



Australian Government
Australian Customs Service

R E P O R T

CUSTOMS ACT 1901 - PART XVB

TRADE MEASURES REPORT No. 99A

**CERTAIN PRESERVED MUSHROOMS
FROM
THE PEOPLE'S REPUBLIC OF CHINA**

**REINVESTIGATION OF CERTAIN
CUSTOMS' FINDINGS**

14 August 2006

Abbreviations

CEO	Chief Executive Officer of Customs
China	The People's Republic of China
COFCO	Fujian Provincial Cereals, Oils & Foodstuffs Import/Export Corporation Xiamen Company
CTMS	Cost to make and sell
FBIA	The Food & Beverage Importers Association
Fujian	Fujian Holdings Pty Ltd
Fujian Zishan	Fujian Zishan Group Co Ltd
Jiangsu COF	Jiangsu Cereals, Oils and Foodstuffs Import/Export Group Corp
Manual	Customs Dumping and Subsidy Manual Vol. 22
Oriental	Oriental Merchant Pty Ltd
the Act	<i>The Customs Act 1901</i>
the goods	the goods the subject of the application
TMRO	Trade Measures Review Officer
the Minister	Minister for Justice and Customs
SG&A	selling, general and administrative
WFF	Windsor Farms Food Group Pty Ltd
WTO	World Trade Organization
Xiamen Fortune	Xiamen Fortune Import & Export Co Ltd
Xiamen Gulong	Xiamen Gulong Import & Export Co Ltd

TABLE OF CONTENTS

1. SUMMARY AND FINDINGS	1
1.1 Summary.....	1
1.2 Findings	1
2. BACKGROUND TO THE REINVESTIGATION	3
2.1 Customs' original investigation.....	3
2.2 Review of a Ministerial decision	4
2.2.1 The TMRO's Review	4
2.3 Reinvestigation process	5
3. ISSUE 1 - LIKE GOODS	7
3.1 Original Investigation.....	7
3.1.1 The goods under consideration.....	7
3.1.3 Customs assessment in the original investigation.....	8
3.2 The TMRO's Review	9
3.2.1 Applications for Review.....	9
3.2.2 Submissions to the TMRO's review	10
3.2.3 The TMRO's report	11
3.3 Customs' reinvestigation	13
3.3.1 Considerations when determining 'like goods'	13
3.3.2 Submissions to the reinvestigation on like goods.....	13
3.3.3 Customs' Reinvestigation Assessment	14
3.3.4 Customs' reinvestigation conclusion	19
4. ISSUE 2 - DUMPING	21
4.1 Original Investigation.....	21
4.1.1 Customs assessment in the original investigation.....	21
4.2 The TMRO's Review	26
4.2.1 Applications for Review.....	26
4.2.2 Other submissions to the TMRO's review	29
4.2.3 The TMRO's report	29
4.3 Customs' reinvestigation	30
4.3.2 Submissions to the reinvestigation.....	31
4.3.3 Customs' Reinvestigation Assessment	32
5. ISSUE 3 – INJURY	40
5.1 Original Investigation.....	40
5.1.1 Customs' assessment in the original investigation	40
5.2 The TMRO's Review	42
5.2.1 Applications for Review.....	42
5.2.2 Other submissions to the TMRO's review	42
5.2.3 The TMRO's report	42
5.3 Customs' reinvestigation	43
5.3.2 Submissions to the reinvestigation.....	43
5.3.3 Customs' Reinvestigation Assessment	44
6. ISSUE 4 – CAUSATION	50
6.1 Original Investigation.....	50
6.1.1 Customs' assessment in the original investigation	50
6.2 The TMRO's Review	51
6.2.1 Applications for Review.....	51
6.2.2 Other submissions to the TMRO's review	52

6.2.3	The TMRO's report	52
6.3	Customs' reinvestigation	52
6.3.2	Submissions to the reinvestigation.....	53
6.3.3	Customs' Reinvestigation Assessment	54
7.	ISSUE 5 – CONTINUED DUMPING & MATERIAL INJURY	61
7.1	Original Investigation.....	61
7.1.1	Customs' assessment in the original investigation	61
7.2	The TMRO's Review	61
7.2.1	Applications for Review.....	61
7.2.2	Other submissions to the TMRO's review	62
7.2.3	The TMRO's report	62
7.3	Customs' reinvestigation	62
7.3.1	Considerations when determining if continued dumping may cause further material injury.....	62
7.3.2.	Submissions to the reinvestigation.....	62
7.3.3	Customs' Reinvestigation Assessment	63
8.	FINDINGS & RECOMMENDATION	65
9.	EVIDENCE RELIED UPON	67

1. SUMMARY AND FINDINGS

1.1 Summary

This report provides the results of Customs' reinvestigation of certain findings in relation to the alleged dumping of certain preserved mushrooms exported to Australia from the People's Republic of China (China).

On 12 January 2006 the Minister for Justice and Customs (the Minister) published a dumping duty notice imposing measures on certain preserved mushrooms exported to Australia from China.

The Trade Measures Review Officer (TMRO) accepted applications for a review of the Minister's decision from Oriental Merchant Pty Ltd (Oriental) and Fujian Holdings Pty Ltd (Fujian). Following the review, the Minister accepted the recommendations of the TMRO and subsequently wrote to the Chief Executive Officer of Customs (CEO) requiring him to reinvestigate Customs' findings that:

- preserved mushrooms produced by the Australian industry, being preserved mushrooms other than those preserved only in brine, are like goods to the goods under consideration;
- exports of preserved mushrooms from China were dumped;
- the Australian industry suffered injury in the form of price undercutting, price suppression, price depression, reduced profits and profitability and underutilisation of capacity;
- preserved mushrooms exported from China at dumped prices caused material injury to the Australian industry; and
- exports of preserved mushrooms from China in the future may be at dumped prices and the continued dumping may cause further material injury to the Australian industry.

The Minister directed Customs to report the result of the reinvestigation to him on or before 13 August 2006.

1.2 Findings

Following its reinvestigation, Customs affirms the findings that:

- preserved mushrooms produced by the Australian industry, being preserved mushrooms other than those preserved only in brine, are like goods to the goods under consideration;
- exports of preserved mushrooms from China by Fujian Provincial Cereals, Oils & Foodstuffs Import/Export Corporation Xiamen Company (COFCO), Fujian Zishan Group Co Ltd (Fujian Zishan), Xiamen Fortune Import & Export Co Ltd (Xiamen Fortune) and all other exporters, (except Jiangsu Cereals, Oils and Foodstuffs Import/Export Group Corp (Jiangsu COF) and Xiamen Gulong Import & Export Co Ltd (Xiamen Gulong)) were dumped;

- the Australian industry suffered injury in the form of price undercutting, price suppression, price depression, reduced profits and profitability and underutilisation of capacity;
- preserved mushrooms exported from China at dumped prices caused material injury to the Australian industry; and
- exports of preserved mushrooms from China in the future may be at dumped prices and the continued dumping may cause further material injury to the Australian industry.

Customs makes a new finding that the dumping margins determined in the original investigation be replaced with those determined in the reinvestigation, those new margins being:

Exporter	Dumping Margin
COFCO	22.7%
Fujian Zishan	2.4%
Xiamen Fortune	19.9%
Xiamen Gulong	1.3%
All other exporters except Jiangsu COF, and Xiamen Gulong	32.4%

2. BACKGROUND TO THE REINVESTIGATION

2.1 Customs' original investigation

On 5 April 2005, following an application by the Windsor Farms Food Group Pty Ltd (WFF), Customs initiated an investigation into the alleged dumping of certain preserved mushrooms exported to Australia from China. WFF was found to be the sole Australian manufacturer of preserved mushrooms.

The goods the subject of the investigation (the goods) were:

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

Preserved mushrooms refer to fresh mushrooms that have been washed, blanched, prepared (eg. sliced or diced), packed into containers in a suitable liquid medium, heated and cooled. Other species of mushrooms including straw mushrooms, shiitake mushrooms, and oyster mushrooms were not included in the application.

The goods are classified to sub-heading 2003 10 00, statistical codes 81 and 82 to Schedule 3 of the *Customs Tariff Act 1995*. The rate of duty is 5 per cent.

On 13 August 2005, Customs placed a statement of essential facts (SEF) on the public record. On 26 September 2005, Customs made a preliminary affirmative determination that there appeared to be sufficient grounds for the publication of a dumping duty notice. Provisional measures in the form of securities were imposed from 30 September 2005.

On 27 September 2005, Customs made its final report (Trade Measures Report No. 99) and recommendations to the Minister. In that report Customs concluded that:

- preserved mushrooms exported to Australia by Jiangsu COF were not dumped;
- preserved mushrooms exported to Australia by all other exporters from China were dumped with dumping margins ranging from 4.2 per cent to 23.3 per cent ;
- the dumped exports from China caused material injury to the Australian industry; and
- future exports of preserved mushrooms from China are likely to be dumped and continue to cause material injury to Australian industry.

The Minister accepted Customs' recommendations in relation to the investigation and on 12 January 2006, dumping duty notices under ss.269TG(1) and (2) of the Act were published imposing anti-dumping measures on the goods. Measures were imposed on preserved mushrooms exported to Australia from China (except those exported by Jiangsu COF) and were effective from 30 September 2005 (date provisional measures were imposed).

2.2 Review of a Ministerial decision

Division 9 of the Act provides for reviews by the TMRO of certain decisions by the Minister, including decisions to take, or not to take, anti-dumping action under ss. 269TG(1) and 269TG(2) of the Act. Reviews are conducted only on application from relevant interested parties as defined in s. 269ZX of the Act.

An affected party includes a person directly concerned with the exportation or importation of the goods to which the measures relate; a person representing all or part of the Australian industry producing like goods; or the government of a country from which like goods have been exported to Australia.

2.2.1 *The TMRO's Review*

The TMRO received applications for review from Oriental, an Asian food wholesaler/distributor in Australia, and Fujian, an Australian importer of Asian grocery items. Both companies made submissions to Customs in the course of its investigation and both were accepted to be interested parties, within the meaning the Act.

In their applications for review, both Oriental and Fujian disputed several Customs' findings including that mushrooms in butter sauce and other similar sauces manufactured in Australia were like goods to the preserved mushrooms exported from China. They also claimed that Customs should have determined normal value in accordance with the 'other sellers' provision in s. 269TAC(1) of the Act. Notice of the TMRO's review was given on 10 February 2006.

In making his findings to the Minister, and in accordance with s. 269ZZK of the Act, the TMRO must only have regard to the relevant information when making his report to the Minister. Therefore, the TMRO had regard to all of the information available to Customs during the course of its investigation, to Customs' analysis, findings and recommendations as contained in its final report to the Minister and to the submissions provided by the applicants for review on this matter.

Following the review, the TMRO, in his report to the Minister dated 7 April 2006, recommended that the Minister direct the CEO to reinvestigate Customs' findings that:

- preserved mushrooms produced by the Australian industry, being preserved mushrooms other than those preserved only in brine, are like goods to the goods under consideration;
- exports of preserved mushrooms from China were dumped;
- the Australian industry suffered injury in the form of price undercutting, price suppression, price depression, reduced profits and profitability and underutilization of capacity;
- preserved mushrooms exported from China at dumped prices caused material injury to the Australian industry; and

- exports of preserved mushrooms from China in the future may be at dumped prices and the continued dumping may cause further material injury to the Australian industry.

On 15 May 2006, the Minister accepted the TMRO's recommendations and directed Customs to reinvestigate the above findings and report to him on or before 13 August 2006.

2.3 Reinvestigation process

In accordance with s. 269ZZL of the Act, Customs published a notice advising of the reinvestigation in *The Australian* on 15 May 2006. Australian Customs Dumping Notice 2006/18, dated 15 May 2006 also notified details of the reinvestigation.

The reinvestigation by Customs is subject to s.269ZZL of the Act which requires the CEO, in making a further investigation of the findings, to have regard only to the information and conclusions to which the TMRO was permitted to have regard. As noted above, this included all of the information available to Customs during the course of its original investigation, Customs' analysis, findings and recommendations to the Minister as contained in Trade Measures' Report No. 99 and the submissions provided by the applicants for review on this matter.

Customs wrote to all known interested parties inviting submissions to the reinvestigation and advised that it would consider previous submissions, including those made to the TMRO, as far as they related to the relevant information. Customs reminded interested parties that if they wished to lodge a submission to the reinvestigation they be aware of the limitations on the information to which Customs could have regard.

Customs received submissions from:

- Fujian;
- Oriental; and
- WFF.

A brief letter endorsing Customs' findings in the original investigation was also received from Jiangsu COF.

Public versions of the submissions were placed on the public file. Customs had regard only to those parts of the submissions so far as they related to the information and conclusions before the TMRO.

Under s. 269ZZM(1) of the Act, after receiving this report, the Minister must:

- (a) affirm the reviewable decision concerned; or
- (b) revoke that decision and substitute a new decision.

The reviewable decision in this instance is the Minister's decision to publish dumping duty notices under ss.269TG(1) & (2) of the Act in respect of

preserved mushrooms exported from China (except by Jiangsu COF) to Australia.

Under s. 269ZZM(3) of the Act, the Minister may decide to:

- (a) publish a dumping duty notice or countervailing duty notice; or
- (b) vary a dumping duty notice or countervailing duty notice; or
- (c) revoke a dumping duty notice or countervailing duty notice and substitute another dumping or countervailing duty notice (as the case requires).

3. ISSUE 1 - LIKE GOODS

The Minister has directed Customs to reinvestigate the finding that preserved mushrooms produced by the Australian industry, being preserved mushrooms other than those preserved only in brine, are like goods to the goods under consideration.

3.1 Original Investigation

3.1.1 *The goods under consideration*

The goods under consideration are preserved mushrooms of the genus *Agaricus*, whole, sliced or as stems and pieces, in brine, sauce or some other preserving medium, packed in containers, including bottles, cans, bags, pails and barrels exported from China.

The application excluded all other species of mushrooms including straw mushrooms, shiitake mushrooms, and oyster mushrooms. Customs' Trade Branch confirmed that the goods are classified to sub-heading 2003.10.00, statistical codes 81 and 82 to Schedule 3 of the *Customs Tariff Act 1995*. The general rate of duty is five per cent: this rate applies to exports from China.

Imports

Customs found that all imports of preserved mushrooms that it examined during the investigation period were classed as champignons, the young form of the genus *Agaricus*. Customs found that the champignons were imported whole, sliced and as pieces and stems, and all were packed in a preserving medium of brine. That is, there were no imports of mushrooms in sauce. The champignons in brine were imported mostly in cans, however some imports were in glass jars. Net weights of the containers ranged from 180 grams (g) to 2.87 kilograms (kg). Customs did not find that any preserved mushrooms were imported in bags, pails, or barrels.

3.1.2 *Goods Produced by the Australian Industry*

WFF stated in its application that it produced sliced mushrooms in a range of preserving mediums, including butter sauce, garlic sauce, peppercorn sauce, 'lite' sauce and brine. The products were sold in containers comprising:

- cans ranging in size from 130g to 2.8kg;
- bags in 2.5kg and 10kg sizes; and
- pails and barrels in 10kg, 20kg, and 200kg sizes.

WFF's sales of its mushrooms in brine products were sold only in containers of 2.8kg (generally referred to as A10 size) and above. WFF's mushrooms in sauce were not sold in containers greater than A10 size.

The industry's products use older mushrooms of the genus *Agaricus*. The mushrooms are produced only in a sliced form and, as noted above, are packaged in a variety of mediums, principally butter sauce.

3.1.3 Customs assessment in the original investigation

As noted, Customs found that WFF preserved its sliced mushrooms in a variety of sauce mediums, and brine. The preserved mushrooms exported from China are preserved in brine only.

Mushrooms in Brine

In respect of preserved mushrooms in brine exported from China, Customs found that WFF's locally produced preserved mushrooms in brine products, although not identical to those exported from China, had characteristics closely resembling them and are like goods.

Mushrooms other than those preserved only in brine

Trade Measures Report No. 99 noted that the locally produced preserved mushrooms in sauce products and the Chinese imports of preserved mushrooms in brine products differed in appearance and taste, because of:

- the different preserving mediums;
- the style of mushroom (imports may be whole, sliced or pieces and stems whereas industry's are sliced only); and
- the ages of mushrooms used in the respective products.

Customs considered, however, that the essential physical characteristics of the products are the same, i.e. they are both a preserved form of the mushroom species genus *Agaricus*.

In support of its like goods argument, WFF provided a study it commissioned from the Faculty of Economics and Business Law at the University of New England (the UNE study). The aim of this study was to determine if imported canned mushrooms compete on price with locally produced preserved mushrooms in the Australian market. This UNE study examined sales data of a major Australian retailer spanning a two-year period to April 2004. The sales data covered WFF's mushrooms in butter sauce (220g and 410g sizes) and comparable sizes of preserved mushrooms in brine exported from China (both whole and pieces and stems). The study concluded, *inter alia*, that there were significant:

- negative own-price elasticities of demand (that a product's own price was strongly related to the quantity of product sold – a higher price resulted in less product sales) ;
- cross-price elasticities of demand between imported and locally produced canned mushrooms (that local and imported canned mushrooms are related in the domestic market with a decline in the quantity of local canned product sold as the price of the imported product was reduced); and
- cross-price elasticities of demand among individual products (changes in demand across product types as price differentials changed - a decrease in price of imported 400g cans had a highly significant effect on decreasing sales of industry 220g cans).

WFF stated that the UNE study findings showed the significant degree of interchangeability between its locally produced preserved mushrooms in sauce

and the preserved mushrooms in brine exported from China and that the price of Chinese imports of preserved mushrooms had a direct impact on the sales volume of locally produced preserved mushrooms in sauce. Trade Measures Report No. 99 noted that this conclusion was consistent with Customs' observation that during calendar year 2000, FOB export prices fell significantly, resulting in a substantial increase in import sales volumes and a significant loss of sales volumes for WFF. Further, during 2001 the Australian industry reduced its prices to compete with the cheaper imports and regained the lost sales volumes.

Trade Measures Report No. 99 stated that some interested parties asserted that WFF's sauce products had different end-uses, operated in different market segments, and were not substitutable, however no evidence was provided to Customs to support these assertions.

Customs observed that both the Chinese imports of preserved mushrooms in brine and the locally produced preserved mushrooms in sauce are used in food preparation. Customs agreed with some interested parties that there were likely to be some applications that were better suited to locally produced preserved mushrooms in sauce and some better suited to preserved mushrooms in brine exported from China. However, having considered the available information, Customs considered there was also a significant degree of overlap in end-use.

Customs verified that Chinese imports of preserved mushrooms in brine and the locally produced preserved mushrooms in sauce had similar manufacturing processes, were sold to the same market sectors (retail and food services), and were distributed through similar channels.

After considering the evidence, Customs concluded that locally produced preserved mushrooms in sauce:

- had physical characteristics closely resembling the imported goods; and
- had similar end-uses to the imported goods and were substitutable for them in many applications.

In the original investigation, Customs was satisfied that the preserved mushrooms in sauce produced in Australia are like goods to the preserved mushrooms in brine exported from China.

3.2 The TMRO's Review

3.2.1 Applications for Review

As noted, the TMRO received applications for review from Oriental, an Asian food wholesaler/distributor in Australia, and Fujian, an importer of Asian grocery items. Both applicants claimed that the locally produced preserved mushrooms in sauce are not like goods to the preserved mushrooms in brine exported from China.

Fujian

Fujian agreed that the preserved mushrooms in brine produced by the Australian industry are like goods to the preserved mushrooms in brine exported from China. Fujian claimed however that the locally produced

preserved mushrooms in sauce are not like goods to the preserved mushrooms in brine exported from China because they have physical characteristics that do not closely resemble the imported product, have different end-uses and in most applications are not substitutable. Fujian further claimed that the products do not compete with each other in the market, involve different production processes and have different prices.

Fujian noted that in Trade Measures Report No. 99, Customs reported that:

Apart from container size, the only other difference between WFF's mushrooms in sauce and mushrooms in brine products is the preserving medium

and submitted that the nature of the preserving medium (as brine or sauce) is the fundamental reason for the products not being like goods. Fujian noted that the locally produced preserved mushrooms in sauce are significantly different in so many characteristics that it cannot reasonably be concluded that they are like goods to the preserved mushrooms in brine exported from China.

Oriental

Oriental criticised the apparent failure by Customs to give sufficient weight to the views of consumers in determining whether the locally produced preserved mushrooms in sauce were like goods to the preserved mushrooms in brine exported from China. In this context, Oriental noted:

Page 11 of the Report indicates that at first instance, Customs had considered the views of consumers. Indeed, those consumers expressed strong opinions that mushrooms in sauce were not like goods to imported products. However Customs' subsequent investigations did not include "consumers". At page 11 of the Report, Customs indicates that it "canvassed" the issue with interested parties and users in the "food services and industrial food processing market" sectors. Our view is that failure to consider the views of consumers further was in error as was the apparent failure to put much weight to the views of consumers.

Oriental further claimed that Customs placed undue reliance on the UNE study's findings in relation to cross-price elasticity of demand for mushrooms. Oriental noted that the UNE study's was dated June 2004 and examined sales for a two year period expiring April 2004 while the period under investigation by Customs was calendar year 2004.

Further, it is Oriental's view that price-elasticity is a consideration which is not relevant to an anti-dumping investigation as it is not referred to in Division 2 of Customs Dumping Manual.

3.2.2 Submissions to the TMRO's review

Food & Beverage Importers Association

The Food & Beverage Importers Association (FBIA) endorsed the views of Fujian and Oriental and noted that in comparing mushrooms in sauce to mushrooms in brine:

- The goods are not physically identical: young mushrooms in brine versus older mushrooms in sauce.
- The local product does not have characteristics closely resembling the imported mushrooms because there is a major difference. The sauce in the local product is for consumption; the brine in the imported product is exclusively a preserving medium and not for consumption.
- Because of its sauce, the local product has a limited end use, compared to the imported product.

WFF

WFF rejected the claims made by Fujian that locally produced preserved mushrooms in sauce were not like goods to the preserved mushrooms in brine exported from China and noted that the UNE study confirmed the significant level of interchangeability between locally produced mushrooms in sauce and mushrooms in brine.

WFF noted that interested parties had merely asserted that mushrooms in sauce are not like goods, but had put forward no qualitative evidence to challenge the UNE study conclusions. WFF further claimed that the preserved mushrooms market is a single market as it has been unable to price its goods exclusive of any price for the imported goods.

WFF also claimed that Oriental's reference to the period covered by the modelling of sales data in the UNE study as not coinciding with the investigation period was irrelevant. WFF submitted that the purpose of the modelling was to demonstrate cross-price elasticities of demand and that the "timing of the two periods is of little consequence to the outcome that the products are wholly interchangeable."

3.2.3 *The TMRO's report*

The TMRO acknowledged that the UNE study suggested that, from a price perspective, the preserved mushrooms in brine exported from China compete with all types of domestically-produced mushrooms including mushrooms in sauce. The TMRO report noted:

Customs' final report appeared to have placed great reliance on the findings of the report in reaching a conclusion as to like goods. While cross-price elasticity of demand is a relevant factor in determining whether goods are like goods, it is only one factor among a range of others.

The TMRO reported that another significant element of any consideration of substitutability is end-use. The TMRO noted that it was clear on the evidence that Customs sought views on end-use from a number of interested parties and that a number of these parties were of the view that the locally produced preserved mushrooms in sauce were not like goods to the preserved mushrooms in brine exported from China. The TMRO opined that Customs did not give appropriate weight to these views in its final report.

The TMRO also observed that it is relevant to consider the manner in which the products in question are marketed in order to determine the intended end-use of the products. In this context the TMRO reported that WFF included in its application excerpts of their marketing material relevant to the mushrooms in question.

Under the heading “Old Fashioned Favourites”, Windsor Farm Foods lists such goods as mushrooms in garlic sauce, mushrooms in peppercorn sauce, mushrooms in lite sauce, mushrooms in butter sauce and mushy peas. There is no reference in this category of products to mushrooms or champignons in brine. I assume from this omission that such products are not considered to be “Old Fashioned Favourites”.

In considering the marketing material provided by Oriental and Fujian, the TMRO noted that neither company characterised their ranges of preserved products as “old fashioned favourites” but rather grouped its imported champignons in brine with other product lines that are commonly found in Asian grocery stores and which are used in Asian cuisine.

The TMRO further noted that:

... Fujian submitted that the nature of the preserving medium (as brine or sauce) is in fact the most fundamental characteristic of the goods and should, accordingly, not be discounted easily. A submission to similar effect was made by FBIA.

In this context the TMRO reported that:

It is erroneous to characterise both butter sauce and brine as preservatives. Butter sauce is a consumable as well as a preservative. Preserved champignons in brine would normally be drained and the brine discarded before use. Butter sauce cannot be readily drained off the mushrooms, but has to be washed off. Moreover, the butter sauce is an essential ingredient of the mushrooms in butter sauce product. It is the sauce that makes the product capable of use as a stand alone meal when for example it is served on toast. It is the sauce that makes the product capable of being used as a garnishment for grilled steak without additional treatment other than heating. Labelling for the product in some instances also identifies these uses for it, and they are uses that cannot be claimed for the GUC.

It appears that the TMRO has accepted that locally produced preserved mushrooms in brine are like to preserved mushrooms in brine exported from China. The TMRO however, has concluded that in his opinion, the locally produced preserved mushrooms in sauce are not like goods to the preserved mushrooms in brine exported from China.

3.3 Customs' reinvestigation

3.3.1 Considerations when determining 'like goods'

Section 269T(1) of the Act defines 'like goods' as:

Like goods, in relation to goods under consideration, means goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

In assessing whether the goods produced by the Australian industry are like goods to the goods under consideration, Customs first has regard to the physical characteristics. If the locally produced goods are not identical in all respects, Customs considers if they have closely resembling physical characteristics to the imported goods. Customs will also have regard to other characteristics which may include commercial and functional substitutability, manufacturing processes, distribution channels, marketing, tariff classification or additional factors raised by interested parties.

No one characteristic is of itself sufficient to ascertain if goods are 'like'. Customs generally gives greater weighting to physical characteristics and commercial and functional substitutability although the importance of any characteristic will inevitably vary depending on the goods being considered.

3.3.2 Submissions to the reinvestigation on like goods

Fujian reiterated its view that the locally produced preserved mushrooms in sauce are significantly different in so many characteristics that they cannot be considered to be like goods to the preserved mushrooms in brine exported from China. Fujian noted that the consumable nature of the sauce in the Australian product was a significant physical difference to the preservative nature of the product in brine exported from China and contributed to different end-uses. Fujian acknowledged that cross-elasticity of price may be a relevant factor in the like goods consideration, but noted its view that this factor is subordinate to the significant physical and end-use differences.

Oriental endorsed the TMRO's findings in relation to 'like goods' and restated its position that the locally produced preserved mushrooms in sauce are not like goods to the preserved mushrooms in brine exported from China. Oriental noted, *inter alia*, that the finding on like goods is the fundamental issue before Customs in its reinvestigation and that a proper investigation of all the material before Customs "will reach a conclusion... in exactly the same form as set out in the TMRO Decision and, as a result, there is no basis on which there should be a finding of dumping of the GUC and all measures imposed... should be revoked".

In a further submission, Oriental claimed that the UNE study "assumes that the local and imported goods are sufficiently alike to be typified as local canned mushrooms and imported canned mushrooms" and drew attention to Appendix 1 of the UNE study which indicated the eight varieties of canned mushrooms used in its analysis. Oriental noted that the study analyses local mushrooms in sauces whilst the imported goods considered in the study are "whole champignon mushrooms and mushrooms

pieces and stems, no preservatives mentioned". Oriental further claimed that the UNE study does not support a conclusion that the goods are like, even based on a price analysis. Oriental noted in this context that there were only minor variations in price beyond June 2002 for both imported and local preserved mushrooms products.

WFF reiterated its view that locally produced preserved mushrooms in sauce *are* like goods to the preserved mushrooms in brine exported from China. WFF noted that no one factor can determine like goods and in this context commented, "...preserved mushrooms in butter sauce (whilst not constituting identical goods) possess similar physical characteristics closely resembling the imported goods, and have similar end-uses... and are substitutable for them in many applications (it not being a requirement for 100 per cent end-use substitutability)."

In response to Oriental's later submission disputing the UNE findings, WFF claimed that the purpose of the analysis was to establish the existence of brand and product substitution based upon changes in price between imported and locally produced preserved mushrooms. WFF noted "the concept of price elasticities between imported and locally produced preserved mushrooms was a finding of the analysis" and it "is not a requirement that the imported goods must be used in all end-uses... rather there exists a significant overlap..."

3.3.3 Customs' Reinvestigation Assessment

Physical Likeness

Customs' first test of whether goods are 'like' for the purposes of s. 269T of the Act is to consider if the locally produced goods are *identical* to the imported goods. If the goods are not identical, Customs considers whether the products have physical characteristics that closely resemble each other.

Customs' reinvestigation compared the physical characteristics of the locally produced preserved mushrooms in sauce with the preserved mushrooms in brine exported from China. These characteristics included colour, texture, smell, appearance, species and age.

Whilst Customs' reinvestigation acknowledges the degree of subjectivity inherent in assessing the physical characteristics of any foodstuff, it concluded that the preserved mushrooms themselves are the same mushroom type (genus *Agaricus*) and despite variations in age or preparation (whole, sliced or in pieces) are similar in colour, texture and appearance and therefore were, of themselves, physically like. The principal physical difference is the medium in which the mushrooms are packaged, and indeed both Fujian and the TMRO observed this characteristic to be the critical element in deciding if the locally produced preserved mushrooms in sauce are like to the preserved mushrooms in brine exported from China.

The reinvestigation sought to determine if the degree of this difference rendered the goods produced by the Australian industry as not being 'like goods' in terms of s. 269T(1) of the Act. To do this, Customs must have regard to physical and other characteristics. Customs was guided by the views of the interested

parties that provided submissions to the TMRO and by the TMRO's own views that commercial substitutability was one factor among a range of others, which should include functional (end-use) substitutability, marketing characteristics, manufacturing processes, distribution and tariff classification.

Functional Substitutability

Customs' reinvestigation considered if the locally produced preserved mushrooms in sauce are functionally substitutable with preserved mushrooms in brine exported from China. Functional likeness indicators include whether the goods have the same end-use, or to what extent the goods are capable of performing the same or similar functions.

In the original investigation, Customs sought the views of interested parties on functional likeness, and in particular if those parties believed that imported mushrooms in brine are interchangeable with locally produced preserved mushrooms in sauce. Importers and exporters unanimously claimed that the end-uses of the goods are not interchangeable but no qualitative evidence was presented to support this view.

Several interested parties observed that the most significant determinant in end-use was the preserving medium in which the mushrooms were packaged. In this context, those interested parties noted that the brine in which the preserved mushrooms exported from China is packaged is not intended to be consumed but rather drained off before use, permitting these goods to be used in a variety of ways (eg. salads, pizzas, cooking). It was further noted that the sauce in which locally produced preserved mushrooms are packaged is an integral component of the product and is intended for consumption along with the mushrooms. It was claimed that this characteristic restricts the use of the locally produced preserved mushrooms in sauce to that of a topping or garnish. No evidence was presented to support this assertion.

In Trade Measures Report No. 99 it was noted that "WFF stated that there was as much as 75 per cent overlap in applications", but again, there was no evidence provided to substantiate this claim.

In the course of the original investigation, Customs contacted end-users in the food services and industrial food processing market in an endeavour to assess the expectations of the ultimate purchaser and its specific customer requirements. In this reinvestigation, Customs has collated the comments of those end-users as follows:

<i>Opinion</i>	<i>Number of respondents</i>
Goods <i>not</i> substitutable	4
Goods <i>are</i> substitutable	5
Not applicable: use fresh mushrooms, don't use agaricus species	4
No reply	2
Total	15

The majority of the responses to Customs' inquiries with end-users were brief and all were anecdotal. Given the ambiguous evidence available, Customs' reinvestigation is unable to make a conclusion on functional substitutability.

Commercial Substitutability

The reinvestigation considered whether the locally produced preserved mushrooms in sauce compete directly in the Australian market with the preserved mushrooms in brine exported from China. In this context, Customs' reinvestigation considered the commercial interchangeability of the goods, including whether a change in price would affect consumer's preference for one product over the other.

As noted, the UNE study provided by WFF principally tested whether the preserved mushrooms in brine exported from China compete on price with the locally produced preserved mushrooms in sauce. The UNE study results indicated, *inter alia*, that a decrease in the price of preserved mushrooms in brine exported from China leads to a decline in the quantity demanded of the locally produced preserved mushrooms in sauce.

In Trade Measures Report No. 99, Customs found that the Australian industry suffered material injury in the form of price undercutting, price suppression, price depression, reduced profits and profitability, and underutilisation of capacity. Customs' reinvestigation has reconsidered the findings on injury and causation; this assessment is provided in sections 5 & 6 to this report. On the evidence available, Customs' reinvestigation findings included that:

- the price of exports of preserved mushrooms from China undercut the Australian industry's preserved mushroom products;
- prices for preserved mushrooms exported from China were substantially reduced during the injury analysis period, most notably in 2000 and again in 2003; and
- the price for each of the Australian industry's three largest selling products fell and negatively affected its economic performance during the injury analysis period.

In the context of this material injury, particularly the identified price effects caused by the dumped imports, Customs' reinvestigation considers it reasonable to conclude that this injury is an indicator of commercial substitutability.

Customs' reinvestigation concludes that the degree of commercial substitutability supports the view that locally produced preserved mushrooms in sauce are commercially interchangeable with the preserved mushrooms in brine exported from China and therefore 'like' in that sense.

Marketing

The TMRO noted that it is relevant to consider the manner in which the goods are marketed in order to assess the intended end-use of the products. In having regard to marketing material provided by WFF, the TMRO noted that the locally produced preserved mushrooms in sauce are marketed as "Old fashioned favourites" and that WFF's own mushrooms in brine are not included in this category. It was further noted that marketing material provided by Oriental and Fujian grouped its imported preserved mushrooms in brine with other product lines that are commonly found in Asian grocery stores and which are used in Asian cuisine.

In the original investigation, evidence was provided by WFF in the form of sample cans showing the suggested servings on labels of containers of preserved mushrooms in brine exported from China included the same suggestions as on labels of locally produced preserved mushrooms in sauce, such as in soups, casseroles, stews, sauces and gravies. One imported sample line included a picture of a casserole like serving suggestion that was similar to pictures on locally produced preserved mushrooms in sauce.

Customs' reinvestigation notes the fact that large retailers place its products on supermarket shelves alongside those of the imported products and considers this suggests that the goods are similarly marketed.

It appears from the product brochures provided that locally produced preserved mushrooms in sauce and preserved mushrooms in brine exported from China generally portray different cuisine characteristics. Actual sample products however indicate similarities in marketing and presentation. Customs' reinvestigation concludes that there is some commonality in marketing characteristics of the locally produced preserved mushrooms in sauce and preserved mushrooms in brine exported from China and this is another indication that the goods are 'like'.

Manufacturing processes

As noted, the preserved mushrooms exported from China are classed as champignons of the genus *Agaricus* and are packaged whole, sliced and as pieces and stems in a brine medium.

Trade Measures Report No. 99 provided a summary of Chinese producers manufacturing processes as follows:

- Checking and acceptance of mushroom supply
- Washing
- Hydrating
- Blanching
- Sorting and grading
- Trimming
- Slicing
- Testing for alien objects
- Filling into container
- Brining
- Sealing
- Sterilisation
- Cooling and can drying

The locally produced preserved mushrooms in sauce use older mushrooms of the genus *Agaricus*, prepared in a sliced form only, and are preserved in a variety of mediums, principally butter sauce. During the original investigation, Customs observed the local production of preserved mushrooms: WFF purchases mushrooms from Australian growers and then performs a number of processes including washing, drying, blanching, mixing of ingredients, heating of the mixture, canning, cooking, crating, cooling and storing.

From the evidence available, Customs' reinvestigation concludes that the locally produced preserved mushrooms in sauce have similar production processes to the preserved mushrooms in brine exported from China.

Distribution Channels

Trade Measures Report No. 99 noted that there are three market sectors for preserved mushrooms - retail, food services, and industrial food processing. The market sectors can be differentiated by the container sizes sold:

- the retail sector (supermarkets, grocery stores) typically comprises container sizes ranging from around 130g up to 425g;
- the food services sector (restaurants, bakeries, caterers) typically comprises the A10 container size; and
- the industrial food process sector (commercial food manufacturers) typically consumes bags and barrels over 10kg in size.

In its application, WFF claimed that preserved mushrooms have the same distribution channels regardless of whether the goods were locally produced

preserved mushrooms in sauce or preserved mushrooms in brine exported from China.

WFF sells its locally produced preserved mushrooms in sauce to two types of customer:

- retailers (through their respective distribution channels) and
- industrial and food service customers including caterers and restaurants, typically through distributors.

From information obtained from importers, Customs' reinvestigation also observed that sales of preserved mushrooms in brine exported from China are distributed to the retail and food service sectors¹ in a similar manner as the locally produced preserved mushrooms in sauce. Interested parties did not present contrary views in relation to Customs findings on channels of distribution.

Customs' reinvestigation concludes that the locally produced preserved mushrooms in sauce have similar distribution channels to preserved mushrooms in brine exported from China and this is another indication that the goods are 'like'.

Tariff Classification

Customs' reinvestigation also had regard to the tariff classification of goods in considering likeness. Both preserved mushrooms in sauce and preserved mushrooms in brine are classified to the same tariff subheading - 2003.10.00.

3.3.4 Customs' reinvestigation conclusion

In terms of their physical characteristics, the preserved mushrooms are the same mushroom type and are similar in colour, texture and appearance. The locally produced preserved mushrooms in sauce differ from the preserved mushrooms in brine exported from China principally because of the medium in which the mushrooms are packaged. Several interested parties observed that this physical difference meant that the locally produced mushrooms in sauce are primarily a 'stand alone' comestible and the preserved mushrooms in brine exported from China are mainly an ingredient in further prepared foods. This perception appears consistent with the view that it is the medium in which the preserved mushrooms are packaged that determines its end-use and that those end-uses are dissimilar.

Customs' reinvestigation sought to test if the extent of the physical difference in the packaging mediums of the locally produced preserved mushrooms and the preserved mushrooms in brine exported from China is sufficient to render the goods produced by the Australian industry as not being 'like goods' for the purposes of the Act, by considering a range of other characteristics, including functional (end-use) substitutability, marketing characteristics, manufacturing processes, distribution and tariff classification.

¹ The industrial food processing sector does not appear to use preserved mushrooms in brine exported from China.

The available evidence on functional substitutability was ambiguous. Whilst some interested parties observed that the end-uses of locally produced preserved mushrooms and the preserved mushrooms in brine exported from China are mutually exclusive, other parties indicated that in some applications the products were substitutable. What was consistent in this context was that the rationalisation of either view was limited to anecdotal accounts and no qualitative or quantitative evidence was presented to Customs.

The available evidence on marketing characteristics indicates that for some marketing methods, locally produced preserved mushrooms in sauce and preserved mushrooms in brine exported from China are marketed in a similar way. The commonality of some marketing characteristics is consistent with the view that there is an overlap (but not 100 per cent) of end-use.

The available evidence on commercial substitutability includes the analysis provided in the UNE study which gives support to the contention that the price of preserved mushrooms in brine exported from China has a discernible and quantifiable effect on demand for the locally produced preserved mushrooms in sauce. The evidence of the injurious price effects caused by the preserved mushrooms in brine exported from China is also an important indicator that locally produced preserved mushrooms in sauce and preserved mushrooms in brine exported from China are commercially substitutable.

The manufacturing processes and distribution channels of the locally produced preserved mushrooms in sauce and the preserved mushrooms in brine exported from China are similar, and both are classified to the same tariff subheading.

Customs' reinvestigation has accepted the TMRO's concern that cross-price elasticity of demand is only one factor among a range of others and has had regard to the other characteristics suggested by interested parties as critical to an assessment of like goods. The available evidence in regard to *all* the considered characteristics has demonstrated that the degree of difference in physical characteristics between the locally produced preserved mushrooms in sauce and the preserved mushrooms in brine exported from China does not render the goods produced by the Australian industry as not being 'like' for the purposes of the Act.

On the balance of evidence available, Customs' reinvestigation finds no reason to go against the conclusion made in the original investigation that the locally produced preserved mushrooms in sauce are like goods to the preserved mushrooms in brine exported from China.

4. ISSUE 2 - DUMPING

The Minister has directed Customs to reinvestigate the finding that exports of preserved mushrooms from China were dumped.

4.1 Original Investigation

4.1.1 Customs assessment in the original investigation

Customs identified 25 Chinese exporters and/or producers and sent exporter questionnaires to each of them. Completed submissions were received from seven companies, and all were visited. Customs identified a large number of importers of preserved mushrooms from China but many imported very small volumes. Customs visited the largest importers, accounting for more than 90 per cent of imports from China.

Trade Measures Report No. 99 noted that at the time of initiation China was regarded as an economy in transition and was thus subject to certain provisions under the Act. These provisions included the requirement that exporters complete a supplementary exporter questionnaire addressing matters relevant to that status. The Chinese exporters and producers that Customs visited completed the questionnaire, and non-confidential versions of those submissions were placed on the public record.

On 21 April 2005, Australian Customs Dumping Notice 2005/26 notified that Australia had granted China market economy status for the purposes of anti-dumping. Nevertheless, Customs had regard to questionnaire responses to assess if sales were suitable for use in determining normal values for the purposes of s. 269TAC(2)(a)(ii) of the Act. Customs did not find any evidence to indicate that pricing of the inputs used in making preserved mushrooms or the domestic sales prices of preserved mushrooms was influenced by a factor other than market conditions.

Trade Measures Report No. 99 further noted that none of the exporters taking part in the investigation sold like goods on the Chinese domestic market. There were however, sales of like goods on the domestic market by one of the three producers of preserved mushrooms that responded to Customs' questionnaire. Customs visited this producer and found that it did not export preserved mushrooms to Australia, but sold to two traders identified by Customs as the exporters of the goods to Australia.

The report noted that Customs' initially considered determining normal values using the domestic sales of this producer in accordance with the 'other sellers' provisions in s. 269TAC(1). Customs found that there were sufficient domestic sales at arms length and in the ordinary course of trade for this purpose.

Customs found however, that five model types² were sold in the domestic market compared to 21 different models exported to Australia, and the majority of export models did not have a 'matching' domestic model. Further, exporters to Australia sourced the models they exported from a number of different Chinese producers. Information obtained during Customs' visits to the three Chinese producers indicated that the cost to manufacture the different models varied significantly. Customs found that these differences were apparent in the varying prices paid by the exporters to the producers. Variations were also discerned in prices to other producers not visited by Customs. Customs was of the view that prices paid by the exporter would reflect the manufacturing costs of the individual producer.

Having regard to all the available information, Customs considered that selling prices in the domestic and export preserved mushrooms markets were influenced by a diverse range of factors. Customs nevertheless sought to determine normal values based on the sales prices of the domestic producer under the provisions of s. 269TAC(1) of the Act with appropriate adjustments under s. 269TAC(8). Customs found that in certain circumstances the results generated by these calculations rendered inaccurate or unreasonable normal values because of the number and complexity of the differences to be adjusted for fair comparison. In these circumstances, Customs found the sales by the domestic producer were not relevant for the purposes of normal value determination under s. 269TAC(1) and therefore determined normal value as follows:

- where there was an identical model sold domestically to that exported (i.e. both were produced by the domestic seller) normal value for that model was determined pursuant to s. 269TAC(1) using the price paid or payable for the relevant domestic sales;
- where there was not an identical model sold on the domestic market to that exported, but the exported model was sourced from the domestic seller, Customs used the price paid or payable for a domestically sold model that was most similar to the exported model, adjusted for the physical differences (and other pricing differences) between the two models;
- for models exported to Australia by exporters who sourced their product from a producer other than the domestic seller, Customs was satisfied there were no domestic sales of like goods that would be relevant for determining a price under s. 269TAC(1). Where the producer's costs were verified, Customs determined normal value under s. 269TAC(2)(c) of the Act using the cost to make of the particular producer of the exported goods. Where the producer's costs were not verified, Customs determined normal value under s. 269TAC(6), using the best available information.

² 'Models' refers to different combinations of container sizes and preparation (whole, sliced, or pieces and stems).

4.1.2 Customs assessment of dumping for each exporter in the original investigation

Xiamen Gulong

Xiamen Gulong is a Chinese trading company that sold preserved mushrooms to three customers in Australia during the investigation period. Customs found that Xiamen Gulong was the exporter, its Australian customers were the importers and the importers purchased the goods from the exporters in arms length transactions. Customs established export prices for Xiamen Gulong under the provisions of s. 269TAB(1)(a) using the price paid by importers less any charges arising after exportation of the goods.

Xiamen Gulong did not sell preserved mushrooms on the domestic market in the investigation period. Customs did however verify domestic sales and cost information from another seller in China. For models exported to Australia for which there were sufficient relevant domestic sales of comparable models, normal values were determined under s. 269TAC(1) of the Act based on prices paid in respect of the domestic sales of that other seller.

For models exported to Australia for which there were no relevant domestic sales of comparable models, but costs of the exported models had been verified, normal values were determined under s. 269TAC(2)(c), using cost to produce of the supplier of the exported models and selling general and administrative costs and profit of the domestic seller.

For models for which there were no relevant domestic sales of comparable models and costs had not been verified, normal values were determined under s. 269TAC(6).

Adjustments pursuant to s. 269TAC(8) and (9) of the Act, as appropriate, were made in the normal value calculations to ensure fair comparisons with export prices. Negative adjustments were made in relation to domestic inland transport, domestic sales expenses, exhibitions and advertising, and compensation (certain sales). Positive adjustments were made in relation to export inland freight (certain sales), export charges to FOB (certain sales), credit terms, VAT price effect, and trader costs and profit. Adjustments were also made for physical differences, where applicable.

A comparison of the weighted average of export prices with the weighted average of corresponding normal values over the investigation period resulted in a dumping margin of 4.2 per cent.

Jiangsu COF

Jiangsu COF is a Chinese trading company that sold preserved mushrooms to a buyer in a third country that on-sold the goods to an Australian customer. Customs found that Jiangsu COF was the exporter, the Australian customer was the importer, but the goods were not purchased by the importer from the exporter. Customs established export prices under s. 269TAB(1)(c) using Jiangsu COF's invoiced export prices, less any charges arising after exportation of the goods.

For models Jiangsu COF exported to Australia for which there were sufficient relevant domestic sales of comparable models, normal values were determined under s. 269TAC(1) of the Act based on prices paid in respect of those domestic sales.

For models exported to Australia for which where there were no relevant domestic sales of comparable models normal values were determined under s. 269TAC(2)(c), using verified costs of the producer of the particular exported model and selling general and administrative costs and profit of the domestic seller.

Adjustments under ss. 269TAC(8) and (9) of the Act were made as appropriate: negative adjustments were made in relation to domestic inland transport, domestic sales expenses, and exhibitions and advertising. Positive adjustments were made in relation to export inland freight (certain sales), export charges to FOB (certain sales), credit terms, VAT price effect, trader costs and profit. Adjustments were also made for physical differences, where applicable.

A comparison of the weighted average of export prices with the weighted average of corresponding normal values over the investigation period resulted in a dumping margin of –4.5 per cent. Customs terminated its investigation so far as it related to Jiangsu COF on 21 September 2005.

Fujian Zishan

Fujian Zishan is a Chinese producer and exporter that sold preserved mushrooms to an Australian trading company, who on-sold the goods to customers in Australia. Two of the Australian trader's customers entered the goods they had purchased.

Customs found that Fujian Zishan was the exporter in all transactions and in some circumstances the Australian trader was the importer. Customs established export prices for these transactions under s. 269TAB(1)(a), using the price paid by the importer, less any charges arising after exportation of the goods. In the instances where the Australian trader's customer entered the goods, Customs established export prices under s. 269TAB(1)(c) using Fujian Zishan's invoiced export prices, less any charges arising after exportation of the goods.

Customs found that there were no relevant domestic sales of models that were comparable to the models exported to Australia. Customs determined normal values under s. 269TAC(2)(c) of the Act, using verified production costs of Fujian Zishan and selling, general and administrative costs and profit of the domestic seller. Negative adjustments under s. 269TAC(9) of the Act were made for domestic inland transport, exhibition and advertising, and domestic sales expenses. Positive adjustments were made for export inland freight, terminal handling charges, and VAT price effect.

A comparison of the weighted average of export prices with the weighted average of corresponding normal values over the investigation period resulted in a dumping margin of 4.8 per cent.

COFCO

COFCO is a Chinese trading company that sold preserved mushrooms to an Australian trader during the investigation period. The Australian trader sold the goods to customers in Australia. One of these customers entered the goods that it had bought from the trader.

Customs found that COFCO was the exporter in all cases and in some instances the Australian trader was the importer. Customs established export prices for the transactions for transactions where the Australian trader was the importer under s. 269TAB(1)(a) using the price paid by the importer, less any charges arising after exportation of the goods. In the instance where the Australian trader's customer entered the goods, Customs established export prices under s. 269TAB(1)(c) using COFCO's invoiced export prices, less any charges arising after exportation of the goods.

Customs found that there were no relevant domestic sales of models that were comparable to the models exported to Australia. Customs determined normal values under s. 269TAC(2)(c) of the Act, using verified production costs of the supplier of the goods exported to Australia and the selling, general and administrative costs and profit of the domestic seller. Adjustments were made under s. 269TAC(9) of the Act, to ensure fair comparisons with export prices. Negative adjustments were made in relation to domestic inland transport, domestic sales expenses, and exhibitions and advertising. Positive adjustments were made in relation to export inland freight, export charges to FOB, credit terms, VAT price effect, and trader costs and profit.

A comparison of the weighted average of export prices with the weighted average of corresponding normal values over the investigation period resulted in a dumping margin of 20.6 per cent.

Xiamen Fortune

Xiamen Fortune is a Chinese trading company that sold preserved mushrooms to an Australian trader during the investigation period. This trader sold to customers in Australia, two of which entered the goods that they had purchased. Customs visited Xiamen Fortune, Xiamen Fortune's supplier in China, the Australian trader, and the two Australian customers who had entered the goods purchased.

Customs found that Xiamen Fortune was the exporter in all cases. In some circumstances the Australian trader was the importer and Customs established export prices for these transactions under s. 269TAB(1)(a) using the price paid by the importer, less any charges arising after exportation of the goods. In the instances where the relevant customer entered the goods, Customs established export prices under s. 269TAB(1)(c) using Xiamen Fortune's invoiced export prices, less any charges arising after exportation of the goods.

Customs found that there were no relevant domestic sales of models that were comparable to the models exported to Australia. Customs determined normal values under s. 269TAC(2)(c) of the Act, using verified production costs of the supplier of the goods exported to Australia and the selling, general and administrative costs and profit of the domestic seller. Adjustments were made under s. 269TAC(9) of the Act to ensure fair comparisons with export prices. Negative adjustments were made in relation to domestic inland transport, domestic sales expenses, and exhibitions and advertising. Positive adjustments were made in relation to export inland freight, export charges to FOB, credit terms, VAT price effect, and trader costs and profit.

A comparison of the weighted average of export prices with the weighted average of corresponding normal values over the investigation period resulted in a dumping margin of 17.4 per cent.

All others

Customs determined an FOB export price under s. 269TAB(3) of the Act for all exporters other than the cooperating exporters using export price information from its commercial database. Customs determined normal value for exporters other than those that cooperated under s. 269TAC(6) of the Act using verified manufacturing costs of the exported goods (weighted average of all models) of one of the producers plus the weighted average selling, general and administrative costs, and profit, of the producer who sold in the domestic market. In the absence of any evidence, Customs did not make adjustments to the normal value.

A comparison of the weighted average of export prices with the weighted average of corresponding normal values over the investigation period resulted in a dumping margin of 23.2 per cent.

4.2 The TMRO's Review

4.2.1 Applications for Review

Fujian

Fujian, an Australian importer submitted that Customs' determination of normal values for Fujian Zishan and Xiamen Fortune resulted in several errors of law. Fujian claimed that, having found that:

- there were sufficient domestic sales in China that were arms length transactions in the ordinary course of trade that could be used for the 'other sellers' provision of s. 269TAC(1) of the Act; and
- the situation in the market of the country of export was not such as to render the sales unsuitable for use in determining normal values under s. 269TAC(1) of the Act;

Fujian claimed that Customs was 'required by law' to determine normal values for Fujian Zishan and Xiamen Fortune's exports under s. 269TAC(1) of the Act.

Fujian drew attention to Customs' findings on normal value in Trade Measures Report No. 99 and noted that Customs '... considered the sales by the other

seller of like goods to be not relevant (for s. 269TAC(1) purpose) pursuant to s. 269TAC(2)(a) of the Act on the basis of its decision that "...the sales by other sellers would not permit fair comparison in relation to certain models because of the numerous and complex differences between domestic and export sales, which could affect the accuracy of the dumping calculations..."

Fujian contended that, notwithstanding the Manual reference, there is no legal basis for Customs to consider the sales by the 'other seller' to *not* be relevant for the purpose of s. 269TAC(1) for the reason that the numerous and complex differences between the domestic and export sales would not permit a fair comparison. Fujian claims that s. 269TAC(2)(a) does not authorise such a decision and that the expression "relevant for the purpose of determining a price under subsection (1)" means sales in the ordinary course of trade for home consumption in the country of export and in arms length transactions. Fujian noted that Customs had erroneously attached another meaning to this expression by deeming domestic sales to not be relevant for reasons other than them not falling within the definition s. 269TAC(1) of the Act. In this same context, Fujian noted that s. 269TAC(2)(a) does not discriminate between sales by the exporter and sales by other sellers of like goods.

Fujian claimed that the differences between the domestic sales and the exported goods, described by Customs as 'numerous and complex', could readily be adjusted for under the provisions of s. 269TAC(8) of the Act where it was demonstrated that they affected price comparability. Fujian's specific comments regarding Customs' views on the differences in the domestic and export sales are summarised below:

- that there is only one producer/seller in the domestic market is an irrelevant circumstance where Customs found the 'other seller' provision of s. 269TAC(1) had been met;
- the disparity in the number of models exported compared to the number sold domestically is not relevant to Fujian Zishan and Xiamen Fortune, because Customs treated cans of the same size and drained weight, but with a different marked weight eg. 184/190/200g and 400/415/425g, as different models for normal value purposes but treated cans with the same net weights to be in the same category of models for export price purposes;
- Fujian Zishan and Xiamen Fortune exported models directly comparable to those sold in the domestic market for all except 400/425g cans of pieces and stems, and this model could have been readily determined by making adjustments to the domestic selling price of 400g whole mushrooms;
- the physical differences between models sold by the various producers is not relevant as Fujian Zishan and Xiamen Fortune exported identical products to those sold in the domestic market (ie. mushrooms of the genus *Agaricus*, whole or as pieces and stems, preserved in brine and packed in cans);
- Customs has erroneously considered that models can only be identical if they were manufactured by the same producer ie. the domestic seller; and
- the varying terms and circumstances of the purchases from the different producers and the varying terms and circumstances of the export sales

can readily be provided for by s. 269TAC(8) adjustments to the normal value.

Fujian made a supplementary submission to the TMRO setting out its methodology for adjustments to the domestic seller's prices to make them comparable to Fujian Zishan's and Xiamen Fortune's export prices. In this submission Fujian also noted that no adjustment is necessary for differences in marked net weights eg. 400g v 415/425g or 184/200g v 190g as such differences have no effect on the comparison of export and domestic prices. Fujian submitted that those preserved mushrooms in the same can size category have the same drained weight (mushroom content) and if there is a difference in actual weight, it is the difference in brine content only. To overcome any concerns that the marked can weight may not reflect the actual net weight, Fujian claimed that the unit of the normal value should be RMB per carton of 24 cases.

Fujian also disputed Customs' treatment of a positive adjustment to the normal values for Xiamen Fortune under s. 269TAC(9) for trader costs and profit. Fujian claims that this adjustment was not necessary as the selling, general and administrative (SG&A) costs included in Xiamen Fortune's normal value construction were those incurred by a domestic producer selling to the retail trade level and the export price was based on the resale price of Xiamen Fortune (a trader) to an Australian trading company.

Fujian noted that the SG&A costs incurred by the domestic seller in sales to the retail sector are likely to be significantly higher than those incurred by both the producer of the goods exported by Xiamen Fortune and those incurred by Xiamen Fortune in selling to its Australian trading company customer. Fujian claimed that it would be reasonable to assume that if a Chinese trading company made domestic sales, the price to the retailer would remain the same, with producers that sold to the trading company selling at a lower price to enable the trader to take a reasonable sales margin in on-selling to supermarkets. Fujian noted that it would be unlikely that retailers would pay more for this commodity for reason that the seller was a trader rather than a producer. Fujian further claimed that if the producer was itself the exporter, it would take the same export sale margin taken by Xiamen Fortune and sell to Australia at a similar price.

Oriental

Oriental also disputed Customs' departure from the provisions of s. 269TAC(1) of the Act for the determination of some normal values, but for the reason that it believes, had Customs undertaken additional investigation, it would have found additional sales in the domestic market to enable examination under s. 269TAC(1) of the Act.

Oriental drew attention to its concerns regarding the determination of export price and noted that the reinvestigation should also include a review as to how export price had been determined by Customs, and in particular who was the actual importer and exporter.

4.2.2 Other submissions to the TMRO's review

Food & Beverage Importers Association

The FBIA did not address the issue of dumping in its submission to the TMRO.

WFF

WFF questioned the reasons given by Fujian to dispute Customs' methodology in normal value determination, and noted that given the numerous differences that existed between domestic and export sales, and in particular that Customs could not accurately determine certain specification adjustments for different sized cans to those sold domestically, Customs had reasonably concluded that it could not determine normal values for the goods under s. 269TAC(1) of the Act.

In response to Fujian's claims regarding its view that Customs erred in making a positive adjustment to Xiamen Fortune's normal value for trader costs and profit, WFF observed that an adjustment is required to the constructed normal value to allow for the margin that a seller/distributor other than a manufacturer would take on a sale should the goods be sold domestically. WFF noted its view that Customs was correct in increasing Xiamen Fortunes' normal value by the amount of its gross margin.

4.2.3 The TMRO's report

The TMRO noted Fujian and Oriental's arguments relating to Customs determination of normal values and in particular, Fujian's claim that there was no legal basis to consider the sales by the other domestic seller in China not to be relevant for the purposes of s. 269TAC(1) for the reason that sales by that other seller would not permit fair comparison because of numerous and complex differences between domestic and export sales.

The TMRO referred to Fujian's claim that in determining normal values under ss. 269TAC(2)(c) and (9) of the Act, Customs had made an error of law. In this context, the TMRO stated:

I consider that if there was an error that it was not an error of law. If Customs was correct in its assertion that there were no sales in the Chinese domestic market of models comparable to those exported to Australia, that would justify a conclusion that sales in the domestic market were not relevant for determining normal value under subsection 269TAC(1), or that the sales in the domestic market were unsuitable for use for that purpose.

The TMRO did however agree with Fujian's view that the lack of a number of sellers in the market did not amount to a complex difficulty and that this was an irrelevant circumstance once Customs had determined that sales by the other domestic seller constituted sufficient domestic sales for determination under s. 269TAC(1) of the Act.

The TMRO noted Fujian's view that Customs did not lack directly comparable models in the domestic market for the majority of the goods exported by Fujian

Zishan or Xiamen Fortune and observed that in his view, the difficulties identified by Customs, namely that the terms and circumstances of the purchases from different producers varied, and that the terms and circumstances of the export sales varied could have been addressed through adjustments made under s. 269TAC(8) of the Act. The TMRO concluded that Fujian had raised sufficient doubt about the correctness of determining normal value using the constructed method, rather than proceeding under s. 269TAC(1) of the Act, to warrant this issue being investigated again.

4.3 Customs' reinvestigation

4.3.1 Considerations when determining dumping

Dumping occurs when the export price of a product is less than the normal value of the same (or similar) product in the domestic market of the country of export. Section 269TAC of the Act sets out methods for determining the normal value of goods.

The preferred method for determining normal value is to use the price paid for like goods sold in the domestic market of the country of export. The normal value may be based either on the price obtained by the exporter, or by other sellers of the goods in the country of export. For a domestic selling price in the country of export to be accepted as the normal value, the sale needs to be at arms length and in the ordinary course of trade.

In circumstances where:

- there is an absence, or low volume, of sales of like goods that would be relevant for determining a price under s. 269TAC(1) of the Act; or
- the market situation in the country of export is such that sales are not suitable for use in determining a price under s. 269TAC(1);

normal value must be determined using alternative methods. In these circumstances, Customs may base a normal value on:

- a price for like goods sold in the ordinary course of trade, in arms length transactions, for exportation from the country of export to an appropriate third country; or
- the cost of production or manufacture of the goods in the country of export; and the SG&A costs of the goods, on the assumption that they had been sold for home consumption instead of exported. A profit margin may be incorporated in this constructed cost.

Circumstances may also arise, usually because insufficient or unsuitable information has been provided, where the above methods cannot be used to assess a normal value. When this occurs, the normal value is determined having regard to all relevant information.

To ensure a proper comparison between normal value and export price, the normal value must take account of adjustments for certain factors that give rise to differences between the domestic and the export sale. These adjustments, sometimes referred to as due allowance, may either lower or raise the normal value.

The margin of dumping is the amount by which the normal value exceeds the export price of the goods.

4.3.2 *Submissions to the reinvestigation*

Fujian repeated its views provided to the TMRO in its request for review, and stressed again that there was no intermediary involvement in transactions between Fujian and Xiamen Fortune and between Fujian and Fujian Zishan either in the country of export or after exportation. Fujian also stressed that Fujian as the importer was correctly determined to be a trading company.

Fujian reiterated its view that Customs' determination of normal values for Xiamen Fortune and Fujian Zishan in accordance with s. 269TAC(2)(c) was "contrary to relevant legislation". Fujian submitted that normal values for Xiamen Fortune and Fujian Zishan should be determined under s. 269TAC(1) of the Act with adjustments under s. 269TAC(8) where differences between exports and domestic sales of like goods by the domestic producer affected price comparability.

Fujian accepted that the adjustments to the normal value made by Customs in the original investigation relating to exports by Xiamen Fortune and Fujian Zishan were appropriate with the exception of the adjustment for trader costs and profit made in the case of Xiamen Fortune. Fujian claimed that Customs did not demonstrate how this different circumstance affected the comparison of domestic sale prices with Xiamen Fortune's export sales to Australia and noted that Xiamen Fortune was a principal in the export sales transactions, not an intermediary. In this same context, Fujian noted that the prices paid by it are not influenced by the level of trade of the supplying producer or trading company. Fujian claimed that contract prices between Fujian and Xiamen Fortune (trading company) and between Fujian and Fujian Zishan (producer) are of the same order.

Fujian further noted that there "was, however, justification for a negative level of trade adjustment to normal values based on prices paid in domestic sales by supermarkets when export prices were based on prices paid by a trading company."

Fujian summarised its claims regarding fair comparison as follows.

Adjustments to the normal value *should* be made for:

- domestic and inland transportation;
- exhibition and advertising expenses;
- domestic sales expenses;
- export charges to FOB
- VAT price effect; and
- level of trade.

Adjustments to the normal value *should not* be made for:

- trader costs and profit;
- differences in market net weights of cans of the same size; and
- differences in mushroom or other costs of production.

Oriental noted and endorsed the TMRO's concerns regarding the mechanism adopted by Customs to determine normal value and reiterated its view that there are sufficient grounds to use the domestic sales in China for the basis of normal values under s. 269TAC(1) of the Act with adjustments as appropriate under s. 269TAC(8).

Oriental further noted that "as a result of Customs failure to further investigate associated domestic sales in China the Reinvestigation should find that there were insufficient grounds to make any assessment of whether the "GUC" were 'dumped'". Oriental did not indicate what these associated domestic sales might be.

WFF repeated its view that Customs methods in determining normal values were in accordance with the legislation and with the Customs Manual. WFF noted that Customs' reasons for reverting to a normal value based on costs for exports sales where the exported goods were not purchased from the domestic seller appeared reasonable. WFF further noted its view that the TMRO failed to fully consider the circumstances before Customs at the time of the visit and the significantly differing costs between the various Chinese producers visited by Customs.

4.3.3 Customs' Reinvestigation Assessment

Customs' reinvestigation has noted the TMRO's view that Customs must be correct in its assertion that there were no sales in the Chinese domestic market of models comparable to those exported to Australia to justify a conclusion that sales in the domestic market were not relevant for determining normal value under s. 269TAC(1). Customs reinvestigation also had regard to the TMRO's view that the difficulties identified by Customs, namely that the terms and circumstances of the purchases from different producers varied, and that the terms and circumstances of the export sales varied, could have been addressed through adjustments made under s. 269TAC(8) of the Act.

Customs' reinvestigation has reviewed the information obtained from Chinese producers and exporters and Australian importers to determine export prices for exports of preserved mushrooms from China. Customs' reinvestigation assessment in relation to the provisions of s. 269TAB is discussed below under individual exporters.

Customs' reinvestigation has reviewed the information obtained from Chinese producers and exporters and found that there were domestic sales made by a Chinese producer that did not export the goods to Australia. This domestic seller did, however, sell the goods to Chinese trading companies, which exported the goods to Australia. Customs reinvestigation further found that the domestic sales made by the Chinese producer were in the ordinary course of trade and were arms length transactions. Customs' reinvestigation considered that the domestic sales made by the Chinese producer may be suitable for the determination of normal values under the 'other seller' provisions of s. 269TAC(1) of the Act, except where the provisions of s. 269TAC(2)(a) applied, in particular, whether there was an absence of sales of like goods in

the market of the country of export that would be relevant for determining a price under s. 269TAC(1).

In this context, Customs' reinvestigation compared the models exported to Australia to the five models sold domestically by the Chinese producer and found that in most cases, the export models could be compared to the domestic sales models for normal value purposes if adjustments were made for differences in model types (specification). Accordingly, Customs reinvestigation has determined normal values in accordance with s. 269TAC(1) of the Act, adjusted under s. 269TAC(8) for differences in specification and certain other differences between exports and comparable domestic sales of like goods by the domestic producer that affected price comparability. In some cases, the exported model was so different from any domestic sale model that they could not be considered relevant for the purposes of determining a price under s. 269TAC(1). In these instances, Customs' reinvestigation determined normal values under either s. 269TAC(2)(c) or under s. 269TAC(6) of the Act. These sales are discussed in greater detail under 'Specification differences' below.

Customs' reinvestigation general approach to adjustments³ were as follows:

Specification differences

Customs' reinvestigation found that only three exported models were identical to the models sold on the domestic market. Customs' reinvestigation considers that only those models of the same marked weight and made by the same domestic producer can be considered to be identical. No adjustment for specification difference was necessary for these three models.

Where the exported model was not identical to that sold on the domestic market, Customs' reinvestigation adjusted the domestic selling price by the difference in the cost to make the exported model and the cost to make the comparable domestic sale model.

Specification adjustments were made where:

- the marked weight of the exported model was different to the comparable domestic sale model;
- the preparation method (whether whole, sliced or pieces and stems) of the exported model was different to that of the comparable domestic sale model; and/or
- the exported model was manufactured by a different producer to that of the comparable domestic sale model.

Customs' reinvestigation does not accept Fujian's view that the physical differences between models sold by the various producers are not relevant as the exported goods are identical products to those sold in the domestic market (ie. mushrooms of the genus *Agaricus*, whole or as pieces and stems, preserved in brine and packed in cans)⁴. The available evidence shows that

³ Not all adjustments were made for every exporter. See discussion of relevant adjustments under each exporter below.

⁴ Fujian's non-confidential submission to the reinvestigation of 5 June 2006, page 2.

there are significant differences in costs between the domestic producers and that these cost differences were reflected in the prices paid by exporters to the producers. Customs' reinvestigation considers that the cost differences between producers affect a fair comparison between the exported models and the comparable domestic sales model. Customs' reinvestigation also notes that Fujian's earlier submission to the TMRO⁵ claimed that an adjustment should be made for the physical difference between the 400-425g stems and pieces model exported by Xiamen Fortune for fair comparison with the 400g whole domestic sale model.

As noted, Customs' reinvestigation made a specification difference adjustment by having regard to the difference in the cost to make the exported model and the comparable domestic sale model. Customs' reinvestigation found however, that the generic cost to make per kilogram information provided by one of the three producers was not specific to the marked can weights or the preparation method (whole, pieces & stems etc.). The available information did not indicate the product mix of the marked weights or preparation types manufactured by the company, nor was it clear whether the cost data related to Australian export models and/or other export models. Therefore, Customs' reinvestigation is not in possession of information for this producer that reasonably reflects the costs associated with the production of each model. For the goods produced by the producer without reliable cost data, Customs' reinvestigation has calculated the specification difference adjustment with reference to the known cost difference between common models of the other producers.

In some instances, Customs reinvestigation found that the specification differences were so significant between the domestic sale model and the exported model that the sales did not permit a proper comparison and were therefore not relevant for the purpose of determining a price under s. 269TAC(1) of the Act. This was the case for 275g whole, 280g whole, 285g whole, 1550g whole and 280g sliced models. For the models for which there was no comparable domestic selling price and cost information was available, Customs' reinvestigation determined normal values under s. 269TAC(2)(c) of the Act using verified production costs of the relevant producer of the goods exported to Australia and the selling, general and administrative costs and profit of the domestic seller.

Customs reinvestigation determined normal values for the two COFCO export models for which there was no comparable domestic selling price, and no suitable cost information, and no third country information, by having regard to all relevant information. Specifically, under the provisions of s. 269TAC(6) of the Act, Customs' reinvestigation calculated the difference between the weighted average export price of the two models and the weighted average export price of all other COFCO's export models. The reinvestigation then used this difference to adjust the weighted average normal value of all other models to derive a normal value for the two export models in question.

⁵ Fujian's non-confidential supplementary submission to the TMRO of 6 March 2006, page 2.

Domestic and export transportation differences

The available evidence indicated that there were differences in the inland freight circumstances between the domestic and export sales. As such, Customs' reinvestigation made a negative adjustment to the comparable domestic selling price for domestic inland freight and a positive adjustment for export inland freight and other charges to the point of export, including terminal handling charges.

Level of trade

Customs' reinvestigation considered whether there was a level of trade difference in the sales being compared. The selling functions in both markets were examined in order to determine if the domestic sales related to a different level of trade. As part of this consideration, Customs' reinvestigation identified several costs arising from functions carried out by the domestic seller in making sales on the domestic market, that were not incurred by the exporter in making sales to Australia. The domestic seller incurred expenditure for exhibitions and advertising in relation to domestic sales, but no such expenditure in relation to sales to traders. Customs' reinvestigation made a negative adjustment to the comparable domestic selling price. The domestic seller also had a team of sales people servicing domestic sales but less than one full time person servicing sales to traders. Customs' reinvestigation made a negative adjustment to the comparable domestic selling price.

Fujian had submitted that a trade level discount be applied to the comparable domestic selling price. Customs' reinvestigation does not accept Fujian's view that a level of trade discount should be made to the comparable domestic selling price *in addition* to the level of trade adjustments discussed above. Customs' reinvestigation considers that to do so would result in a 'double count' in the level of trade adjustment.

VAT price effect

The verified domestic sales information was exclusive of the 17 per cent VAT payable on domestic sales. In relation to exports, 17 per cent VAT is paid to the government, but 13 per cent of that is claimed back from the government. Customs' reinvestigation considers the 4 per cent differential in taxes would affect price and that a VAT exclusive domestic selling price should be increased by 4 per cent to ensure it is properly comparable to export price.

Trader costs & profit

Customs' reinvestigation considered Fujian's claim that the adjustment for trader costs and profit made in the case of Xiamen Fortune was inappropriate. Fujian claimed that Customs did not demonstrate how this different circumstance affected the comparison of domestic sale prices with Xiamen Fortune's export sales to Australia. As noted, Fujian claimed that the prices paid by it are not influenced by the level of trade of the seller (whether producer or trading company) and that contract prices between Fujian and a Chinese trading company and Fujian and a Chinese producer are of the same order.

Customs' reinvestigation considers that the Chinese producer's prices to Fujian cannot be readily compared with that of any Chinese trader that sells to Fujian

because the products are produced by different manufacturers. Further, Customs' reinvestigation does not accept that such a comparison indicates that export price is unaffected by the trader's involvement. The adjustment for trader's cost and profit (ie. the gross margin) reflects that the margin is an element affecting export price that is not present in the domestic selling price. Therefore Customs' reinvestigation made a positive adjustment to the comparable domestic selling price in sales made to Australia by Chinese traders.

4.1.3 Customs reinvestigation conclusions on dumping

Xiamen Gulong

Customs' reinvestigation found that Xiamen Gulong was the exporter, its Australian customers were the importers and the importers purchased the goods from the exporters in arms length transactions. Customs' reinvestigation established export prices for Xiamen Gulong under the provisions of s. 269TAB(1)(a) using the price paid by importers less any charges arising after exportation of the goods.

Customs' reinvestigation found that Xiamen Gulong exported ten different models to Australia, and that all of these models could be compared to the models sold on the domestic market if adjustments were made for specification differences where the exported goods were not identical to the comparable domestic sale model. Customs' reinvestigation determined normal values for exports of preserved mushrooms by Xiamen Gulong under s. 269TAC(1) of the Act based on prices paid in respect of the comparable domestic sales models.

Adjustments under s. 269TAC(8) the Act were made in the normal value calculations to ensure fair comparisons with export prices. In addition to the specification adjustment for exports of models not identical to the comparable domestic sales model, Customs' reinvestigation made negative adjustments for domestic inland transport, domestic sales expenses, exhibitions and advertising. A negative adjustment relating to a compensation discount on certain export sales was also made. Positive adjustments were made in relation to export inland freight, export charges to FOB, credit terms, trader costs and profit and VAT price effect.

A comparison of the weighted average of export prices with the weighted average of corresponding normal values over the investigation period resulted in a dumping margin of 1.3 per cent. Customs' reinvestigation notes that this dumping margin is negligible.

Jiangsu COF

The original investigation was terminated is so far as it related to exports from Jiangsu COF.

Fujian Zishan

Customs' reinvestigation found that Fujian Zishan was the exporter in all transactions and in most circumstances the Australian trader was the importer.

Customs established export prices for these transactions under s. 269TAB(1)(a) using the price paid by the importer, less any charges arising after exportation of the goods. In the instances where the Australian trader's customer was the importer, Customs reinvestigation established export prices under s. 269TAB(1)(c) using Fujian Zishan's invoiced export prices, less any charges arising after exportation of the goods.

Customs' reinvestigation found that Fujian Zishan exported four different models to Australia, and that all of these models could be compared to the models sold on the domestic market if adjustments were made for specification differences between the exported goods and the comparable domestic sale model. Customs' reinvestigation determined normal values for exports of preserved mushrooms by Fujian Zishan under s. 269TAC(1) of the Act based on prices paid in respect of the comparable domestic sales models.

Adjustments under s. 269TAC(8) the Act were made in the normal value calculations to ensure fair comparisons with export prices. In addition to the specification adjustment, Customs' reinvestigation made negative adjustments for domestic inland transport, domestic sales expenses, exhibitions and advertising. Positive adjustments were made in relation to export inland freight, export charges to FOB, and VAT price effect.

A comparison of the weighted average of export prices with the weighted average of corresponding normal values over the investigation period resulted in a dumping margin of 2.4 per cent.

COFCO

Customs reinvestigation found that COFCO was the exporter in all cases and in most some instances the Australian trader was the importer. Customs reinvestigation established export prices for these transactions under s. 269TAB(1)(a) using the price paid by the importer, less any charges arising after exportation of the goods. In the instance where the Australian trader's customer was the importer, Customs established export prices under s. 269TAB(1)(c) using COFCO's invoiced export prices, less any charges arising after exportation of the goods.

Customs' reinvestigation found that COFCO exported ten different models to Australia, and that eight of these models could be compared to the models sold on the domestic market if adjustments were made for specification differences between the exported goods and the comparable domestic sale model. Customs' reinvestigation determined normal values for exports of preserved mushrooms by COFCO under s. 269TAC(1) of the Act based on prices paid in respect of the comparable domestic sales models.

Adjustments under s. 269TAC(8) of the Act were made in the normal value calculations to ensure fair comparisons with export prices. In addition to the specification adjustment, Customs' reinvestigation made negative adjustments for domestic inland transport, domestic sales expenses, exhibitions and advertising. Positive adjustments were made in relation to export inland freight,

export charges to FOB, credit terms, trader costs and profit and VAT price effect.

Customs' reinvestigation determined normal values for the two export models for which there was no comparable domestic selling price, and no suitable cost information or third country information, by having regard to all relevant information under the provisions of s. 269TAC(6) of the Act.

A comparison of the weighted average of export prices with the weighted average of corresponding normal values over the investigation period resulted in a dumping margin of 22.7 per cent.

Xiamen Fortune

Customs' reinvestigation found that Xiamen Fortune was the exporter in all cases and in some circumstances the Australian trader was the importer. Customs established export prices for these transactions under s. 269TAB(1)(a) using the price paid by the importer, less any charges arising after exportation of the goods. In the instances where the Australian trader's customer was the importer, Customs established export prices under s. 269TAB(1)(c) using Xiamen Fortune's invoiced export prices, less any charges arising after exportation of the goods

Customs' reinvestigation found that Xiamen Fortune exported eight different models to Australia, and that all of these models could be compared to the models sold on the domestic market if adjustments were made for specification differences between the exported goods and the comparable domestic sale model. Customs' reinvestigation determined normal values for exports of preserved mushrooms by Xiamen Fortune under s. 269TAC(1) of the Act based on prices paid in respect of the comparable domestic sales models.

Adjustments under s. 269TAC(8) the Act were made in the normal value calculations to ensure fair comparisons with export prices. In addition to the specification adjustment, Customs' reinvestigation made negative adjustments for domestic inland transport, domestic sales expenses, exhibitions and advertising. Positive adjustments were made in relation to export inland freight, export charges to FOB, credit terms, trader costs and profit and VAT price effect.

A comparison of the weighted average of export prices with the weighted average of corresponding normal values over the investigation period resulted in a dumping margin of 19.9 per cent.

All others

Customs' reinvestigation determined an FOB export price under s. 269TAB(3) of the Act for all exporters other than the cooperating exporters using export price information from its commercial database. Customs reinvestigation determined normal value for exporters other than those that cooperated under s. 269TAC(6) of the Act using prices paid in respect of the comparable domestic sales models. In addition to an adjustment for specification

differences and differences in export and inland freight, Customs' reinvestigation made positive adjustments in relation to export charges to FOB, credit terms, trader costs and profit and VAT price effect.

A comparison of the weighted average of export prices with the weighted average of corresponding normal values over the investigation period resulted in a dumping margin of 32.4 per cent.

5. ISSUE 3 – INJURY

The Minister has directed Customs to reinvestigate the finding that the Australian industry suffered injury in the form of price undercutting, price suppression, price depression, reduced profits and profitability and underutilisation of capacity.

5.1 Original Investigation

5.1.1 Customs' assessment in the original investigation

Customs found that WFF, the applicant, is wholly owned by Windsor Farm Foods Group Limited (Windsor), an Australian public company not listed on the stock exchange. WFF is the only producer of preserved mushrooms in Australia. Customs was informed that there was a second participant in the Australian preserved mushrooms industry, Cowra Export Packers Limited (CEP), but this company was acquired by WFF in November 2000. Customs was satisfied that WFF is the Australian industry producing like goods. WFF claimed it had experienced material injury from dumped exports of Chinese preserved mushrooms since 1999.

The period of investigation for the purposes of determining the dumping margins was 1 January 2004 to 31 December 2004 (the investigation period). Customs examined details of the Australian market commencing 1 July 1999 for injury analysis (the injury analysis period).

Customs analysed the economic performance of the industry as a whole and by market sector, focusing on the performance of the largest selling products by volume (the 220g, 410g and A10 mushrooms in butter sauce products, which collectively account for about 90 per cent of industry's total sales volume).

Custom's assessment of price undercutting, price suppression, price depression, reduced profits and profitability and underutilisation of capacity (the injury factors which Customs found the Australian industry to have suffered) are summarised below.

Price undercutting

Customs compared quarterly selling prices per kg of the five largest importers with WFF's quarterly selling prices to their respective customers during the investigation period. Australian industry's prices of its 220g, 310g, 410g, A10 mushrooms in sauce and A10 mushrooms in brine cans were compared with comparable imported can sizes.

For the 220g container, Customs found evidence that two importers undercut the Australian industry's prices by between 7-37 per cent over the investigation period. For the 410g can, Customs found that prices for two of the importers were above those of the Australian industry, and three of the importers had prices between 24-34 per cent lower than the prices of the Australian industry. For other sized containers, Customs found significant price undercutting of

Australian industry's prices by the imported A10 (2.8kg to 2.9kg) size product, but no undercutting for the 310g product. Customs was satisfied that price undercutting had occurred.

Price depression

Customs found that unit average sales revenue declined significantly in 2001, further declined marginally for the next two years before increasing in 2004 to slightly above the level in 2001 (but still well below the levels achieved in 1999 and 2000). Customs was satisfied that Australian industry suffered injury from price depression.

Price suppression

Customs found that in 2001, the average cost to make and sell (CTMS) per kg of preserved mushrooms fell significantly following WFF's purchase of CEP in late 2000. The CTMS continued to decline slightly for the next two years before marginally increasing in 2004. Although the unit CTMS was above the unit sales revenue for the whole period, the gap widened considerably in 2001. The gap declined slightly in each of the next three years and by 2004 was almost back to the level of 2000. Customs was satisfied the Australian industry suffered injury from price suppression during the period.

Profit and profitability

Profitability relates to net profit as a percentage of sales revenue. WFF provided financial statements for the 1998 and 1999 financial years that showed that its preserved mushroom business was profitable in those years (although it was unprofitable in the second half of 1999).

Customs found that WFF's preserved mushrooms business had been unprofitable from the last six months of 1999 to 2004. In terms of profits, Customs found that WFF had last recorded a profit in the financial year to 30 June 1999 (note that no profit figure was available for CEP). In the six months to December 1999, WFF recorded a loss, and its net earnings had remained that way since. In calendar year 2000, earnings fell substantially over what they had been in the 12 months to June 1999, and a significant loss was recorded by WFF. The amount of that loss has been exceeded every year since. There was a moderate recovery in 2004 compared with previous years, but the loss was still significantly higher than the loss in 2000. Customs considered the Australian industry suffered injury from reduced profits and profitability.

Capacity utilisation

WFF transferred its preserved mushroom production facilities to Cowra following the industry rationalisation at the end of 2000. Since then the company had been operating at about 25 per cent of capacity. This percentage was based on total operational capacity of the plant, which exceeds the current size of the Australian market. Customs is satisfied the industry suffered injury from capacity under-utilisation.

5.2 The TMRO's Review

5.2.1 Applications for Review

Fujian

Fujian did not address the issue of injury in its application to the TMRO.

Oriental

Oriental claimed in its application to the TMRO "there is no real evidence of material injury caused by any alleged dumping". Oriental listed nine points under the heading of 'Material Injury' in its application to the TMRO, some of which have been addressed in the sections on 'Like Goods' and 'Causation' to this report.

Oriental's claims on injury included its view that WFF is not the producer of like goods, but rather CEP is the correct legal entity to be considered as the producer. Oriental claim that after WFF's parent company, Windsor Farm Foods Group Limited acquired CEP, production was moved to CEP's production site at Cowra. Oriental submitted that Windsor Farm Foods Group Limited owns all the shares in CEP, not WFF, and that all three companies are separate legal entities. In this context, Oriental claim that as manufacturing is carried out at CEP's production site, any injury in the form of underutilisation of capacity was suffered by CEP as the actual producer, and not WFF. Oriental summarised this view by noting, "... not only is the applicant the incorrect legal entity, but the various types of injury allegedly suffered have been suffered by various separate legal entities."

Oriental submitted that any changes to WFF's sales "appear to reflect the normal ebb and flow of the Australian marketplace".

5.2.2 Other submissions to the TMRO's review

Food & Beverage Importers Association

The comments addressed by FBIA on material injury are discussed in the section on 'Causation' to this report.

WFF

WFF addressed Oriental's comments regarding the identity of the applicant. In this context WFF noted, "Cowra Export Packers was acquired by WFF in November 2000 at which time it ceased to operate as a trading entity. WFF produces, markets and sells preserved mushrooms."

WFF also addressed Oriental's comments in relation to its views on diminished demand. As noted, this commentary is provided under the section to this report on 'Causation'.

5.2.3 The TMRO's report

The TMRO observed Oriental's view that WFF is the incorrect legal entity is without substance. In this context the TMRO noted that the Act provides that if there is a person or persons producing like goods in Australia, then there is an

Australian industry in respect of the like goods. The TMRO noted Customs finding that WFF was the only entity in Australia manufacturing preserved mushrooms, and therefore constituted the Australian industry, was correct.

Other comments by the TMRO in this context relate more to the *cause* of material injury and are discussed in the following section on 'Causation'.

5.3 Customs' reinvestigation

5.3.1 Considerations when determining injury

Section 269TAE of the Act provides a non-exhaustive list of factors which may indicate whether material injury has been caused by goods exported to Australia at dumped or subsidised prices. Primary injury factors are typically categorised into volume effects, price effects and/or reduction of profits and profitability. In conjunction with these key indicators, Customs may consider a range of other injury indicators including employment and wages, production levels, capacity utilisation and return on investment.

These factors are discussed further in the section to this report on 'Causation'.

5.3.2 Submissions to the reinvestigation

Oriental restated its views that any material injury was caused by reasons other than dumping and noted that WFF increased its sales quantity in the investigation period. Oriental also reiterated its view that Customs had incorrectly identified the applicant and any material injury was suffered by another company altogether.

In a later submission, Oriental noted its concern with Customs' "measurement, if you like, of injury being average prices per kilogram, not individual products per can size whilst normal values concentrated on can sizes for comparison purposes". Oriental further noted that WFF's inability to prove its claims in relation to volume and market share "appears to sit uneasily with findings on 'price' if we examine the Industry Profitability Chart... Oriental is of the view that the unprofitability of the Applicant's operations was due to unprofitability of infrastructure and not due to Chinese dumped imports."

WFF considered that Oriental had limited its views on injury to sales volumes and capacity utilisation. WFF noted that Customs had not based its material injury finding on lost sales volumes or loss of market share, but rather Customs had found significant price-effect injury in the form of price undercutting, price depression and price suppression which had impacted profits and profitability.

The FBIA noted that any changes to the applicant's sales appear to be the result of normal market fluctuations. The FBIA also expressed its view that other factors caused the injury to WFF – these comments are addressed in the section on 'Causation' to this report.

Fujian did not comment on material injury in its submissions to the reinvestigation.

5.3.3 Customs' Reinvestigation Assessment

Price undercutting

Price undercutting occurs when imported product is sold at a price below that of the Australian industry's product.

WFF claimed in its application it had experienced price undercutting from dumped imports of Chinese preserved mushrooms – the undercutting enabling imported mushrooms to capture the market growth apparent in 2003 and 2004. WFF claimed that this undercutting was most discernible in prices to the retail sector for the 220g and 410g can sizes, its two largest selling lines.

Customs' reinvestigation examined the pricing information provided by WFF and information obtained from importers in the original investigation in considering this claim. Customs' reinvestigation compared quarterly weighted average net selling prices of the five largest volume importers of preserved mushrooms with the quarterly weighted average net selling prices of the Australian industry during the investigation period. The volume of preserved mushrooms imported from China by these five importers was approximately 70 per cent of total import volume in the investigation period. Importer's prices were at the distributor/wholesale level and included delivery so as to be properly comparable with WFF's prices.

Customs' reinvestigation examined the prices of comparable goods to the Australian industry's 220g, 410g and A10 mushrooms in sauce and A10 mushrooms in brine products and found price-undercutting by imports of up to 50 per cent. Customs' reinvestigation notes that sales of 220g, 410g and A10 can sizes represents over 90 per cent of WFF's sales by volume. Whilst in some few instances the imported product did not undercut the Australian industry's price, Customs' reinvestigation notes that for each comparison, the weighted average of comparable prices over the investigation period undercut the Australian industry's price. The only exception to this was the 310g can, however Customs' reinvestigation notes that sales of this product represented a very small proportion of the Australian industry's total preserved mushrooms sales by volume in the investigation period.

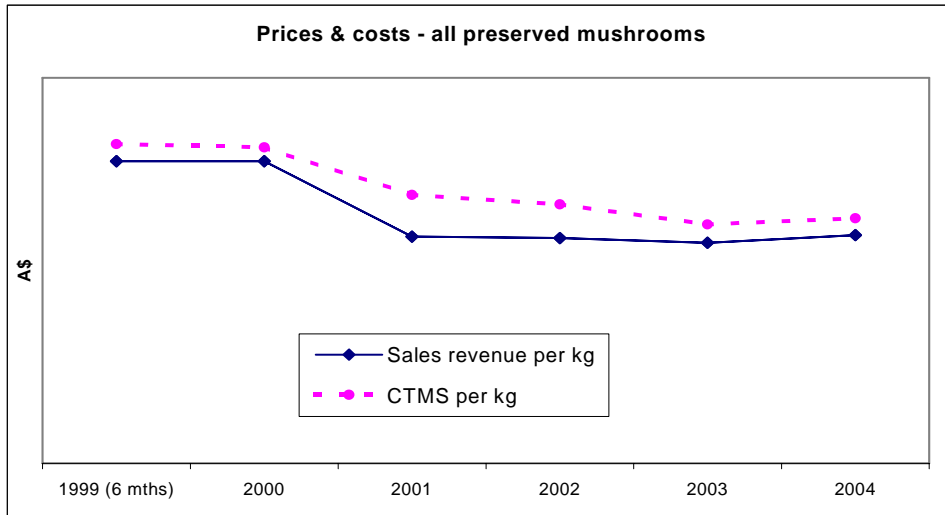
Customs' reinvestigation is satisfied that price undercutting has occurred.

Price depression

Price depression occurs when there is a reduction in selling prices.

Customs' reinvestigation examined the pricing information provided by WFF in its application and verified at the industry visit. Pricing information was available for the injury analysis period; estimates of CEP's sales revenue until the end of calendar year 2000 when it ceased trading were included in this pricing information. Movements in the Australian industry's yearly weighted average prices and costs for all domestic sales of preserved mushrooms per kg are illustrated in the chart below.

The chart indicates that WFF's average sales revenue per kg for preserved mushrooms declined significantly in 2001 and remained relatively stable through to and including 2004. Total sales revenue in 2004 remained approximately 16 per cent lower than that achieved at the commencement of the injury analysis period.



Customs' reinvestigation noted Oriental's view that individual products per can size should be examined to test injury claims, rather than average prices per kg. Customs' reinvestigation observed however, that Trade Measures Report No. 99 included detailed commentary on individual sales revenue trends and costs trends of the 220g, 410g and A10 mushrooms in sauce can sizes (the three largest selling lines representing over 90 per cent of the Australian industry's sales by volume).

Customs' reinvestigation considered the pricing and cost data for these three products and another three products, A10 mushrooms in brine, mushrooms in bags and mushrooms in barrels. These six products represented approximately 95 per cent of WFF's sales by volume over the injury analysis period. Customs' reinvestigation notes that the sales volumes of the Australian industry's individual preserved mushrooms products as a ratio to total sales has not varied significantly throughout the injury analysis period.

Customs' reinvestigation found that unit average sales revenue for the majority of the products examined generally followed a similar trend to that of WFF's overall sales revenue for preserved mushrooms.

Customs' reinvestigation is satisfied that the data on prices for preserved mushrooms showed that WFF's prices had reduced and that WFF had suffered injury in the form of price depression.

Price suppression

Price suppression occurs when price increases for the Australian industry's product, which otherwise would be expected to occur have not occurred, or have been less than expected.

Customs' reinvestigation considered the cost information provided by WFF in its application and verified at the industry visit. Information on the Australian industry's costs to make was examined for the injury analysis period. Movements in the Australian industry's weighted average prices and costs for all domestic sales of preserved mushrooms per kg are illustrated in the chart above.

The chart shows the average unit cost to make and sell (CTMS) per kg of preserved mushrooms was above the unit sales revenue for the whole of the injury analysis period. In 2001, the average CTMS per kg fell significantly following WFF's acquisition of CEP, although prices fell at a greater rate. WFF's CTMS continued to decline marginally over the next two years before a slight increase in 2004. The extent of the difference between WFF's unit sales revenue and average CTMS declined from 2001 until its return to a similar level of that in 1999 and 2000. WFF claimed that this decrease in the disparity between revenue and CTMS in 2004 had occurred as, despite cost increases in that year which would normally occasion an increase in prices, WFF had been unable to do so because of the intense price competition from Chinese imports. WFF provided evidence that this marginal improvement in profitability (albeit still negative) was attributed to a temporary reduction in WFF's purchase price for raw material mushrooms.

Customs' reinvestigation also separately examined movements in the Australian industry's unit CTMS and correlating average unit price for its six major preserved mushrooms products. Customs' reinvestigation notes that the majority of the products analysed showed a similar trend to that of the overall sales revenue compared to overall CTMS for WFF's preserved mushrooms, and all products were sold at a loss in the investigation period.

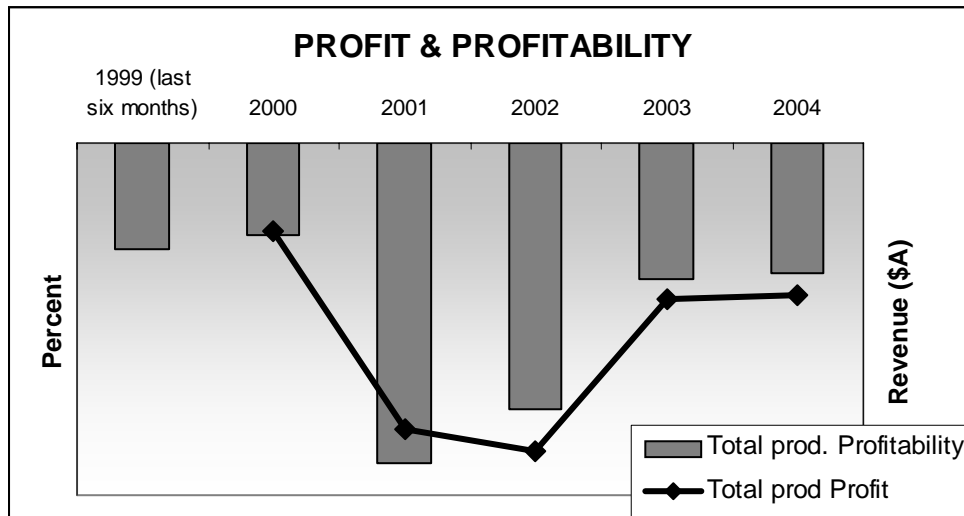
Customs' reinvestigation is satisfied that the evidence indicates that WFF had suffered injury from price suppression.

Reduced profits and profitability

WFF claimed in its application that despite increased raw material costs, it had continued to reduce overall manufacturing costs, but selling prices had nevertheless continued to decline with the falling price of preserved mushrooms imported from China. WFF stated that the declining prices and increasing costs had resulted in price suppression, which had reduced profits and profitability.

Customs' examined the financial data provided by WFF in its consideration of profits and profitability over the injury analysis period. WFF also provided financial statements for the 1998 and 1999 financial years that showed that its preserved mushroom business was profitable until the second half of 1999. The data for 1999 and 2000 did not include financial information from CEP, and therefore the profitability assessed for those years was applicable to WFF only. As noted in Trade Measures Report No. 99, WFF production of preserved mushrooms accounted for 70 per cent the Australian industry's total production prior to its acquisition of CEP.

Movements in the Australian industry's profits and profitability generated on domestic sales are illustrated in the following chart. Customs' reinvestigation notes that the X-axis in the chart represents zero profitability.



For 1999, the profitability is based on the last six months data. Profit data for all of 1999 was not available. The chart indicates that WFF's preserved mushrooms production has been unprofitable for the entire injury analysis period. WFF provided evidence that it last recorded a profit in the financial year ending 30 June 1999. Customs' analysis showed that total profits and profitability on domestic sales of preserved mushrooms declined significantly in 2001 compared to the commencement of the injury analysis period and then improved over 2002 and 2003. The extent of the negative profitability lessened in 2004, but those losses remain greater than at the commencement of the injury analysis period.

Customs' reinvestigation also examined individual profit data for WFF's six major preserved mushrooms products and observed that the profitability of these products followed a similar trend to that of the aggregate of all sales, with losses generally being greater in 2004 than at the commencement of the injury analysis period.

Customs' reinvestigation is satisfied that WFF suffered injury from reduced profits and profitability.

Underutilisation of capacity

Customs' reinvestigation considered Oriental's claim regarding the identity of the applicant. Information obtained at the industry visit during the original investigation indicated that Windsor Farm Foods Group Limited, WFF's parent company, purchased CEP in late 2000. Trading operations by CEP were concluded at this time, and WFF became the sole member of the Australian industry producing preserved mushrooms. Customs' reinvestigation, like the TMRO, are satisfied that WFF was the only entity in Australia manufacturing preserved mushrooms in the investigation period, and therefore comprised the Australian industry.

WFF claimed in its application that its production facility of preserved mushrooms was operating at a greatly reduced capacity and that it had sufficient total manufacturing capacity to service the total Australian market for preserved mushrooms, including those imported from China.

WFF provided information to indicate that since its acquisition of CEP, it had been operating at approximately 25 per cent of the company's total operational capacity. Customs' reinvestigation is satisfied that WFF experienced capacity underutilisation.

Other injury factors

Customs' reinvestigation notes that the Minister directed Customs to reinvestigate its findings that the Australian industry suffered injury in the form of price undercutting, price suppression, price depression, reduced profits and profitability and underutilisation of capacity. Nevertheless, Customs' reinvestigation also had regard to the other factors claimed by the Australian industry to have caused injury.

Customs' reinvestigation examined sales volume data for sales of preserved mushrooms by the Australian industry. Sales data was available from 2000 onwards, and the 2000 data included an estimate by Customs for CEP's production based on information provided by WFF. Customs' reinvestigation notes that the Australian industry's sales volumes declined significantly in 2001; then increased over the period to a level in 2004 approximately 6 per cent above the volumes sold in 2000.

Customs examined the sales volume pattern for the six highest volume selling product lines and found that the sales pattern for each generally followed a similar trend to that for the combined business. Customs considers the Australian industry has not suffered injury from loss of sales volume.

Examination of the data on market shares indicated that the Australian industry's market share increased in 2001 and 2002 and then declined considerably in 2003. This lost market share was recovered in 2004. Customs considers that the Australian industry had not suffered injury from loss of market share.

Customs' original investigation also had regard to the Australian industry's claims of other relevant economic factors that had been affected by dumping. In addition to under utilisation of capacity, the Australian industry claimed that it had reduced its Cowra workforce numbers to reduce total fixed costs. Customs accepted that the number of employees declined between 2002 and 2004, but was not satisfied that this affected the preserved mushrooms business.

Customs' reinvestigation considers that its conclusions on these other injury factors would have been affirmed.

Conclusion

From the evidence available, Customs' reinvestigation is satisfied that the Australian industry has suffered injury from:

- price undercutting
- price depression;
- price suppression ;
- reduced profit and profitability; and
- underutilisation of capacity.

6. ISSUE 4 – CAUSATION

The Minister has directed Customs to reinvestigate that preserved mushrooms exported from the China at dumped prices caused material injury to the Australian industry.

6.1 Original Investigation

6.1.1 Customs' assessment in the original investigation

Customs' original investigation found that the Australian industry and imports from China supplied about 98 per cent of the preserved mushrooms' market, with imports from China holding the largest market share. Customs' further found there were three market sectors for preserved mushrooms: retail, food services and industrial food processing. The industrial food-processing sector is relatively small compared to the retail sector and was supplied by the Australian industry. The retail and food processing sectors were supplied by both the Australian industry and imports from China, with the retail sector accounting for more than 80 per cent of industry turnover.

Customs noted the Australian industry's claim that the primary cause of its material injury was the intense price competition from exports of preserved mushrooms from China in the retail sector, particularly in the 220g and 410g can sizes (representing over 75 per cent of WFF's total sales volume). The Australian industry further claimed that similar price competition against its A10 can product in the foods services sector had also contributed to the material injury sustained by Chinese imports.

Customs found that profit and profitability declined significantly from the last six months of 1999. Customs further found that import data showed that prices of preserved mushrooms exported from China began to significantly decline from this time.

The Australian industry claimed that its acquisition of CEP in late 2000 was an endeavour to obtain economies of scale and make the industry more competitive with imports from China, given the market prices at that time. Trade Measures Report No. 99 explained that the Australian industry's verified data demonstrated that the cost efficiencies anticipated with the acquisition of CEP in late 2000 did occur, with a significant reduction in unit average per kg CTMS in 2001 compared to the previous year. Customs noted that despite the decline in CTMS per kg over the period, WFF's unit annual average revenue across the period declined by an even greater degree, and did not return to profitability in the period. These price declines were also observed for each of the industry's largest selling products (the 220g, 410g and A10 mushrooms in sauce containers) and negatively affected its economic performance in both the retail and food processing sectors of the market.

Customs found that the sellers who undercut WFF's prices for the 220g, 410g and A10 products in 2004 had sourced their products from exporters whose

exports were assessed by Customs to be dumped and that the dumping margins were a key factor in that price undercutting.

Customs' original investigation acknowledged that during the injury analysis period the Australian industry's pricing and profitability would have been influenced by such factors as maturity of the market, retailer market dominance, undumped import competition and exchange rate movements. Customs nevertheless found that the Australian industry would have had a reasonable opportunity to address these factors and retain profitability, particularly in light of the cost efficiencies achieved following the industry rationalisation in 2000, were it not for the substantial reduction in prices of Chinese imports in 1999 and 2000.

Customs noted that to recover sales and maintain existing capacity utilisation the Australian industry lowered prices to compete with Chinese imports, and in doing so suffered price depression and price suppression. As a consequence the Australian industry became unprofitable.

Dumped goods from China comprise the largest share of imports to the Australian market. Customs considered it reasonable to link the dumping with the price undercutting, price depression and price suppression that resulted in loss of profits and profitability and the under-utilisation of capacity experienced by Australian industry. Notwithstanding that there were various market factors that may have negatively impacted industry's pricing, Customs was satisfied that the dumped imports from China had, of themselves, caused material injury to the Australian industry.

6.2 The TMRO's Review

6.2.1 Applications for Review

Fujian

Fujian did not address the cause of material injury to the Australian industry in its application to the TMRO.

Oriental

As noted in the previous section, Oriental claimed that there was no real evidence of material injury caused by alleged dumping. Oriental noted its view that there had been insufficient research as to the impact of fresh mushrooms on the preserved mushrooms market. Oriental also claimed that Customs' assessment of the effect of retailer concentration had "overlooked the impact of generic "own brands" produced and marketed by the retailers themselves in competition to the market the local product. Our view is that this may have had an impact on sales of WFF [sic]".

Oriental submitted that the Australian industry created its own underutilisation of capacity by buying and expanding the CEP facility at a time when market share was not growing. Oriental also claimed that WFF is a monopoly producer which appears to have secured "a reasonably stable market for its products" and that there is no evidence as to investigations by Customs as to whether WFF undertook marketing or promotional activity to expand its market.

6.2.2 Other submissions to the TMRO's review

Food & Beverage Importers Association

The FBIA's comments on the finding of "material injury caused by alleged dumping to a monopoly producer" were that:

- any changes to WFF's sales appeared to be the case of normal market fluctuations;
- no consideration was given to the impact of fresh mushrooms on the mushrooms in sauce market; and
- no consideration was given to the impact of private label products on the market.

WFF

WFF submitted that Oriental's "assertions about an apparent "waning" of demand" for locally produced product is not supported by sales volumes data provided to Customs investigation by WFF.

6.2.3 The TMRO's report

The TMRO noted Oriental's views that:

- the Australian industry had suffered no material injury;
- changes to sales were part of the normal commercial ebb and flow of the market;
- WFF had created its own under-utilisation of capacity by expanding the manufacturing plant at Cowra at a time when market share was not increasing; and
- there was insufficient research into the impact of fresh mushrooms on the market for preserved mushrooms.

The TMRO observed that there may be some substance in these claims and these matters should be investigated again.

6.3 Customs' reinvestigation

6.3.1 Considerations when determining the cause of material injury

Measures on exports of dumped goods are only applied where it is found that the dumping has *caused*, or threatened to cause, material injury to an Australian industry producing like goods. There must be an identifiable relationship between the impact of the dumped goods on the Australian market and any alleged material injury suffered by, or threatened to, the Australian industry.

Circumstances may arise where an industry is suffering injury that may not be caused by exports at dumped prices. As well as providing factors to be considered in assessing injury to an Australian industry, s.269TAE gives indicative factors to be considered in deciding if injury to an industry is being caused by a factor *other* than dumping. These include:

- the volume and prices of imports not sold at dumped prices;

- contraction in demand or changes in the patterns of consumption;
- trade restrictive practices of and competition between the foreign and domestic producers;
- developments in technology; and
- the export performance and productivity of the Australian industry.

6.3.2 *Submissions to the reinvestigation*

Oriental reiterated its view that Customs' original investigation did not adequately address other causes of material injury to the Australian industry. Oriental noted that the re-investigation should have regard to:

- other factors causing injury, including changing consumer tastes and the increasing demand for fresh mushrooms;
- whether the final report relied unduly on the expert evidence supplied by the applicant.

In a later submission, and presumably in the context of its concerns regarding the impact of retailer concentration, Oriental noted that supermarkets "are subjected to all manner of temptations as are other retailer/wholesales [sic] particularly when considering offers by their suppliers of "special efforts", marketing ploys, promotions etc."

Oriental also noted a product recall of A10 mushrooms in brine product in November 2005 might reasonably suggest problems in production. Customs' reinvestigation has not considered this information in its assessment of causation as, notwithstanding these products were produced prior to Customs' report to the Minister on 27 September 2005, this information was not included in that to which the TMRO was permitted to have regard.

Oriental commented that the Australian industry's unprofitability was due to "unprofitability of infrastructure and not due to Chinese dumped imports". Oriental noted in this context that sales indices showed an increase in sales by the Australian industry and a decrease in sales of preserved mushrooms exported from China. In this context, Customs reinvestigation notes that Customs' original investigation did not find that the Australian industry had suffered injury from loss of sales volume, but that material injury in the form of price-effect factors and the subsequent impact on profits and profitability was evident.

WFF submitted that a causal link between the dumped imports and the material injury is evidenced through the significant levels of price undercutting substantiated by Customs in the 220g, 410g and A10 size containers with margins of up to 37 per cent. WFF further noted that the UNE study confirmed the price-elasticity between locally produced and imported preserved mushrooms and that any reduction in price of imported preserved mushrooms negatively affects the sales volumes of the locally produced preserved mushrooms in sauce. WFF further submitted that these findings confirm the existence of a causal link between the exports of preserved mushrooms at dumped prices and the price depression and 'erosion of margin' material injury suffered by WFF.

WFF did not accept Oriental's view that Customs did not take account of other factors and noted that Trade Measures Report No. 99 provided an assessment of the impact of fresh mushrooms and the effect of retailer concentration, as well as other issues affecting the preserved mushrooms market.

WFF submitted in response to Oriental's view that its purchase of CEP created the "capacity issue" that "the level of combined CEP and WFF sales, combined with the then import volumes for preserved mushrooms, represented a realisable opportunity to grow sales volumes and market share and fully utilise a production facility that was larger than the Windsor site capacity." WFF further noted that under-utilisation of capacity is a question of fact and only one factor in Customs' overall assessment of material injury.

Fujian's submissions did not address Customs' finding on the cause of material injury.

6.3.3 Customs' Reinvestigation Assessment

Customs' reinvestigation has established that the Australian industry has suffered injury and that the preserved mushrooms from China were exported at dumped prices. In this section, Customs' reinvestigation considered if there was a causal link between the dumped Chinese goods and the injury suffered by the Australian industry, and whether that injury was material.

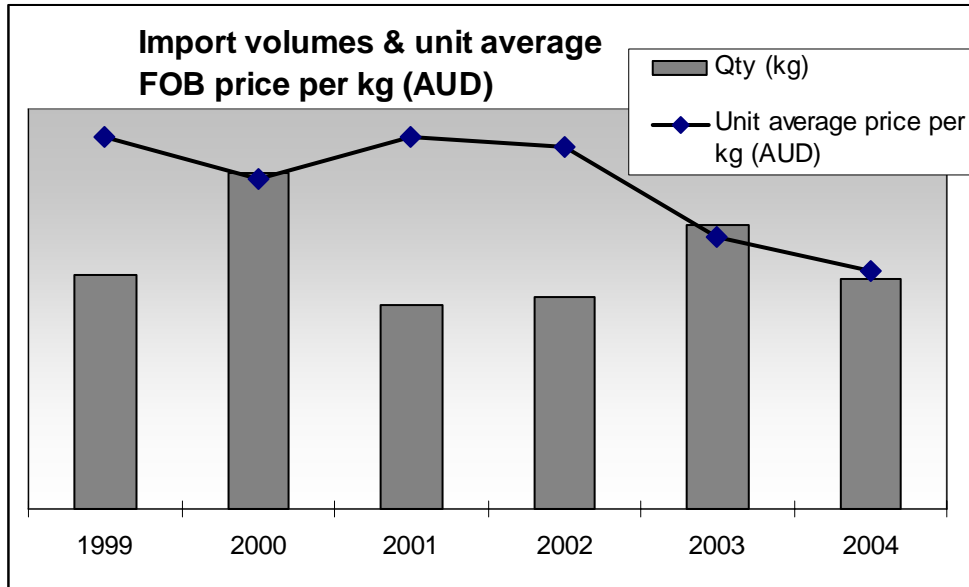
Customs' reinvestigation had regard to the views of interested parties expressed in the submissions to the TMRO and the reinvestigation and submissions made in response to the SEF. Customs' reinvestigation also collated the views expressed by the importers visited during the course of the original investigation. In this context, Customs' reinvestigation noted that a large importer claimed that nearly all preserved mushrooms imported into Australia are from China and that "the Indonesian mushroom industry collapsed in 1999 under competitive pressure from China."⁶ This importer also noted that the change in the USD/AUD exchange rate from \$0.48 in 2001 to \$0.76 in 2004 had made it cheaper to import.

Several importers observed that preserved mushrooms are a commodity and as such are a price sensitive product with relatively low margins. Several importers claimed that prices in the retail sector have been very competitive.

Imports

Customs' reinvestigation considered the trends in import volumes and prices of the preserved mushrooms exported from China in assessing the cause of injury to the Australian industry. Yearly import quantities and average yearly prices per kg in Australian dollars extracted from Customs' commercial database are illustrated in the chart below.

⁶ Non-confidential Oriental Merchant Pty Ltd importer visit report, page 13.



The chart indicates that import quantities increased significantly in 2000, declined in 2001, increased in 2002 and 2003 and declined slightly in 2004. Australian dollar FOB prices per kg of preserved mushrooms exported from China have declined by 36.5 per cent since commencement of the injury analysis period.

Dumping

Customs' reinvestigation has established that exports of preserved mushrooms from China during the investigation period were at dumped prices. Dumping margins calculated for those exports ranged between 2.4 per cent and 32.4 per cent. These margins are not negligible.

Customs reinvestigation also found that preserved mushrooms exported from China by Xiamen Gulong and Jiangsu were not dumped, however the majority of exports over the investigation period were at dumped prices. Export volumes of dumped goods were not negligible.

Injury caused by dumping

In its application and during the industry visit, WFF provided evidence supporting its claim that domestic selling prices had been undercut by prices of Chinese preserved mushrooms, particularly in the 220g and 410g can sizes, its largest selling preserved mushrooms products.

As discussed earlier in this report, Customs' reinvestigation found the quarterly weighted average selling prices of Chinese preserved mushrooms undercut the Australian industry's quarterly weighted average selling prices by considerable margins over the investigation period.

Custom' reinvestigation considers that the dumping margins were a key factor in enabling imported preserved mushrooms to undercut the Australian industry's prices and is therefore an important link between dumping and the injury to the Australian industry.

In the context of Orientals' claim under 'causation' asserting that the that the original investigation relied too heavily on the UNE study, Customs' reinvestigation noted that Trade Measures Report No. 99 did not have regard to this study in its assessment of causation. Customs' reinvestigation nevertheless considers that the UNE study indicates elasticities between locally produced and preserved mushrooms and that price undercutting by imported goods impacts the volumes of sales of locally produced goods.

In its application and during the industry visit, WFF provided details of its weighted average prices to its Australian customers and its quarterly average CTMS to demonstrate declines in its selling prices which resulted in price suppression. The Australian industry alleged that this price injury was suffered as a result of the preserved mushrooms from China being exported at dumped prices.

Customs' reinvestigation found that the Australian industry had reduced its prices and that sales revenue per kg had declined by approximately 16 per cent over the injury analysis period. In a separate analysis of price movements of its six major preserved mushrooms products, selling prices declined on the substantial majority of products. Customs' reinvestigation was satisfied that the Australian industry had suffered injury in the form of price depression.

Customs' reinvestigation found that despite the Australian industry significantly reducing its costs over the injury analysis period, its unit average sales revenue had also declined over the same period. The average unit CTMS per kg was above the unit sales revenue for the whole of the injury analysis period. Customs' reinvestigation was satisfied that the Australian industry had suffered injury in the form of price suppression.

The Australian industry provided evidence of tender negotiations at two key accounts that its price reductions were in response to competitive offers of Chinese preserved mushrooms and necessary to retain sales volumes. Customs' reinvestigation considers that the availability of preserved mushrooms exported from China at dumped prices led to price suppression because the Australian industry was unable to increase its prices over the injury analysis period, nor was it able to reach a profitable result even when costs were lower.

As noted above, Customs' reinvestigation found that the preserved mushrooms exported from China at dumped prices caused price declines on the majority of the Australian industry's sales over the injury analysis period as well as price suppression in a period where the Australian industry had significantly lowered its costs.

Customs' reinvestigation considers that the Australian industry's price effect injury, which can be linked to the dumped Chinese imports, resulted in a decline in the Australian industry's profits and profitability.

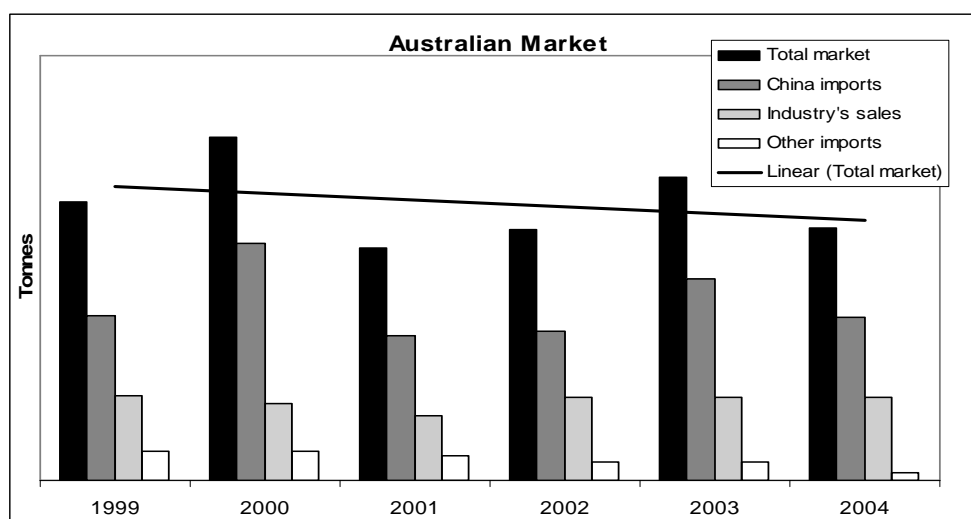
Other injury factors

Customs' reinvestigation considered the other factors raised by interested parties which may have caused injury to the Australian industry. Consideration of these factors is discussed below.

Declining market

Several interested parties observed that the Australian preserved mushrooms market was mature and declining. Reasons for this decline included a perceived change in consumer's tastes, particularly in regard to mushrooms in sauce products and because of increased consumption of fresh mushrooms (discussed below). Customs' reinvestigation notes that no evidence was provided to support these anecdotal accounts.

Customs' reinvestigation examined movements in the Australian preserved mushrooms market using sales volume data provided by the Australian industry and importers and import volumes from Customs' commercial database. The chart below illustrates market changes over the injury analysis period. Industry sales revenue data for the second half of 1999 was extrapolated to provide a 1999 figure.



The chart indicates that the Australian market trended downwards over the injury analysis period, although sales volumes varied substantially from year to year. Total market sales volumes in 2004 are approximately 9 per cent lower than in 1999. The Australian industry's sales declined from 1999 to 2001 and then remained relatively static from 2002.

Customs' reinvestigation does not consider that this marginal market decline could reasonably account for the significant degrees of price depression and suppression, and resulting decline in profits and profitability suffered by the Australian industry.

Retailer concentration & 'housebrands'

It was suggested by some parties that the competitive pressures of a market dominated by a small number of grocery retailers in Australia had caused the decline in prices for preserved mushrooms by forcing suppliers to be price-takers or risk losing the retailer's business. No evidence was provided to support these claims. Several parties also claimed that the 'housebrands' marketed by these grocery retailers in competition to the Australian industry's product may have impacted the Australian industry's sales.

Customs' reinvestigation accepts that the small number of companies comprising the Australian grocery retail sector may demand highly competitive pricing strategies and notes that approximately 80 per cent of the Australian industry's preserved mushrooms sales are to the retail sector. Customs' reinvestigation notes that large grocery retailers source its 'housebrand' product both from China and from the Australian industry and that price appears to be the critical factor in the retailer's purchasing decisions.

Customs' reinvestigation is unable to overlook the evidence of undercutting by preserved mushrooms exported from China at dumped prices including that provided by the Australian industry indicating that its price reductions were in response to competitive offers of Chinese preserved mushrooms. Customs' reinvestigation considers that the presence of the dumped preserved mushrooms from China in the Australian market would have provided significant leverage in the pricing pressures exerted by the grocery retail sector.

Exchange rate changes

Several interested parties argued that the decline in import prices over the injury analysis period was due to the appreciation of the Australian dollar against the US dollar. Customs' reinvestigation notes in this context that most Chinese preserved mushrooms exported to Australia were priced in US dollars.

Customs' reinvestigation examined movements in the US dollar exchange rate and noted that the Australian dollar appreciated against the US dollar by approximately 13 per cent over the injury analysis period. As noted above however, Australian dollar FOB prices per kg of preserved mushrooms exported from China have declined by 36.5 per cent since the start of the injury analysis period. Customs' reinvestigation also examined the unit average US dollar FOB price per kg and noted that that these prices have declined by approximately 27 per cent over the injury analysis period.

Customs' reinvestigation accepts that the appreciation of the Australian dollar may have made US dollar prices of preserved mushrooms from China more attractive for importers over the injury analysis period. Customs' reinvestigation considers however, that the significant decline in the unit average US dollar FOB export price would have been an important factor in purchasing decisions. Customs' reinvestigation considers it reasonable to conclude that, had the goods been exported from China at undumped prices, the impact of the weaker US dollar relative to the Australian dollar would have been diminished.

Fresh mushrooms

Several interested parties claimed that the decline in the Australian market for preserved mushrooms and increased price pressure was caused by changes in consumer tastes and increased price competition from fresh mushrooms. No evidence was provided to support the claim that consumer preference for fresh mushrooms had caused the decline in the market for preserved mushrooms.

Competition from undumped goods

Customs' reinvestigation notes that imports of preserved mushrooms from countries other than China represented less than 4 per cent of total imports in the investigation period and considers that this minor market share is unlikely to have contributed to injury to the Australian industry.

As noted in section 4 to this report, Customs' reinvestigation determined that exports of preserved mushrooms to Australia by Jiangsu COF were not at dumped prices. Exports of preserved mushrooms to Australia by Xiamen Gulong were exported at prices with negligible dumping margins. . Volumes of preserved mushrooms exported by these companies to Australia over the injury analysis period were not insignificant.

Customs' reinvestigation examined sales prices by the importer that sources its goods from Jiangsu and noted that its sales prices were above those of the Australian industry for all comparable products, with the exception of the A10 size. Customs' reinvestigation was unable to compare sales prices by importers that sourced their preserved mushrooms from Xiamen Gulong as the relevant importers' sales data did not indicate the identity of supplying exporter.

Customs reinvestigation also examined the relativities of export price for comparable products. It compared the export prices of Xiamen Gulong and Jiangsu with the export prices of preserved mushrooms exported at dumped prices. The reinvestigation noted that, in relation to a significant proportion of preserved mushrooms exported to Australia in the investigation period, the export prices of suppliers of preserved mushrooms at dumped prices were the lowest prices. Having regard to relativities of export price between suppliers that were dumping or not dumping, and to the significant volume of dumped products, Customs' reinvestigation considers the price of the undumped goods is likely to have been influenced by its competition with dumped products.

Capacity underutilisation

In the context of Oriental's claim that WFF had created its own underutilisation of capacity by expanding its manufacturing plant at a time when market share was not increasing, Customs' reinvestigation accepts that the acquisition of CEP created an increase in capacity. However, as noted in section 5 above, Customs' reinvestigation observed that WFF's average CTMS per kg declined significantly following its acquisition of CEP, whilst unit prices per kg fell at a greater rate.

Conclusion

Customs' reinvestigation has found that a substantial proportion of preserved mushrooms from China were exported at dumped prices and the margins of

dumping were not negligible. Customs' reinvestigation further found that the regularity and the degree by which dumped Chinese imports undercut the Australian industry's prices was significant over the investigation period. Customs' reinvestigation considers that the extent of the dumping was an important means for the preserved mushrooms exported from China to undercut the Australian industry's prices. Customs' reinvestigation established that this price pressure resulted in the Australian industry reducing its prices in order to compete with the Chinese imports. This pricing pressure, combined with an increase in import volumes, has prevented the Australian industry from raising prices to improve profits on sales volume and/or and return to profitability.

Customs' reinvestigation acknowledges that the Australian industry's pricing and profitability may have been impacted to some degree by other factors including the declining market and undumped import competition but these factors do not detract from the assessment that dumping, of itself, has caused material injury to the Australian industry.

7. ISSUE 5 – CONTINUED DUMPING & MATERIAL INJURY

The Minister has directed Customs to reinvestigate that exports of preserved mushrooms from China in the future may be at dumped prices and the continued dumping may cause further material injury to the Australian industry.

7.1 Original Investigation

7.1.1 Customs' assessment in the original investigation

Trade Measures Report No. 99 noted that the USA had represented a significant market for exports of preserved mushrooms from China prior to the imposition of US anti-dumping measures in late 1998. The report further noted that China, a large producer and exporter of preserved mushrooms, was forced to find alternative markets. Customs considered this a likely explanation for the increase in export volume to Australia, at substantially reduced prices, from China to Australia in 1999/2000.

Customs' investigation found no evidence that Chinese exporters would not continue to seek to increase export volumes to Australia, using price to gain a competitive edge over Australian industry and imports from other countries. Customs was satisfied that the dumping was likely to continue.

Customs found that the Australian industry was making losses, and had been since 1999, as it had been unable to achieve prices sufficient to cover its costs despite significantly reducing these costs since 1999. Customs considered that this had occurred predominately because of pricing competition from exports of preserved mushrooms from China at dumped prices. Based on the available evidence, Customs was satisfied that exports of preserved mushrooms from China in the future may be at dumped prices and that continued dumping may cause further material injury to the Australian industry.

7.2 The TMRO's Review

7.2.1 Applications for Review

Fujian

Fujian did not address continued dumping and material injury to the Australian industry in its application to the TMRO.

Oriental

Oriental did not address continued dumping and material injury to the Australian industry in its application to the TMRO.

7.2.2 Other submissions to the TMRO's review

Food & Beverage Importers Association

The FBIA did not address continued dumping and material injury to the Australian industry in its submission to the TMRO.

WFF

The FBIA did not address continued dumping and material injury to the Australian industry in its submission to the TMRO.

7.2.3 The TMRO's report

The TMRO did not address continued dumping and material injury to the Australian industry in his report, except to note that Customs was satisfied that continued dumping would cause further material injury to the Australian industry and that the issue should be reinvestigated.

7.3 Customs' reinvestigation

7.3.1 Considerations when determining if continued dumping may cause further material injury

When the Minister is satisfied that material injury to an Australian industry has been caused by dumping, anti-dumping measures may be imposed on future exports of like goods if the Minister is satisfied that the future exports of like goods may be dumped and material injury to the Australian industry producing like goods may continue.

7.3.2. Submissions to the reinvestigation

WFF noted its assumption that the TMRO included a recommendation to reinvestigate the causal link and future threat of material injury findings in recognition of the impact of any change resulting from the re-examination of the like goods, dumping and material injury findings. WFF noted that it had demonstrated that it manufactured like goods to the preserved mushrooms exported from China, that Customs' original investigation had correctly determined the normal values resulting in dumping margins and that WFF had suffered material injury through price-effect injury indicators which had reduced profits and profitability. WFF claimed that a causal link between the dumped imports and its material injury is "evidenced through:

- the significant levels of price undercutting substantiated by Customs in the 220g, 410g and A10 size containers (margins of up to 37 per cent); and
- the UNE study which confirms price-elasticity's exist between locally produced preserved mushrooms and imported preserved mushrooms."

WFF summarised that as dumping, material injury and causal link have been established it necessarily follows that anti-dumping measures are required to remove the injurious effects of dumping and that the absence of such measures would result in further material injury to the Australian industry.

Oriental claimed that the reasoning in section 9 of Trade Measures Report No. 99 was "entirely inadequate to support the conclusion that dumping is likely to continue to cause material injury". Oriental drew attention to Article 3.7 of the WTO Agreement and noted that a determination of the threat of material injury should be based on facts and not merely allegation, conjecture or remote possibility.

In this context Oriental noted that Customs' conclusions appear to be based on market trends from 1999/2000 and certain findings of dumping by the USA in 1999. Oriental claimed that the continuation of measures on exports of preserved mushrooms from China by the USA indicates that China had continued to sell significant amounts of preserved mushrooms into the US rather than diverting sales to Australia.

Oriental further claimed "the reference to the Australian industry making losses appears to be purely predicated on the assumption that those losses are caused by the exports of allegedly dumped [goods] by Chinese exporters". Oriental noted that the Australian industry's sales had increased whilst sales of preserved mushrooms exported from China had decreased. Oriental claimed that Customs' did not undertake an assessment of whether the Australian industry could satisfy increased demand for the goods or whether the imposition of measures on some exporters "would lead to a monopoly position for exporters" on which no measures had been imposed.

Fujian's submissions to the reinvestigation did not address Customs' finding on continued dumping and material injury.

7.3.3 Customs' Reinvestigation Assessment

Customs' reinvestigation notes that exports of preserved mushrooms from China have gained an increasing proportion of total imports over the period, with Chinese product representing approximately 96 per cent of total import volume in the investigation period, leaving purchasers with limited choice of alternative supply sources. Customs' reinvestigation further notes that exports of preserved mushrooms from China have been at dumped prices and the margins of dumping were not negligible. The Australian industry's preserved mushroom business has been making a loss since 1999, despite significantly decreasing its costs, predominately because of price competition from dumped goods. Evidence of forward contracts for continued exports of preserved mushrooms was obtained from several importers at the time of the original investigation. Inquiries with cooperating exporters at the time of the original investigation did not indicate that these companies would be reducing export volumes or changing pricing strategies in their trade with Australia.

Customs' reinvestigation accepts Oriental's view that the impact of measures on exports of preserved mushrooms exported from China to the USA is but one factor in assessing if continued dumping may cause further material injury, but nevertheless notes that the goods are traded globally and restrictions in a particularly large market are likely to affect trade to other markets internationally.

In the context of Oriental's further comments on this issue, Customs' reinvestigation notes that an assessment of whether future dumping may cause further material injury to the Australian industry is not determined by the factors provided in Article 3.7 of the WTO Agreement. This Article refers to the threat of material injury that has not yet occurred. In Trade Measures Report No. 99, Customs was not satisfied that the Australian industry had suffered injury from loss of sales volume, but that material injury in the form of price-effect factors and the subsequent impact on profits and profitability was evident. Customs' reinvestigation further notes that Trade Measures Report No. 99 addressed the Australian industry's ability to satisfy increased demand and stated WFF had "been operating at about 25 per cent of capacity. This percentage is based on total operational capacity of the plant, which exceeds the current size of the Australian market." Neither Australian legislation nor the WTO Agreement requires authorities to have regard to the anticipated behaviour of exporters on which no measures are imposed.

Based on the available evidence, Customs' reinvestigation is satisfied that exports of preserved mushrooms from China in the future may be at dumped prices and that continued dumping may cause further material injury to the Australian industry.

8. FINDINGS & RECOMMENDATION

Following its reinvestigation, Customs affirms the findings that:

- preserved mushrooms produced by the Australian industry, being preserved mushrooms other than those preserved only in brine, are like goods to the goods under consideration;
- exports of preserved mushrooms from China by COFCO, Fujian Zishan, Xiamen Fortune and all other exporters, (except Jiangsu COF and Xiamen Gulong) were dumped;
- the Australian industry suffered injury in the form of price undercutting, price suppression, price depression, reduced profits and profitability and underutilisation of capacity;
- preserved mushrooms exported from China at dumped prices caused material injury to the Australian industry; and
- exports of preserved mushrooms from China in the future may be at dumped prices and the continued dumping may cause further material injury to the Australian industry.

Customs makes a new finding that the dumping margins determined in the original investigation be replaced with those determined in the reinvestigation, those new margins being:

Exporter	Dumping Margin
COFCO	22.7%
Fujian Zishan	2.4%
Xiamen Fortune	19.9%
Xiamen Gulong	1.3%
All other exporters except Jiangsu COF, and Xiamen Gulong	32.4%

Customs recommends that the dumping duty notice published on 12 January 2006, with effect from 30 September 2005, be varied as follows:

- (a) the dumping duty notice does not apply to goods and like goods exported from China to Australia by Jiangsu COF and Xiamen Gulong; and

- (b) the dumping duty notice is to be taken to have effect as if different variable factors had been fixed in respect of all other exporters not referred to in paragraph (a).

Export prices, non-injurious prices, and normal values will not be published in this report as they may reveal confidential information, but are attached in Confidential Attachment 1.

9. EVIDENCE RELIED UPON

In making its findings, Customs' reinvestigation had regard to the following material or other evidence:

- information provided to Customs' original investigation by: Australian industry; importers; exporters; manufacturers and other parties; and Customs' commercial database; and
- submissions to the TMRO and to the reinvestigation as far as they related to the relevant information or conclusions based on the relevant information.