



Australian Government

**Australian Customs and
Border Protection Service**

CUSTOMS ACT 1901 - PART XVB

TRADE MEASURES BRANCH

CONSIDERATION REPORT NO. 166

REVIEW OF ANTI-DUMPING MEASURES

PRESERVED MUSHROOMS

THE PEOPLE'S REPUBLIC OF CHINA

13 September 2010

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1 SUMMARY AND RECOMMENDATIONS

This report provides the results of our consideration of an application lodged by Xiamen Fortune Imp & Exp Co., Ltd (Xiamen Fortune) for the review of anti-dumping measures that apply to preserved mushrooms exported by it to Australia from the People's Republic of China (China).

1.1 RECOMMENDATIONS

We recommend that:

- the delegate of the Chief Executive Officer (CEO) of the Australian Customs and Border Protection Service (Customs and Border Protection) not reject the application; and
- the delegate recommend to the Minister for Home Affairs (the Minister) that the review be extended to all non-exempt exporters from China.

1.2 APPLICATION OF LAW TO FACTS

Sections 269ZB to 269ZDB of the *Customs Act 1901* (the Act¹) set out among other things, the procedures to be followed by the CEO in dealing with an application for the review of measures.

Section 269ZC(1) requires the CEO to examine the application and within 20 days after Customs receives the application decide whether to reject the application. In relation to this application the decision must be made by 5 September 2010.

Section 269ZC(4) states:

If the CEO decides not to reject the application for review, the CEO must either:

- *publish a notice in a national newspaper indicating that it is proposed to review the measures covered by the application; or*
- *if the application for review related only to the review of the measures as they affect particular exporters and the CEO is satisfied that there is a reasonable prospect that a review of such measures as they affect other particular exporters, or as they affect exporters generally, may be justified – recommend to the Minister that the review applied for be extended accordingly.*

The CEO's powers have been delegated to certain officers of Customs and Border Protection.

1.3 FINDINGS AND CONCLUSIONS

Compliance with subsection 269ZB(1) (Section **Error! Reference source not found.** of this report)

¹ A reference to a division, section or subsection in this report is a reference to a provision of the Act, unless otherwise specified.

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The application complies with s.269ZB(1).

Reasonable grounds (Section 4 of this report)

Having regard to the matters contained in the application and to other information considered relevant, there appears to be reasonable grounds for asserting that the variable factors relevant to the taking of anti-dumping measures have changed.

Scope of review

There is a reasonable prospect that a review of the measures as they affect other exporters is justified.

The period of review will be 1 July 2009 to 30 June 2010.

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2 BACKGROUND

On 16 August 2010, Xiamen Fortune Imp & Exp Co., Ltd lodged an application under section 269ZA of the Act requesting a review of the anti-dumping measures applying to preserved mushrooms exported by it to Australia from the People's Republic of China (China).

2.1 EXISTING MEASURES

On 12 January 2006, the Minister published a dumping duty notice in respect of certain exporters from China. The dumping notice applies to all exporters of preserved mushrooms from China except for Jiangsu Cereals, Oils and Foodstuffs Import/Export Group Corp and Xiamen Gulong Import & Export Co., Ltd. Trade Measures Reports 99 and 99A set out the findings of the original investigation.

The anti-dumping measures have not been reviewed since they were imposed. The anti-dumping measures are subject to a continuation inquiry that commenced on 28 June 2010. The anti-dumping measures are due to expire on 12 January 2011.

2.2 GOODS THE SUBJECT OF THE MEASURES

The applicant identifies the goods to which the measures relate as preserved mushrooms.

Preserved mushrooms of the genus *Agaricus* are classified under tariff subheading 2003.10.00, statistical codes 81 and 82 to Schedule 3 of the *Customs Tariff Act 1995*.

2.2.1 Imports

Imports of preserved mushrooms from China have been examined for the period 1 January 2006 to 30 June 2010 and transactions in which Xiamen Fortune is recorded as the supplier have been identified (**confidential appendix 1**).

2.2.2 Like goods

On the basis of the application lodged in relation to the continuation of anti-dumping measures, Windsor Farm Foods Pty Ltd (Windsor Farm) continues to manufacture in Australia preserved mushrooms that are like goods to the goods covered by the anti-dumping measures. Windsor Farm is the only manufacturer of like goods in Australia.

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3 COMPLIANCE WITH SUB-SECTION 269ZB(1)

The application lodged by Xiamen Fortune complies with the requirements of s.269ZB(1).

3.1 LEGISLATIVE FRAMEWORK

Section 269ZB(1) specifies that an application under s 269ZA(1) for review of anti-dumping measures must:

- (a) be in writing; and
- (b) be in an approved form; and
- (c) contain such information as the form requires; and
- (d) be signed in the manner indicated in the form.

Section 269ZHB(2) specifies that the application must include:

- (a) a description of the kind of goods to which the measures the subject of the application relate; and
- (b) a description of the measures the subject of the application; and
- (c) if the application is based on a change in variable factors-a statement of the opinion of the applicant concerning:
 - a. the variable factors relevant to the taking of the measures taken that have changed; and
 - b. the amount by which each such factor has changed; and
 - c. the information that establishes that amount.

3.2 ASSESSMENT

3.2.1 Approved Form

Subsection 269ZB(1) requires that the application be in writing, be in an approved form, contain such information as the form requires and be signed in the manner indicated by the form.

The applicant, Xiamen Fortune, has lodged an "Application for Review of Anti-Dumping Measures" in the approved form. The form has been signed.

Xiamen Fortune has provided all information required by the form including a non-confidential summary of the application.

The non-confidential summary complies with the requirements of section 269ZB(1).

3.2.2 Required information

Subsection 269ZB(2) requires that the application include certain information.

The application includes:

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- a description of the kind of goods subject to measures – canned agaricus mushrooms in brine; tariff classification 2003.10.00 exported by Xiamen Fortune; and
- a description of the measures the subject of the application.

Xiamen Fortune claims that normal values have changed since originally being ascertained due to increases in the cost of mushrooms. In support of its application Xiamen Fortune provided a cost to make and sell summary sheet for the months January to April 2010 and a copy of the worksheet used in the calculation of the weighted average normal value for Xiamen Fortune in the original investigation (**confidential attachment 2**).

It is considered that Xiamen Fortune's application:

- includes a statement that the ascertained normal value has changed; and
- quantifies the amount by which the ascertained normal value has changed.

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4 CONSIDERATION OF REASONABLE GROUNDS

Having regard to matters contained in the application and to other information considered relevant, there appear to be reasonable grounds for asserting that the variable factors have changed.

4.1 LEGISLATIVE FRAMEWORK

Subsection 269ZC(2) requires that there appear to be reasonable grounds for asserting either:

- that the variable factors relevant to the taking of anti-dumping measures have changed; or
- that, if the anti-dumping measures to which the application relates had not been taken, the Minister would not be entitled to take such measures.

4.2 VARIABLE FACTORS

4.2.1 Normal value

Xiamen Fortune claimed that the ascertained normal value has changed.

Xiamen Fortune provided evidence of the cost to make and sell for the months January to April 2010 obtained from its supplier Zhangzhou Lixing Canned Food Co. Ltd, a Chinese manufacturer of preserved mushrooms. Costing information provided by Zhangzhou Lixing was used in the calculation of normal value under s269TAC(2)(c) in the original investigation for 'other exporters'. Given that normal values were constructed using the cost of production for the exported goods during the original investigation period, it is likely that the recent production costs would result in revised normal values should they be constructed again (**confidential appendix 4**).

4.2.2 Export price

Xiamen Fortune did not claim that the ascertained export price has changed. The costing information, however, contained in the application is sufficient to demonstrate that export prices are likely to have changed since the original imposition of measures.

An examination of imports indicates that export prices for China have changed since measures were imposed in January 2006 (**confidential appendix 3**).

4.2.3 Non-injurious price

Xiamen Fortune did not claim that the ascertained non-injurious price has changed.

Windsor Farm provided cost to make and sell information and selling prices for preserved mushrooms with its application for continuation of measures (**confidential attachment 5**). This data shows that non-injurious prices are likely to have increased since the measures were imposed in January 2006.

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4.2.4 Conclusion

Xiamen Fortune has provided reasonable evidence that the ascertained normal values have changed and provided information to establish the amount of change.

Xiamen Fortune has provided a statement that it and its supplier, Zhangzhou Lixing, will fully co-operate in a review inquiry if initiated (**confidential attachment 6**).

From the available evidence, there appears to be reasonable grounds for asserting that one or more of the variable factors applying to preserved mushrooms exported from China has changed. Although Xiamen Fortune's application is based on changes to normal values, we consider that a review of the anti-dumping measures should encompass all of the variable factors.

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5 SCOPE OF REVIEW

5.1 Coverage

The application states that the application for review is in respect of exports of Xiamen Fortune only.

The current anti-dumping measures are structured such that there are exporter specific measures applying to two other individual exporters and a separate rate for all other exporters from China.

Available import information shows that there has been a significant quantity of exports of the goods from China since measures were imposed in January 2006. Given the indicative change in costs based on the data supplied with the application, there is a reasonable prospect that a review of the measures as they affect other exporters is justified. Accordingly, a recommendation should be made to the Minister to extend the scope of the review in accordance with s. 269ZC(4)(b).

5.2 Review period

It is recommended that the period of review will be 1 July 2009 to 30 June 2010.

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6 List of Attachments

confidential attachment 1	List of exports by Xiamen Fortune from 1 January 2006
confidential attachment 2	Evidence of change in CTMS provided by Xiamen Fortune
confidential attachment 3	Calculation of the change in export price
confidential attachment 4	Calculation of the change in ascertained normal value
confidential attachment 5	Australian industry CTMS data
confidential attachment 6	Statement of co-operation by Xiamen Fortune and its supplier