved mushrooms in 2008 was 179.0 million pounds. This figure is below the most recent previous figure available, which is for 2003, and is also below the annual levels of apparent U.S. consumption reported during four of the six years of the 1998-2003 period examined in the first reviews. During the period examined during the first reviews, apparent U.S. consumption ranged between 173.2 and 198.7 million pounds. The 2008 apparent U.S. consumption figure is well below the apparent U.S. consumption levels reported between 1995 and 1997 during the original period of investigation, which ranged from 204.5 million pounds to 240.1 million pounds.<sup>108</sup> The Coalition characterizes preserved mushrooms as a "mature" product.<sup>109</sup> The record does not contain any information suggesting that the types of purchasers or channels of distribution have changed since the prior proceedings.

*Supply Conditions.* The Coalition states that there have been no major structural changes to the domestic industry since the time of the first reviews.<sup>110</sup> The capacity of the domestic industry has declined since the time of the first reviews. The Coalition reports the domestic industry had capacity of 176.8 million pounds in 2008.<sup>111</sup> This is lower than the 200.0 million pounds of domestic industry capacity reported in 2003, which was the lowest capacity level reported during the period examined in the first reviews.<sup>112</sup>

The domestic industry supplied 19.7 percent of apparent U.S. consumption of preserved mushrooms in 2008. By contrast, the four subject countries were the largest suppliers to the domestic

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<sup>105</sup> Original Chile Determination, USITC Pub. 3144 at 16; Original China/India/Indonesia Determinations, USITC Pub. 3159 at 11.

<sup>106</sup> Original Chile Determination, USITC Pub. 3144 at 16-17; Original China/India/Indonesia Determinations, USITC Pub. 3159 at 11.

<sup>107</sup> First Five-Year Review Determinations, USITC Pub. 3731 at 22.

<sup>108</sup> CR/PR, Table I-3.

<sup>109</sup> Coalition Response to Notice of Institution at 26.

<sup>110</sup> Coalition Response to Notice of Institution at 24.

<sup>111</sup> Coalition Response to Notice of Institution at 21. This figure is based on actual data from the four coalition members and \*\*\*. See id. at 18-19, 21 n.9.

<sup>112</sup> CR/PR, Table I-1.



market, supplying in the aggregate \*\*\* percent of apparent U.S. consumption in 2008.<sup>113</sup> Sources not subject to antidumping duties supplied the remaining \*\*\* percent of apparent U.S. consumption.<sup>114</sup>

*Substitutability.* In both the original investigations and the first five-year reviews, the Commission found that the subject imports, regardless of source, were at least moderate substitutes for the domestic like product.<sup>115</sup> Nothing in the current record indicates that this finding is no longer applicable.<sup>116</sup>

### C. Likely Volume of Subject Imports

#### 1. The Commission's Original Determinations and Prior Reviews

In the original investigations, the quantity of cumulated subject imports rose slightly from 1995 to 1997 for purposes of the Indonesia determination and declined for purposes of the other determinations. For all determinations, the quantity of cumulated subject imports was higher in interim 1998 than in interim 1997. Additionally, for all determinations, the market penetration of cumulated subject imports rose from 1995 to 1997 and was higher in interim 1998 than in interim 1997. The Commission found that, in light of their market penetration levels, both the volume and increase in market penetration of cumulated subject imports were significant.<sup>117</sup>

In its determinations in the first five-year reviews concerning cumulated subject imports from Chile, China, and India, the Commission found that cumulated subject import volume declined sharply in 1999 after imposition of the orders, rose the next two years, declined in 2002, and rose sharply in 2003.<sup>118</sup> It found that the increases in cumulated subject imports observed during the period of review, as well as other information in the record, indicated that the subject producers had the capability to increase subject imports to the United States. It found that unused capacity in Chile had remained at least at the quantity observed during the original investigations, and that total capacity increased in China and India during the period of review.<sup>119</sup>

The Commission stated that several factors supported a conclusion that subject producers in Chile, China, and India would likely utilize their increased or unused capacity to direct significant quantities of additional exports to the United States upon revocation of the orders. These factors were: (1) the export orientation of the subject producers, (2) the attractiveness of the U.S. market to the subject producers, and (3) barriers to exportation in third-country export markets.<sup>120</sup>

In its determination on subject imports from Indonesia, the Commission found that subject import volume fluctuated within a fairly narrow range from 1998 to 2001. Subject import volume from

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<sup>113</sup> CR/PR, Table I-3. This figure is also applicable to China, India, and Indonesia combined. For Chile, China, and India combined, the applicable figure is 58.2 percent. *Id.*

<sup>114</sup> CR/PR, Table I-3. This figure includes imports from Indonesian producer PT Zeta Agro, which is no longer subject to the antidumping duty order.

<sup>115</sup> Original Chile Determination, USITC Pub. 3144 at 18-20; Original China/India/Indonesia Determinations, USITC Pub. 3159 at 13-15, 18-20; First Five-Year Review Determinations, USITC Pub. 3731 at 25, 30.

<sup>116</sup> Vice Chairman Pearson and Commissioner Okun join the remainder of this opinion only insofar as it addresses the antidumping duty orders on subject imports from Chile, China, and India. Their determinations on the antidumping duty order on subject imports from Indonesia are found in their separate opinions.

<sup>117</sup> Original Chile Determination, USITC Pub. 3144 at 17; Original China/India/Indonesia Determinations, USITC Pub. 3159 at 12-13, 17-18. 1997 cumulated subject import penetration was 44.1 percent for the Chile determination, 57.8 percent for the China and India determinations, and 55.2 percent for the Indonesia determination.

<sup>118</sup> First Five-Year Review Determinations, USITC Pub. 3731 at 23.

<sup>119</sup> First Five-Year Review Determinations, USITC Pub. 3731 at 23-24.

<sup>120</sup> First Five-Year Review Determinations, USITC Pub. 3731 at 24.

Indonesia declined appreciably in 2002 and 2003 due to the revocation of the order with respect to Indonesian producer PT Zeta Agro.<sup>121</sup>

The subject Indonesian producers projected that their capacity would increase after 2003, and specifically projected increases in exports to the United States in 2004 and 2005. The Commission found that these projections were overly conservative, and concluded that “the overwhelming percentage of additional production is likely to be directed to increasing exports to the United States.”<sup>122</sup> In light of this conclusion, the Commission found that subject import volume from Indonesia would likely increase substantially over current levels.<sup>123</sup>

## 2. The Current Reviews

For each of the three cumulation combinations we are considering, the quantity of subject imports has increased since the period examined during the first five-year reviews. Additionally, for each cumulation combination, subject import quantity peaked in 2007, was greater that year than for any year since 1997, and was at or near the peak level for the entire period for which data are available. Subject import quantity in 2008 for each cumulation combination was only \*\*\* below the 2007 quantities, and was also above the quantity for every other year since 1997.<sup>124</sup>

Because the only year during the period of review for which the record contains U.S. shipment data is 2008, this is also the sole year during the period for which we can compute subject imports’ share of the quantity of apparent U.S. consumption. This share is \*\*\* percent for both cumulated imports from all subject countries and cumulated imports for China, India, and Indonesia, and 58.1 percent for cumulated imports from Chile, China, and India. Each of these figures is higher than the comparable figure for any year since 1995 for which we have available data.<sup>125</sup>

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<sup>121</sup> First Five-Year Review Determinations, USITC Pub. 3731 at 28.

<sup>122</sup> First Five-Year Review Determinations, USITC Pub. 3731 at 29.

<sup>123</sup> First Five-Year Review Determinations, USITC Pub. 3731 at 28-29.

<sup>124</sup> For subject imports from Chile, China, and India, which the Commission is cumulating for purposes of its determinations on subject imports from Chile and which Vice Chairman Pearson and Commissioner Okun are cumulating for purposes of their determinations on imports from each of those three subject countries, cumulated subject import quantities rose in 2004, declined the next two years, peaked at 106.3 million pounds in 2007, and declined slightly to 104.1 million pounds in 2008. Both the 2007 and 2008 figures exceeded the prior peak of 94.7 million pounds of cumulated subject imports from Chile, China, and India, which was reached in 2004. By contrast, the peak quantity of cumulated subject imports from Chile, China, and India in the period examined during the first five-year reviews was 75.1 million pounds, reached in 2003, and the peak quantity during the original period of investigation was 83.5 million pounds, reached in 1995. CR/PR, Table I-2.

For all four subject countries, which the Commission is cumulating for purposes of its determinations on subject imports for China and India and which Commissioner Lane is cumulating for purposes of each of her determinations, cumulated subject import quantities rose in 2004, declined the next two years, peaked at \*\*\* pounds in 2007, and declined to \*\*\* pounds in 2008. The 2008 figure exceeded the peak 93.8 million pounds of cumulated subject imports from Chile, China, India, and Indonesia observed during the first reviews, and matched or exceeded the quantities of cumulated subject imports from these countries reported during two of the three full years of the original period of investigation. (The peak quantity for the original period of investigation, 123.0 million pounds, occurred in 1995.) CR/PR, Table I-2.

For subject imports from China, India, and Indonesia, which the Commission is cumulating for purpose of its determination on subject imports from Indonesia, cumulated subject import quantities rose in 2004, declined the next two years, peaked at \*\*\* pounds in 2007, and declined to \*\*\* pounds in 2008. The 2007 and 2008 volumes, as well as the 2004 volume of \*\*\* pounds, exceeded the prior peak of 108.9 million pounds of cumulated subject imports from China, India, and Indonesia, which occurred in 1997. CR/PR, Table I-2.

<sup>125</sup> CR/PR, Table I-3.

For each cumulation combination we are considering, we find that cumulated subject import volume, which is already significant both in absolute terms and relative to U.S. consumption, will likely increase further upon revocation. We observe in this respect that the facts available indicate that the industry in each subject country is export oriented. The record indicates that each subject country exported appreciable quantities of preserved mushrooms worldwide during the period of review.<sup>126</sup> The historic data available in the record further indicate that the industries in each country have consistently exported the \*\*\* majority of their production.<sup>127</sup>

Additionally, the information available indicates that each subject country has the ability to direct significant additional quantities of subject merchandise to the United States. Even during the period examined during the original investigations, the industry in Chile had \*\*\* excess capacity.<sup>128</sup> Chilean exports of canned mushrooms to all markets plummeted severely after imposition of the order, indicating that the Chilean industry was unable to direct to other markets exports previously shipped to the United States. While export levels have subsequently fluctuated, they have never reached pre-order levels.<sup>129</sup> This fact, in conjunction with the Chilean industry's export orientation during the original period of investigation, indicates that the Chilean industry maintains \*\*\* excess capacity. Moreover, Chilean exports to individual markets have varied dramatically on an annual basis,<sup>130</sup> which indicates that the Chilean industry would have the ability to shift exports readily from its other export markets to the United States upon revocation.

The industry in China has in fact directed substantial additional exports to the United States since 2006.<sup>131</sup> The record contains no indication that the Chinese industry will be unable to continue this pattern of increased exports in the reasonably foreseeable future. To the contrary, the large increase in Chinese exports of canned mushrooms to all markets since 2004 suggests that the Chinese industry has increased its capacity.<sup>132</sup> Additionally, Chinese export data in the record covering the period of review indicate that China exports substantial quantities of canned mushrooms to other markets; these shipments could be directed to the United States upon revocation.<sup>133</sup>

The most recent information available concerning the capacity of the Indian industry, which is from the period examined in the first reviews, indicates that the industry's capacity \*\*\*. Moreover, throughout that period the amount of unused capacity, in relation to exports to the United States, was significant.<sup>134</sup> The record in these expedited reviews does not contain any information indicating that the industry in India does not continue to have significant unused capacity that could be used to increase exports to the United States. Additionally, the most recent export information available, which is from 2008, indicates that the Indian industry exports appreciable quantities of subject merchandise to other markets; these shipments could be directed to the United States upon revocation.<sup>135</sup>

The information available concerning the industry in Indonesia indicates that its exports to other markets in 2008 were \*\*\* larger than they were during the original period of investigation or the period examined during the first review.<sup>136</sup> This indicates that the industry in Indonesia has the ability to direct substantial additional exports to the United States upon revocation.

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<sup>126</sup> CR/PR, Figures I-1, I-2, Tables I-4, I-5.

<sup>127</sup> CR/PR, Tables I-4 (India), I-5 (Indonesia); INV-V-089 at Tables VII-1 (Chile), VII-2 (China) (Nov. 5, 1999) (EDIS Doc. 415595).

<sup>128</sup> INV-V-089, Table VII-1.

<sup>129</sup> CR/PR, Figure I-1.

<sup>130</sup> Coalition Response to Notice of Institution, ex. 2.

<sup>131</sup> CR/PR, Table I-2.

<sup>132</sup> CR/PR, Figure I-2.

<sup>133</sup> Coalition Response to Notice of Institution, ex. 2.

<sup>134</sup> CR/PR, Table I-4.

<sup>135</sup> CR/PR, Table I-4.

<sup>136</sup> CR/PR, Table I-5. Vice Chairman Pearson and Commissioner Okun do not join this paragraph.

Consequently, for each cumulation combination under consideration, the facts available support a finding that the subject industries have the ability to direct significant additional exports to the United States upon revocation. Several considerations lead us to conclude that the subject producers are likely to exploit their ability to direct significant additional exports to the United States. First, the industries in the subject countries already engaged in such behavior during the period of review even with the orders in place. As previously stated, during the two most recent years of the period of review, for each cumulation combination under consideration, the quantity of subject imports increased to levels at or near historic peaks dating back to the time of the original period of investigation, notwithstanding that current U.S. demand has declined substantially since the original period of investigation and has been no better than stagnant since the time of the first reviews.

Further indication that the subject producers perceive the United States to be an attractive export market, and thus a likely destination for additional exports upon revocation, is provided by data indicating that during the period of review the United States has been the largest export market for the industries in China, India, and Indonesia.<sup>137</sup> Additionally, imports from the subject countries are subject to barriers to importation in other export markets. Preserved mushrooms from China have been subject to antidumping duties imposed by Australia and Mexico since 2006. Preserved mushrooms from Chile have been subject to antidumping duties imposed by Mexico since 2006. Further, since 2006 preserved mushrooms from Chile, China, India, and Indonesia have been subject to a tariff-rate quota in the European Union.<sup>138</sup>

In light of the foregoing considerations, we conclude that upon revocation, the likely subject import volume will be significant for each cumulation combination under consideration.<sup>139</sup>

#### **D. Likely Price Effects of Subject Imports**

##### **1. The Commission's Original Determinations and Prior Reviews**

In the original investigations, the Commission found that price was an important factor in purchasing decisions and that the subject imports (regardless of the sources being cumulated) were at least moderate substitutes with the domestic like product. It found there to be significant underselling by the subject imports, although the incidence of underselling varied depending on the sources being cumulated. It also noted that prices declined during the period of investigation, with the price declines being particularly noteworthy for the 68-ounce stems and pieces pricing product on which the Commission particularly focused in its pricing analysis. The Commission found that prices declined at a greater rate than cost of goods sold, and concluded that the subject imports had significant price-depressing effects.<sup>140</sup>

In the first five-year reviews, the Commission found that price continued to be an important factor in purchasing decisions. It further found that the subject imports, regardless of source, were at least moderate substitutes for the domestic like product.<sup>141</sup>

In the determinations concerning subject imports from Chile, China, and India, the Commission found that the cumulated subject imports undersold the domestic like product in over 65 percent of quarterly comparisons, even with the orders in place. It also found there to be a connection between the increasing presence of cumulated subject imports in the market after 2000 and price declines for the

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<sup>137</sup> See CR/PR, Tables I-4, I-5; Coalition Response to Notice of Institution, ex. 2.

<sup>138</sup> CR at I-36, PR at I-29.

<sup>139</sup> In the first reviews, the Commission did not rely on information concerning inventories or product shifting in its analysis of likely cumulated subject import volume. First Five-Year Review Determinations, USITC Pub. 3731 at 25 n.142. The record in these reviews does not contain any updated information concerning these factors.

<sup>140</sup> Original Chile Determination, USITC Pub. 3144 at 18-20; Original China/India/Indonesia Determinations, USITC Pub. 3159 at 13-15, 18-20.

<sup>141</sup> First Five-Year Review Determinations, USITC Pub. 3731 at 25, 30.

domestic like product. The Commission concluded that, in light of the likely stable U.S. demand for preserved mushrooms, the increased cumulated subject imports likely upon revocation would force the domestic industry either to cut prices or lose market share; moreover, a continued increase in subject imports would likely contribute materially to a continuation of the price declines for the domestic like product observed during both the original investigation and the period of review. It therefore concluded that revocation would likely cause significant price depression.<sup>142</sup>

In the review determination concerning subject imports from Indonesia, the Commission found that during the period of review subject imports from Indonesia undersold the domestic like product in 36 of the 72 quarterly comparisons that met its standards of reliability and comparability.<sup>143</sup> It observed that the frequency of underselling by subject imports from Indonesia was higher during the period of review than during the original period of investigation, found that revocation of the order would likely cause the frequency of underselling to increase further, and thus concluded that underselling would likely be significant upon revocation. It also found that revocation would likely cause significant price depression, using the same reasoning as it did for its similar finding concerning the cumulated subject imports.<sup>144</sup>

## 2. The Current Reviews

As previously discussed, the Commission found in both the original investigations and the first five-year reviews that price is an important consideration in purchasing decisions and that the subject imports, regardless of source, are at least moderate substitutes for the domestic like product. The record in these expedited reviews contains no information that would lead us to question these findings or conclude that they are no longer applicable.

Because no pricing data were collected during these expedited reviews, the pricing data available are from the original investigations and the first five-year reviews. During the original investigations, the Commission found underselling by the subject imports significant for all cumulation combinations. There was underselling in 54 percent of comparisons for cumulated subject imports from Chile, China, and India.<sup>145</sup> There was an equal number of observations of overselling and underselling for cumulated subject imports from all four subject countries, and underselling in 52 percent of comparisons for cumulated subject imports from China, India, and Indonesia.<sup>146</sup> The incidence of underselling was even greater during the period examined during the first reviews despite the orders. For the cumulation combinations under consideration here, rates ranged from 60 percent to over 65 percent.<sup>147</sup> In light of this consistent history of significant underselling during the period for which pricing data are available, we find that significant underselling will likely occur upon revocation for all cumulation combinations under consideration.

This likely underselling, combined with the likely increased volumes of cumulated subject imports, will result in the likelihood of the cumulated subject imports continuing to take market share away from the domestic industry, as happened during the original investigations, the latter portion of the period examined during the first reviews, and the period between 2003 and 2008, the one year during the

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<sup>142</sup> First Five-Year Review Determinations, USITC Pub. 3731 at 26.

<sup>143</sup> First Five-Year Review Determinations, USITC Pub. 3731 at 30-31. The Commission did not use for its underselling analysis certain pricing data submitted by importer General Mills.

<sup>144</sup> First-Five Year Review Determinations, USITC Pub. 3731 at 31-32.

<sup>145</sup> Original Chile Determination, USITC Pub. 3144 at 20.

<sup>146</sup> Original China/India/Indonesia Determinations, USITC Pub. 3159 at 14, 19.

<sup>147</sup> There was underselling in over 65 percent of comparisons for cumulated subject imports from Chile, China, and India. First Five-Year Review Determinations, USITC Pub. 3731 at 26. For cumulated subject imports from all four subject countries, and for cumulated subject imports from China, India, and Indonesia, there was underselling in 60 percent of comparisons. See Confidential First Five-Year Review Determinations at 38, 47 (EDIS Doc. 415602).

current period of review for which apparent U.S. consumption data are available.<sup>148</sup> Moreover, in light of the importance of price in purchasing decisions, and the fact that the subject imports are at least moderate substitutes with the domestic like product, the subject imports are likely to have significant price-depressing or -suppressing effects.<sup>149</sup>

We accordingly determine, for each cumulation combination under consideration, that the cumulated subject imports will likely have significant adverse price effects.

## **E. Likely Impact of Subject Imports<sup>150</sup>**

### **1. The Commission's Original Determinations and Prior Reviews**

In the original investigations, the Commission found that the cumulated subject imports gained market share at the expense of the domestic industry. There were declines in the domestic industry's production, shipments, capacity utilization, and employment. The combination of declining output and falling prices led to deterioration in the domestic industry's operating performance. Operating margins declined throughout the period of investigation. During 1997, the operating margin had declined to 1.3 percent and at least half of the domestic producers sustained operating losses.<sup>151</sup>

In the first five-year reviews, the Commission found that the domestic industry showed some modest improvements in several indicators of performance immediately after imposition of the orders in 1999. However, after 2000, the industry's condition deteriorated; the industry experienced operating losses during 2001, 2002, and 2003. The Commission found the domestic industry to be in a vulnerable condition.<sup>152</sup>

In both the determination concerning cumulated subject imports from Chile, China, and India, and the determination concerning subject imports from Indonesia, the Commission found that subject import volume would likely increase after revocation, the subject imports would likely undersell the

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<sup>148</sup> CR/PR, Table I-3.

<sup>149</sup> Indeed, during the prior proceedings, for which current pricing data series were available, increasing volumes of subject imports correlated with declining prices for the domestic like product for every cumulation combination examined. Original Chile Determination, USITC Pub. 3144 at 20; Original China/India/Indonesia Determinations, USITC Pub. 3159 at 14, 19; First Five-Year Review Determinations, USITC Pub. 3731 at 36.

<sup>150</sup> The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission "considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." SAA at 885, 19 U.S.C. § 1675a(a)(4).

Section 752(a)(6) of the Act states that "the Commission may consider the magnitude of the margin of dumping or the magnitude of the net countervailable subsidy" in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the Commission in five-year reviews as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). See also SAA at 887. Commerce conducted expedited second five-year reviews with respect to each of the orders under review. With respect to Chile, it found a likely margin of 148.51 percent for both named exporter Nature's Farm Products (Chile) S.A. and all others. With respect to China, Commerce found likely margins ranging from 121.47 percent to 162.47 percent for 12 named exporters and a China-wide rate of 198.63 percent. With respect to India, it found likely margins ranging from 6.28 percent to 243.87 percent for four named respondents and an 11.30 percent all-others rate. With respect to Indonesia, the order has been revoked with respect to PT Zeta Agro Corp., there is a likely margin of 7.94 percent for named exporter PT Dieng Djaya/PT Surya Jaya Abadi Perkasa, and the all others rate is 11.26 percent. 79 Fed. Reg. at 67171.

<sup>151</sup> Original Chile Determination, USITC Pub. 3144 at 21-24; Original China/India/Indonesia Determinations, USITC Pub. 3159 at 15-17, 20-22.

<sup>152</sup> First Five-Year Review Determinations, USITC Pub. 3731 at 27.

domestic like product, and that the likely volume and price effects of the subject imports would likely exacerbate the declines in industry performance observed during the latter portion of the period of review.<sup>153</sup>

## 2. The Current Reviews

The record in these expedited reviews contains limited data concerning the condition of the domestic industry in 2008. These data indicate further deterioration in several indicators since the period examined in the first reviews. The industry's capacity and production were lower in 2008 than during any prior year from 1995 for which data are available. The declines in production are particularly dramatic. Domestic industry production in 2008 was 44.7 million pounds, as compared to a range between 50.2 million pounds and 68.9 million pounds during the period examined during the first reviews, and a range between 74.7 million pounds and 107.7 million pounds during the original period of investigation.<sup>154</sup> The domestic industry's capacity utilization during 2008 was 25.3 percent.<sup>155</sup>

The quantity and value of the domestic industry's U.S. shipments were each lower in 2008 than for any prior year for which data are available. The domestic industry had 35.2 million pounds in shipments in 2008, with a value of \$51.9 million. The lowest previous levels for these indicators, which were set in 2003, were respectively 47.7 million pounds and \$55.7 million.<sup>156</sup>

The domestic industry's share of the quantity of apparent U.S. consumption was also lower in 2008 than for any previous year for which data are available. This share was 19.7 percent in 2008. By contrast, it ranged between 25.4 percent and 40.7 percent during the period examined during the first reviews, and between 36.5 percent and 42.2 percent during the original period of investigation.<sup>157</sup>

Notwithstanding these negative indicators, the industry reported profitable operations during 2008.<sup>158</sup> While several indicators for which we have current data support the view that the domestic industry's condition has deteriorated further since the time of the first reviews, we cannot conclude that the domestic industry is in a vulnerable condition in light of the limited data available in these expedited reviews.

We do find that the additional volumes of subject imports that are likely, at prices that will likely undersell those for the domestic like product, will likely cause further declines in the domestic industry's production, shipments, sales revenues, and market share. The likely declines in shipments and output will in turn likely lead to declines in employment. Additional quantities of low-priced subject imports are also likely to lead to a deterioration in the financial performance of the domestic industry, as they did during the original investigations and first five-year reviews. We consequently find, for all cumulation combinations under consideration, that the cumulated subject imports are likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

In conducting our analysis of likely impact, we have also considered the likely effect of factors other than the cumulated subject imports on the domestic industry. With respect to recent and likely changes in demand, apparent U.S. consumption of preserved mushrooms during 2008, the sole year during the period of review for which such data are available, was within the range observed for the period examined during the first reviews.<sup>159</sup> The record contains no empirical information indicating that the type of sharp declines in apparent U.S. consumption observed during the original period of investigation occurred during the period of review, or are likely in the reasonably foreseeable future. In

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<sup>153</sup> First Five-Year Review Determinations, USITC Pub. 3731 at 27, 32-33.

<sup>154</sup> CR/PR, Table I-1.

<sup>155</sup> CR/PR, Table I-1.

<sup>156</sup> CR/PR, Table I-1.

<sup>157</sup> CR/PR, Table I-3.

<sup>158</sup> CR/PR, Table I-1.

<sup>159</sup> CR/PR, Table I-3.

any event, notwithstanding that current U.S. demand for preserved mushrooms is substantially lower than it was during the mid 1990s, the quantity of subject imports in 2007 and 2008, depending on the cumulation combination examined, was either comparable to or higher than the peak volumes reached during the 1995-97 original period of investigation.<sup>160</sup> Declines in demand cannot explain the recent and likely declines in the domestic industry's market share.

We have also considered the role of those imports we have not cumulated. For each of the cumulation combinations under consideration, the market share of those imports we have not cumulated was lower in 2008 than at any time since 1999.<sup>161</sup> In light of the trends showing a diminishing presence of such imports in the U.S. market, the cumulated subject imports would likely have a significant adverse impact notwithstanding the presence of other imports.

Consequently, considerations of factors other than the cumulated subject imports do not detract from our finding that, for each cumulation combination under consideration, the cumulated subject imports will have a likely material adverse impact on the domestic industry.

## CONCLUSION

For the above reasons, we determine that revocation of the antidumping duty orders on preserved mushrooms from Chile, China, India, and Indonesia would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>162</sup>

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<sup>160</sup> CR/PR, Table I-2.

<sup>161</sup> For purposes of the Commission's determination on subject imports from Chile, and the determinations of Vice Chairman Pearson and Commissioner Okun for purposes of their determinations of Chile, China, and India, imports not subject to cumulation (which are from nonsubject countries and Indonesia) had \*\*\* percent U.S. market penetration in 2008. Their lowest previous share since 1999 was \*\*\* percent in 2003. CR/PR, Table I-3.

For purposes of the Commission's determination on subject imports from China and India, and for all determinations of Commissioner Lane, nonsubject imports had \*\*\* percent U.S. market penetration in 2008. Their lowest previous share since 1999 was 25.3 percent in 1999. Id.

For purposes of the Commission's determination on subject imports from Indonesia, imports not subject to cumulation (which are from nonsubject sources and Chile) had \*\*\* percent U.S. market penetration in 2008. Their lowest previous share since 1999 was 25.3 percent in 1999. Id.

<sup>162</sup> Vice Chairman Pearson dissenting with respect to subject imports from Indonesia.



**ADDITIONAL AND DISSENTING VIEWS OF  
COMMISSIONER DANIEL R. PEARSON**

**I. Introduction**

Section 751(d)(2) of the Tariff Act of 1930, as amended (“the Act”), requires that the U.S. Department of Commerce (“Commerce”) revoke a countervailing duty or an antidumping duty finding in a five-year (“sunset”) review unless Commerce determines that dumping or a countervailable subsidy would be likely to continue or recur and the U.S. International Trade Commission (“Commission”) determines that material injury to a U.S. industry would be likely to continue or recur within a reasonably foreseeable time.<sup>1</sup> Based on the record in this second five-year review, I determine that material injury is not likely to continue or recur within a reasonably foreseeable time if the order on subject imports of certain preserved mushrooms from Indonesia is revoked.

I join my colleagues’ discussion regarding domestic like product, domestic industry, and conditions of competition (sections I, II, and IV.B), and I join my colleagues’ determination regarding the likelihood of the recurrence or continuation of material injury if the orders on Chile, China, and India were revoked (sections IV.C-IV.E, as noted). In these reviews, I join my colleagues in their reasoning and conclusions regarding the likelihood of no discernible adverse impact upon revocation (section III.C) and the likelihood of a reasonable overlap of competition among subject imports and between subject imports and the domestic like product (section III.D). I have exercised my discretion to cumulate subject imports from Chile, China, and India for the reasons stated in the Views of the Commission. I have, however, chosen not to cumulate subject imports from Chile, China, and India with those from Indonesia in order to make my determination as to whether a continuation or recurrence of material injury is likely if the order on Indonesia were revoked.

**II. Likelihood of continuation or recurrence of material injury if the order on Indonesia were revoked**

**A. Cumulation**

The Commission conducted a full investigation in its first review of these orders. The record compiled in the first reviews indicated that the industry in Indonesia was distinguishable from those in China and India by differences in its capacity, as the industry in Indonesia was significantly smaller than in the original investigation, while those in China and India appeared to have grown significantly.<sup>2</sup> The industry in Indonesia was also distinguishable in that one significant producer, PT Zeta Agro, had succeeded in having the order as to its imports revoked in February 2002.<sup>3</sup>

Other factors also distinguished the industry in Indonesia from those in China and India, and those factors indicated that, upon revocation, subject imports from Indonesia would face different conditions of competition. The imposition of the orders had diverse effects on subject imports. Subject imports from China were essentially barred from the U.S. market at first, but then increased at impressive rates. Subject imports from China more than doubled between 2000 and 2001, going from 8.3 million pounds to 19.4 million pounds, and more than doubled again between 2002 and 2003, rising from 20.6 million pounds to 48.1 million pounds. In the year that the orders were imposed, subject imports from India ballooned, increasing from 12.6 million pounds in 1998 to 32.0 million pounds in 1999. The volume of subject imports from India slackened somewhat after 1999, but in 2003 the volume of subject

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<sup>1</sup> 19 U.S.C. § 1675(d)(2).

<sup>2</sup> INV-BB-123 at Figure IV-2, Tables IV-3 and IV-4 (Oct. 4, 2004)

<sup>3</sup> INV-BB-123 at I-14.

imports from India was still four-and-a-half times higher than it had been in 1995.<sup>4</sup> Subject imports from Chile had essentially ceased after the order was imposed.<sup>5</sup>

The imposition of the orders also brought significant changes, and instability, to the channels of distribution for subject imports from China and India. In the original investigation, subject imports from China were concentrated in the food service sector, but a significant share of imports went to the retail market. For subject imports from India, the opposite was true, with a majority going to retail but a significant minority sold into the food service sector.<sup>6</sup> In the years since the orders had been imposed, however, there had been no stability in channels of distribution for subject imports from China and India. In 1999, \*\*\* percent of subject imports from China were reported as sold to the food service sector; in 2003, \*\*\* percent of subject imports from China were reported as sold to the retail sector. For subject imports from India, \*\*\* percent of subject imports in 1999 were reported as sold to the food service sector, but by 2003, that sector accounted for only \*\*\* percent, while the retail market accounted for \*\*\* percent.<sup>7</sup>

The imposition of the order had a very different effect on subject imports from Indonesia. During the period of the original investigation, the volume of subject imports from Indonesia had increased somewhat. In the years immediately following the imposition of the order, subject import volume remained relatively steady and within 10 percent of the levels reached during the period of the original investigation. Later in the first review period, subject import volume declined, but total imports from Indonesia, including subject and nonsubject imports, were extremely stable, hovering around 22 million pounds in each of the last three years of the first review period.<sup>8</sup> Subject import volume from Indonesia remained steady between 1999 and 2000 despite a 10-percent increase in apparent domestic consumption, and remained steady between 2002 and 2003, despite an 8.5 percent increase in apparent domestic consumption. Subject imports from Indonesia gained no market share throughout the first period of review despite having consistently low margins. When the order as to one major exporter, PT Zeta Agro, was revoked, its shipments to the U.S. remained relatively flat, and total imports from Indonesia were flat.<sup>9</sup>

A similar stability prevailed in the channels of distribution for subject imports from Indonesia. During the period of the original investigation, just over \*\*\* percent of its shipments went to the retail sector, with the remainder going to the food service sector.<sup>10</sup> After the order was imposed, subject imports from Indonesia remained highly concentrated in that same channel of distribution.<sup>11</sup>

During the original period of investigation, subject imports from Indonesia undersold the domestic like product less frequently than did other subject imports. That trend continued during the post-order period. Subject imports from China and India undersold the domestic like product in approximately two-thirds of the quarterly comparisons; subject imports from Indonesia undersold the domestic like product in less than half of the quarterly comparisons, and at times oversold by large margins.<sup>12</sup>

After the order was imposed, subject imports from Indonesia were relatively stable in both volume and pricing patterns, and subject import volume in particular was not responsive to shifts in overall apparent domestic consumption, shifts in the volume of other subject imports, or changes in its

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<sup>4</sup> INV-BB-123 at Table I-1.

<sup>5</sup> INV-BB-123 at Table I-1.

<sup>6</sup> INV-W-005 (January 20, 1999) at Table I-1.

<sup>7</sup> INV-BB-123 at Table F-1.

<sup>8</sup> INV-BB-123 at Table C-1.

<sup>9</sup> INV-BB-123 at Table C-1.

<sup>10</sup> INV-W-005 (January 20, 1999) at Table I-2.

<sup>11</sup> INV-BB-123 at Table F-1.

<sup>12</sup> INV-BB-123 at Table V-5. Even if the pricing data for \*\*\* products are excluded, subject imports from Indonesia oversold the domestic like product more frequently than did other subject imports. *Id.*

own margins.<sup>13</sup> Subject imports from China and India, on the other hand, appeared to have been significantly affected by the imposition of the orders, and as a result both volume and channels of distribution shifted in opportunistic fashions, while subject imports from Chile were effectively excluded from the U.S. market by reason of the orders.

These differences in trends suggested that subject imports from Indonesia were entering the U.S. market under different conditions of competition than the other subject imports. The more limited record available in this second review does not suggest to me that these unique conditions have changed appreciably. The record does suggest that the industry in Indonesia may have expanded during the second period of review, as one producer that had exited the market returned to production.<sup>14</sup> However, the volume exported to the U.S. market remained relatively steady. Subject imports from Indonesia accounted for between \*\*\* and \*\*\* percent of total U.S. imports for every year between 2002 and 2008.<sup>15</sup> The total volume of imported mushrooms from Indonesia, subject and nonsubject combined, was nearly as steady, accounting for between \*\*\* and \*\*\* percent.<sup>16</sup> The volume of subject imports from China, however, continued to increase significantly over this second period of review, both absolutely and relatively; the volume of subject imports from India declined somewhat over the second review but remained far higher, both absolutely and relatively, than during the original investigation; and imports from Chile continued to be shut out of the U.S. market.<sup>17</sup>

So the record suggests that imports from Indonesia continued to enter the U.S. market during the period of the second review subject to somewhat different conditions of competition, as volume remained relatively constant regardless of other changes, while imports from China and India responded to other conditions and imports from Chile were still barred by the presence of the order. Nothing in the record suggests that the differing conditions affecting Indonesia are likely to be removed upon revocation. Therefore cumulating subject imports from Indonesia with those from Chile, China, or India would obscure important differences between those subject imports and the likely effects upon revocation. I therefore exercise my discretion to cumulate subject imports from Chile, China, and India, but will evaluate subject imports from Indonesia separately.

## **B. Conditions of competition**

I adopt the conditions of competition as discussed by my colleagues in section IV.B of the Views of the Commission above. I find these additional conditions of competition to be relevant to my consideration of the likely effects of revocation of the order on Indonesia.

The record compiled in the first review indicated that the industry in Indonesia was focused on producing preserved mushrooms, predominantly for the U.S. market. The supply of mushrooms available for the production of preserved mushrooms in Indonesia was therefore not dependent on demand for fresh mushrooms or the share of mushrooms that cannot meet the requirements of the market for fresh mushrooms.<sup>18</sup> The industry in Indonesia historically operated at far higher capacity utilization rates than did the domestic industry.<sup>19</sup> A significant portion of imports from Indonesia consisted of branded products that sold for a premium in the retail market.<sup>20</sup>

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<sup>13</sup> The decline in subject imports after 2001 was driven largely by the exclusion of PT Zeta Agro from the order.

<sup>14</sup> CR at I-33 n.68.

<sup>15</sup> CR at Table I-2.

<sup>16</sup> CR at Table I-2.

<sup>17</sup> CR/PR at Table I-2.

<sup>18</sup> Tr. at 148 (Mr. Larson); tr. at 66, 67 (Mr. Kazemi).

<sup>19</sup> Compare INV-BB-123 at Table IV-4 with Table C-1.

<sup>20</sup> Tr. at 142, 143, 144 (Mr. Larson).

### C. Volume

As noted above, subject import volume from Indonesia remained remarkably stable throughout the original investigation period and the first review period. This trend persisted during the second review period, as subject import volume ranged from \*\*\* to \*\*\* percent of total U.S. imports. Subject import volume from Indonesia actually declined modestly towards the end of the second period of review, despite an alleged increase in capacity. The record in the first review indicated that competition between the domestic like product and subject imports from Indonesia was somewhat limited. Subject imports from Indonesia were heavily concentrated in the retail sector, and concentration in that sector meant a corresponding concentration in small cans and jars, as opposed to the 68-ounce cans sold to food service or industrial users. The domestic like product was sold in all channels and in both sizes, but sales of the domestic like product were more evenly distributed, and sales to industrial users and food service users accounted for \*\*\* of sales of the domestic like product throughout the period of the first review since the orders were imposed.<sup>21</sup> Furthermore, a significant portion of the subject imports from Indonesia were sold as name-brand products, further distinguishing those imports.

Nothing in the record suggests that these limitations in competition between the domestic like product and subject imports from Indonesia changed over the second period of review, or that changes are likely upon revocation, given the great continuity in subject imports from Indonesia over a very long period of time. Rather, the evidence suggests continuing stability, limited competition, and the likelihood that the volume of subject imports from Indonesia would not be significant upon revocation.

### D. Price

Subject imports from Indonesia oversold the domestic like product more frequently than did other subject imports during the original investigation. Subject imports from Indonesia oversold the domestic like product in 26 of 42 quarterly observations, including 12 of 14 quarters for product 1, another retail product.<sup>22</sup> Between 1995 and 1997 the volume of subject imports from Indonesia actually increased, both absolutely and relatively, despite persistent overselling in its dominant products. The record suggested that subject imports from Indonesia did not gain market share by underselling and that subject imports from Indonesia did not suppress or depress prices for the domestic like product.<sup>23</sup> In the period of the first review, subject imports from Indonesia continued to oversell the domestic like product frequently. For product 1, four-ounce cans of stems and pieces, subject imports from Indonesia oversold the domestic like product consistently, and by large margins \*\*\*. Even if \*\*\*, subject imports oversold the domestic like product throughout most of the period. Subject imports undersold in the last two years of the period, but by modest margins.<sup>24</sup> Subject imports of product 2, the 68-ounce can product, oversold the domestic like product in most quarters.<sup>25</sup> Only in product 3 did subject imports consistently undersell the domestic like product, and for that product the reported prices accounted for modest amounts of imports.<sup>26</sup>

The record indicates that subject imports from Indonesia frequently oversold the domestic like product both before and after the order was imposed. The record also suggests that overselling had little impact on subject import volume, as subject import volume from Indonesia remained steady during the period of the first review, despite frequently overselling the domestic like product. No product-specific

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<sup>21</sup> INV-BB-123 at Table F-1.

<sup>22</sup> INV-W-005 (January 20, 1999) at Tables V-1 and V-3.

<sup>23</sup> In making this finding, I note that in its original determination, the Commission found that subject imports had significant price-depressing effects, but that finding was made on the basis of cumulated subject imports from China, India, and Indonesia. Original Indonesia Determination at 19.

<sup>24</sup> INV-BB-123 at Table V-1.

<sup>25</sup> INV-BB-123 at Table V-2.

<sup>26</sup> INV-BB-123 at Table V-3.

pricing data were gathered during this expedited review, but average unit values for subject imports from Indonesia were consistently significantly higher than the AUVs for other subject imports and non-subject imports as well. The AUVs for subject imports from Indonesia were quite close to the AUVs for non-subject imports from Indonesia, however. These comparisons suggest that subject imports from Indonesia were comprised either of significantly higher-priced goods or of a significantly different product mix than were other subject imports, as well as suggesting, again, that the order actually had relatively little impact on the pricing or volume of subject imports from Indonesia.<sup>27</sup>

The evidence on the record suggest that revocation would have little effect on the prices of subject imports from Indonesia. The apparent difference in pricing or product mix suggests that subject imports are no more likely to suppress or depress domestic prices than in the past. Given that significant change in import volume is not likely upon revocation, and given that subject imports frequently oversold the domestic like product even when removed from the discipline of an order, I find that significant underselling by the subject imports as compared to domestic like products is not likely, and that the subject imports are not likely to enter the United States at prices that would otherwise have a significant depressing or suppressing effect on the price of domestic like products. I find it likely that subject imports will not lead to significant price depression or suppression.<sup>28</sup>

## **E. Impact**

The domestic industry's market share had peaked in 1999 at 40.7 percent; in 2003, it was 25.4 percent. The domestic industry's production peaked as long ago as 2000 and in 2003, production by the domestic industry was down 27 percent from that peak, although domestic consumption was down by less than five percent. In 2003 the domestic industry utilized only 25.1 percent of its capacity, even though its productive capacity by 2003 had contracted by 28.7 percent since 1998. Along with its productive capacity, the industry shed nearly one-fifth of its workers between 1998 and 2003.<sup>29</sup>

The industry's loss of market share and production coincided with a steady decline in the value of sales after 1999. The value of net sales was \$58.1 million in 2003, down from \$98.4 million in 1999. The industry's profitability peaked in 2000, with operating income equal to only 3.2 percent of sales. The industry registered losses in 2001, 2002, and 2003, and in 2003 its operating losses were equivalent to 2.7 percent of sales.<sup>30</sup>

The limited data available in this expedited review suggest that the domestic industry's condition is little changed from the period of the first review. Capacity has declined further, but production declined as well, leaving capacity utilization in 2008 at levels similar to that in 2003. Shipments were also down significantly. The industry did record an operating profit in 2008.<sup>31</sup> But the industry's performance does not correlate with the behavior of subject imports from Indonesia. In the industry's best years, between 1998 and 2000, subject imports from Indonesia were increasing moderately or steady and accounted for significant shares of apparent domestic consumption. In fact, the market share of subject imports from Indonesia was highest in 1999, the same year that market share for the domestic like product also peaked. In the years since 2000, as the industry has turned downward, subject imports from Indonesia accounted for a steady share of apparent U.S. consumption. As the industry's sales revenue turned downward, subject imports from Indonesia frequently oversold the domestic like product, as in the original investigation. The channels of distribution for subject imports remained essentially unchanged, indicating that imports from Indonesia were not occupying new markets at the expense of the domestic

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<sup>27</sup> CR/PR at Table I-2.

<sup>28</sup> I note that Commerce has determined the likely dumping margins to be 7.94 percent for PT Dieng Djaya and 11.26 percent for all others covered by the antidumping duty order. CR at I-8, PR at I-7.

<sup>29</sup> INV-BB-123 at Table C-1.

<sup>30</sup> INV-BB-123 at Table C-1.

<sup>31</sup> CR/PR at Table I-1.

like product. Yet significant portions of those subject imports were subject to little restraint from antidumping margins, as several exporters earned progressively lower margins through administrative reviews by the Department of Commerce.<sup>32</sup>

Nothing suggests that this will change upon revocation. The entire record, stretching back to the beginning of the original investigation, suggests a fair degree of stability in the relationship between subject imports from Indonesia and the U.S. market. Given the continuity between the original investigation period and the period after the order was imposed, revocation is not likely to have a significant impact on that relationship. Subject import volume is not likely to increase significantly upon revocation, and subject imports are not likely to change the long pattern of frequent overselling. Given the lack of significant volume of subject imports upon revocation, the lack of significant price effects, and the lack of correlation between the condition of the industry and subject imports, I find it likely that revocation of the order will not have a significant impact on the domestic industry's cash flow, inventories, employment, wages, growth, ability to raise capital, nor lead to a significant reduction in the domestic industry's output, sales, market share, profits, or productivity. In light of these findings, I determine that revocation of the order on preserved mushrooms from Indonesia is not likely to lead to the continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

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<sup>32</sup> INV-BB-123 at I-14.

## SEPARATE VIEWS OF COMMISSIONER DEANNA TANNER OKUN

Based on the record in these five-year reviews, I determine under section 751(c) of the Tariff Act of 1930, as amended, that revocation of the antidumping duty orders on preserved mushrooms from Chile, China, India, and Indonesia would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. I join in the Commission's Views with respect to background, domestic like product and industry, the no discernible adverse impact and likelihood of a reasonable overlap of competition sections of the cumulation analysis, legal standards, conditions of competition, and the likely volume, price and impact sections insofar as they address the antidumping duty orders on subject imports from Chile, China, and India. I write separately with respect to my cumulation analysis of likely conditions of competition and my analysis of the likelihood of continuation or recurrence of material injury if the antidumping order on subject imports from Indonesia is revoked.

Based on my cumulation analysis, I exercise my discretion to cumulate subject imports from Chile, China and India, and to assess the likely subject imports from Indonesia separately from any other country. I join the Commission's Views in determining that revocation of the antidumping duty orders on subject imports from Chile, China and India on a cumulated basis would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. I separately determine that revocation of the antidumping duty orders on subject imports from Indonesia would be likely to lead to continuation or recurrence of material injury in the United States within a reasonably foreseeable time.

### I. CUMULATION

#### A. Legal Standard

While I consider the same issues discussed in the Commission's Views in determining whether to exercise my discretion to cumulate the subject imports, my analytical framework begins with whether imports from the subject countries are likely to face similar conditions of competition.<sup>1</sup> For those subject imports which are likely to compete under similar conditions of competition, I next proceed to consider whether there is a likelihood of a reasonable overlap of competition whereby those imports are likely to compete with each other and with the domestic like product. Finally, if based on that analysis I intend to exercise my discretion to cumulate one or more subject countries, I analyze whether I am precluded from cumulating such imports because the imports from one or more subject countries, assessed individually, are likely to have no discernible adverse impact on the domestic industry.

#### B. Likely Conditions of Competition Among Subject Imports

In determining whether to exercise my discretion to cumulate subject imports, I first assess whether the subject imports from each subject country are likely to compete under similar conditions of

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<sup>1</sup> See Steel Concrete Reinforcing Bar From Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine, Invs. Nos. 731-TA-873 to 875, 877 to 880, and 882 (Review), USITC Pub. 3933 (July 2007) (Separate and Dissenting Views of Chairman Daniel R. Pearson and Commissioner Deanna Tanner Okun Regarding Cumulation). Accord Nucor Corp. v. United States, 605 F. Supp.2d 1361, 1372 (Ct. Int'l Trade 2009); Nucor Corp. v. United States, 594 F. Supp.2d 1320, 1345-47 (Ct. Int'l Trade 2008), aff'd, Slip Op. 2009-1234, -1235 (Fed Cir., April 7, 2010).

competition in the U.S. market if the orders are revoked.<sup>2</sup> The record in these expedited reviews contains very little current information about the industries in any of the four subject countries. Therefore, my analysis relies primarily on the record in the first five-year reviews, in which the Commission found that there have been changes in the conditions of competition among imports since the orders were imposed.<sup>3</sup>

Specifically, I found that the Chinese and Indian industries appeared to have grown significantly since the original period of investigation.<sup>4</sup> By contrast, the capacity of subject Indonesian producers had remained considerably smaller.<sup>5</sup> I also found differences between the relatively steady import pattern for Indonesia, on the one hand, and the large fluctuations in import volume for China and India, on the other hand. Differences in import patterns were likely to occur in the future given the changes in subject producers' capacity since the original investigation. These disparities indicated that the Indonesian industry would not be able to increase exports by the magnitude that the Chinese or Indian industries actually increased exports during the period of the first reviews, nor would have the ability to do so in the reasonably foreseeable future.

There is no evidence in these reviews of a change in these likely conditions of competition since the first reviews.<sup>6</sup> Moreover, I join in the Commission majority's findings in Sections III.A-D and therefore concur with the finding that there is no reasonable overlap in channels of distribution between subject imports from Chile and Indonesia, and the finding that subject imports from any of the subject countries are not likely to have no discernible adverse impact on the domestic industry in the event of revocation of the orders. Therefore, I again exercise my discretion to cumulate subject imports from Chile, China and India, and to assess the likely subject imports from Indonesia separately from any other country. Based on my cumulation determination, I have examined the likelihood of continuation or recurrence of material injury if the antidumping duty order on subject imports from Indonesia is revoked.

## **II. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF MATERIAL INJURY IF THE ANTIDUMPING DUTY ORDER ON SUBJECT IMPORTS FROM INDONESIA IS REVOKED**

I join in Section IV.A-B of the Commission's Views, which discusses the legal standards and conditions of competition. I also join in Section IV.C-E of the Commission's Views with respect to its analysis and determinations insofar as it addresses likely volume, price effects, and impact of subject imports from Chile, China, and India, as well as its discussion of the Commission's original determinations and prior reviews with respect to likely volume, price effect, and impact of subject imports from Indonesia.

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<sup>2</sup> See, e.g., Nucor Corp. v. United States, Slip Op. 2009-1234, -1235 at 7-10 (Fed. Cir., April 7, 2010) ("the ITC's consideration of the likely differing conditions of competition in deciding whether to cumulate the subject imports as part of the sunset review determination was a reasonable and permissible interpretation of the discretion conferred by § 1675a(a)(7). . . ." Id. at 10.), aff'g, 594 F. Supp.2d 1320 (Ct. Int'l Trade 2008); Allegheny Ludlum Corp. v. United States, 475 F. Supp. 2d 1370, 1378 (Ct. Int'l Trade 2006) (recognizing the wide latitude the Commission has in selecting the types of factors it considers relevant in deciding whether to exercise discretion to cumulate subject imports in five-year reviews); Nucor Corp. v. United States, 605 F. Supp.2d 1361, 1369-72 (Ct. Int'l Trade 2009); Nucor Corp. v. United States, 569 F. Supp. 2d 1328, 1337-38 (Ct. Int'l Trade 2008); United States Steel Corp. v. United States, Slip Op. 08-82 (Aug. 5, 2008).

<sup>3</sup> Certain Preserved Mushrooms from Chile, China, India, and Indonesia, Inv. Nos. 731-TA-776-779 (Review), USITC Pub. 3731 (Oct. 2004) ("First Five-Year Review Determinations") at 25.

<sup>4</sup> First Five-Year Review Determinations, USITC Pub. 3731 at 17.

<sup>5</sup> First Five-Year Review Determinations, USITC Pub. 3731 at 17. In part, the reduction in capacity was due to the revocation of the antidumping order with respect to a major producer and exporter, PT Zeta Agro, in February 2002. Id.

<sup>6</sup> CR/PR, Figures I-1, I-2, Tables I-4, I-5.



On the limited record of these expedited reviews, I determine that upon revocation of the order, subject imports from Indonesia will likely (1) be significant in volume, (2) have significant adverse price effects on the domestic like product, and (3) have a significant adverse impact on the domestic industry within a reasonably foreseeable time. Accordingly, I determine that revocation of the antidumping duty orders on preserved mushrooms from Indonesia would be likely to lead to continuation or recurrence of material injury in the United States within a reasonably foreseeable time.

#### **A. Likely Volume of Subject Imports from Indonesia**

During the original period of investigation, the quantity of subject imports from Indonesia declined from 30.8 million pounds in 1995 to 26.9 million pounds in 1996, increased to 31.8 million pounds in 1997. U.S. market penetration for these imports increased from 12.8 percent in 1995 to 15.5 percent in 1997.<sup>7</sup> The Commission's original determination on Indonesia found subject import volume to be significant, based on a cumulated analysis of subject imports from China, India, and Indonesia.<sup>8</sup>

During the first reviews, subject imports from Indonesia fluctuated within a fairly narrow range from 1998 through 2001, ranging from a low of 22.4 million pounds (in 2001) to a high of 29.1 million pounds (in 1999). The volume in 1999, while above that for the preceding year, was still below the levels during two of the three full years of the original period of investigation. The revocation of the order with respect to Indonesian producer PT Zeta Agro, effective February 1, 2002, caused subject import volume to decline appreciably. Subject import volume declined to \*\*\* pounds in 2002 and then to \*\*\* pounds in 2003.<sup>9</sup> In 2003, subject imports from Indonesia accounted for \*\*\* percent of apparent U.S. consumption.<sup>10</sup>

During the first review, the Commission recognized that capacity of subject producers in Indonesia declined but concluded that the Indonesian producers' projections of likely increases in their exports to the United States were overly conservative for purposes of projecting what would likely happen upon revocation of the antidumping duty order. Consequently, the Commission determined that, if the antidumping order were revoked, the likely volume of subject imports from Indonesia would have increased substantially over then-current levels and would have been significant in absolute terms.<sup>11</sup>

The record in these second five-year reviews shows that subject imports from Indonesia fluctuated from a low of \*\*\* pounds (in 2006) to a high of \*\*\* pounds (in 2004) and were slightly higher in 2008 than in 2003 (\*\*\* pounds vs. \*\*\* pounds).<sup>12</sup> Subject imports from Indonesia represented \*\*\* percent of apparent U.S. consumption in 2008, the only year during the period of review which we can compute this figure. The 2008 market share is higher than the U.S. market share of subject imports from Indonesia in 2002 and 2003.

The limited information available in this expedited review concerning the industry in Indonesia indicates that its total exports \*\*\* between 2003 and 2008.<sup>13</sup> Thus, the Indonesian industry appears to continue to have the ability to direct substantial additional exports to the United States upon revocation of the orders. The information available also suggests that the industry in Indonesia is export oriented, as the record indicates that Indonesia exported the \*\*\* majority of its production during the years for which data are available.<sup>14</sup> The record also indicates that imports from Indonesia are subject to barriers to

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<sup>7</sup> CR/PR, Table I-3.

<sup>8</sup> Certain Preserved Mushrooms from Chile, China, India, and Indonesia, Inv. Nos. 731-TA-776-779, USITC Pub. 3159 (Feb. 1999) (“Original Determinations”) at 18.

<sup>9</sup> CR/PR, Table I-3; CR at I-33 n.67, PR at I-27 n.67.

<sup>10</sup> CR/PR, Table I-3.

<sup>11</sup> First Five-Year Review Determinations, USITC Pub. 3731 at 29.

<sup>12</sup> CR/PR, Table I-2.

<sup>13</sup> CR/PR, Table I-5.

<sup>14</sup> CR/PR, Table I-5.

importation in other export markets, as Indonesian imports have been subject to a tariff-rate quota in the European Union since 2006.<sup>15</sup>

In light of the foregoing considerations, I conclude that if the order is revoked, the likely volume of subject imports from Indonesia would be significant.

### **B. Likely Price Effects of Subject Imports from Indonesia**

In the original determinations and its first five-year reviews, the Commission found that price was an important factor in purchasing decisions and that subject imports from all sources were at least moderate substitutes for the domestic like product.<sup>16</sup> Nothing in the record for these reviews leads me to question these findings, or conclude that they are no longer applicable, with respect to subject imports from Indonesia.

Because no pricing data were collected during these expedited reviews, the only pricing data available are from the original investigations and the first five-year reviews. In the original investigations, subject imports from Indonesia undersold the domestic like product in 16 of 42 quarterly comparisons.<sup>17</sup> In the first five-year reviews, subject imports from Indonesia undersold the domestic like product in 36 of 72 quarterly comparisons.<sup>18</sup> Based on this pricing information, the Commission concluded in its first five-year reviews that revocation of the order would likely have had significant price-depressing effects on the domestic like product.<sup>19</sup> Nothing in the record for these reviews leads me to determine that this previous conclusion is no longer valid. Accordingly, for the same reasons as in the first five-year review, I find that if the order is revoked, the subject imports are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of the domestic like product.

### **C. Likely Impact of Subject Imports from Indonesia**

In its original determination concerning Indonesia, the Commission found that the cumulated subject imports from China, India, and Indonesia gained market share at the expense of the domestic industry. The Commission also found that there were declines in the domestic industry's production, shipments, capacity utilization, and employment, and that the combination of declining output and falling prices led to a deterioration in the domestic industry's operating performance. Operating margins declined throughout the original period of investigation. In 1997, the operating margin had declined to 1.3 percent and at least half of the domestic producers sustained operating losses.<sup>20</sup>

In the first five-year review, the Commission determined that, if the order was revoked, the volume of subject imports from Indonesia would likely increase significantly. The Commission explained that these subject imports will likely undersell the domestic like product with increasing frequency, and will likely have significant price-depressing effects. In light of their likely volume and price effects, the Commission concluded that, upon revocation of the antidumping duty order, subject imports from Indonesia will likely exacerbate the declines in domestic industry output, employment, and market share observed during the latter portion of the period of review and would likely cause the domestic industry's already unprofitable financial performance to deteriorate further. Accordingly, the

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<sup>15</sup> CR at I-36, PR at I-29.

<sup>16</sup> Original Determination, USITC Pub. 3159 at 18-19.

<sup>17</sup> Original Determination, USITC Pub. 3159 at V-14.

<sup>18</sup> First Five-Year Review Determinations, USITC Pub. 3731 at 31.

<sup>19</sup> First Five-Year Review Determinations, USITC Pub. 3731 at 32.

<sup>20</sup> Original Determination, USITC Pub. 3159 at 20-21.

Commission found that revoking the antidumping duty order on preserved mushrooms from Indonesia would likely have had a significant adverse effect on the domestic industry.<sup>21</sup>

There is limited new information available in this review. I join the Commission majority's determination in these reviews that the limited data available in these expedited reviews do not support a finding that the domestic industry is in a vulnerable condition. For the same reasons as in the first review, I conclude that additional volumes of subject imports from Indonesia are likely, at prices that will likely undersell those of the domestic like product, and will likely cause further declines in the domestic industry's performance indicators. Accordingly, I find that subject imports from Indonesia are likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time if the order is revoked.

### **CONCLUSION**

For the above reasons, I determine that revocation of the antidumping duty orders on preserved mushrooms from Indonesia would be likely to lead to continuation or recurrence of material injury in the United States within a reasonably foreseeable time.

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<sup>21</sup> First Five-Year Review Determinations, USITC Pub. 3731 at 33.



## SEPARATE AND CONCURRING VIEWS OF COMMISSIONER CHARLOTTE R. LANE

Section 751(d)(2) of the Tariff Act of 1930, as amended ("the Act"), requires that the U.S. Department of Commerce ("Commerce") revoke a countervailing duty or an antidumping duty finding in a five-year ("sunset") review unless Commerce determines that dumping or a countervailable subsidy would be likely to continue or recur and the U.S. International Trade Commission ("Commission") determines that material injury to a U.S. industry would be likely to continue or recur within a reasonably foreseeable time.<sup>1</sup> Based on the record in these second five-year reviews, I determine that material injury is likely to continue or recur within a reasonably foreseeable time if the orders on subject imports of certain preserved mushrooms from Chile, China, India, and Indonesia are revoked.

I join in the discussion found in Sections I, II, and IV of the majority opinion. However, I do not reach the same conclusion as my colleagues with regard to cumulation of subject imports. In these reviews, I cumulate subject imports from Chile, China, India and Indonesia because the record indicates that subject imports from these countries compete or would compete with one another and with the domestic like product. In contrast to the original investigations, and the determination of my colleagues in the first five-year reviews, I again determine that subject imports from Indonesia do compete, or are likely to compete, with the domestic like product and with each other.

### CUMULATION

With regard to the "Framework" of the provisions of the Act and Commission determinations with regard to cumulation, I join in the discussion of my colleagues in Section III.A. of the majority views. Likewise, with regard to the "Likelihood of No Discernible Adverse Impact," I join in the discussion in Section III.B. of the majority views. Indeed, the majority found that in the case of Chile, China, India, and Indonesia, subject imports would not be likely to have no discernible adverse impact on the domestic industry if the orders were revoked. I concur with that decision.

I disagree with the majority views regarding reasonable overlap of competition and cumulation. I find that subject imports from China, India, Chile and Indonesia should be cumulated.

The Commission generally examines four factors in determining whether there will be a likely reasonable overlap of competition. These factors are fungibility, geographic overlap, channels of distribution, and simultaneous presence in the market. In addition to these factors, the Commission also determines in five-year reviews whether there are any other considerations that would lead it to exercise its discretion to cumulate subject imports from one or more countries.

Both the original investigations and the majority views in this review found the fungibility factor for cumulation to be satisfied. I concur with the discussion of my colleagues regarding fungibility. Likewise, I concur with the discussion in the majority view of the Commission regarding geographic overlap and likely simultaneous presence. These factors are also satisfied for purposes of cumulation of all subject imports.

With respect to channels of distribution, the evidence also supports cumulation of imports from all four countries. First, I note that the Coalition stated in the original investigation, and the Commission found, that while imports from Chile were concentrated in sales to the food service sector, Chile also manufactured and sold retail sized cans or jars of mushrooms to the retail sector.<sup>2</sup> Similarly, while imports from Indonesia

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<sup>1</sup> 119 U.S.C. § 1675(d)(2).

<sup>2</sup> Domestic Industry's Comments, at 11, citing Final Determination at 8.

were concentrated in sales to the retail sector, Indonesia also manufactured and sold preserved mushrooms to the food service channel where imports from Chile were focused.<sup>3</sup>

In these reviews, the Coalition asserted that if the order on Chile were revoked, subject imports from Chile will likely be sold in the U.S. retail channel. Chilean producer, CPM Inversiones Bosque del Mauco S.A., formerly Nature's Farm, states that its sales to the retail sector are "showing rapid strong development" and that supermarket (retail) outlets in Chile "represent the highest volume of mushrooms sold" in total for both preserved and fresh mushrooms. See Coalition Nov.2 submission, Exh. 4. The ability of both Chile and Indonesia to sell to common sectors and actual sales to both sectors indicate that both countries would sell to both distribution channels again if revocation occurred. The lack of any information regarding an existing retail distribution network within the United States for subject imports from Chile does not dissuade me from this conclusion. Distribution through existing marketers and wholesalers in the United States is a reasonable expectation for subject imports from Chile if the antidumping order were revoked. Therefore, I find that it is likely that subject imports from Chile will enter the U.S. retail channel of distribution should the antidumping order be revoked.

I also find, as the Coalition maintained, and I found in the previous review, that not all the Indonesian product sold in the retail channel of distribution is sold in sizes typically used by home consumers. The lack of new information in this review does not suggest to me that imports from Indonesia, sold in cans above 255 grams, during the first review, do not compete in the retail channel through club stores such as Costco, and through sales to other purchasers such as small restaurants. Consequently, I again find that the Indonesian product sold through the retail channel of distribution will compete for the same customers with product from other sources sold through the food service channel of distribution. This fact is a sufficient basis for me to conclude that subject imports from Indonesia would have a substantial presence in the food service channel of distribution should the orders be revoked. Based on information developed in the original investigations showing actual sales by both Chile and Indonesia in both the retail and food service sectors, as well as additional information on this record showing expanded sales by Chile into the retail channel on which Indonesia focuses, I find that there would likely be a reasonable overlap in channels of distribution by imports from all four countries.

With regard to "Other Considerations," I find that there are not significant differences in current and likely conditions of competition between subject imports from Chile, China, India or Indonesia. Consequently, I have exercised my discretion to cumulate subject imports from Chile, China, India and Indonesia.

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<sup>3</sup>Id.

# INFORMATION OBTAINED IN THE SECOND FIVE-YEAR REVIEWS

## INTRODUCTION

### Background

On October 1, 2009, in accordance with section 751(c) of the Tariff Act of 1930, as amended (“the Act”),<sup>1</sup> the U.S. International Trade Commission (“Commission” or “USITC”) gave notice that it had instituted five-year reviews to determine whether revocation of the antidumping duty orders on preserved mushrooms from Chile, China, India, and Indonesia would be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time.<sup>2 3</sup> On January 4, 2010, the Commission determined that the domestic interested party group response to the notice of institution for each review was adequate;<sup>4</sup> the Commission also determined that the respondent interested party response was inadequate for each of the orders subject to review.<sup>5</sup> The Commission found no other circumstances that would warrant conducting full reviews.<sup>6</sup> Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Act.<sup>7 8</sup> The Commission voted on these reviews on March 26, 2010, and notified Commerce of its determinations on April 9, 2010. Selected information relating to the schedule of the current reviews is presented on the following page.

Effective date	Action
October 1, 2009	Commission’s institution of five-year reviews (74 FR 50818, October 1, 2009)
October 1, 2009	Commerce’s notice of initiation (74 FR 50776, October 1, 2009)
December 18, 2009	Commerce’s final results for expedited five-year reviews (74 FR 67170)
January 4, 2010	Commission’s determination to conduct expedited five-year reviews and scheduling of expedited reviews (75 FR 3756, January 22, 2010). Notice of revised schedule (75 FR 8111, February 23, 2010)
March 26, 2010	Date of Commission’s vote
April 9, 2010	Commission’s determinations transmitted to Commerce

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<sup>1</sup> 19 U.S.C. 1675 (c).

<sup>2</sup> 74 FR 50818, October 1, 2009. All interested parties were requested to respond to this notice by submitting the information requested by the Commission. The Commission’s notice of institution is presented in app. A.

<sup>3</sup> In accordance with section 751(c) of the Act, the U.S. Department of Commerce (“Commerce”) published a notice of initiation of five-year reviews of the subject antidumping duty orders concurrently with the Commission’s notice of institution. 74 FR 50776, October 1, 2009.

<sup>4</sup> The Coalition for Fair Preserved Mushroom Trade and its individual members: L.K. Bowman Co., Monterey Mushrooms Inc., the Mushroom Co., and Sunny Dell Foods, Inc. (collectively “the Coalition”), submitted the only response to the Commission’s notice of institution for the subject reviews. The Coalition is represented by the law firm of Kelley Drye & Warren, LLP. The Coalition’s response included not only company-specific data from the four Coalition member companies \*\*\*.

<sup>5</sup> The Commission received no responses to its notice of institution from respondent interested parties.

<sup>6</sup> The Commission’s statement on adequacy is presented in app. B.

<sup>7</sup> 10 U.S.C. § 1675(c)(3).

<sup>8</sup> On January 15, 2010, the Commission issued a notice of scheduling of the expedited reviews (75 FR 3756, January 22, 2010). On February 17, 2010, the Commission issued a notice of revised scheduling of the expedited reviews (75 FR 8111, February, 23, 2010). The Commission’s notices appear in app. A.

## The Original Investigations and First Five-Year Reviews

On January 6, 1998, petitions were filed with Commerce and the Commission alleging that an industry in the United States was materially injured and threatened with further material injury by reason of less-than-fair-value (“LTFV”) imports of certain preserved mushrooms from Chile, China, India, and Indonesia.<sup>9</sup> On October 19, 1998, Commerce made an affirmative final LTFV determination regarding certain preserved mushrooms from Chile,<sup>10</sup> and on December 28, 1998, Commerce made affirmative final LTFV determinations regarding certain preserved mushrooms from China, India, and Indonesia.<sup>11</sup> The Commission completed its original investigation concerning preserved mushrooms from Chile on November 25, 1998,<sup>12</sup> and completed its original investigations concerning preserved mushrooms from China, India, and Indonesia on February 11, 1999,<sup>13</sup> determining that an industry in the United States was materially injured by reason of LTFV imports of preserved mushrooms from Chile, China, India, and Indonesia. Commerce issued an antidumping duty order on imports of preserved mushrooms from Chile on December 2, 1998,<sup>14</sup> and issued antidumping duty orders on imports of preserved mushrooms from China, India, and Indonesia on February 19, 1999.<sup>15 16</sup>

On November 3, 2003, the Commission instituted its first five-year reviews to determine whether revocation of the antidumping duty orders on certain preserved mushrooms from Chile, China, India, and Indonesia would likely lead to the continuation or recurrence of material injury to a domestic industry.<sup>17 18</sup> On February 6, 2004, the Commission determined that it would conduct full reviews.<sup>19</sup> On March 10, 2004, Commerce made affirmative expedited review determinations regarding imports of certain preserved mushrooms from Chile, China, India, and Indonesia.<sup>20</sup> On October 28, 2004, the Commission determined that revocation of the antidumping duty orders on certain preserved mushrooms from Chile, China, India, and Indonesia, would be likely to lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>21</sup> On November 8, 2004, Commerce issued a continuation of the antidumping duty order on imports of preserved mushrooms from Chile, China, India, and Indonesia.<sup>22</sup>

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<sup>9</sup> The petitions were filed by counsel on behalf of the Coalition and its members: L.K. Bowman, Inc., Nottingham, PA; Modern Mushroom Farms, Inc., Toughkenamon, PA; Monterey Mushrooms, Inc., Watsonville, CA; Mount Laurel Canning Corp., Temple, PA; Mushroom Canning Co., Kennett Square, PA; Southwood Farms, Hockessin, DE.; Sunny Dell Foods, Inc., Oxford, PA; and United Canning Corp., North Lima, OH. *Certain Preserved Mushrooms From Chile*, Investigation No. 731-TA-776 (Final), USITC Publication 3144, November 1998 (“*Publication 3144*”), p. I-1, and *Certain Preserved Mushrooms From China, India, and Indonesia*, Investigation Nos. 731-TA-777-779 (Final), USITC Publication 3159, February 1999 (“*Publication 3159*”), p. I-1.

<sup>10</sup> 63 FR 56613, October 22, 1998.

<sup>11</sup> 63 FR 72246, December 31, 1998.

<sup>12</sup> 63 FR 66575, December 2, 1998.

<sup>13</sup> 64 FR 9178, February 24, 1999.

<sup>14</sup> 63 FR 66529, December 2, 1998.

<sup>15</sup> 64 FR 8308 (China), 64 FR 8311 (India), and 64 FR 8310 (Indonesia), February 19, 1999.

<sup>16</sup> On February 1, 2002, Commerce revoked the antidumping duty order with respect to PT Zeta Agro Corp. (Indonesia).

<sup>17</sup> 68 FR 62322, November 3, 2003.

<sup>18</sup> In accordance with section 751(c) of the Act, the U.S. Department of Commerce (“Commerce”) published a notice of initiation of five-year reviews of the subject antidumping duty orders concurrently with the Commission’s notice of institution. 68 FR 62280, November 3, 2003.

<sup>19</sup> 69 FR 7793, February 19, 2004.

<sup>20</sup> 69 FR 11384, March 10, 2004.

<sup>21</sup> 69 FR 63408, November 1, 2004.

<sup>22</sup> 69 FR 67308, November 17, 2004.



## Commerce's Administrative Reviews

### Chile

Commerce has conducted one administrative review of the antidumping duty order on certain preserved mushrooms from Chile, as shown in the following tabulation:

<b>Period of review</b>	<b>Date results published</b>	<b>Margins (percent)</b>
December 1, 1999 to November 30, 2000	May 10, 2002 (67 FR 31769)	Nature's Farm . . . . . 148.51 <sup>1</sup> Ravine Foods . . . . . 148.51 Chile-wide rate . . . . . 148.51
<sup>1</sup> Includes Chilean merchandise shipped by the Colombian firm, Compania Envasadora del Atlantico.		

## China

Commerce has conducted eight administrative reviews of the antidumping duty order on certain preserved mushrooms from China, as shown in the following tabulation:<sup>23 24</sup>

Period of review	Date results published	Margins (percent)
May 7, 1998 to January 31, 2000	August 17, 2000 (65 FR 50183)	Mei Wei Food ..... 198.63 Tak Fat Trading Co. .... 198.63 China-wide rate ..... 198.63
August 5, 1998 to January 31, 2000	July 6, 2001 (66 FR 35595)	China Processed Food Import & Export Co. .... 0.00 Gerber (Yunnan) Co. .... 121.33 Raoping Xingyu Foods Co., Ltd. .... 47.80
February 1, 2000 to January 31, 2001	August 9, 2002 (67 FR 51833)	Gerber (Yunnan) Co. .... 0.00 Shantou Hongda Industrial General ..... 0.00 Shenxian Dongxing Foods Co., Ltd. .... 0.00 Raoping Xingyu Foods Co., Ltd. .... 161.57
February 1, 2001 to January 31, 2002	July 11, 2003 (68 FR 41304) <i>amended by</i> January 25, 2010 (75 FR 3896)	Guangxi Yulin Oriental Food Co., Ltd. .... 0.00 Shenxian Dongxing Foods Co., Ltd. .... 61.37 Shantou Hongda Industrial General ..... 122.07 Gerber (Yunnan) Co. .... 198.63 Green Fresh Foods (Zhangzhou), Ltd. .... 198.63 Guangxi Yulin ..... 198.63 China-wide rate ..... 198.63
February 1, 2002 to January 31, 2003	September 9, 2004 (69 FR 54635) <i>amended by</i> January 25, 2010 (75 FR 3896)	China Processed Food Import & Export Co. and designated affiliates ..... 3.92 Guangxi Yulin Oriental Food Co., Ltd. .... 0.00 Shenxian Dongxing Foods Co., Ltd. .... 66.50 Shantou Hongda Industrial General ..... 198.63 Gerber Food (Yunnan) Co., Ltd. .... 22.84 Green Fresh Foods (Zhangzhou), Ltd. .... 15.83 Primera Harvest (Xiangfan) Co. .... 82.22 China-wide rate ..... 198.63
February 1, 2003 to January 31, 2004	September 14, 2005 (70 FR 54365) <i>amended by</i> October 17, 2005 (70 FR 60280), and December 28, 2005 (70 FR 76772)	COFCO ..... 2.67 China Processed Food Import & Export Co. .... 1.50 Green Fresh Foods (Zangzhou) Co. Ltd. .... 167.72 Guangxi Hengxian Pro-Light Foods (Zangzhou) ... 21.38 Shandong Jinfa Edible Fungus Corp. Ltd. .... 3.60 Xiamen International Trade & Industrial Co. Ltd. ... 0.00 Guangxi Yulin Oriental Food Co., Ltd. .... 198.63 China-wide rate ..... 198.63
February 1, 2004 to January 31, 2005	July 17, 2006 (71 FR 40477)	Raoping Yucun ..... 113.84 China-wide rate ..... 198.63
February 1, 2005 to January 31, 2006	August 9, 2007 (72 FR 44827)	China Processed Food Import & Export Co. .... 19.02 Primera Harvest (Xiangfan) ..... 19.02 Guangxi Eastwing Trading Co. .... 19.02 China-wide rate ..... 198.63

<sup>23</sup> Commerce rescinded two administrative reviews (73 FR 43210, July 24, 2008) (74 FR 41123, August 14, 2009).

<sup>24</sup> Commerce found duty absorption in the fourth administrative review of certain preserved mushrooms from China, on those sales for which Gerber was the importer of record (69 FR 54635, September 9, 2004).

## India

Commerce has conducted seven administrative reviews of the antidumping duty order on certain preserved mushrooms from India, as shown in the following tabulation:<sup>25 26</sup>

Period of review	Date results published	Margins (percent)
August 5, 1998 to January 31, 2000	August 13, 2001 (66 FR 42507)	Agro Dutch Foods, Ltd. . . . . 2.26 Himalya International, Ltd. . . . . 6.63 Hindustan Lever, Ltd. . . . . 4.29 Techtran Agro Industries, Ltd. . . . . 66.24 Weikfield Agro Products, Ltd. . . . . 26.44 India-wide rate . . . . . 11.30
February 1, 2000 to January 31, 2001	July 12, 2002 (67 FR 46172)	Agro Dutch Foods, Ltd. . . . . 27.80 Himalya International, Ltd. . . . . 0.68 Saptarishi Agro Industries, Ltd. . . . . 66.24 Weikfield Agro Products, Ltd. . . . . 0.00
February 1, 2001 to January 31, 2002	July 11, 2003 (68 FR 41303)	Agro Dutch Foods, Ltd. . . . . 1.02 Himalya International, Ltd. . . . . 0.08 Weikfield Agro Products, Ltd. . . . . 34.66
February 1, 2002 to January 31, 2003	August 20, 2004 (69 FR 51630) <i>amended by</i> September 14, 2004 (69 FR 55405)	Agro Dutch Foods, Ltd. . . . . 33.47 Dinesh Agro Products, Ltd. . . . . 66.24 Premier Mushroom Farms . . . . . 25.73 Saptarishi Agro Industries, Ltd. . . . . 66.24 Weikfield Agro Products, Ltd. . . . . 9.35
February 1, 2003 to January 31, 2004	June 30, 2005 (70 FR 37757)	Agro Dutch Industries Ltd. . . . . 0.62 Premier Mushroom Farms . . . . . 41.67 Flex Foods Ltd. . . . . 114.76 Weikfield Agro Products . . . . . 25.69
February 1, 2004 to January 31, 2005	March 2, 2006 (71 FR 10647)	Agro Dutch Industries, Ltd. . . . . 0.76
February 1, 2005 to January 31, 2006	February 5, 2007 (72 FR 5268)	Agro Dutch Industries, Ltd. . . . . 0.61

<sup>25</sup> Commerce issued a final determination in a changed-circumstances review in which it determined that KICM (MADRAS), Ltd. was the successor-in-interest to Hindustan Lever, Ltd. for purposes of determining antidumping duty liability. *Certain Preserved Mushrooms from India: Final Results of Changed-Circumstances Review*, 68 FR 6884, February 11, 2003.

<sup>26</sup> Commerce found duty absorption in the fourth administrative review of certain preserved mushrooms from India. However, the Court of Appeals for the Federal Circuit directed Commerce to annul all findings and conclusions made pursuant to the duty absorption inquiry (73 FR 11869, March 5, 2008).

## Indonesia

Commerce has conducted three administrative reviews of the antidumping duty order on certain preserved mushrooms from Indonesia, as shown in the following tabulation:

Period of review	Date results published	Margins (percent)
August 5, 1998 to January 31, 2000 <sup>1</sup>	July 13, 2001 (66 FR 36754)	PT Dieng Djaya ..... 0.44 PT Surya Jaya Abadi Perkasa ..... 0.44 PT Indo Evergreen ..... 5.16 PT Zeta Agro ..... 0.02 Indonesia-wide rate ..... 11.26
February 1, 2000 to January 31, 2001	May 13, 2002 (67 FR 32014)	PT Dieng Djaya ..... 0.59 PT Surya Jaya Abadi Perkasa ..... 0.59 PT Indo Evergreen ..... 0.09 PT Zeta Agro ..... 0.27 Indonesia-wide rate ..... 11.26
February 1, 2001 to January 31, 2002	July 2, 2003 (68 FR 39521)	PT Indo Evergreen ..... 0.30 PT Zeta Agro ..... 0.00 <sup>2</sup> Indonesia-wide rate ..... 11.26
<p><sup>1</sup> The period of review covered December 31, 1998 through January 31, 2000 for PT Dieng Djaya and PT Surya Jaya Abadi Perkasa.</p> <p><sup>2</sup> Commerce revoked the antidumping duty order with regard to imports from PT Zeta Agro Corp., effective February 1, 2002. It determined that PT Zeta Agro Corp., had not sold product at less than fair value for three consecutive administrative reviews. See <i>Certain Preserved Mushrooms from Indonesia: Antidumping Duty Administrative Review and Final Determination to Revoke Order in Part</i>, 68 FR 39521, July 2, 2003.</p>		

### Commerce's Final Results of Expedited Reviews

On December 18, 2009, Commerce found that revocation of the antidumping duty orders on preserved mushrooms from Chile, China, India, and Indonesia would likely lead to the continuation or recurrence of dumping.<sup>27</sup> The weighted-average dumping margins (in percent *ad valorem*), as reported by Commerce, that would occur if the antidumping duty orders were to be revoked, are presented in the tabulation on the following page.

<sup>27</sup> Commerce's notice is presented in app. A.

Country and firm	Margin (percent)
<b>Chile</b>	
Nature's Farm Products (Chile) S.A.	148.51
All others	148.51
<b>China</b>	
China Processed Food I&E Co./ Xiamen Jiahua I&E Trading Co., Ltd.	121.47
Tak Fat Trading Co.	162.47
Shenzhen Cofry Cereals, Oils, & Foodstuffs Co., Ltd.	151.15
Gerber (Yunnan) Food Co.	142.11
Jiangsu Cereals, Oils, & Foodstuffs Group Import & Export Corp.	142.11
Fujian Provincial Cereals, Oils, & Foodstuffs I&E Corp.	142.11
Putian Cannery Fujian Province	142.11
Xiamen Gulong I&E Co., Ltd.	142.11
General Canned Foods Factory of Zhangzhou	142.11
Zhejiang Cereals, Oils, & Foodstuffs I&E Corp.	142.11
Shanghai Foodstuffs I&E Corp.	142.11
Canned Goods Co. of Raoping	142.11
All others	198.63
<b>India</b>	
Agro Dutch Foods Ltd.	6.28
KICM (Madras) Ltd. <sup>1</sup>	14.91
Alpine Biotech Ltd.	243.87
Mandeep Mushrooms Ltd.	243.87
All others	11.30
<b>Indonesia</b>	
PT Dieng Djaya/PT Surya Jaya Abadi Perkasa	7.94
PT Zeta Agro Corp.	revoked <sup>2</sup>
All others	11.26
<sup>1</sup> Commerce conducted a changed circumstances review and found that KICM (Madras) Ltd. was the successor-in-interest to Hindustan Lever Ltd. (formerly known as Ponds (India) Ltd.). <sup>2</sup> Effective February 1, 2002, the antidumping duty order with respect to PT Zeta Agro Corp. was revoked.	

**Distribution of Continued Dumping and Subsidy Offset Act Funds  
to Affected Domestic Producers**

Since 2001, qualified U.S. producers of certain preserved mushrooms have been eligible to receive disbursements from U.S. Customs and Border Protection (“Customs”) under the Continued Dumping and Subsidy Offset Act of 2000 (“CDSOA”), also known as the Byrd Amendment.<sup>28</sup> The following tabulation presents CDSOA disbursements for Federal fiscal years 2001-09.

Fiscal year	Country			
	Chile	China	India	Indonesia
	Value (dollars)			
2001	\$0	\$0	\$171,150	\$83,079
2002	0	19,895	2,154,765	442,949
2003	170,253	12,268	1,326,207	524,182
2004	0	93,744	242,476	48,678
2005	0	53,179	536,436	456,073
2006	0	16,719	201,637	46,024
2007	0	227,528	128,509	16,700
2008	0	385,877	1,135,061	95,530
2009	0	1,241,828	773,629	0

Source: Customs' CDSOA Annual Reports at [http://www.cbp.gov/xp/cgov/import/add\\_cvd/cont\\_dump](http://www.cbp.gov/xp/cgov/import/add_cvd/cont_dump),

**COMMERCE’S SCOPE RULINGS**

Since the issuance of the antidumping orders, Commerce has issued two scope rulings with regard to certain preserved mushrooms. On July 13, 1999, Commerce determined that preserved mushrooms produced in third countries from provisionally preserved mushrooms produced in Chile were within the scope of the antidumping orders.<sup>29</sup> On June 19, 2000, Commerce determined that “marinated or acidified mushrooms with an acetic acid content under 0.5 percent” were within the scope of the antidumping orders.<sup>30</sup>

<sup>28</sup> 19 CFR 159.64(g).

<sup>29</sup> *Notice of Scope Rulings*, 65 FR 41957, July 7, 2000.

<sup>30</sup> *Notice of Scope Rulings*, 65 FR 52409, August 29, 2000.

## THE PRODUCT<sup>31</sup>

### Scope

Commerce has defined the scope of the subject product (certain preserved mushrooms) as follows:

The products covered by this review are imported certain preserved mushrooms whole, sliced, diced, or as stems and pieces. The “preserved mushrooms” covered under the orders 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. Included within the scope of these orders are “brined” mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing. Also included within the scope of these orders, as of June 19, 2000, are marinated, acidified, or pickled mushrooms containing less than 0.5 percent acetic acid. The mushrooms subject to these orders were previously classified under statistical reporting numbers 2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000 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 these orders is dispositive. As of January 1, 2002, the HTSUS statistical reporting numbers are as follows: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153, 0711.51.0000.<sup>32</sup>

### Description and Uses

The imported product subject to the antidumping duty orders under review, as defined by Commerce, consists of certain preserved mushrooms of the species *Agaricus bisporus* and *Agaricus bitorquis* 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. These mushrooms are imported whole, sliced, diced, or as stems and pieces. Included within the scope of the antidumping duty orders are “brined” mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing. Also included in the scope of the antidumping orders are marinated, acidified, or pickled mushrooms containing less than 0.5 percent acetic acid.

The term “certain preserved mushrooms” does not include: (1) all other species of mushroom, including straw mushrooms (HTS statistical reporting number 2003.90.0010); (2) all fresh and chilled mushrooms (HTS subheading 0709.51.01), including “refrigerated” or “quick blanched” mushrooms; (3) dried mushrooms (HTS subheading 0712.31.00); and (4) frozen mushrooms (HTS subheading 0710.80.20).

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<sup>31</sup> The discussion in this section is taken largely from the product description as presented in the staff report from the first five-year review. *Certain Preserved Mushrooms from Chile, China, India, and Indonesia, Staff Report*, INV-BB-123, October 4, 2004, pp. I-5-I-18.

<sup>32</sup> See *Certain Preserved Mushrooms from Chile, India, Indonesia, and the People’s Republic of China: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders*, 74 FR 67170, December 18, 2009.

In its original determinations and its first full five-year reviews determinations, the Commission found one domestic like product consisting of preserved mushroom coextensive with the scope definition.<sup>33</sup> In these second five-year reviews, the Coalition stated that it agreed with the Commission's earlier domestic like product and domestic industry determinations.<sup>34 35</sup>

### Physical Characteristics, Processing Operations, and End Uses

The imported and domestic products covered in these reviews are preserved<sup>36</sup> mushrooms of the *Agaricus bisporus* and *Agaricus bitorquis* (collectively "Agaricus") species.<sup>37</sup> Raw *Agaricus* mushrooms used to produce the subject preserved mushrooms are often white but may also include off-white (cream and brown) mushrooms.<sup>38</sup> U.S. mushroom growers sell most of their mushrooms in the fresh market, whereas less than 15 percent annually of all *Agaricus* mushrooms grown in the United States are sold for processing.<sup>39</sup> U.S. standards of identity for raw mushrooms intended for processing range from grade 1-A (white, closed veil, no blemishes) to grade 2-B (off-white, open veil, blemishes), with most canned stems and pieces made from grade 2 mushrooms and most canned whole and sliced mushrooms made from grade 1-B and sometimes grade 1-A mushrooms.<sup>40</sup>

The processing of mushrooms begins with the procurement of raw product. The largest, best-formed mushrooms are generally sold on the fresh market for prices higher than those for processing-grade mushrooms, resulting in medium to small, broken or blemished mushrooms being more readily available for canning.<sup>41</sup> Domestic industry sources have stated that in times of oversupply to the fresh market, fresh-market-quality mushrooms that would otherwise be sold to a retailer or food-service buyer to be used in the fresh form might instead be diverted to a processor.<sup>42</sup>

In general, mushroom processing involves the cleaning, grading, sorting, sometimes slicing or dicing, blanching, packing in a liquid medium (including water, brine, and butter or butter sauce) in airtight containers, and heating or retorting (preserved by heat sterilization) in cans or jars.<sup>43</sup> Due to the perishable nature of raw mushrooms, they are generally processed within 24 hours after harvest.<sup>44</sup> Fresh mushrooms for processing are prepared from raw mushrooms that have been cleaned, inspected, and

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<sup>33</sup> *Publication 3144*, pp. 3-6. *Certain Preserved Mushrooms from Chile, China, India, and Indonesia, Inv. Nos. 731-TA-776-779 (Review)*, USITC Pub. 3044 ("Publication 3044"), October 2004, pp. 4-5.

<sup>34</sup> The Coalition's response to the Notice of Institution, ("Response"), November 2, 2009.

<sup>35</sup> In the original determinations, the Commission did not exclude any producers from the domestic industry pursuant to the related parties provisions. Commissioners Crawford and Askey defined the domestic industry by excluding \*\*\* and \*\*\* from the definition under the related parties provision. In the first full five-year reviews, the Commission unanimously determined that appropriate circumstances did not exist to exclude any producers from the domestic industry as a related party.

<sup>36</sup> Raw mushrooms were not within the scope of the original investigations. *Publication 3144*, pp. 4-5.

<sup>37</sup> *Antidumping Duty Petition, Volume I: Certain Preserved Mushrooms from Chile, China, India, and Indonesia*, submitted on behalf of L.K. Bowman, Inc.; Modern Mushroom Farms, Inc.; Monterey Mushrooms, Inc.; Mount Laurel Canning Corp.; Mushroom Canning Co.; Southwood Farms; Sunny Dell Foods, Inc.; and United Canning Corp., received January 6, 1998, p. 12.

<sup>38</sup> *Publication 3144*, p. I-3.

<sup>39</sup> U.S. mushroom growers reported sales of the 2008-09 *Agaricus* mushroom crop to be 679 million pounds for the fresh market, or 85 percent of the yield, and 123 million pounds, or 15 percent, for the processing market. *Mushrooms*, National Agricultural Statistics Service (NASS), Agricultural Statistics Board, U.S. Department of Agriculture, August 20, 2009.

<sup>40</sup> *Publication 3144*, p. I-3.

<sup>41</sup> *Id.* at pp. I-3-I-4.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*



weighed again to determine the net volume of the shipment. The mushrooms are then washed with plain water and blanched (cooked) to an internal temperature of at least 180 degrees for 7-8 minutes. The blanching process shrinks the mushrooms by about 40 percent as raw mushrooms consist of about 94-percent water and excess moisture is lost during this process. The mushrooms are then sliced (if desired as sliced or as pieces or stems), de-watered, and put through a metal detector to check for extraneous metal materials.<sup>45</sup> Finally, the mushrooms go through a volumetric filler machine, the net weight in the can or jar is checked, and the packing media (which may include such things as water, a light salt water solution, ascorbic acid, or other preservatives) is added into the can.<sup>46</sup> The container is vacuum sealed with a metal lid and the cans or jars are heated in a retort cooker until the contents reach commercial sterility. The product is allowed to cool and the containers labeled, if appropriate, and packed in cardboard cartons or palletized for shipment.<sup>47</sup> Canned mushrooms generally have a shelf life of up to 3 years. Processed mushrooms are generally tan or gray in color, have a slightly salty taste, and a soft texture. Mushrooms packed in jars are usually in small container sizes ranging from 2.5 to 8 ounces. Mushrooms packed in cans are packed predominantly in larger container sizes of 16 ounces and 68 ounces, but also are packed in 4- and 8-ounce cans.

Processed mushrooms are generally sold in three styles of pack: whole (including buttons),<sup>48</sup> sliced and diced or stems and pieces. Whole mushrooms are said to account for the smallest market share of canned-mushroom sales. Most of the U.S. market for canned mushrooms prefers stems and pieces, which especially predominate in the industrial and institutional/food-service market.<sup>49</sup> The three main types of purchasers of certain preserved mushrooms are industrial users, food-service customers, and retailers. Industrial customers generally use canned mushrooms to produce other food products, such as brand-name and private-label soups and spaghetti sauces. These purchasers are described as generally buying large volumes of canned mushrooms in large containers. Food-service users, including major pizza chains, other restaurants, and distributors for institutional applications, also purchase large quantities of large-volume containers. Finally, sales of mushrooms packed in jars and 4- and 8-ounce cans tend to be concentrated in retail outlets, including grocery stores, and distributors to such outlets, where the mushrooms are sold as both national brands and private-label products principally to individual customers for home consumption.

### **Interchangeability and Customer and Producer Perceptions**

In the original investigations all responding U.S. producers reported that preserved mushrooms from all sources are used interchangeably. Importers showed more divergence in views. The sole importer of Eleven of 15 importers reported that subject merchandise from China was interchangeable with domestically-produced mushrooms and four reported that it was not. Ten of 20 importers reported that subject merchandise from India was interchangeable with domestically-produced mushrooms, and ten reported it was not. Ten of 22 importers reported that subject merchandise from Indonesia was interchangeable with domestically-produced, and 12 reported that it was not. A majority of purchasers reported that imports from each of the subject countries were at least moderate substitutes for the

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<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> Buttons are small whole mushrooms with the stems removed manually. *Id.* at p. I-3.

<sup>49</sup> *Id.* U.S. producers reported that by volume, 81.9 percent of their 2003 U.S. shipments were of pieces and stems, 14.3 percent were sliced mushrooms, and the remaining 3.8 percent were whole mushrooms or other (e.g., portobello) mushrooms. U.S. importers reported that 72.7 percent of their 2003 U.S. shipments were of pieces and stems, 23.0 percent were sliced mushrooms, and the remaining 4.3 percent were of whole mushrooms or other portobello mushrooms.

domestically-produced product. All U.S. producers reported that imported preserved mushrooms from all subject sources were used interchangeably, sixteen of 23 responding importers agreed.<sup>50</sup>

In the first full five-year reviews, a majority of purchasers and U.S. producers reported that U.S.-produced preserved mushrooms were always interchangeable with imports from each of the subject countries. A majority of U.S. importers reported that U.S.-produced mushrooms were always or frequently interchangeable with imports from each of the subject countries. For each possible subject country combination, a majority of each type of market participants reported that imports from different subject countries were always or frequently interchangeable.<sup>51</sup>

### **Channels of Distribution**

Preserved mushrooms are sold to industrial users, food-service customers, and retailers. In both the original investigations and the first full five-year reviews, there was substantial presence by the domestically-produced product in all three channels of distribution. During the period examined in the original investigation and the first full five-year reviews, the Commission found that channels of distribution did not overlap for subject imports from Chile and Indonesia, but did for all other possible subject country combinations.<sup>52</sup>

### **Price**

In its original determination on subject imports from Chile, the Commission found that the subject imports it cumulated (those from Chile, China, and India), undersold the domestic like product in 51 out of 94 quarterly comparisons.<sup>53</sup> In its original determinations on China and India, the Commission found that the subject imports it cumulated (those from all four subject countries), undersold the domestic like product in 67 quarterly comparisons, oversold the domestic like product in 67 quarterly comparisons, and in two comparisons were priced the same. With respect to the 68 ounce stems and pieces pricing product to which the Commission gave particular focus, the cumulated subject imports undersold the domestic like product in 27 out of 50 quarterly comparisons.<sup>54</sup> In its original determination on Indonesia, the Commission found that the subject imports it cumulated (those from China, India, and Indonesia) undersold the domestic like product in 61 out of 118 quarterly comparisons.<sup>55</sup>

In the first five-year reviews, the Commission cumulated subject imports from Chile, China, and India for purposes of the determinations on those countries. It found that the cumulated subject imports undersold the domestic like product in over 65 percent of quarterly comparisons.<sup>56</sup> The Commission did not cumulate subject imports from Indonesia with those from any other subject country. It found that the subject imports from Indonesia undersold the domestic like product in 16 out of 42 quarterly

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<sup>50</sup> Publication 3144, p. 11, Publication 3159, pp. 8-10.

<sup>51</sup> *Certain Preserved Mushrooms From Chile, China, India, and Indonesia*, Investigation Nos. 731-TA-776-779 (Review), USITC Publication 3171, October 2004 (“*Publication 3171*”), p. 14.

<sup>52</sup> “With respect to the various subject country combinations, the Commission found a significant overlap between Chile and China and between Chile and India in the food-service channel, and between China and India, China and Indonesia, and India and Indonesia in the retail channel. The Commission did not find a reasonable overlap of channels of distribution between subject imports from Chile and subject imports from Indonesia, as the product from the former source was overwhelmingly concentrated in the industrial and food-service channels, and the product from the latter source was overwhelmingly concentrated in the retail channel.” *Publication 3144*, p. 19.

<sup>53</sup> *Publication 3144*, p. 20.

<sup>54</sup> *Publication 3159*, p. 14.

<sup>55</sup> *Publication 3159*, p. 19.

<sup>56</sup> *Publication 3171*, p. 26. Not all Commissioners used the same database for making pricing comparisons. See *id.* at 26 n.148.

comparisons.<sup>57</sup> According to the Coalition in these current five-year reviews, subject imports have continued to compete aggressively on the basis of price and domestic prices are currently depressed to their lowest levels in roughly 15 years.<sup>58</sup>

## **THE INDUSTRY IN THE UNITED STATES**

### **U.S. Producers**

During the period examined in the original investigations, the U.S. preserved mushroom industry was comprised of 13 producers. After the original investigations, the structure of the domestic industry changed substantially through company closures and acquisitions; Ron Son \*\*\*; Mount Laurel Canning was purchased by Monterey in 1998; Modern Mushrooms closed its cannery operation in 2000; Southwood Farms ceased company operations in 2002; and \*\*\*. By the time of the Commissions' first full five-year reviews of the orders completed in October 2004, the domestic industry was comprised of six producers. In its response to the Commission's notice of institution in these five-year reviews, the Coalition reported that there are currently six domestic producers of preserved mushrooms: Creekside, Giorgio, LK Bowman, Monterey, the Mushroom Co., and Sunny Dell. No company entered or exited the industry from 2004 to 2008. Mushroom Canning Company changed its name to The Mushroom Company in November 2006. The company Son Top LLC is the mushroom processing facility of Creekside Mushrooms, Ltd. In terms of related parties, the Coalition reported that none of the domestic producers is related to a foreign producer/exporter and none is related to an importer of the subject merchandise. However, they reported that \*\*\*.

### **U.S. Producers' Trade, Employment, and Financial Data**

Data reported by U.S. producers of preserved mushrooms in the Commission's original investigation, first full five-year reviews, and in response to the second five-year reviews' institution notice are presented in table I-1.

During the current five-year reviews, industry data are available for 2008.<sup>59</sup> Many industry indicators have declined since the end of the first five-year reviews: capacity (11.6 percent), production (10.8 percent), quantity of U.S. shipments (26.2 percent), value of U.S. shipments (6.8 percent), value of net sales (15.1 percent), and cost of goods sold (26.2 percent). Other industry indicators have increased since the end of the first full-review: capacity utilization (0.2 percentage points), unit values of U.S. shipments (26.5 percent), gross profit (222.6 percent), and SG&A (3.3 percent). The Coalition reported that the gradual decline in demand for preserved mushrooms from 2003 to 2008 reflects its nature as a mature product. In addition, \*\*\*.<sup>60</sup>

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<sup>57</sup> *Publication 3731*, p. 30.

<sup>58</sup> *Response*, November 2, 2009, pp. 15-16.

<sup>59</sup> *Response*, November 2, 2009, pp. 21-22.

<sup>60</sup> *Response*, November 2, 2009, p. 25.

Table I-1

## Preserved mushrooms: U.S. producers' trade, employment, and financial data, 1998-2003 and 2008

Item	1995	1996	1997	1998	1999	2000	2001	2002	2003	2008
Capacity (1,000 pounds drained weight)	214,973	223,735	203,523	280,404	285,300	287,728	271,155	270,042	200,044	176,757
Production (1,000 pounds drained weight)	107,711	84,936	74,711	66,186	67,849	68,932	53,316	50,733	50,161	44,726
Capacity utilization (percent)	50.1	38.0	36.7	23.6	23.8	24.0	19.7	18.8	25.1	25.3
U.S. shipments:										
Quantity (1,000 pounds drained weight)	95,274	91,865	74,642	66,196	73,525	61,741	56,543	58,552	47,687	35,170
Value (\$1,000)	142,013	121,084	90,279	82,859	99,290	81,411	69,031	67,582	55,722	51,944
Unit value (\$/pound drained weight)	\$1.49	\$1.32	\$1.21	\$1.25	\$1.35	\$1.32	\$1.22	\$1.15	\$1.17	\$1.48
Inventories/U.S. shipments	25.2	17.3	19.1	22.0	12.1	26.1	22.7	8.3	15.3	( <sup>1</sup> )
PRWs (number)	518	476	421	330	321	328	270	260	266	( <sup>1</sup> )
Hours worked (1,000 hours)	1,113	978	804	435	433	502	430	402	380	( <sup>1</sup> )
Wages paid (\$1,000)	12,672	10,776	10,525	5,372	5,480	6,999	6,633	6,423	5,988	( <sup>1</sup> )
Hourly wages	\$11.39	\$11.02	\$13.09	\$12.35	\$12.66	\$13.94	\$15.43	\$15.98	\$15.78	( <sup>1</sup> )
Productivity (tons per 1,000 hours)	96.8	86.8	92.9	125.6	140.0	133.8	124.0	126.2	132.2	( <sup>1</sup> )
Unit labor costs (per short ton)	\$0.12	\$0.13	\$0.14	\$0.10	\$0.09	\$0.10	\$0.12	\$0.13	\$0.12	( <sup>1</sup> )
Net sales										
Quantity (1,000 pounds drained weight)	90,840	90,551	76,052	68,133	71,437	64,639	57,251	59,943	49,724	( <sup>1</sup> )
Value (\$1,000)	142,110	122,323	94,012	81,714	98,393	87,008	70,610	69,463	58,139	49,387
Unit value (\$/pound drained weight)	\$1.56	\$1.35	\$1.24	\$1.20	\$1.38	\$1.35	\$1.23	\$1.16	\$1.17	( <sup>1</sup> )
Cost of goods sold (\$1,000)	121,721	105,728	81,957	74,270	89,167	76,808	64,611	66,246	55,543	41,013
Gross profit (\$1,000)	20,389	16,595	12,055	7,444	9,226	10,200	5,999	3,217	2,596	8,374
SG&A expenses (\$1,000)	12,868	12,067	10,815	6,657	7,183	7,447	6,305	5,729	4,150	4,287
Operating Income (\$1,000)	7,521	4,528	1,240	787	2,043	2,753	(305)	(2,512)	(1,554)	4,087

<sup>1</sup> Not available.

Source: Compiled from data appearing in the *Confidential Staff Report*, INV-V-089 (November 5, 1998), tables III-1, III-2, III-3, III-4, and VI-1, and *Confidential Staff Report* INV-BB-123 (October 4, 2004), tables III-1, III-2, III-3, III-5, III-6, and *Response*, November 2, 2009, pp. 21-24.

## **U.S. IMPORTS AND APPARENT U.S. CONSUMPTION**

### **U.S. Importers**

Thirty-two importers responded to the Commission's questionnaires in the final phase of the original investigations accounting for 83 percent of subject imports in 1997. In the Commission's first five-year reviews, 19 importers responded accounting for \*\*\* percent of subject imports in 2003. In its response to the Commission's notice of institution in these second five-year reviews, the Coalition listed 157 importers of preserved mushrooms.

### **U.S. Imports**

Table I-2 presents import data on preserved mushrooms from 1995 to 2008. Once the orders were imposed in late 1998 and early 1999, imports from Chile exited the market. In 2008, imports from China and India exceed the pre-order level of imports, while subject imports from Indonesia were less than half of pre-order levels.<sup>61</sup> From 2003 to 2008 imports of preserved mushrooms from China increased by 73.4 percent, imports from India decreased by 23.7 percent, and imports from Indonesia increased by \*\*\* percent. At the same time, the value of these imports increased by 147.9 percent (China), 22.9 percent (India), and \*\*\* percent (Indonesia).

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<sup>61</sup> Commerce revoked the antidumping duty order with regard to imports from PT Zeta Agro Corp., effective February 1, 2002.

**Table I-2**  
**Preserved mushrooms: U.S. imports, by sources, 1995-2008**

Source	Calendar year													
	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
<b>Quantity (1,000 pounds, drained weight)</b>														
China	66,923	67,491	67,209	48,046	320	8,330	19,364	20,594	48,139	60,990	60,410	48,709	78,831	83,460
Hong Kong	8,664	5,262	3,901	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
Subtotal	75,587	72,753	71,109	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
Chile	10,660	7,101	5,429	6,516	0	0	0	0	0	0	0	0	0	0
India	5,951	4,368	9,949	12,559	32,023	34,439	29,479	23,885	27,010	33,691	27,114	29,117	27,491	20,606
Indonesia (subject)	30,756	26,893	31,791	26,666	29,096	29,043	22,417	***	***	***	***	***	***	***
Subtotal	122,953	111,115	118,279	93,786	61,439	71,812	71,259	***	***	***	***	***	***	***
Indonesia (nonsubject)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	***	***	***	***	***	***	***
All other sources	21,826	14,763	11,590	21,814	45,663	65,136	47,462	47,549	42,838	27,018	20,413	17,437	12,019	19,388
Total	144,780	125,879	129,869	115,600	107,102	136,948	118,721	114,615	140,216	145,469	131,852	110,633	137,270	143,783
<b>Value (\$1,000)<sup>3</sup></b>														
China	77,071	63,038	55,701	37,520	433	7,617	19,117	19,516	43,339	53,107	50,087	45,783	92,648	107,443
Hong Kong	10,508	4,532	2,620	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
Subtotal	87,580	67,570	58,321	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
Chile	11,661	7,990	6,252	7,683	0	0	0	0	0	0	0	0	0	0
India	8,065	5,400	10,069	13,022	27,873	33,057	27,442	21,051	21,997	28,948	21,857	27,007	32,568	27,044
Indonesia (subject)	47,648	35,197	37,269	30,459	39,321	38,493	28,830	***	***	***	***	***	***	***
Subtotal	154,954	116,157	111,911	88,685	67,628	79,167	75,389	***	***	***	***	***	***	***
Indonesia (nonsubject)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	***	***	***	***	***	***	***
All other sources	30,476	19,279	15,826	26,158	51,161	67,638	47,239	43,954	39,809	23,911	17,673	15,800	13,559	21,159
Total	185,430	135,436	127,737	114,843	118,789	146,805	122,628	109,220	131,607	133,972	117,347	107,082	166,184	187,294

Table continued on next page.

Table I-2--Continued  
Preserved mushrooms: U.S. imports, by sources, 1995-2008

Source	Calendar year													
	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
<i>Unit value (per pound, drained weight)</i>														
China	1.15	0.93	0.83	0.78	\$1.35	\$0.91	\$0.99	\$0.95	\$0.90	\$0.87	\$0.83	\$0.94	\$1.18	\$1.29
Hong Kong	1.21	0.86	0.67	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
Average	1.16	0.93	0.82	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
Chile	\$1.09	\$1.13	\$1.15	\$1.18	(1)	(1)	(1)	(1)	(1)	--	--	--	--	--
India	1.36	1.24	1.01	1.04	0.87	0.96	0.93	0.88	0.81	0.86	0.81	0.93	1.18	1.31
Indonesia (subject)	1.55	1.31	1.17	1.14	1.35	1.33	1.29	***	***	***	***	***	***	***
Average	1.26	1.05	0.95	0.95	1.10	1.10	1.06	***	***	***	***	***	***	***
Indonesia (nonsubject)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	***	***	***	***	***	***	***
All other sources	1.40	1.31	1.37	1.20	1.12	1.04	1.00	0.92	0.93	0.89	0.87	0.91	1.13	1.09
Average	1.28	1.08	0.98	0.99	1.11	1.07	1.03	0.95	0.94	0.92	0.89	0.97	1.21	1.30
<i>Share of quantity (percent)</i>														
China	46.2	53.6	51.8	41.6	0.3	6.1	16.3	18.0	34.3	41.9	45.8	44.0	57.4	58.0
Hong Kong	6.0	4.2	3.0	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
Subtotal	52.2	57.8	54.8	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
Chile	7.4	5.6	4.2	5.6	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
India	4.1	3.5	7.7	10.9	29.9	25.1	24.8	20.8	19.3	23.2	20.6	26.3	20.0	14.3
Indonesia (subject)	21.2	21.4	24.5	23.1	27.2	21.2	18.9	***	***	***	***	***	***	***
Subtotal	84.9	88.3	91.1	81.1	57.4	52.4	60.0	***	***	***	***	***	***	***
Indonesia (nonsubject)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	***	***	***	***	***	***	***
All other sources	15.1	11.7	8.9	18.9	42.6	47.6	40.0	41.5	30.6	18.6	15.5	15.8	8.8	13.5
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Table continued on next page.

Table I-2--Continued  
Preserved mushrooms: U.S. imports, by sources, 1995-2008

Source	Calendar year													
	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Share of value (percent)														
China	41.6	46.5	43.6	32.7	0.4	5.2	15.6	17.9	32.9	39.6	42.7	42.8	55.8	57.4
Hong Kong	5.7	3.3	2.1	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
Subtotal	47.2	49.9	45.7	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
Chile	6.3	5.9	4.9	6.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
India	4.3	4.0	7.9	11.3	23.5	22.5	22.4	19.3	16.7	21.6	18.6	25.2	19.6	14.4
Indonesia (subject)	25.7	26.0	29.2	26.5	33.1	26.2	23.5	***	***	***	***	***	***	***
Subtotal	83.6	85.8	87.6	77.2	56.9	53.9	61.5	***	***	***	***	***	***	***
Indonesia (nonsubject)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	***	***	***	***	***	***	***
All other sources	16.4	14.2	12.4	22.8	43.1	46.1	38.5	40.2	30.2	17.8	15.1	14.8	8.2	11.3
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
<p><sup>1</sup> Hong Kong data presented in all other sources.  <sup>2</sup> Not applicable.  <sup>3</sup> Landed, duty-paid.</p> <p>Source: Compiled from adjusted Commerce statistics, and from data appearing in the <i>Confidential Staff Report</i>, INV-V-089 (November 5, 1998) table IV-1, and <i>Confidential Staff Report</i> INV-BB-123 (October 4, 2004), table IV-1, and <i>Response</i>, November 2, 2009, pp. 21-24. U.S. imports from Indonesia for 2002- 2008 were adjusted to remove U.S. imports from PT Zeta Agro from subject U.S. imports from Indonesia. U.S. imports from PT Zeta Agro were compiled using information provided by Customs. These imports are reported under Indonesia (nonsubject).</p>														



### Apparent U.S. Consumption and Market Shares

Apparent U.S. consumption of preserved mushrooms during the original investigations, the first full five-year review, and 2008 are shown in table I-3. Apparent U.S. consumption quantity in 2008 was less than apparent consumption during the original period, and was 4.8 percent less than apparent consumption in 2003. The domestic producers' market share based on quantity fell from 25.4 percent in 2003 to 19.7 percent in 2008. The market share of imports from China rose from 25.6 percent in 2003 to 46.6 percent in 2008, and imports from Indonesia rose from \*\*\* percent to \*\*\* percent, whereas the market share of imports from India fell from 14.4 percent to 11.5 percent. The Coalition reported that the gradual decline in demand for preserved mushrooms from 2003 to 2008 reflects its nature as a mature product. In addition, \*\*\*.<sup>62</sup>

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<sup>62</sup> *Response*, November 2, 2009, p. 25.

Table I-3

## Certain preserved mushrooms: U.S. shipments of domestic product, U.S. imports, and apparent U.S. consumption, 1995-2003 and 2008

Item	1995	1996	1997	1998	1999	2000	2001	2002	2003	2008
<i>Quantity (1,000 pounds, drained weight)</i>										
U.S. producers' U.S. shipments	95,274	91,865	74,642	66,196	73,525	61,741	56,543	58,552	47,687	35,170
U.S. imports from--										
China	66,923	67,491	67,209	48,046	320	8,330	19,364	20,594	48,139	83,460
Hong Kong	8,664	5,262	3,901	(1)	(1)	(1)	(1)	(1)	(1)	(1)
Subtotal	75,587	72,753	71,109	(1)	(1)	(1)	(1)	(1)	(1)	(1)
Chile	10,660	7,101	5,429	6,516	0	0	0	0	0	0
India	5,951	4,368	9,949	12,559	32,023	34,439	29,479	23,885	27,010	20,606
Indonesia (subject)	30,756	26,893	31,791	26,666	29,096	29,043	22,417	***	***	***
Subtotal	122,953	111,115	118,279	93,786	61,439	71,812	71,259	***	***	***
Indonesia (nonsubject)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	***	***	***
Other sources	21,826	14,763	11,590	21,814	45,663	65,136	47,462	47,549	42,838	19,388
Total imports	144,780	125,879	129,869	115,600	107,102	136,948	118,721	114,615	140,216	143,783
Apparent consumption	240,054	217,744	204,511	181,796	180,627	198,689	175,264	173,167	187,903	178,953
<i>Value (\$1,000)</i>										
U.S. producers' U.S. shipments	142,013	121,084	90,279	82,859	99,290	81,411	69,031	67,582	55,722	51,944
U.S. imports from--										
China	77,071	63,038	55,701	37,520	433	7,617	19,117	19,516	43,339	107,443
Hong Kong	10,508	4,532	2,620	(1)	(1)	(1)	(1)	(1)	(1)	(1)
Subtotal	87,580	67,570	58,321	(1)	(1)	(1)	(1)	(1)	(1)	(1)
Chile	11,661	7,990	6,252	7,683	0	0	0	0	0	0
India	8,065	5,400	10,069	13,022	27,873	33,057	27,442	21,051	21,997	27,044
Indonesia (subject)	47,648	35,197	37,269	30,459	39,321	38,493	28,830	***	***	***
Subtotal	154,954	116,157	111,911	88,685	67,628	79,167	75,389	***	***	***
Indonesia (nonsubject)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	***	***	***
Other sources	30,476	19,279	15,826	26,158	51,161	67,638	47,239	43,954	39,809	21,159
Total imports	185,430	135,436	127,737	114,843	118,789	146,805	122,628	109,220	131,607	187,294
Apparent consumption	327,443	256,520	218,016	197,702	218,079	228,216	191,659	176,802	187,329	239,238
<i>Table continued on next page.</i>										

Table I-3--Continued

## Preserved mushrooms: U.S. shipments of domestic product, U.S. imports, and apparent U.S. consumption, 1995-2003 and 2008

Item	1995	1996	1997	1998	1999	2000	2001	2002	2003	2008
<b>Share of Quantity (percent)</b>										
U.S. producers' U.S. shipments	39.7	42.2	36.5	36.4	40.7	31.1	32.3	33.8	25.4	19.7
U.S. imports from--										
China	27.9	31.0	32.9	26.4	0.2	4.2	11.0	11.9	25.6	46.6
Hong Kong	3.6	2.4	1.9	(1)	(1)	(1)	(1)	(1)	(1)	(1)
Subtotal	31.5	33.4	34.8	(1)	(1)	(1)	(1)	(1)	(1)	(1)
Chile	4.4	3.3	2.7	3.6	0.0	0.0	0.0	0.0	0.0	0.0
India	2.5	2.0	4.9	6.9	17.7	17.3	16.8	13.8	14.4	11.5
Indonesia (subject)	12.8	12.4	15.5	14.7	16.1	14.6	12.8	***	***	***
Subtotal	51.2	51.0	57.8	51.6	34.0	36.1	40.7	***	***	***
Indonesia (nonsubject)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	***	***	***
Other sources	9.1	6.8	5.7	12.0	25.3	32.8	27.1	27.5	22.8	10.8
Total imports	60.3	57.8	63.5	63.6	59.3	68.9	67.7	66.2	74.6	80.3
<b>Share of Value (percent)</b>										
U.S. producers' U.S. shipments	43.4	47.2	41.4	41.9	45.5	35.7	36.0	38.2	29.7	21.7
U.S. imports from--										
China	23.5	24.6	25.5	19.0	0.2	3.3	10.0	11.0	23.1	44.9
Hong Kong	3.2	1.8	1.2	(1)	(1)	(1)	(1)	(1)	(1)	(1)
Subtotal	26.7	26.3	26.8	(1)	(1)	(1)	(1)	(1)	(1)	(1)
Chile	3.6	3.1	2.9	3.9	0.0	0.0	0.0	0.0	0.0	0.0
India	2.5	2.1	4.6	6.6	12.8	14.5	14.3	11.9	11.7	11.3
Indonesia (subject)	14.6	13.7	17.1	15.4	18.0	16.9	15.0	***	***	***
Subtotal	47.3	45.3	51.3	44.9	31.0	34.7	39.3	***	***	***
Indonesia (nonsubject)	(2)	(2)	(2)	(2)	(2)	(2)	(2)	***	***	***
Other sources	9.3	7.5	7.3	13.2	23.5	29.6	24.6	24.9	21.3	8.8
Total imports	56.6	52.8	58.6	58.1	54.5	64.3	64.0	61.8	70.3	78.3

<sup>1</sup> Hong Kong data presented in all other sources.

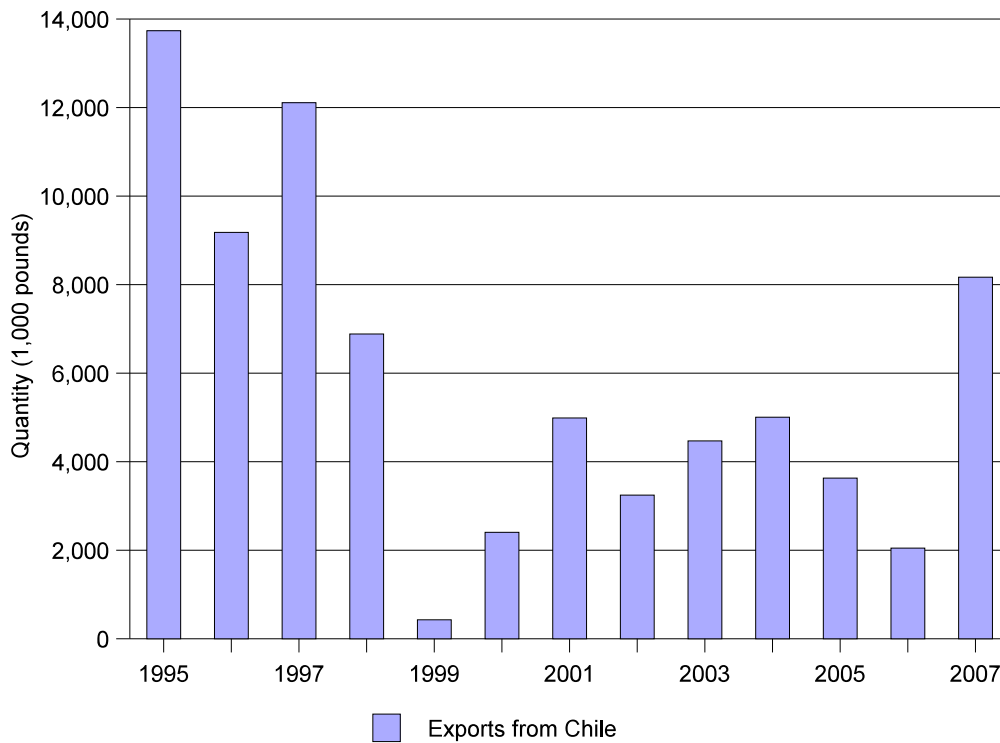
<sup>2</sup> Not applicable.

Source: Compiled from adjusted Commerce statistics, and from data appearing in the *Confidential Staff Report*, INV-V-089 (November 5, 1998), table IV-2, and *Confidential Staff Report* INV-BB-123 (October 4, 2004), tables I-4 and I-5, and *Response*, November 2, 2009, pp. 21-24. U.S. imports from Indonesia for 2002-2008 were adjusted to remove U.S. imports from PT Zeta Agro from subject U.S. imports from Indonesia. U.S. imports from PT Zeta Agro were compiled using information provided by Customs. These imports are reported under Indonesia (nonsubject).

## THE INDUSTRY IN CHILE

The Commission's report for the original investigations presented data from the only known producer of preserved mushrooms in Chile, Nature's Farm Products (Chile), S.A.. ("Nature's Farm"). In the first full five-year reviews, Nature's Farm did not provide the Commission with a response to its questionnaires. In its response to the Commission's notice of institution for these second reviews, the Coalition identified two firms it believes to be producing the subject merchandise in Chile: Nature's Farm and Discom International Ltda. The Coalition reported that Chile exported 5.0 million pounds of canned mushrooms valued at \$4.4 million in 2008.<sup>63</sup> Figure I-1 provides data obtained from the United Nations regarding exports of "canned mushrooms" from Chile to all countries combined.

**Figure I-1**  
**Exports of canned mushrooms from Chile, 1995-2007**



Source: INV-BB-123 (October 4, 2004), Figure IV-1, and Food and Agricultural Organization of the United Nations, Statistics Division, <http://www.fao.org/es/ess/toptrade.asp>.

<sup>63</sup> *Response*, November 2, 2009, exhibit 2.

## THE INDUSTRY IN CHINA

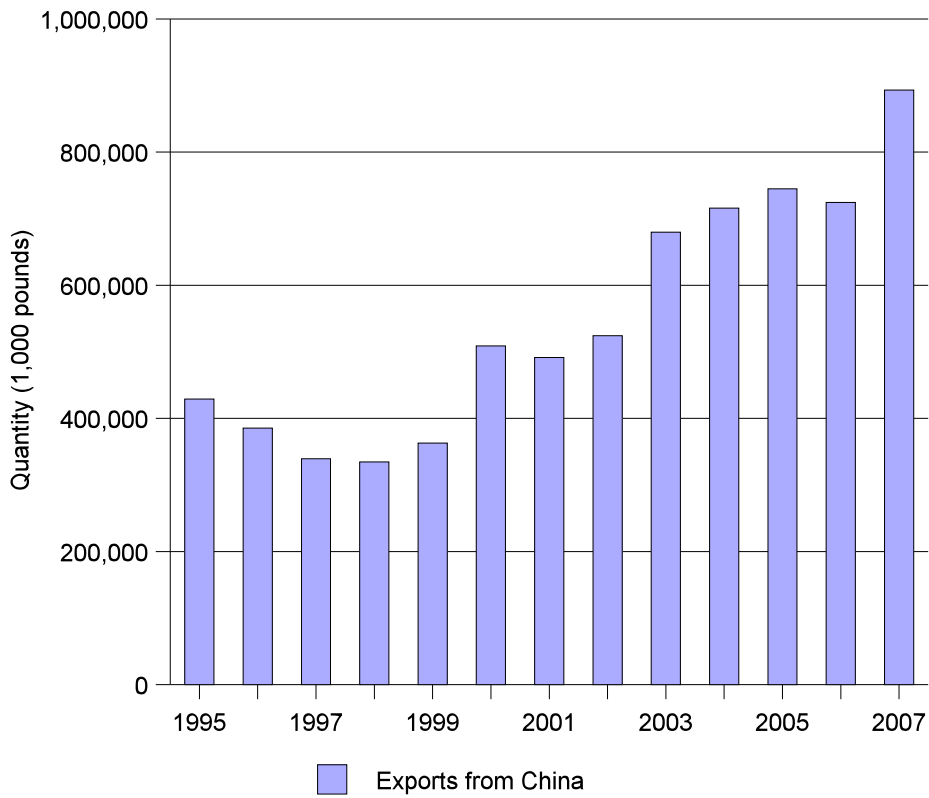
The Commission's report for the original investigations presented data from three producers in China. In the first full five-year reviews, the Commission requested data from 12 producers of preserved mushrooms in China, none of which provided a response.<sup>64</sup> In its response to the Commission's notice of institution for these second reviews, the Coalition identified 133 firms it believes to be producing the subject merchandise in China. The Coalition reported that China exported 881 million pounds of canned mushrooms valued at \$591 million in 2008.<sup>65</sup> Figure I-2 provides data obtained from the United Nations regarding exports of "canned mushrooms" from China. As shown, exports of canned mushrooms from China have increased since 1999, thereby tracking the trend observed in the data on U.S. imports from China.

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<sup>64</sup> These producers are: (1) China Processed Food Import & Export Co., Ltd.; (2) Dalian Mishima Foods, Co., Ltd.; (3) Fujian Provincial Cereals, Oils, & Foodstuffs Import & Export Corp.; (4) Fujian Putian Canned Foods Group Corp.; (5) General Canned Food Factory of Zhangzhou; (6) Gerber Food (Yunnan) Co., Ltd.; (7) Jiangsu Cereals, Oils & Foodstuffs Import & Export Corp.; (8) Shanghai Foodstuffs Import & Export Corp.; (9) Shenzhen Cofry, Cereals, Oils & Foodstuffs, Co., Ltd.; (10) Tak Fat Trading Co.; (11) Xiamen Gulong Import & Export Co., Ltd.; and (12) Zhejiang Cereals, Oils & Foodstuffs Import & Export Co., Ltd.

<sup>65</sup> In 2008, China exported 127 million pounds of canned mushrooms to the United States, valued at \$92.2 million, with an average unit value of \$0.73. *Response*, November 2, 2009, exhibit 2.

**Figure I-2**  
**Exports of canned mushrooms from China, 1995-2007**



Source: INV-BB-123 (October 4, 2004), Figure IV-2, and Food and Agricultural Organization of the United Nations, Statistics Division, <http://www.fao.org/es/ess/toptrade.asp>.

## THE INDUSTRY IN INDIA

The Commission's report for the original investigations presented data from two producers in India. In the first full five-year reviews, the Commission requested data from seven firms and received data from two Indian firms. In its response to the Commission's notice of institution for these second reviews, the Coalition identified thirteen firms it believes to be producing the subject merchandise in India: Agro Dutch Foods, Ltd.; Alpine Biotech, Ltd.; Dinesh Agro Products, Ltd.; Flex Foods, Ltd.; Himalya International, Ltd.; Hindustan Lever, Ltd.; KICM (Madras), Ltd.; Mandeep Mushrooms, Ltd.; Premier Mushroom Farms; Saptarishi Agro Industries, Ltd.; Techtran Agro Industries, Ltd.; Transchem, Ltd.; and, Weikfield Agro Products, Ltd. Data on the preserved mushroom industry in India reported to the Commission during the original investigation, the first full five-year reviews, and these second reviews are presented in table I-4.<sup>66</sup>

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<sup>66</sup> \*\*\*.

Table I-4

## Preserved mushrooms: India's capacity, production, shipments, and inventories, 1995-2003, and 2008

Item	Calendar year										
	1995	1996	1997	1998	1999	2000	2001	2002	2003	2008	
<b>Quantity (1,000 pounds, drained weight)</b>											
Capacity	***	***	***	***	***	***	***	***	***	***	(1)
Production	***	***	***	***	***	***	***	***	***	***	(1)
End of period inventories	***	***	***	***	***	***	***	***	***	***	(1)
Shipments:											
Internal consumption	(1)	(1)	(1)	***	***	***	***	***	***	***	(1)
Home market	***	***	***	***	***	***	***	***	***	***	(1)
Exports to--											
The United States	***	***	***	***	***	***	***	***	***	***	23,937
European Union	(1)	(1)	(1)	***	***	***	***	***	***	***	(1)
Asia	(1)	(1)	(1)	***	***	***	***	***	***	***	(1)
All other markets	***	***	***	***	***	***	***	***	***	***	13,131
Total exports	***	***	***	***	***	***	***	***	***	***	37,068
Total shipments	***	***	***	***	***	***	***	***	***	***	(1)
<b>Value (\$1,000)</b>											
Exports to the United States	(1)	(1)	(1)	***	***	***	***	***	***	***	13,897
<b>Unit value (per pound, drained weight)</b>											
Exports to the United States	(1)	(1)	(1)	***	***	***	***	***	***	***	\$0.58
* * * * *											
<sup>1</sup> Not applicable.											

Source: Compiled from data appearing in the *Confidential Staff Report*, INV-V-089 (November 5, 1998), table VII-3, *Confidential Staff Report* INV-BB-123 (October 4, 2004), table IV-3, and *Response*, November 2, 2009, ex. 2.



## THE INDUSTRY IN INDONESIA

The Commission's report for the original investigations presented data from four producers in Indonesia. In the first full five-year reviews, the Commission received data from five Indonesian firms, accounting for a majority of imports of preserved mushrooms from Indonesia. In its response to the Commission's notice of institution for these second reviews, the Coalition identified seven firms it believes to be producing the subject merchandise in Indonesia: PT Citraraja Ampat Canning, PT Dieng Djaya, PT Eka Timur Raya, PT Indo Evergreen Agro Business Corp., PT Karya Kompos Bagas, PT Surya Jaya Abadi Perkasa, and PT Tumbuh Agung.<sup>67 68</sup> Data on the preserved mushroom industry in Indonesia reported to the Commission during the original investigations, the first full five-year reviews, and these second reviews are presented in table I-5.

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<sup>67</sup> In 2002, the antidumping duty order was revoked on imports of preserved mushrooms from Indonesian producer PT Zeta Agro.

<sup>68</sup> During the first full five-year reviews, PT Dieng Djaya and PT Indo Evergreen both reported ceasing production of preserved mushrooms in 2003. PT Dieng resumed mushroom production operations in 2007, and the website of PT Indo Evergreen currently advertises the sale of mushrooms.

Table I-5

## Preserved mushrooms: Indonesia's capacity, production, shipments, and inventories, 1995-2003, and 2008

Item	Calendar year										
	1995	1996	1997	1998	1999	2000	2001	2002	2003	2008	
<b>Quantity (1,000 pounds, drained weight)</b>											
Capacity	***	***	***	***	***	***	***	***	***	***	(1)
Production	***	***	***	***	***	***	***	***	***	***	(1)
End of period inventories	***	***	***	***	***	***	***	***	***	***	(1)
Shipments:											
Internal consumption	(1)	(1)	(1)	***	***	***	***	***	***	***	(1)
Home market	***	***	***	***	***	***	***	***	***	***	(1)
Exports to--											
The United States	***	***	***	***	***	***	***	***	***	***	28,462
European Union	(1)	(1)	(1)	***	***	***	***	***	***	***	(1)
Asia	(1)	(1)	(1)	***	***	***	***	***	***	***	(1)
All other markets	***	***	***	***	***	***	***	***	***	***	10,637
Total exports	***	***	***	***	***	***	***	***	***	***	39,100
Total shipments	***	***	***	***	***	***	***	***	***	***	(1)
<b>Value (\$1,000)</b>											
Exports to the United States	(1)	(1)	(1)	***	***	***	***	***	***	***	22,328
<b>Unit value (per pound, drained weight)</b>											
Exports to the United States	(1)	(1)	(1)	***	***	***	***	***	***	***	\$0.78
* * * * *											
<p><sup>1</sup> Not applicable.</p> <p>Note: PT Zeta Agro was a subject producer during 1998-2001.</p> <p>Source: Source: Compiled from adjusted Commerce statistics, and from data appearing in the <i>Confidential Staff Report</i>, INV-V-089 (November 5, 1998), table VII-4, <i>Confidential Staff Report</i> INV-BB-123 (October 4, 2004), table IV-4, and <i>Response</i>, November 2, 2009, ex. 2.</p>											

## ANTIDUMPING AND COUNTERVAILING DUTY ORDERS IN THIRD-COUNTRY MARKETS

Imports of certain preserved mushrooms into the EU are subject to a tariff-rate quota system that commenced in 1995. In 2006, the EU modified the annual quota assigning an annual quota of 63.8 million pounds to imports of preserved mushrooms from China and 11.1 million pounds from all other countries (other than Bulgaria and Romania), including Chile, India, and Indonesia. The out-of-quota tariff rate is 12 percent for HTS subheading 0711.5100, and 23 percent for HTS subheadings 2003.1020, and 2003.10.30.<sup>69</sup> Australia imposed an antidumping duty order on imports of preserved mushrooms from China in January 2006. Mexico imposed an antidumping duty order on imports of preserved mushrooms from Chile and China in May 2006.<sup>70</sup>

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<sup>69</sup> Commission Regulation 1979/2006, December 22, 2006.

<sup>70</sup> *Response*, November 2, 2009, pp. 14-15.

**APPENDIX A**  
***FEDERAL REGISTER* NOTICES**



deadline date. As a result, in accordance with 19 CFR 351.218(d)(1)(iii)(A), the Department determined that no domestic interested party intends to participate in the sunset review, and on August 21, 2009, we notified the International Trade Commission, in writing, that we intended to issue a final determination revoking this antidumping duty order. See 19 CFR 351.218(d)(1)(iii)(B)(2).

**Scope of the Order**

The merchandise covered by this order is barbed wire and barbless fencing wire from Argentina, which is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) item number 7313.00.00. The HTSUS number is provided for convenience and customs purposes. The written product description remains dispositive.

**Determination To Revoke**

Pursuant to section 751(c)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.218(d)(1)(iii)(B)(3), if no domestic interested party files a notice of intent to participate, the Department shall, within 90 days after the initiation of the review, issue a final determination revoking the order. Because the domestic interested parties did not file a notice of intent to participate in this sunset review, the Department finds that no domestic interested party is participating in this sunset review. Therefore, consistent with 19 CFR 351.222(i)(1)(i) and section 751(c)(3)(A) of the Act, we are revoking this antidumping duty order. The effective date of revocation is September 20, 2009, the fifth anniversary of the date of publication in the **Federal Register** of the most recent notice of continuation of this antidumping duty order.

**Effective Date of Revocation**

Pursuant to section 751(c)(3)(A) of the Act and 19 CFR 351.222(i)(2)(i), the Department will issue instructions to U.S. Customs and Border Protection, 15 days after publication of the notice, to terminate the suspension of liquidation of the merchandise subject to this order entered, or withdrawn from warehouse, on or after September 20, 2009. Entries of subject merchandise prior to the effective date of revocation will

continue to be subject to suspension of liquidation and antidumping duty deposit requirements. The Department will complete any pending administrative reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

This five-year (sunset) review and notice are in accordance with sections 751(c) and 777(i)(1) of the Act.

Dated: September 24, 2009.

**John M. Andersen,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. E9-23695 Filed 9-30-09; 8:45 am]

**BILLING CODE 3510-DS-P**

**DEPARTMENT OF COMMERCE**

**Foreign-Trade Zones Board**

[Docket 45-2008]

**Foreign-Trade Zone 72—Indianapolis, IN; Termination of Review of Application for Subzone GETRAG Transmission Manufacturing LLC (Automotive Transmissions), Tipton, IN**

Notice is hereby given of termination of review of an application submitted by the Indianapolis Airport Authority, grantee of FTZ 72, requesting special-purpose subzone status for the automotive transmission manufacturing plant of GETRAG Transmission Manufacturing LLC, located in Tipton, Indiana. The application was filed on August 8, 2008 (73 FR 48194, 8-18-08).

The termination is a result of changed circumstances, and the case has been closed without prejudice.

Dated: September 24, 2009.

**Pierre V. Duy,**

*Acting Executive Secretary.*

[FR Doc. E9-23697 Filed 9-30-09; 8:45 am]

**BILLING CODE 3510-DS-P**

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**Initiation of Five-Year (“Sunset”) Review**

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

**SUMMARY:** In accordance with section 751(c) of the Tariff Act of 1930, as amended (“the Act”), the Department of Commerce (“the Department”) is automatically initiating a five-year review (“Sunset Review”) of the antidumping duty order listed below. The International Trade Commission (“the Commission”) is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers the same order.

**DATES:** *Effective Date:* October 1, 2009.

**FOR FURTHER INFORMATION CONTACT:** The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Ave., NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205-3193.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Department’s procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department’s conduct of Sunset Reviews is set forth in the Department’s Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-Year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin*, 63 FR 18871 (April 16, 1998).

**Initiation of Review**

In accordance with 19 CFR 351.218(c), we are initiating the Sunset Review of the following antidumping duty order:

DOC Case No.	ITC Case No.	Country	Product	Department contact
A-337-804 .....	731-TA-776 .....	Chile .....	Certain Preserved Mushrooms (2nd Re-view).	Brandon Farlander (202) 482-0182.
A-533-813 .....	731-TA-777 .....	India .....	Certain Preserved Mushrooms (2nd Re-view).	Brandon Farlander (202) 482-0182.
A-560-802 .....	731-TA-778 .....	Indonesia .....	Certain Preserved Mushrooms (2nd Re-view).	Brandon Farlander (202) 482-0182.

DOC Case No.	ITC Case No.	Country	Product	Department contact
A-570-851 .....	731-TA-779 .....	PRC .....	Certain Preserved Mushrooms (2nd Review).	Brandon Farlander (202) 482-0182.

### Filing Information

As a courtesy, we are making information related to Sunset proceedings, including copies of the pertinent statute and Department's regulations, the Department schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's Internet Web site at the following address: <http://ia.ita.doc.gov/sunset/>. All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303.

Pursuant to 19 CFR 351.103 (c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order ("APO") immediately following publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304-306.

### Information Required From Interested Parties

Domestic interested parties defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b) wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically

revoke the order without further review. See 19 CFR 351.218(d)(1)(iii).

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that all parties wishing to participate in the Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews.<sup>1</sup> Please consult the Department's regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218 (c).

September 22, 2009.

**John M. Andersen,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. E9-23691 Filed 9-30-09; 8:45 am]

**BILLING CODE 3510-DS-P**

### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

**RIN 0648-XR96**

#### Gulf of Mexico Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

<sup>1</sup> In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests to extend that five-day deadline based upon a showing of good cause.

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meetings.

**SUMMARY:** The Gulf of Mexico Fishery Management Council will convene a public meeting of the Louisiana/Mississippi Habitat Protection Advisory Panel (AP).

**DATES:** The meeting will convene at 9 a.m. on Thursday, October 29, 2009 and conclude no later than 4 p.m.

**ADDRESSES:** This meeting will be held at the Four Points by Sheraton, 6401 Veterans Memorial Highway, Metairie, LA 70003.

*Council address:* Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

**FOR FURTHER INFORMATION CONTACT:** Jeff Rester, Habitat Support Specialist, Gulf States Marine Fisheries Commission; telephone: (228) 875-5912.

**SUPPLEMENTARY INFORMATION:** At this meeting, the AP will discuss the Mississippi Coastal Improvements Program, deepwater coral in the Gulf of Mexico, projects associated with Individual Environmental Report 11 (Inner Harbor Navigation Canal Navigable Floodgates in Orleans and St. Bernard Parishes, LA), potential estuarine and marine impacts from the expansion of the Strategic Petroleum Reserve in Richton, MS, open water disposal of dredge material in Mississippi Sound, and Louisiana Coastal Protection and Restoration Plan projects in Planning Unit 1.

The Louisiana/Mississippi group is part of a three unit Habitat Protection AP of the Gulf of Mexico Fishery Management Council. The principal role of the advisory panels is to assist the Council in attempting to maintain optimum conditions within the habitat and ecosystems supporting the marine resources of the Gulf of Mexico. Advisory panels serve as a first alert system to call to the Council's attention proposed projects being developed and other activities which may adversely impact the Gulf marine fisheries and their supporting ecosystems. The panels may also provide advice to the Council on its policies and procedures for addressing environmental affairs.

Although other issues not on the agenda may come before the panel for discussion, in accordance with the Magnuson-Stevens Fishery

either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: September 25, 2009.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E9-23627 Filed 9-30-09; 8:45 am]

BILLING CODE 7020-02-P

## INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731-TA-776-779  
(Second Review)]

### Preserved Mushrooms From Chile, China, India, and Indonesia

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of five-year reviews concerning the antidumping duty orders on preserved mushrooms from Chile, China, India, and Indonesia.

**SUMMARY:** The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on preserved mushrooms from Chile, China, India, and Indonesia would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; <sup>1</sup> to be assured of consideration, the deadline for responses is November 2, 2009. Comments on the adequacy of responses may be filed with the Commission by December 15, 2009. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

**DATES:** *Effective Date:* October 1, 2009.

**FOR FURTHER INFORMATION CONTACT:** Mary Messer (202-205-3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain

information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

#### SUPPLEMENTARY INFORMATION:

**Background.**—On December 2, 1998, the Department of Commerce ("Commerce") issued an antidumping duty order on imports of preserved mushrooms from Chile (63 FR 66529) and on February 19, 1999, Commerce issued antidumping duty orders on imports of preserved mushrooms from China, India, and Indonesia (64 FR 8308-8312). Commerce subsequently revoked in part the order on imports from Indonesia (68 FR 39521, July 2, 2003). Following five-year reviews by Commerce and the Commission, effective November 17, 2004, Commerce issued a continuation of the antidumping duty orders on imports of preserved mushrooms from Chile, China, India, and Indonesia (69 FR 67308). The Commission is now conducting second reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

**Definitions.**—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Countries* in these reviews are Chile, China, India, and Indonesia.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determinations and its full five-year review determinations, the Commission found one domestic like product consisting of preserved mushrooms

corresponding to the scope of Commerce's investigations.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations and its full five-year review determinations, the Commission defined the *Domestic Industry* to consist of all domestic producers of preserved mushrooms. Certain Commissioners defined the *Domestic Industry* differently in the original investigations.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

**Participation in the reviews and public service list.**—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the "same particular matter" as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy



Agency Ethics Official, at 202–205–3088.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Certification.*—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

*Written submissions.*—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is November 2, 2009. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is December 15, 2009. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in

accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

*Inability to provide requested information.*—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

*Information to be provided in response to this notice of institution:* If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country*; or produce *Subject Merchandise* in more than one *Subject Country*, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country*. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2003.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and E-mail address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2008, except as noted (report quantity data in pounds, drained weight, and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(d) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(e) The value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country(ies)*, provide the following information on your firm's(s') operations on that product during calendar year 2008 (report quantity data in pounds, drained weight, and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country*; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country(ies)*, provide the following information on your firm's(s') operations on that product during calendar year 2008 (report quantity data in pounds, drained weight, and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise*

in each *Subject Country* accounted for by your firm's(s') production; and

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in each *Subject Country* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* after 2003, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country*, and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority:** These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: September 25, 2009.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E9-23564 Filed 9-30-09; 8:45 am]

BILLING CODE 7020-02-P

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-658]

### In the Matter of Certain Video Game Machines and Related Three-Dimensional Pointing Devices; Notice of Commission Decision Not To Review an Initial Determination Terminating the Investigation Based on a Settlement Agreement

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's initial determination ("ID") (Order No. 44) granting a joint motion to terminate the above-captioned investigation based on a settlement agreement.

**FOR FURTHER INFORMATION CONTACT:** Daniel E. Valencia, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-1999. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on September 23, 2008, based on a complaint filed by Hillcrest Laboratories, Inc. of Rockville, Maryland ("Hillcrest"), alleging violations of section 337 of the Tariff Act of 1930 (19 U.S.C. \*\*1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of

(TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:**

Facsimiles will not be accepted as official nominations. E-mail or a courier service is recommended. Regular mail submissions must be screened by the Agency and may delay the receipt of the application up to a month.

A total of five positions will be filled. The following four positions will serve 3-year term appointments from January 1, 2010, to December 31, 2012. Positions to be filled are for:

- A member who is not currently an officer or employee of any government body living in a city with a population of less than 50,000 and who has experience and has been active in urban and community forestry.
- A member representing city/town government.
- One of two members representing a national non-profit forestry and/or conservation citizen organization.
- One of two members representing academic institutions with an expertise in urban and community forestry activities.

The fifth position will fill an interim term appointment (January 1, 2009 to December 31, 2010):

- A person representing forest products, nursery, or related industries.

Dated: December 9, 2009.

**Robin L. Thompson,**

*Associate Deputy Chief, State and Private.*

[FR Doc. E9-30113 Filed 12-17-09; 8:45 am]

**BILLING CODE 3410-11-P**

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**A-337-804, A-533-813, A-560-802, A-570-851**

**Certain Preserved Mushrooms from Chile, India, Indonesia and the People's Republic of China: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders**

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

**SUMMARY:** On October 1, 2009, the Department of Commerce (the Department) initiated sunset reviews of the antidumping duty orders on certain preserved mushrooms from Chile, India, Indonesia, and the People's Republic of China (PRC), pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). The Department has

conducted expedited (120-day) sunset reviews for these orders pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2). As a result of these sunset reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping.

**FOR FURTHER INFORMATION CONTACT:**

David Goldberger or Kate Johnson, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4136 and (202) 482-4929, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 2, 1998, the Department published the antidumping duty order on certain preserved mushrooms from Chile. *See Notice of Antidumping Duty Order: Certain Preserved Mushrooms from Chile*, 63 FR 66529 (December 2, 1998). On February 19, 1999, the Department published the antidumping duty orders on certain preserved mushrooms from India, Indonesia, and the PRC. *See Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms from India*, 64 FR 8311 (February 19, 1999); *Notice of Antidumping Duty Order: Certain Preserved Mushrooms from Indonesia*, 64 FR 8310 (February 19, 1999); and *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).

In 2003-2004, the Department conducted the first sunset review on imports of certain preserved mushrooms from Chile, India, Indonesia, and the PRC, pursuant to section 751(c) of the Act, and found that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping at the same rates as found in the original investigations.<sup>1</sup> In November 2004, the U.S. International Trade Commission (ITC) determined, pursuant to section 751(c) of the Act, that revocation of these antidumping duty orders would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a

reasonably foreseeable time.<sup>2</sup> Also in November 2004, the Department published a notice of continuation of these antidumping duty orders.<sup>3</sup>

On October 1, 2009, the Department published the notice of initiation of the sunset reviews of the antidumping duty orders on certain preserved mushrooms from Chile, India, Indonesia, and the PRC, pursuant to section 751(c) of the Act. *See Initiation of Five-year ("Sunset") Reviews*, 74 FR 50776 (October 1, 2009) (*Notice of Initiation*).

The Department received a notice of intent to participate from the Coalition for Fair Preserved Mushroom Trade (the "Coalition"), a domestic interested party, which is comprised of L.K. Bowman Company, a division of Hanover Foods Corporation, Monterey Mushrooms, Inc., The Mushroom Company (formerly Mushroom Canning Company), and Sunny Dell Foods, Inc., within the deadline specified in 19 CFR 351.218(d)(1)(i). The Coalition claimed interested party status under section 771(9)(C) of the Act as a manufacturer of a domestic like product in the United States.

The Department received a complete substantive response to the notice of initiation from the domestic interested party within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no substantive responses from respondent interested parties with respect to any of the orders covered by these sunset reviews, nor was a hearing requested. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted expedited (120-day) sunset reviews of the antidumping duty orders on certain preserved mushrooms from Chile, India, Indonesia, and the PRC.

**Scope of the Orders**

The products covered under the Certain Preserved Mushrooms orders are imported whole, sliced, diced, or as stems and pieces. The "preserved mushrooms" covered under the orders 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,

<sup>2</sup> See *Certain Preserved Mushrooms from Chile, China, India, and Indonesia*, 69 FR 63408 (November 1, 2004).

<sup>3</sup> See *Continuation of Antidumping Duty Orders on Certain Preserved Mushrooms from Chile, the People's Republic of China, India, and Indonesia*, 69 FR 67308 (November 17, 2004).

<sup>1</sup> See *Certain Preserved Mushrooms from Chile, India, Indonesia and the People's Republic of China: Final Results of Expedited Sunset Reviews of Antidumping Duty Orders*, 69 FR 11384 (March 10, 2004).

brine, butter or butter sauce. Included within the scope of these orders are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing. Also included within the scope of these orders, as of June 19, 2000, are marinated, acidified, or pickled mushrooms containing less than 0.5 percent acetic acid.

Excluded from the scope of these orders 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; and (4) frozen mushrooms. The merchandise subject to these orders was previously classifiable under subheadings 2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000 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 these orders is dispositive. As of January 1, 2002, the HTSUS subheadings are as follows: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153, 0711.51.0000.

**Analysis of Comments Received**

All issues raised in these reviews are addressed in the "Issues and Decision Memorandum for the Expedited Sunset Reviews of the Antidumping Duty Orders on Certain Preserved Mushrooms from Chile, India, Indonesia, and the People's Republic of China" from John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration (Decision Memo), which is hereby adopted by, and issued concurrently with, this notice. The issues discussed in the Decision Memo include the

likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the orders were revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room 1117 of the main Department building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at <http://ia.ita.doc.gov/frn>. The paper copy and electronic version of the Decision Memo are identical in content.

**Final Results of Reviews**

We determine that revocation of the antidumping duty orders on certain preserved mushrooms from Chile, India, Indonesia, and the PRC would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/Exporters/Producers	Weighted-Average Margin (percent)
<b>Chile.</b>	
Nature's Farm Products (Chile) S.A. ....	148.51
All-Others Rate .....	148.51
<b>India.</b>	
Agro Dutch Foods Ltd. ....	6.28
KICM (Madras) Ltd.* .....	14.91
Alpine Biotech Ltd. ....	243.87
Mandeep Mushrooms Ltd. ....	243.87
All-Others Rate .....	11.30
<b>Indonesia.</b>	
PT Dieng Djaya/PT Surya Jaya Abadi Perkasa .....	7.94
PT Zeta Agro Corporation .....	*revoked
All-Others Rate .....	11.26
<b>PRC.</b>	
China Processed Food I&E Co./Xiamen Jiahua I&E Trading Company, Ltd. ....	121.47
Tak Fat Trading Co. ....	162.47
Shenzhen Cofry Cereals, Oils, & Foodstuffs Co., Ltd. ....	151.15
Gerber (Yunnan) Food Co. ....	142.11
Jiangsu Cereals, Oils & Foodstuffs Group Import & Export Corporation .....	142.11
Fujian Provincial Cereals, Oils & Foodstuffs I&E Corp. ....	142.11
Putian Cannery Fujian Province .....	142.11
Xiamen Gulong I&E Co., Ltd. ....	142.11
General Canned Foods Factory of Zhangzhou .....	142.11
Zhejiang Cereals, Oils & Foodstuffs I&E Corp. ....	142.11
Shanghai Foodstuffs I&E Corp. ....	142.11
Canned Goods Co. of Raoping .....	142.11
PRC-wide Rate .....	198.63

\*The Department conducted a changed circumstances review and found that KICM (Madras) Limited was the successor-in-interest to Hindustan Lever Limited (formerly known as Ponds (India) Ltd.). See *Certain Preserved Mushrooms from India: Final Results of Changed Circumstances Review*, 68 FR 6884 (February 11, 2003); *Certain Preserved Mushrooms from India: Preliminary Results of Antidumping Duty Administrative Review*, 67 FR 10371 (March 7, 2002), unchanged in *Certain Preserved Mushrooms from India: Final Results of Antidumping Duty Administrative Review*, 67 FR 46172 (July 12, 2002).

\*Effective February 1, 2002, the antidumping duty order with respect to PT Zeta Agro Corporation was revoked. See *Final Results of Antidumping Duty Administrative Review: Certain Preserved Mushrooms from Indonesia and Final Determination to Revoke Order in Part*, 68 FR 39521 (July 2, 2003).

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. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders

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 the results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: December 14, 2009.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E9-30156 Filed 12-17-09; 8:45 am]

BILLING CODE 3510-DS-0

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[Docket 57-2009]

#### Foreign-Trade Zone 202—Los Angeles, CA, Area Application for Reorganization/Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Board of Harbor Commissioners of the City of Los Angeles, grantee of FTZ 202, requesting authority to reorganize and expand its zone in the Los Angeles area within and adjacent to the Los Angeles-Long Beach Customs and Border Protection port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on December 11, 2009.

FTZ 202 was approved on July 14, 1994 (Board Order 693, 59 FR 37464, 7/22/94), expanded on August 26, 1996 (Board Order 842, 61 FR 46763, 9/5/96) and on July 9, 1999 (Board Order 1043, 64 FR 38887, 7/20/99), and expanded/reorganized on April 30, 2004 (Board Order 1331, 69 FR 26065, 5/11/04) and on April 24, 2009 (Board Order 1616, 74 FR 21623, 5/8/09).

The zone project currently consists of 16 permanent and temporary sites located at port facilities, industrial parks and warehouse facilities in Los Angeles, San Bernardino, Kern and Riverside Counties as described below:

- *Site 1* (2,783 acres total)—consists of the Port of Los Angeles Harbor Complex in San Pedro;
- *Site 2* (3 acres total) located: At 1 World Way within the Los Angeles International Airport (Parcel 1—1 acre); at 5330 W. 102nd Street, Los Angeles (Parcel 2—1.5 acres); and, at 1111 Watson Center Road, Unit 2-A, B-C, Carson (Parcel 3—22,705 sq. ft.);
- *Site 3* (564 acres)—within the International Trade & Technology Center, Santa Fe Highway at 7th Standard Road, Kern County;
- *Site 4* (353.6 acres)—within the 438-acre Carson Dominguez Technology

Center south of the Artesia Freeway, between the Harbor Freeway and I-710 in the City of Carson and the Rancho Dominguez area of Los Angeles County;

- *Site 5* (8.51 acres total, sunset 4/30/2014)—warehouse facilities of 3Plus Logistics located at 20250 South Alameda Street in Rancho Dominguez (6.13 acres) and at 2730 El Presidio Street in Carson (2.38 acres);
- *Site 6* (23 acres)—located at 20002 E. Business Parkway, Walnut;
- *Site 7* (93 acres)—within the 140-acre Pacific Gateway Center, at the southwest corner of the San Diego Freeway Interchange, Los Angeles;
- *Site 9* (22.87 acres total): Parcel A (5.61 acres)—19700 Van Ness Avenue, Torrance; and, Parcel C (7.26 acres)—1451 Knox Street, Torrance;
- *Site 10* (325 acres)—Watson Industrial Center South, 22010 South Wilmington Avenue, Carson;
- *Site 11* (153.79 acres)—Watson Corporate Center located at 22010 South Wilmington Avenue and at 2417 East Carson Street in Carson;
- *Site 12* (8 acres, expires 7/31/2011)—Schafer Brothers Distribution Center, Inc., 1981 East 213th Street, Carson;
- *Site 14* (33 acres, expires 7/31/2011)—Nippon Express USA, Inc., located adjacent to Site 1, at 300 Westmont Street, San Pedro;
- *Site 15* (4 acres)—located at 1020 McFarland Avenue, Wilmington;
- *Site 20* (21 acres, expires 7/31/2011)—Kwikset Corporation facilities located within the Park Mira Loma West, southeast side of the Intersection of Highway 60 (the Pomona Freeway) and Interstate 15 (the Ontario Freeway), Mira Loma;
- *Site 23* (177 acres, sunset 3/31/2013)—within the 1,450-acre Tejon Industrial Complex located directly off Interstate 5 at the Highway 99 junction, Lebec; and,
- *Temporary Site 2* (2.4 acres, expires 6/30/2010)—a warehouse located at 2200 and 2250 Technology Place, Long Beach.

There is an application pending for a proposed new zone project in the Bakersfield, California, area (Doc. 18-2009). That application is requesting a transfer of FTZ 202—Site 23 (Tejon Industrial Complex) to the Bakersfield zone project as proposed Site 2.

The applicant is now requesting authority for a reorganization and expansion of the zone which would result in an overall net increase of zone sites and space. As described below, the proposal includes a request for new authority for expired sites/parcels, to delete an existing site, for permanent

status for temporary sites, and to add a new site.

- Expand *Site 1* by requesting new authority for the Howard Hartry parcel (0.39 acres, 10,833 sq. ft.) (which expired on 7/1/09) (new total acreage—2,783 acres);
- Delete *Site 6* in its entirety due to changed circumstances;
- Expand *Site 9* by requesting new authority for Parcel B (7 acres) (which expired on 7/1/09) (new total acreage—29.87 acres);
- Modify *Site 12* by requesting permanent status;
- Modify and expand *Site 14* by requesting permanent status for the current 33 acres and requesting new authority for 55 acres (which expired on 7/1/09) (new total acreage—88 acres);
- Requesting new authority for 4.16 acres at *Site 16* (which had previously consisted of 153.20 acres that expired on 7/1/09);
- Requesting new authority for 18.5 acres at *Site 19* (which had previously consisted of 83.16 acres that expired on 7/1/09);
- Modify *Site 20* by requesting permanent status for the current 21 acres and to expand the site to include an additional 120.79 acres (113.37 acres that expired on 7/1/09 and a new 7.42-acre parcel) (new total acreage—141.79 acres);
- Requesting new authority for 84 acres at *Site 22* (which had previously consisted of 227 acres that expired on 7/1/09); and,
- Add *Proposed Site 24* (5 acres)—RPM Transport warehouse facility located at 2200 and 2250 Technology Place, Long Beach (this site will include Temporary Site 2 (2.4 acres) on a permanent basis and add an additional 2.6 acres).

The sites will provide warehousing and distribution services to area businesses. No specific manufacturing authority is being requested at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 16, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the

Environmental Impact Statement (EIS) and Record of Decision. Because of the significance of paleontological, botanical, hydrological, and cultural resources present within the CTA study area and the need for additional public input, the BLM is preparing a Supplemental EIS. The BLM proposes to establish a final boundary for the CTA. This decision was not made in the 2004 Record of Decision. The CTA study area is located in the northern portion of the Las Vegas Valley. A defined final boundary is needed to ensure protection of sensitive resources, including fossils, cultural resources, the natural functioning of the wash, and endemic plants on public lands available for disposal within the CTA study area, in accordance with applicable laws.

Six alternatives for boundaries are analyzed, ranging from approximately 13,000 acres to less than 1,500 acres. Alternative A, at 12,953 acres, includes the fossil formation, sensitive cultural and plant resources, active wash, the adjacent alluvial fan, and a one mile resource protection zone around northern and eastern boundaries of the Las Vegas Paiute reservation. Alternative B, at 11,008 acres, includes the fossil formation, sensitive cultural and plant resources, active wash, and the adjacent alluvial fan. Alternative B is the BLM's Preferred Alternative. Alternative C, at 6,362 acres, includes the fossil formation, sensitive cultural and plant resources, active wash, and a portion of the adjacent alluvial fan. Alternative D, at 5,301 acres, includes most of the fossil formation, the sensitive cultural and rare plant resources, and the active wash. Alternative E, at 3,314 acres, includes some of the fossil formation, the sensitive cultural and rare plant resources, and part of the active wash. The No Action alternative, at 1,448 acres, includes the Tule Spring cultural site and the 300-acre Eglington Preserve. Scoping of the project occurred from June 6 to August 20, 2007, and was extended to September 4, 2007. A total of 1,183 individuals submitted comments. Comments received pertained to a variety of broad categories, including alternatives, boundaries, management, and physical/natural resources. Additional stakeholder involvement has been achieved through the BLM's newsletters that provided updates on the Supplemental EIS process.

The Draft Supplemental EIS addresses the following issues identified during scoping: NEPA process (consultation/coordination, proposal description, alternatives, and connected actions/cumulative impacts); social resources

(cultural resources, visual resources, noise, land use, recreation, transportation, and socioeconomic resources); and physical/natural resources (botanical resources, water resources, paleontological resources, and geologic/soil resources).

Maps of the CTA study area and the alternatives being analyzed in the Supplemental EIS are available at the BLM Las Vegas Field Office. Please note that public comments and information submitted including names, street addresses, and e-mail addresses of persons who submit comments will be available for public review and disclosure at the above address during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority:** 40 CFR 1506.6 and 1506.10.

**Angie Lara,**

*Associate District Manager.*

[FR Doc. 2010-976 Filed 1-21-10; 8:45 am]

**BILLING CODE 4310-HC-P**

## DEPARTMENT OF THE INTERIOR

### National Indian Gaming Commission

#### The National Environmental Policy Act Procedures Manual

**AGENCY:** National Indian Gaming Commission.

**ACTION:** Notice of reopening of comment period.

**SUMMARY:** This notice reopens the period for comments on the Draft NEPA Procedures Manual published in the **Federal Register** on December 4, 2009 (74 FR 63765, 74 FR 63787).

**DATES:** The comment period for the Draft NEPA Procedures Manual is being reopened from January 19, 2010, to March 4, 2010.

**ADDRESSES:** Please submit your comments by only one of the following means: (1) By mail to: Brad Mehaffy, National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005; (2) by hand delivery to: National Indian Gaming Commission, 1441 L Street, NW., Suite

9100, Washington, DC 20005; (3) by facsimile to: (202) 632-7066; (4) by e-mail to: [nepa\\_procedures@nigc.gov](mailto:nepa_procedures@nigc.gov); or (5) online at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Bradley Mehaffy, NEPA Compliance Officer at the National Indian Gaming Commission: 202-632-7003 or by facsimile at 303-632-7066 (not toll-free numbers).

**SUPPLEMENTAL INFORMATION:** In response to several requests, the Acting Chairman of the National Indian Gaming Commission has decided to reopen the comment period on the Draft NEPA Procedures Manual for an additional 45 days.

Dated: January 15, 2010.

**George T. Skibine,**

*Acting Chairman, National Indian Gaming Commission.*

[FR Doc. 2010-1148 Filed 1-21-10; 8:45 am]

**BILLING CODE 7565-01-P**

## UNITED STATES INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731-TA-776-779 (Second Review)]

### Preserved Mushrooms from Chile, China, India, and Indonesia

**AGENCY:** United States International Trade Commission.

**ACTION:** Scheduling of expedited five-year reviews concerning the antidumping duty orders on preserved mushrooms from Chile, China, India, and Indonesia.

**SUMMARY:** The Commission hereby gives notice of the scheduling of expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty orders on preserved mushrooms from Chile, China, India, and Indonesia would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

**DATES:** *Effective Date:* January 4, 2010.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Haines (202-205-3200), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain

information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

#### SUPPLEMENTARY INFORMATION:

**Background.**—On January 4, 2010, the Commission determined that the domestic interested party group response to its notice of institution (74 FR 50818, October 1, 2009) for each review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.<sup>1</sup> Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Act.

**Staff report.**—A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on February 17, 2010, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

**Written submissions.**—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution, and any party other than an interested party to the reviews, may file written comments with the Secretary on what determination the Commission should reach in the reviews. Comments are due on or before February 23, 2010 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by February 23, 2010. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not

authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 Fed. Reg. 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Determination.**—The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C.

1675(c)(5)(B).

**Authority:** These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: January 15, 2010.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 2010-1136 Filed 1-21-10; 8:45 am]

**BILLING CODE 7020-02-P**

## DEPARTMENT OF JUSTICE

[OMB Number 1121-0311]

### Bureau of Justice Statistics; Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 60-Day Notice of Information Collection Under Review: Extension of Existing Collection With Change; National Inmate Survey.

The Department of Justice (DOJ), Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until March 23, 2010. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or

associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Paige M. Harrison, Bureau of Justice Statistics, 810 Seventh Street, NW., Washington, DC 20531 (phone: 202-514-0809).

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of existing collection with change.

(2) *Title of the Form/Collection:* National Inmate Survey.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Paper and Pencil questionnaires—PAPI M12, PAPI M<12, PAPI F12, PAPI F<12, SP PAPI M12, SP PAPI M<12, SP PAPI F12, SP PAPI F<12; Facility Characteristics survey—NIS FS. The Bureau of Justice Statistics, Office of Justice Programs, Department of Justice is the sponsor for the collection.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* *Primary:* State, Local, or Tribal Government. *Other:* Federal Government, Business or other for-profit, Not-for-profit institutions. The work under this clearance will be used to produce estimates for the incidence and prevalence of sexual assault within correctional facilities as required under the Prison Rape Elimination Act of 2003 (Pub. L. 108-79).

(5) An estimate of the total number of respondents and the amount of time

<sup>1</sup> A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Taylor's City, Address Restricted, Price, 09001048, LISTED, 11/30/09 (Nine Mile Canyon, Utah)

#### VIRGINIA

##### Charlotte County

Four Locust Farm, U.S. Rt. 15, Keysville vicinity, 09001053, LISTED, 12/03/09

##### Gloucester County

Walker, T.C., House, 1 Main St., Gloucester, 09001050, LISTED, 12/04/09

##### Rockbridge County

Willson House, 367 VA 673, Lexington vicinity, 09001049, LISTED, 12/03/09

[FR Doc. 2010-3553 Filed 2-22-10; 8:45 am]

BILLING CODE 4312-51-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[AK-963-1410-ET; AA-3060]

#### Notice of Proposed Withdrawal Extension and Opportunity for Public Meeting; Alaska

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The United States Department of Agriculture (USDA) Forest Service has filed an application with the Bureau of Land Management (BLM) that proposes to extend the duration of Public Land Order (PLO) No. 6888 for an additional 20-year period. This order withdrew approximately 320 acres of National Forest System land from surface entry and mining, but not from mineral leasing laws, to protect the recreational values of the Juneau Falls Recreation Area. This notice gives an opportunity to comment on the proposed action and to request a public meeting.

**DATES:** Comments meeting requests for a public meeting must be received by May 24, 2010.

**ADDRESSES:** Comments and meeting requests should be sent to the Alaska State Director, BLM Alaska State Office, 222 West 7th Avenue, No. 13, Anchorage, Alaska 99513-7504.

**FOR FURTHER INFORMATION CONTACT:** Robert Lloyd, BLM Alaska State Office, 907-271-4682 or at the address listed above.

**SUPPLEMENTARY INFORMATION:** The withdrawal created by PLO No. 6888 (56 FR 50661 (1991)) will expire on October 7, 2011, unless extended. The USDA Forest Service has filed an application to extend the withdrawal for an additional 20-year period to protect the recreational values of the Juneau Falls Recreation Area.

This withdrawal comprises approximately 320 acres of National Forest System land located in the Chugach National Forest, within T. 5 N., R. 4 W., Seward Meridian, as described in PLO No. 6888.

A complete description, along with all other records pertaining to the extension application, can be examined in the BLM Alaska State Office at the address listed above.

As extended, the withdrawal would not alter the applicability of those public land laws governing the use of land under lease, license, or permit or governing the disposal of the mineral or vegetative resources other than under the mining laws.

The use of a right-of-way or interagency or cooperative agreement would not adequately protect the recreational values of the Juneau Falls Recreation Area.

There are no suitable alternative sites available that could be substituted for the above described National Forest system land, since the Juneau Falls Recreation Area is unique.

No water rights would be needed to fulfill the purpose of the requested withdrawal extension.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may present their views in writing to the BLM Alaska State Director at the address listed above. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal extension. All

interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the BLM Alaska State Director to the address listed above within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** and at least one local newspaper no less than 30 days before the scheduled date of the meeting.

The withdrawal extension proposal will be processed in accordance with the regulations set forth in 43 CFR 2310.4 and subject to Section 810 of the Alaska National Interest Lands Conservation Act, 16 U.S.C. 3120.

**Authority:** 43 CFR 2310.3-1(b).

**Robert L. Lloyd,**

*Acting Deputy State Director, Division of Alaska Lands.*

[FR Doc. 2010-3419 Filed 2-22-10; 8:45 am]

BILLING CODE 4310-JA-P

## INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731-TA-776-779 (Second Review)]

### Preserved Mushrooms From Chile, China, India, and Indonesia

**AGENCY:** United States International Trade Commission.

**ACTION:** Revised schedule for the subject reviews.

**DATES:** *Effective Date:* February 17, 2010.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Haines (202-205-3200), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

**SUPPLEMENTARY INFORMATION:** On January 4, 2010, the Commission established a schedule for the conduct of the expedited five-year reviews and



determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B) (75 FR 3756, January 22, 2010). Due to the closure of the Government during the recent snowstorms, the Commission is revising its schedule. The Commission's new schedule for the reviews is as follows: the staff report will be placed in the nonpublic record on March 9, 2010; and the deadline for filing comments is March 15, 2010.

**Authority:** These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: February 17, 2010.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 2010-3528 Filed 2-22-10; 8:45 am]

**BILLING CODE 7020-02-P**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-130 (Third Review)]

### Chloropicrin From China

**AGENCY:** United States International Trade Commission.

**ACTION:** Revised schedule for the subject review.

**DATES:** *Effective Date:* February 17, 2010.

**FOR FURTHER INFORMATION CONTACT:**

Cynthia Trainor (202-205-3354), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

**SUPPLEMENTARY INFORMATION:** On October 15, 2009, the Commission established a schedule for the conduct of this review (74 FR 55065, October 26, 2009).

Subsequently, counsel for three domestic interested parties filed a request to appear at the hearing or, in the alternative, for leave to submit

written testimony in lieu of an oral presentation. In connection with the offer of written testimony, counsel indicated a willingness to respond to written questions of the Commissioners by a date to be set by the Commission. No other party filed a request to appear at the hearing. Consequently, the public hearing in connection with the review, scheduled to begin at 9:30 a.m. on February 18, 2010, at the U.S. International Trade Commission Building is cancelled.

The Commission has determined to accept the offer to submit written testimony in lieu of an oral public hearing presentation. Written testimony shall be filed with the Commission by the close of business on Thursday, February 18, 2010. The parties are expected to respond to the Commission's written questions in their post-hearing briefs, which are due to be filed on March 1, 2010.

For further information concerning this investigation see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

**Authority:** This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: February 17, 2010.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 2010-3530 Filed 2-22-10; 8:45 am]

**BILLING CODE 7020-02-P**

## INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-703]

### In the Matter of Certain Mobile Telephones and Wireless Communication Devices Featuring Digital Cameras, and Components Thereof; Notice of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Institution of investigation pursuant to 19 U.S.C. 1337.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 14, 2010, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Eastman Kodak Company of Rochester, New York. A letter supplementing the complaint was filed on February 4,

2010. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain mobile telephones and wireless communication devices featuring digital cameras, and components thereof by reason of infringement of certain claims of U.S. Patent No. 6,292,218. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202-205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

**FOR FURTHER INFORMATION CONTACT:** Vu Q. Bui, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-205-2582.

**Authority:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2009).

*Scope of Investigation:* Having considered the complaint, the U.S. International Trade Commission, on February 16, 2010, ordered that—  
(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain mobile telephones or wireless communication devices featuring digital cameras, or



**APPENDIX B**  
**STATEMENT ON ADEQUACY**



## **EXPLANATION OF COMMISSION DETERMINATION ON ADEQUACY**

in

*Preserved Mushrooms from Chile, China, India, and Indonesia*, Inv. Nos. 731-TA-776-779  
(Second Review)

On January 4, 2010, the Commission determined that it should proceed to expedited reviews in the subject five-year reviews pursuant to section 751(c)(3)(B) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1675(c)(3)(B).

The Commission received a single response to the notice of institution filed by the Coalition for Fair Preserved Mushroom Trade and its individual members L.K. Bowman Co., Monterey Mushrooms Inc., the Mushroom Co., and Sunny Dell Foods, Inc. (collectively “the Coalition”). The Commission found the individual response of each of these domestic producers of preserved mushrooms, which contained company-specific data, to be adequate. Because the four producers that are members of the Coalition collectively account for a substantial share of domestic production of preserved mushrooms, the Commission further determined that the domestic interested party group response was adequate.

The Commission received no response from any respondent interested party, and therefore determined that the respondent interested party group response to the notice of institution was inadequate for each of the orders subject to review. In the absence of an adequate respondent interested party group response or any other circumstances warranting full reviews, the Commission determined to conduct expedited reviews.

A record of the Commissioners’ votes is available from the Office of the Secretary and the Commission’s web site ([www.usitc.gov](http://www.usitc.gov)).