

*What Every Member of the
Trade Community Should Know About:*

Mushrooms



AN INFORMED COMPLIANCE PUBLICATION

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U.S. CUSTOMS and BORDER PROTECTION

NOTICE:

This publication is intended to provide guidance and information to the trade community. It reflects the position on or interpretation of the applicable laws or regulations by U.S. Customs and Border Protection (CBP) as of the date of publication, which is shown on the front cover. It does not in any way replace or supersede those laws or regulations. Only the latest official version of the laws or regulations is authoritative.

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PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), also known as the Customs Modernization or “Mod” Act, became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws.

Two new concepts that emerge from the Mod Act are “informed compliance” and “shared responsibility,” which are premised on the idea that in order to maximize voluntary compliance with laws and regulations of U.S. Customs and Border Protection, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's rights and responsibilities under customs regulations and related laws. In addition, both the trade and U.S. Customs and Border Protection share responsibility for carrying out these requirements. For example, under Section 484 of the Tariff Act, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and determine the value of imported merchandise and to provide any other information necessary to enable U.S. Customs and Border Protection to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met. CBP is then responsible for fixing the final classification and value of the merchandise. An importer of record's failure to exercise reasonable care could delay release of the merchandise and, in some cases, could result in the imposition of penalties.

Regulations and Rulings (RR) of the Office of International Trade has been given a major role in meeting the informed compliance responsibilities of U.S. Customs and Border Protection. In order to provide information to the public, CBP has issued a series of informed compliance publications on new or revised requirements, regulations or procedures, and a variety of classification and valuation issues.

This publication, prepared by the National Commodity Specialist Division of Regulations and Rulings is entitled “Mushrooms”. It provides guidance regarding the classification of these items. We sincerely hope that this material, together with seminars and increased access to rulings of U.S. Customs and Border Protection, will help the trade community to improve voluntary compliance with customs laws and to understand the relevant administrative processes.

The material in this publication is provided for general information purposes only. Because many complicated factors can be involved in customs issues, an importer may wish to obtain a ruling under Regulations of U.S. Customs and Border Protection, 19 C.F.R. Part 177, or to obtain advice from an expert who specializes in customs matters, for example, a licensed customs broker, attorney or consultant.

Comments and suggestions are welcomed and should be addressed to the Executive Director, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, (Mint Annex), Washington, D.C. 20229.

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Office of International Trade

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This publication discusses the tariff classification and other issues related to the importation of mushrooms.

TYPES OF MUSHROOMS

There are more than 38,000 kinds of mushrooms in the world, and they vary considerably in color, size and shape. Only about 25 of a possible 2000 edible mushroom species are cultivated as human food. The main parts of a mushroom include the stem and cap (See diagram). Stem sizes vary from short and thick to long and thin. The cap's texture can be smooth, pitted, honeycombed or ruffled. Flavors range from bland to rich, to nutty and earthy. The cultivated *Agaricus* (common button) mushroom, having a mild, earthy flavor, with caps that range in size from 1/2 to 3 inches in diameter and either a white or tan color, is commonly found in most grocery and supermarket stores.

Specialty or exotic varieties of mushrooms are commercially grown in the United States as well as imported. Specialty mushrooms include Shiitake (*Lentinus edodes*), Maitake (*Grifola frondosa*), Nameko (*Pholiota nameko*), Enoki (*Flammulina velutipes*), Pom Pom (*Hericium erinaceus*), Oyster (*Pleurotus spp.*), Portabella, Crimini (*Agaricus Bisporus*), and others. Production has steadily increased over the past several years. Shiitake, Portabella, and Oyster are the most popular, followed by the Enoki, Maitake, Nameko and Pom Pom.

Fresh mushrooms are imported in bulk, and in a variety of retail sizes. Canned mushrooms are available in several forms including whole, chopped, sliced and caps only. Some mushrooms, usually the imported varieties, are available dried whole or in slices, bits or pieces, and are sometimes packed in a marinade.

CLASSIFICATION

The 2008 Harmonized Tariff Schedule of the United States (HTSUS) provides for mushrooms as follows:

Tariff Description	HTSUS subheading
Fresh or chilled	
of the genus <u>Agaricus</u>	0709.51.0100*
other [than <u>Agaricus</u>]	0709.59.9000*
Frozen, uncooked or cooked by steaming or boiling in water	0710.80.2000
Provisionally preserved by e.g., sulfur dioxide gas, in brine, in sulfur water or in other preservative solutions, but unsuitable in that state for immediate consumption	

Mushrooms of the genus <u>Agaricus</u>	0711.51.0000**
Other:	
Mushrooms	0711.59.1000
Dried, whole, cut, sliced, broken or in powder, but not further prepared:	
Mushrooms of the genus <u>Agaricus</u> :	
Air dried or sun dried	0712.31.1000
Other	0712.31.2000
Other:	
Mushrooms:	
Air dried or sun dried	0712.39.1000
Other	0712.39.2000
Prepared or preserved by vinegar or acetic acid	2001.90.3800
Mushrooms... prepared or preserved otherwise than by vinegar or acetic acid:	
Mushrooms of the genus <u>Agaricus</u>	
<u>In containers each holding not more than 255g:</u>	2003.10.0127**
Whole (including buttons)	2003.10.0131**
Sliced	2003.10.0137**
Other	
In containers each holding more than 255g:	2003.10.0143**
Whole (including buttons)	2003.10.0147**
Sliced	2003.10.0153**
Other	
Other	2003.90.0010
Straw mushrooms	2003.90.0090
Other	

- * Fresh mushrooms are subject to a mushroom import assessment fee. (See Mushroom Import Assessment Fee, below)
- ** Subject to antidumping duties from certain countries.

The tariff classification of “canned marinated mushrooms” and the coverage of subheading 2003.10, HTSUS, the provision for mushrooms prepared or preserved otherwise than by vinegar or acetic acid, was addressed in Headquarters Ruling Letter (HRL) 964374, dated October 17, 2000. The HTSUS, and the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) do not define what constitutes “prepared or preserved by vinegar or acetic acid” (which is found in vinegar). However, under the Tariff Schedules of the United States (TSUS), the predecessor to the HTSUS, Customs and Border Protection’s (CBP) position as to the minimum amount of acetic acid necessary to determine whether a vegetable is prepared or preserved by vinegar or acetic acid was outlined in HRL 069121, dated May 20, 1983 (IA 247/80). That decision held that a product required a “minimum of 0.5 per cent acetic acid (subject to allowable tolerances) in the equilibrated product” to be considered as prepared or preserved by vinegar or acetic acid. That position has continued under the HTSUS. (See *also* HRL Letters, 085838 dated December 21, 1989, 952738 dated January 27, 1993, 953518 dated June 24, 1993, 956850 dated March 22, 1996, 959313 dated February 20, 1997, 959314 dated February 20, 1997, 959361 dated April 17, 1997 and 957041 dated November 11, 1998, for similar rulings relating to the classification of vegetables put up or preserved in vinegar or acetic acid.)

The mushrooms falling in chapter 20, HTSUS, are usually prepared and preserved by washing, blanching, slicing, canning and/or by the addition of water, vinegar, acetic acid, sugar, yeast extracts, MSG, and/or natural flavoring. Where vinegar or acetic acid is indicated to be one of the ingredients in prepared mushrooms, CBP may require laboratory analysis in order to determine whether classification in heading 2001 or 2003 is appropriate.

COUNTRY OF ORIGIN MARKING

Pursuant to section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304) and Part 134 of the CBP Regulations (19 CFR Part 134), all imported articles must be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the articles (or container) will permit in such manner as to indicate to an ultimate consumer in the United States, the English name of the country of origin of the article.

Section 1970(b) of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, provides:

Imported preserved mushrooms shall not be considered to be in compliance with section 304 of the Tariff Act of 1930 (19 U.S.C. Part 1304) or any other law relating to the marking of imported articles unless the containers thereof indicate in English the country in which the mushrooms were grown.

Subsequent packing or preserving (i.e. canning) is not sufficient to change the country of origin. The term “product of...” may only be used to refer to the country in which the mushrooms were grown. (See HRL 734281, dated February 13, 1992) Acceptable country of origin marking includes “grown in...” and “product of...” However, the “product of...” phrase cannot be used when referring to the country in which the mushrooms have been merely packed or canned.

INVOICING

It is important to have a detailed description of the imported product on the invoice to insure proper classification. Mushrooms should be described as “fresh,” “chilled,” “frozen,” etc., as well as the genus, species, form (whole, buttons, sliced, etc.), type of packing, country of origin (see “country of Origin Marking” above), etc.

IMPORTS

Mushrooms are imported from as many as fifty different countries. The majority of the imports are from Canada and China. For the year 2007, the value of imported mushrooms (excluding those prepared or preserved by vinegar or acetic acid, for which no specific data for mushrooms is available) totaled more than \$289,637,808.. Fresh or chilled mushrooms of the genus Agaricus are the largest type imported. The value of these mushrooms, classified in subheading 0709.51.0100, HTSUS, was \$89,249,793 in 2007.

ANTIDUMPING

The Department of Commerce publishes antidumping orders in the Federal Register concerning preserved mushrooms imported from Chile, China, India, and Indonesia.

Antidumping case numbers

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

Country

Chile
India
Indonesia
China

The mushrooms covered by these orders are preserved mushrooms of the species *Agaricus bisporus* and *Agaricus bitorquis*, whether imported whole, sliced, diced, or as stems and pieces. "Preserved mushrooms," for purposes of the antidumping orders, are mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes cutting or slicing, then packed and heated in containers such as cans or glass jars, in a liquid medium such as water, brine, butter or butter sauce. Included within the scope of the orders are "brined" mushrooms, i.e., mushrooms that are pre-salted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of the orders are:

- all other species of mushroom, including straw mushrooms,
- fresh and chilled mushrooms, including "refrigerated" or "quick blanched" mushrooms,
- dried mushrooms,
- frozen mushrooms, and
- "marinated," "acidified," or "pickled" mushrooms.

The antidumping orders define "marinated," "acidified," or "pickled" mushrooms as prepared or preserved by means of vinegar or acetic acid, but which may contain oil or other additives. This exclusion applies only to mushrooms with an acetic acid content of 0.5 percent or more. (Department of Commerce scope ruling dated June 19, 2000. See also HRL 963835 dated October 17, 2000 (IA 00/04) and HRL 964374, dated October 17, 2000). In *Tak Fat Trading Company, et. al., v. United States*, 396 F.3d 1378, 1386 (Fed Cir. 2005), the Court of Appeals for the Federal Circuit affirmed the Department of Commerce's utilization of this standard for exclusion from the antidumping orders.

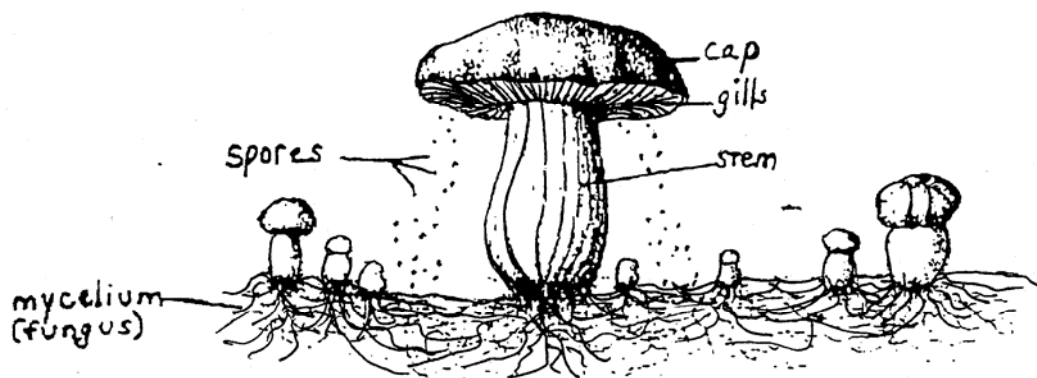
Mushrooms subject to these orders are classifiable under subheadings 0711.51.0000, 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, and 2003.10.0153 of the Harmonized Tariff Schedule of the United States (HTSUS).

The importing public and other interested parties should contact the International Trade Administration, at the U.S. Department of Commerce for information on antidumping rates of duty and case numbers.

MUSHROOM IMPORT ASSESSMENT FEE

In March 1993, the Agricultural Marketing Service (AMS) of the United States Department of Agriculture (USDA) entered into an agreement with CBP whereby CBP is required to collect an import assessment fee, as part of the entry process, for all varieties of fresh mushrooms entered or withdrawn from warehouse, under subheadings 0709.51.0100 or 0709.59.9000, HTSUS.

The Mushroom Council, established by the Mushroom Promotion, Research, and Consumer Information Order (7 C.F.R. 1209), has determined that the mushroom fee will be \$0.01102300 per kilogram for goods classified under subheadings 0709.51.0100 and 0709.59.9000, HTSUS, and entered, or withdrawn from warehouse, for consumption effective January 1, 2008. The Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6101-6112), provides the authority for the Mushroom Council to periodically increase or decrease the rate of assessment.



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www.mushroomcouncil.org, 2008

ADDITIONAL INFORMATION

The Internet

The home page of U.S. Customs and Border Protection on the Internet's World Wide Web, provides the trade community with current, relevant information regarding CBP operations and items of special interest. The site posts information -- which includes proposed regulations, news releases, publications and notices, etc. -- that can be searched, read on-line, printed or downloaded to your personal computer. The web site was established as a trade-friendly mechanism to assist the importing and exporting community. The web site also links to the home pages of many other agencies whose importing or exporting regulations that U.S. Customs and Border Protection helps to enforce. The web site also contains a wealth of information of interest to a broader public than the trade community. For instance, the "Know Before You Go" publication and traveler awareness campaign is designed to help educate international travelers.

The web address of U.S. Customs and Border Protection is <http://www.cbp.gov>

Customs Regulations

The current edition of Customs and Border Protection Regulations of the United States is a loose-leaf, subscription publication available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; telephone (202) 512-1800. A bound edition of Title 19, Code of Federal Regulations is also available for sale from the same address. All proposed and final regulations are published in the Federal Register, which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information about on-line access to the Federal Register may be obtained by calling (202) 512-1530 between 7 a.m. and 5 p.m. Eastern time. These notices are also published in the weekly Customs Bulletin described below.

Customs Bulletin

The Customs Bulletin and Decisions ("Customs Bulletin") is a weekly publication that contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U.S. Court of International Trade, as well as customs-related decisions of the U.S. Court of Appeals for the Federal Circuit. Each year, the Government Printing Office publishes bound volumes of the Customs Bulletin. Subscriptions may be purchased from the Superintendent of Documents at the address and phone number listed above.

Importing Into the United States

This publication provides an overview of the importing process and contains general information about import requirements. The current edition of *Importing Into the United States* contains much new and revised material brought about pursuant to the Customs Modernization Act ("Mod Act"). The Mod Act has fundamentally altered the relationship between importers and U.S. Customs and Border Protection by shifting to the importer the legal responsibility for declaring the value, classification, and rate of duty applicable to entered merchandise.

The current edition contains a section entitled "Informed Compliance." A key component of informed compliance is the shared responsibility between U.S. Customs and Border Protection and the import community, wherein CBP communicates its requirements to the importer, and the importer, in turn, uses reasonable care to assure that CBP is provided accurate and timely data pertaining to his or her importation.

Single copies may be obtained from local offices of U.S. Customs and Border Protection, or from the Office of Public Affairs, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Washington, DC 20229. An on-line version is available at the CBP web site. *Importing Into the United States* is also available for sale, in single copies or bulk orders, from the Superintendent of Documents by calling (202) 512-1800, or by mail from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7054.

Informed Compliance Publications

U.S. Customs and Border Protection has prepared a number of Informed Compliance publications in the "*What Every Member of the Trade Community Should Know About:...*" series. Check the Internet web site <http://www.cbp.gov> for current publications.

Value Publications

Customs Valuation under the Trade Agreements Act of 1979 is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. §1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 C.F.R. §§152.000-152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system.

Customs Valuation Encyclopedia (with updates) is comprised of relevant statutory provisions, CBP Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7054. This publication is also available on the Internet web site of U.S. Customs and Border Protection.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under CBP Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Additional information may also be obtained from U.S. Customs and Border Protection ports of entry. Please consult your telephone directory for an office near you. The listing will be found under U.S. Government, Department of Homeland Security.

“Your Comments are Important”

The Small Business and Regulatory Enforcement Ombudsman and 10 regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement activities and rate each agency’s responsiveness to small business. If you wish to comment on the enforcement actions of U.S. Customs and Border Protection, call 1-888-REG-FAIR (1-888-734-3247).

REPORT SMUGGLING 1-800-BE-ALERT OR 1-800-NO-DROGA



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