



Australian Government
**Australian Customs and
Border Protection Service**

R E P O R T

**TRADE MEASURES BRANCH
REPORT TO THE MINISTER NO. 166
REVIEW OF ANTI-DUMPING MEASURES
PRESERVED MUSHROOMS
EXPORTED FROM
THE PEOPLE'S REPUBLIC OF CHINA**

15 February 2011

PUBLIC RECORD



Australian Government
Australian Customs and
Border Protection Service

Customs Act 1901 – Part XV B

PRESERVED MUSHROOMS EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA Finding in relation to a review of anti-dumping measures

Public notice under s. 269ZDB(1)

The Australian Customs and Border Protection Service (Customs and Border Protection) has completed its review of anti-dumping measures applying to preserved mushrooms exported to Australia from the People's Republic of China ("the goods"), which was commenced on 13 September 2010. Recommendations resulting from that review, reasons for the recommendations and material findings of fact and law in relation to the review are contained in Trade Measures Report No. 166 (REP 166).

I, BRENDAN O'CONNOR, the Minister for Home Affairs, have considered REP 166 and have decided to accept the recommendations and reasons for the recommendations, including all the material findings of facts or law set out in REP 166. Under s. 269ZDB(1) of the *Customs Act 1901* (the Act), I declare, for the purposes of the Act and the *Customs Tariff (Anti-Dumping) Act 1975* to the extent that anti-dumping measures concerning the goods involved the publication of a dumping duty notice that, with effect from the date of publication of this notice, the dumping duty notice is to be taken to have effect, in relation to exporters generally as if different variable factors had been fixed, relevant to the determination of duty.

To preserve confidentiality, the revised variable factors will not be published. Bona fide importers of the goods can obtain details of the new rates from the Regional Dumping Officer in their respective capital city.

Non-confidential copies of REP 166 will be sent to all interested parties that participated in the review. Trade Measures reports are available on the Customs and Border Protection internet home page at www.customs.gov.au. Copies may also be obtained by contacting Trade Measures Office Management, Canberra, on telephone number (02) 6245 6547 or fax number (02) 6275 6990 or tmops1@customs.gov.au.

Enquiries regarding the outcome of the review may be directed to the case manager on telephone number (02) 6275 6701, fax number (02) 6275 6990 or tmops1@customs.gov.au.

Dated this

24th

day of

February

2011

BRENDAN O'CONNOR
Minister for Home Affairs

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ABBREVIATIONS

ACDN	Australian Customs Dumping Notice
CEO	Chief Executive Officer of Customs and Border Protection
China	The Peoples' Republic of China
Customs and Border Protection	Australian Customs and Border Protection Service
delegate	delegate of the CEO under Division 5 of Part XVB
goods	the goods subject to anti-dumping measures
Fujian COFCO	Fujian Provincial Cereals, Oils & Foodstuffs Fujian Imp/Exp Corporation Xiamen Company
Fujian Zishan	Fujian Zishan Group Co., Ltd
Jiangsu COF	Jiangsu Cereals, Oils & Foodstuff Import Export Group
Minister	Minister for Home Affairs
Preserved mushrooms	Preserved mushrooms or champignons of the genus Agaricus whole, sliced or in pieces and stems in brine, sauce or some other preserving medium packed in containers including bottles, cans, bags, pails and barrels
review period	1 July 2009 to 30 June 2010
SEF 166	Statement of essential facts no. 166
Shenzhen Grandness	Shenzhen Grandness Industry Group Co., Ltd
Xiamen Fortune	Xiamen Fortune Imp & Exp Co., Ltd
Xiamen Gulong	Xiamen Gulong Import & Export Co., Ltd
Windsor Farm	Windsor Farm Foods Pty Ltd

1 SUMMARY AND RECOMMENDATIONS

This report provides the conclusions and recommendations to the Minister for Home Affairs (Minister) following a review of the anti-dumping measures applying to exports of preserved mushrooms¹ from The People's Republic of China (China).

Australian Customs and Border Protection Service (Customs and Border Protection) examined exports of preserved mushrooms from China to Australia during the period 1 July 2009 to 30 June 2010 to determine if the variable factors² relevant to the taking of anti-dumping measures had changed.

Customs and Border Protection found that the variable factors had changed. As a result of this finding Customs and Border Protection recommends that the dumping duty notice in respect of preserved mushrooms exported from China be modified in relation to exporters generally.

1.1 Applicable law

Division 5 of Part XVB³ enables affected parties to apply for a review of anti-dumping measures. The Division also empowers the Minister to initiate such a review. The Division, among other matters:

- sets out the procedures to be followed by the Chief Executive Officer of Customs and Border Protection (CEO) in dealing with applications or requests and preparing reports for the Minister; and
- empowers the Minister, after consideration of such reports, to leave the anti-dumping measures unaltered or to modify them as appropriate or revoke the measures.

The CEO's powers under this Division have been delegated to certain officers of Customs and Border Protection (delegate).

After conducting a review of anti-dumping measures, the CEO must give the Minister a report containing recommendations⁴.

1.2 Recommendation

Customs and Border Protection recommends that the Minister sign the attached schedule and public notice to declare that the dumping duty notice in respect of preserved mushrooms exported from China is taken to have effect, in relation to exporters of the goods generally, as if different variable factors had been fixed in respect of those exporters, relevant to the determination of duty.

¹ More particularly described in section 3.2 of this report.

² Variable factors are defined as normal value, export price and non-injurious price as ascertained by the Minister (s. 269T(4E)). Non-injurious price is defined as the minimum price necessary to prevent the injury or a recurrence of the injury (s. 269TACA).

³ A reference in this report to a provision of legislation, unless otherwise specified, is a reference to the *Customs Act 1901*.

⁴ Section 269ZDA(1).

1.3 Summary of findings and conclusions

1.3.1 The goods and like goods

Preserved mushrooms manufactured by Windsor Farm Foods Pty Ltd (Windsor Farm) are like goods⁵ to the preserved mushrooms exported to Australia from China because they are physically similar and functionally and commercially interchangeable (see section 3 of this report).

1.3.2 Review of variable factors

The variable factors (export prices, normal values and non-injurious prices) relevant to the taking of anti-dumping measures on preserved mushrooms exported from China have increased since anti-dumping measures were imposed in 2006. Section 4 of this report provides details of the assessments of export prices and normal values. Section 5 provides details of the assessment of non-injurious prices.

1.3.3 Should the anti-dumping measures be revoked?

The anti-dumping measures on preserved mushrooms exported to Australia from China should not be revoked. Section 7 of this report provides details of the consideration of whether the Minister would be entitled to take anti-dumping measures on preserved mushrooms exported from China if they had not been taken.

⁵ S. 269T.

2 INTRODUCTION

2.1 The current review

On 16 August 2010, Xiamen Fortune Imp & Exp Co., Ltd (Xiamen Fortune) on behalf of itself and the manufacturer/supplier: Fujian Zishan Group Co., Ltd (Fujian Zishan) lodged an application requesting a review of anti-dumping measures⁶ applying to preserved mushrooms exported from China.

On 13 September 2010, Customs and Border Protection initiated a review of anti-dumping measures applying to preserved mushrooms exported from China following the consideration of the application by Xiamen Fortune. Public notification of initiation of the review was made on 13 September 2010 in *The Australian* newspaper. Australian Customs Dumping Notice (ACDN) No. 2010/33 was also published.

On 4 January 2011, Customs and Border Protection placed on the public record a statement of essential facts no. 166 (SEF 166) on which the CEO proposed to base his recommendations to the Minister concerning the review. Interested parties were invited to lodge submissions in response to SEF 166 no later than 23 January 2011. Submissions were received from Windsor Farm, Xiamen Fortune and Shenzhen Grandness Industry Group Co., Ltd (Shenzhen Grandness) and the non-confidential version of each submission is available on the public record.

Within 155 days of initiation of the review, or such period as the Minister allows,⁷ the CEO must give to the Minister a report on the review of anti-dumping measures applying to preserved mushrooms exported from China. The CEO's final report to the Minister is due by 15 February 2011.

In formulating the final report, the CEO has had regard to the request for review, submissions relating generally to the review to which the CEO has had regard for the purpose of formulating the statement of essential facts, the statement of essential facts, submissions made in response to the statement of essential facts, and any other matters that the CEO considered to be relevant to the review.⁸

2.2 Review period

At the commencement of the review, Customs and Border Protection set 1 July 2009 to 30 June 2010 as the review period (review period).

2.3 History of the anti-dumping measures

Customs and Border Protection initiated the original investigation into preserved mushrooms exported from China on 5 April 2005, following an application by Windsor Farm.

⁶ In accordance with s.269ZA of the Act

⁷ Section 269ZHI

⁸ Section 269ZDA(3)

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The Minister accepted Customs and Border Protection's recommendation in Trade Measures Report No. 99 that anti-dumping measures be imposed on the goods exported from China other than by Jiangsu Cereals, Oils & Foodstuff Import Export Group (Jiangsu COF). Customs and Border Protection was satisfied that the dumping margin for Jiangsu COF was less than 2 percent and therefore terminated the investigation so far as it related to Jiangsu COF. The Minister published a dumping duty notice, on 12 January 2006, for preserved mushrooms exported to Australia from China except those exported by Jiangsu COF.

The Minister's decision was the subject of a reinvestigation following an appeal to the Trade Measures Review Officer. On 9 November 2006 the Minister accepted Customs and Border Protection's recommendation in Trade Measures Report no. 99A that anti-dumping measures be imposed on the goods exported from China except those exported by Jiangsu COF and Xiamen Gulong Import & Export Co., Ltd (Xiamen Gulong). The original investigation was terminated in so far as it related to exports from Jiangsu COF. Customs and Border Protection found in the re-investigation that the dumping margin for Xiamen Gulong was less than 2 percent and was therefore negligible. The Minister published a dumping duty notice, on 21 November 2006, for preserved mushrooms exported from China other than by Jiangsu COF and Xiamen Gulong.

On 28 June 2010, Customs and Border Protection initiated a continuation inquiry following the consideration of an application by Windsor Farm. On 23 December 2010 the Minister agreed with Customs and Border Protection's recommendation that the anti-dumping measures be continued for a further five years. Notice of the Ministers decision was published on 7 January 2011 in *The Australian* newspaper and the *Commonwealth of Australia gazette*. ACDN 2011/01 was also published.

3 THE GOODS & LIKE GOODS

3.1 Findings

The preserved mushrooms manufactured by Windsor Farm are like goods⁹ to the preserved mushrooms exported to Australia from China because they are physically similar and functionally and commercially interchangeable.

3.2 The goods

The goods are:

'preserved mushrooms¹⁰ or champignons of the genus Agaricus, whole, sliced or as pieces and stems, in brine, sauce or some other preserving medium, packed in containers, including bottles, cans, bags, pails and barrels.

The goods exported to Australia from China during the review period were champignons¹¹ whole or in pieces and stems, packed in brine in can sizes ranging from 184 grams to 425 grams with 190 gram and 400 gram can sizes imported in the greatest volumes.

3.2.1 Tariff classification

The goods are classified under tariff subheading 2003.10.00, statistical codes 81 and 82 in Schedule 3 to the *Customs Tariff Act 1995*. The rate of customs duty on imports of preserved mushrooms from China is five percent.

3.3 Like goods

Windsor Farm is the sole producer of preserved mushrooms in Australia at its production facility located at Cowra, NSW.

Windsor Farm preserves sliced mushrooms¹² packed in a variety of sauces (including butter, peppercorn, lite, no added salt, gravy and gluten free) in can sizes ranging from 130 grams to 2.8 kilograms and in 200 kilogram barrels. Windsor Farm has also produced small quantities of mushrooms in brine in 2.8 kilogram cans. Windsor Farm sells preserved mushrooms in 220 gram and 410 gram can sizes in the greatest volumes.

There was no information submitted during the continuation and review inquiries that caused the CEO to deviate from the original finding in Trade Measures Report no. 99 that:

⁹ Section 269T.

¹⁰ Preserved mushrooms refer to fresh mushrooms that have been washed, blanched, prepared (e.g. sliced or diced), packed into containers in a suitable liquid medium, heated and cooled. All other species of mushrooms, including straw, shiitake, and oyster, are not covered.

¹¹ Champignons are described as the young form of the genus Agaricus

¹² Windsor Farm's products use the mature form of the genus Agaricus

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preserved mushrooms manufactured by Windsor Farm are like goods to preserved mushrooms imported from China because they are physically similar and functionally and commercially interchangeable.

4 REVIEW OF VARIABLE FACTORS: EXPORT PRICE AND NORMAL VALUE**4.1 Findings**

Customs and Border Protection is satisfied that export prices and normal values have changed:

- export prices of the goods exported by Shenzhen Grandness are the prices paid by the Australian importers other than any part of the price representing overseas freight or any other charges after exportation¹³;
- as sufficient information has not been furnished to enable the export price of the goods exported by all other exporters to be ascertained under preceding subsections, the export price of those goods is such amount as determined having regard to all relevant information¹⁴ being the free-on-board export prices estimated from Customs and Border Protection's import database;
- the normal value of the goods exported by Shenzhen Grandness is the sum of such amount determined to be the cost of production of those goods plus (on the assumption that those goods instead of being exported had been sold in the ordinary course of trade in the Chinese market) an amount determined would be the administrative, selling and general costs associated with that sale plus the profit on that sale¹⁵. Adjustments have been made to ensure fair comparison with export prices¹⁶; and
- as sufficient information has not been furnished to enable the normal value of preserved mushrooms for all other exporters of the goods to be ascertained under preceding subsections, the normal value of those goods is such amount as is determined having regard to all relevant information¹⁷ being information contained in a published market report for Chinese mushrooms provided by the Australian industry.

4.2 Introduction

This review was initiated after Xiamen Fortune on behalf of itself and the manufacturer/ supplier: Fujian Zishan, lodged an application claiming that one or more of the variable factors had changed. This section explains the results of Customs and Border Protection's inquiry into whether export prices and normal values have changed since anti-dumping measures were imposed.

¹³ s. 269TAB(1)(a).

¹⁴ s. 269TAB(3)

¹⁵ s. 269TAC(2)(c)

¹⁶ S. 269TAC(9)

¹⁷ s. 269TAC(6)

4.3 Importers

No importers were visited during the review inquiry as importers were visited during the continuation inquiry and the review/ inquiry period was the same for both inquiries.

During the continuation inquiry, the following three importers, who imported over 60 percent of the goods in 2009/10, were visited:

- Grocery Holdings Pty Ltd (a subsidiary of Coles Group Ltd);
- Woolworths Ltd; and
- Riviana Foods Pty Ltd.

The above three companies cooperated with the continuation inquiry and visit reports for these companies are available on the public record for that inquiry¹⁸.

4.4 Exporters

On 21 September 2010, an exporter questionnaire was sent to all known suppliers in China who exported the goods to Australia in the review period, as identified in Customs and Border Protection's import database. This included the exempt exporters, Jiangsu COF and Xiamen Gulong.

An exporter questionnaire response was received from Shenzhen Grandness. A non-confidential version of the response was placed on the public record. The response was considered complete and a verification visit was conducted from 24-26 November 2010. Shenzhen Grandness co-operated fully during the visit. Accordingly, specific export prices and normal values were determined for Shenzhen Grandness.

A summary of the export price, normal value and dumping margin calculations for Shenzhen Grandness is contained at **confidential attachments 1 and 2**.

After on-going attempts to obtain the required information from the applicants, an exporter questionnaire response was received from Fujian Zishan on 3 December 2010. The questionnaire response was considered to be incomplete and contained a number of inconsistencies. Customs and Border Protection therefore decided not to conduct a verification visit. Fujian Zishan did not provide a non-confidential version of its exporter questionnaire response.

As data provided by Fujian Zishan was considered to be unreliable, specific export prices and normal values were not determined for Fujian Zishan.

An exporter questionnaire response was also received from Xiamen Fortune on 2 December 2010. A non-confidential version of the response was placed on the public record. As Xiamen Fortune does not manufacture the goods and did not export the goods to Australia during the review period the company was not visited.

No other exporter questionnaire responses were received.

¹⁸ Preserved Mushrooms – Continuation Inquiry TM Report No. 164

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A summary of the export price, normal value and dumping margin calculations for all other exporters of the goods is contained at **confidential attachment 3**.

4.5 Submissions

Submissions on export price and normal value were received from Shenzhen Grandness and Windsor Farm.

Shenzhen Grandness commented in particular on Customs and Border Protection's inclusion in constructed domestic selling prices of:

- A profit margin;
- A credit adjustment; and
- A product type adjustment for differences between the export selling price of whole mushrooms and mushrooms in pieces and stems.

Windsor Farm requested an adjustment be made to the Chinese contracted selling price for whole mushrooms used in determining normal values for increases in the CPI index since 2008/09.

4.6 Export Price

4.6.1 Shenzhen Grandness

Shenzhen Grandness was found to be the trader and supplier of the goods on behalf of its related manufacturing entities, Sichuan Grandness Food Co., Ltd and Shandong Shanxian Grandness Food Co., Ltd. The related group of companies were treated as the 'exporter'.

Exports of the goods by Shenzhen Grandness during the review period were to Australian customers reflecting arms length transactions.

Export prices of the goods exported by Shenzhen Grandness are the prices paid by the Australian importers other than any part of the price representing the overseas freight or any other charges after exportation¹⁹.

4.6.2 All other exporters the subject of this review

As sufficient information has not been furnished to enable the export price of the goods exported by all other exporters to be ascertained under preceding subsections, the export price of those goods is such amount as determined having had regard to all relevant information²⁰ being the free-on-board export prices estimated from Customs and Border Protection's import database.

4.7 Normal Value

4.7.1 Shenzhen Grandness

Shenzhen Grandness did not sell like goods on the domestic market during the review period. One of its related manufacturing entities, however, did have a small

¹⁹ s.269TAB(1)(a)

²⁰ s.269TAB(3)

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volume of domestic sales but these were found to not be in sufficient volume, when compared to the equivalent export volume, to base the determination of normal value.

Customs and Border Protection considered determining normal value based on 'other sellers' domestic sales of like goods. Fujian Zishan was the only other seller of like goods that provided domestic sales information. This information was considered to be unreliable and was therefore disregarded.

Third country sales information provided by Shenzhen Grandness was not preferred as a basis for determining normal value because of volume and level of trade differences.

Therefore Customs and Border Protection constructed domestic selling prices using the sum of the cost of production of the exported goods; the administrative, selling and general expenses associated with the sale of the goods in the ordinary course of trade in the country of export; and an amount for profit on that sale.

Cost of production

The cost of production of the exported goods (i.e. 190 gram and 425 gram cans of whole mushrooms and mushrooms in pieces and stems) were used in constructing domestic selling prices.

Administrative, selling and general expenses

Customs and Border Protection used the administrative, selling and general costs associated with the sales of goods of the same general category²¹ in the Chinese domestic market (i.e. canned peaches and apples) in constructing domestic selling prices.

Profit

Shenzhen Grandness claimed an amount for profit should not be added in constructing a domestic selling price because:

- using the profit margin on a single transaction of goods of the same general category is not appropriate;
- sales of goods of the same general category were found to be not in the ordinary course of trade and therefore not suitable for determining normal value;
- sales of canned peaches is in sufficient quantity but are at a loss;
- sales of canned apples are also at a loss; and
- the company traded at a loss during the review period.

In determining the level of profit to be used in constructing normal values, the following relevant information was considered:

- the profit achieved by Shenzhen Grandness on domestic sales of goods of the same general category being canned peaches;
- the profit achieved by Shenzhen Grandness on export sales of like goods to third countries; and

²¹ Regulation 181(3)(a)

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- the profit achieved by other exporters' domestic sales of like goods in the ordinary course of trade during the original investigation period.

The preliminary normal values outlined in SEF 166 were constructed using the profit from domestic sales of canned peaches. It is accepted that the profit achieved on a single domestic transaction is not appropriate to use in constructing a domestic price for preserved mushrooms given that the volume is less than one percent of the export volume of preserved mushrooms. Therefore an amount for profit is unable to be calculated under Regulation 181A(3)(a).

Reference was made to Regulation 181A(3)(b). However, as outlined in SEF 166, information from 'other sellers' was rejected as a fair comparison could not be achieved without properly taking account of differences in characteristics such as raw materials, costs and production methods.

Reference was then made to Regulation 181A(3)(c), which provides for any other reasonable method by having regard to all relevant information.

The exporter's submission was considered to contain merit. It was established that over the course of the review period Shenzhen Grandness' domestic sales of like goods and goods of the same general category were unprofitable but an individual sale transaction was profitable. The volume of the profitable sale transaction was low. Therefore using this low volume sales transaction to identify an actual amount of profit would not be reasonable or reliable. It is also considered that information provided on the sale of canned peaches and canned apples is not adequate to calculate the actual amount of profit achieved on that particular sale.

Therefore taking into account Shenzhen Grandness' overall domestic performance for the purpose of establishing a reasonable methodology under Customs Regulation 181A(3)(c), adding a zero amount for profit in constructing domestic selling prices is reasonable.

Adjustments

In determining normal values, adjustments may be required to ensure a proper comparison between the constructed price of like goods in the domestic market and the export price of the goods.

Inland freight

Cost to make and sell is calculated at the ex-factory level whereas export sales are free-on-board. The cost of the inland freight to port has therefore been added to the constructed selling price.

Level of trade (sale)

The constructed domestic prices were based on cost to make canned mushrooms plus administrative, selling and general costs associated with domestic sales of the same general category of goods by the manufacturing companies in the Grandness Group. Export sales to Australia are made by Shenzhen Grandness which is a trading company in the Group. Therefore a level of trade adjustment was made based on administrative, selling and general costs incurred by Shenzhen Grandness.

Cost of credit

Interest expenses were included in the selling costs in the construction of a

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domestic selling price. An adjustment for differences in the cost of credit has therefore been made. Customs and Border Protection agrees with Shenzhen Grandness that the difference in the cost of credit between export sales and domestic sales should be deducted from the constructed selling price.

Product type

An adjustment to a constructed domestic sales price is made for differences in physical characteristics where the differences can be quantified to ensure a fair comparison.

In most cases an adjustment for differences in physical characteristics is based on production cost differences. However, where there is evidence of different selling prices for products with different physical characteristics, the size of the price difference may be used as the basis for any adjustment.

An examination of export prices to Australia shows that prices varied significantly within each of the can sizes depending on whether the mushrooms were whole or pieces and stems. Whilst it was established that production costs do not differ greatly between the types of mushrooms, there is strong evidence that prices for canned whole mushrooms are significantly higher than for mushrooms sold in pieces and stems.

Shenzhen Grandness claimed that no adjustment should be made to canned whole mushrooms based on the export sales price difference between canned whole mushrooms and mushrooms in pieces and stems because:

- cost to make and sell does not differ greatly between product types;
- Australian customer price preference should not be automatically applied to domestic customer price preference in China;
- there is no basis to rely on export sales price difference in determining normal values for different models; and
- canned peaches are more closely aligned to whole mushrooms rather than pieces and stems (i.e. canned peaches are only in halves because the stone has been removed).

Customs and Border Protection rejects the claims of the exporter. Information provided by Shenzhen Grandness clearly shows that prices differ significantly between the two types of canned mushrooms even though costs are similar. In addition, the exporter provided no explanation for the variation in selling prices.

Customs and Border Protection considers that there is sufficient information to warrant an upward adjustment to constructed domestic selling prices for canned whole mushrooms. The percentage differences between the export prices of mushrooms in pieces and stems and whole mushrooms during the review period, was applied to the constructed domestic selling prices for mushrooms in pieces and stems to calculate an adjustment for whole mushrooms.

The normal value of the goods exported by Shenzhen Grandness is the sum of such amount determined to be the cost of production of the goods plus (on the assumption that the goods instead of being exported are sold in the ordinary course of trade in the Chinese domestic market) an amount determined would be the administrative, selling and general costs associated with that sale plus the

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profit on that sale²². Adjustments have been made for inland freight, level of trade (sale), cost of credit and product type to ensure fair comparison with export prices²³.

4.7.2 All other exporters of the goods

Information provided by Shenzhen Grandness was not considered suitable for establishing normal values for all other exporters of the goods. The original investigation found that large variations in costs existed between the various Chinese producers of preserved mushrooms and therefore substitution of costs across exporters was not considered appropriate.

For the purpose of this review, Customs and Border Protection considers that information provided by the Australian industry in its application for continuation of anti-dumping measures²⁴ is both relevant and reliable.

The Australian industry quoted a market report for Chinese mushrooms for the December 2007 to March 2008 crop²⁵. The report contained Chinese contracted prices for canned mushrooms at the beginning and end of the 2007 season. These prices are shown in the table below.

The Australian industry claimed it is reasonable to conclude that the contracted selling prices in the 2007-08 season, which they consider to be a conservative estimate of domestic selling prices, are suitable as an estimate of more recent domestic selling prices due to increasing costs.

Table 1: Chinese contracted prices – canned mushrooms 2007-08 crop

Item	Price1 FOB US\$/ tray	Price2 FOB US\$/ tray	Midpoint price FOB US\$/ tray	Midpoint price FOB \$US/kg	Midpoint price FOB RMB/kg*1
12x8oz whole EOE	6.80	8.20	7.50	2.76	16.5818
12x313ml slice 30%	5.10	6.10			
6x68oz pieces & stems	20	26			

Note: *1 USD:RMB exchange rate of 6.0225 is the average RBA rate for 2009/10

Customs and Border Protection consider it is reasonable to use the above contracted prices for 8 ounce (227 gram) cans of whole mushrooms in 2007/08 as the basis for calculating normal values for all other exporters of the goods in 2009/10 as information provided by Chinese manufacturers indicates that cost of production of canned mushrooms has increased since 2007/08.

²² S.269TAC(2)(c)

²³ S. 269TAC(9)

²⁴ Trade Measures Report No. 164

²⁵ Market Report for Chinese Mushrooms (2007/2008 crop), Xiamen Kingstar Imp & Exp Co., Ltd, 31 August 2007

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The Australian industry requested in its submission that Customs and Border Protection take account of increases in the CPI index since 2008/09.

The Australian industry, in its application for continuation of the dumping duty notice (Trade Measures Report No. 164), stated that it was reasonable to conclude that the Chinese contracted prices for canned mushrooms in 2007/08 are indicative of domestic selling prices post the March 2008 harvest. Customs and Border Protection therefore does not consider it appropriate to adjust the 2007/08 Chinese contracted prices for increases in the CPI index.

As sufficient information is not available to enable the normal value of preserved mushrooms for all other exporters of the goods (except Shenzhen Grandness) to be ascertained under preceding subsections, the normal value of those goods is such amount as is determined having had regard to all relevant information²⁶ being information contained in a published market report for Chinese mushrooms²⁷ provided by the Australian industry.

No adjustments were made to the normal values ascertained for all other exporters of the goods.

4.8 Dumping Margin

Measurement of a dumping margin is not required for the purposes of reviewing the variable factors, however it may be relevant to the consideration of whether anti-dumping measures should be revoked (refer section 6).

A dumping margin was calculated for all exporters the subject of this review by comparing the weighted average of export prices over the whole of the review period with the weighted average of corresponding normal values over the whole of that period²⁸.

Dumping margins are summarised in the following table.

Table 2: summary of dumping margins

Exporter	Method	Dumping Margin
Shenzhen Grandness	s. 269TACB(2)(a)	5.1 percent
All other exporters the subject of this review	s. 269TACB(2)(a)	35.3 percent

²⁶ Under s.269TAC(6)

²⁷ s. 269TAC(6)

²⁸ s. 269TACB(2)(a).

5 REVIEW OF VARIABLE FACTOR: NON-INJURIOUS PRICE**5.1 Finding**

Customs and Border Protection is satisfied that the non-injurious price relevant to the taking of anti-dumping measures on preserved mushrooms from China has changed. The non-injurious price can be established by using the Australian industry's selling prices during 2009/10 less any charges to the free-on-board level.

5.2 Introduction

Dumping duties may be applied where it is established that dumped imports have caused or threaten to cause injury to the Australian industry producing like goods. The level of dumping duty cannot exceed the margin of dumping, but a lesser duty may be applied if it is sufficient to remove the injury.

The calculation of the non-injurious price provides the mechanism whereby this lesser duty provision is given effect. The non-injurious price is the minimum price necessary to prevent the injury, or a recurrence of the injury, caused to the Australian industry by the dumping²⁹.

Anti-dumping duties are based on free-on-board prices in the country of export. Therefore a non-injurious price is calculated in free-on-board terms for the country of export.

This section explains the results of Customs and Border Protection's inquiry into whether non-injurious price has changed since anti-dumping measures were imposed in 2006.

5.3 Unsuppressed selling price

The method of calculating a non-injurious price is not given in the legislation, but it is generally derived from the Australian industry's unsuppressed selling price³⁰.

The preferred approach to establishing the unsuppressed selling price is to observe the following hierarchy:

1. Industry selling prices at a time unaffected by dumping;
2. Constructed industry prices – industry cost to make and sell plus an appropriate profit; and
3. Selling prices of undumped imports.

Having calculated the unsuppressed selling price, a non-injurious price is then calculated by deducting the costs incurred in getting the goods from the export free-on-board point (or another point if appropriate) to the relevant level of trade in Australia.

²⁹ The non-injurious price is defined in section 269TACA.

³⁰ The unsuppressed selling price is a price at which the Australian industry might reasonably be able to sell the goods in a market unaffected by dumped imports.

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In the original investigation, the unsuppressed selling price was calculated using the average revenue per kilogram for each model sold by the Australian industry in 2000. The consumer price index data, relevant to the food sector, was then used to adjust the average revenue per kilogram to a December 2004 value for each model. From this data a weighted average product unsuppressed selling price was calculated.

The non-injurious price was calculated by adjusting the unsuppressed selling price to a free-on-board price by deducting all relevant post exportation costs such as: ocean freight and insurance; duty; port charges; cartage to store; importer's selling costs and importer's profit.

5.3.1 Australian Industry's claims

The Australian industry proposed during the continuation inquiry that its selling prices in 2009/10 be used as the basis for determining the unsuppressed selling price and then deduct all relevant post exportation charges to calculate the non-injurious price.

5.3.2 Assessment

Windsor Farm's selling prices in 2009/10 are considered suitable for establishing an unsuppressed selling price. The recent continuation inquiry into preserved mushrooms (REP 164) found that it was likely that dumped imports from China continued to cause injury to the Australian industry. However, the basis for this finding centred on the use of import price during sales negotiations between Windsor Farm and retailers. Windsor Farm did not argue that it had as a result of these negotiations reduced its prices. It is more likely that the industry would have experienced reduced sales volumes.

Therefore, there is no reason why the profit margin achieved by Windsor Farm on sales made during the review period are indicative of prices that could be achieved in a market affected by dumping. Accordingly, Windsor Farm's weighted average selling prices in 2009/10 are considered suitable for calculation of the unsuppressed selling price.

The 220 gram and 410 gram can sizes were the most comparable models sold on the Australian market by the Australian industry to the 190 gram and 400 gram can sizes imported from China in 2009/10. The average revenue per kilogram for 220 gram and 410 gram can sizes for 2009/10 were therefore used to calculate unsuppressed selling prices.

Windsor Farm's sales of 220 gram and 410 gram cans were free-into-store and at both the distributor and retailer levels. Three importers were visited during the continuation inquiry and had their post exportation costs verified. Two of the three importers visited operate at the retail level and the third operates at the distributor level. Customs and Border Protection therefore used an average of post exportation costs for all three importers as Windsor Farm operates at both levels in calculating non-injurious prices. Post exportation costs deducted included cartage to store, into-store costs, ocean freight and marine insurance.

The non-injurious price were established by using the Australian industry's selling prices during 2009/10 less any charges to the free-on-board level.

The calculations for the unsuppressed selling price and non-injurious price are contained in **confidential attachment 4**.

6 EFFECT OF THE REVIEW

6.1 Findings

Customs and Border Protection is satisfied that the variable factors relevant to the taking of anti-dumping measures (export price, normal value and non-injurious price) have increased for all exporters of the goods since anti-dumping measures were imposed in 2006.

6.2 Introduction

The original investigation/ re-investigation resulted in specific variable factors: export prices and normal values being calculated for the following co-operating exporters:

- Fujian Provincial Cereals, Oils & Foodstuffs Fujian Imp/Exp Corporation Xiamen Company (Fujian COFCO);
- Fujian Zishan; and
- Xiamen Fortune.

Two exporters: Jiangsu COF and Xiamen Gulong were found to have dumping margins of less than two percent and were therefore exempted from anti-dumping measures.

Interim dumping duties were therefore determined for exports of preserved mushrooms from China except those exported by Jiangsu COF and Xiamen Gulong. Five different categories of interim dumping duty were established with no differentiation based on product type:

	Exporter	Product type
1	Fujian COFCO	All types
2	Fujian Zishan	All types
3	Xiamen Fortune	All types
4	All other exporters except Jiangsu COF & Xiamen Gulong	All types
5	Manufactured and exported by exempt exporters, Jiangsu COF and Xiamen Gulong and supplied by intermediaries	All types

6.3 Assessment

As a result of this review, Customs and Border Protection recommends that changes be made to the calculation of interim dumping duty payable on imports of preserved mushrooms from China.

Customs and Border Protection recommends that interim dumping duty be determined for exports of preserved mushrooms from China except those manufactured and exported by Jiangsu COF and Xiamen Gulong as follows:

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	Exporter	Product type ^{*2}
1	Goods manufactured and exported by Shenzhen Grandness	PNS ^{*1} ≤300 grams PNS >300 grams WHOLE ≤300 grams WHOLE >300 grams
2	All other exporters except goods manufactured and exported by exempt exporters, Jiangsu COF & Xiamen Gulong	PNS ≤300 grams PNS >300 grams WHOLE ≤300 grams WHOLE >300 grams

*1 PNS: pieces and stems

*2 weight refers to net weight of can

NOTE:

1. All exports of the goods are covered by the dumping duty notice except goods **manufactured and exported** by Jiangsu COF or Xiamen Gulong. All goods not manufactured by but exported by Jiangsu COF or Xiamen Gulong will be subject to the 'all other exporters' rates of dumping duties.
2. Different rates of interim dumping duty will apply to each product type.

The variable factors: export price, normal value and non-injurious price for all exporters of the goods have increased since anti-dumping measures were imposed in 2006 (**confidential attachment 5**).

7 SHOULD THE MEASURES BE REVOKED?**7.1 Findings**

Customs and Border Protection is satisfied that in the absence of anti-dumping measures:

- the goods would continue to be exported at dumped prices; and
- those dumped goods would cause material injury to the Australian industry producing like goods.

Customs and Border Protection is therefore satisfied that the anti-dumping measures should not be revoked.

7.2 Introduction

After reviewing the variable factors, the delegate considered whether a recommendation to the Minister should be made to revoke the dumping duty notice³¹ as it applies to a particular exporter or to exporters generally.

The question to be considered is if the measures were not in place, would the delegate be positively satisfied that they could now be imposed. In other words, would injurious dumping exist if there were no measures applying to the goods.

7.3 Submissions claiming revocation

Customs and Border Protection received a submission from Shenzhen Grandness requesting revocation of the anti-dumping measures. The company submitted that anti-dumping measures on exports by Shenzhen Grandness, or Chinese exporters generally, should be revoked given that there is no evidence that Shenzhen Grandness would dump/ continue to dump if the measures are revoked. This is because they asserted that Shenzhen Grandness' exports to Australia during the review period were at negative or de minimis dumping margins.

7.4 Assessment**7.4.1 Dumping during the review period**

In the continuation inquiry Customs and Border Protection was satisfied that the expiration of anti-dumping measures would likely lead to a continuation of preserved mushrooms being exported at dumped prices given the level of dumping during the inquiry period, the volume of dumped product continuing to be imported from exporters subject to measures, the capacity of the canned mushroom industry in China and the propensity of Chinese exporters to sell at dumped prices.

The review has determined that exports of preserved mushrooms by Shenzhen Grandness were exported during the review period at dumped prices with dumping margins that were not negligible. Importantly, for one of the models exported to

³¹ s.269TG(1) and (2)

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Australia, Customs and Border Protection found that the export price of the goods was less than the verified cost to make and sell.

So whilst the normal values have been determined using the cost to make and sell plus zero profit, there is sufficient evidence demonstrating the willingness of Shenzhen Grandness to export preserved mushrooms to Australia at unprofitable prices.

Customs and Border Protection is that in the absence of the anti-dumping measures, exports of the goods at dumped prices would continue or recur.

7.4.2 Injury during the review period

In examining whether dumping would have caused material injury to the Australian industry in the absence of measures, Customs and Border Protection has had regard to information provided to the recently completed continuation inquiry into preserved mushrooms from China.

Customs and Border Protection found in the continuation inquiry that material injury was continuing and likely to recur as a result of dumping from China on the basis:

- Chinese imports continue to be the main source of supply to the Australian market despite the imposition of anti-dumping measures;
- imports from China undercut the selling price of the Australian industry to its major customers and the expiration of measures would likely lead to imports becoming more price competitive resulting in further price undercutting;
- evidence that retailers were using dumped import prices as a benchmark in negotiations with the Australian industry for supply contracts. The benchmark prices were being used to obtain reduced and competitive price offers from Windsor Farms; and
- the price pressure being exerted on the Australian industry by reference to dumped import prices would be likely to lead to price depression and price suppression in the absence of anti-dumping measures. This impact on price would ultimately result in reduced profits and profitability for the Australian industry.

A comparison of the export prices with the non-injurious prices shows that export prices are below the non-injurious prices by between 23 and 49 percent for all exporters of the goods. This is evidence that dumped exports from China were exported during the review period at prices that were injurious to the Australian industry.

On the basis of this evidence, Customs and Border Protection is satisfied that in the absence of the anti-dumping measures, grounds would now exist for the Minister to impose them.

8 RECOMMENDATIONS

Customs and Border Protection recommends that the Minister considers this report, and if agreed, sign the attached schedule and public notice to **declare**:

- under s. 269ZDB of the Act, that, for the purpose of the Act and the *Customs Tariff (Anti-Dumping) Act 1975*, to the extent that the anti-dumping measures concerned involved the publication of a dumping duty notice, that, with effect from the date of publication of the notice, the notice is taken to have effect in relation to exporters of the goods generally as if different variable factors had been fixed in respect of those exporters, relevant to the determination of duty.

Customs and Border Protection recommends that the Minister **be satisfied** that:

- in accordance with s. 269TAB(3) of the Act, sufficient information has not been furnished or is not available to enable export prices of the goods for all exporters (except Shenzhen Grandness) to be ascertained under the preceding subsections of s. 269TAB of the Act and;
- in accordance with s. 269TAC(6) of the Act, sufficient information has not been furnished or is not available to enable normal values of the goods for all exporters (except Shenzhen Grandness) to be ascertained under the preceding subsections of s. 269TAC of the Act.

Customs and Border Protection recommends that the Minister **determine**:

- in accordance with s. 269TAB(3) of the Act, the export prices of the goods for all exporters (except Shenzhen Grandness) is the amount having regard to all relevant information;
- in accordance with s. 269TAC(2)(c) of the Act, the normal value of the goods exported by Shenzhen Grandness is the sum of the cost of production of the exported goods, the administrative, selling and general costs associated with the sale in the ordinary course of trade in China and the profit on that sale; and
- in accordance with s. 269TAC(6) of the Act, the normal value of the goods for all exporters (except Shenzhen Grandness) is the amount having regard to all relevant information.

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9 CONFIDENTIAL ATTACHMENTS

Confidential attachment 1	Normal value, export price and dumping margin calculation - Shenzhen Grandness
Confidential attachment 2	Normal value calculation - Shenzhen Grandness
Confidential attachment 3	Normal value, export price and dumping margin calculation summary – all other exporters of the goods
Confidential attachment 4	Unsuppressed selling price and non-injurious price calculations
Confidential attachment 5	Ascertained export price, ascertained normal value and interim dumping duty calculation