



**Australian Government**  
**Australian Customs Service**

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**CUSTOMS ACT 1901 - PART XVB**

**TRADE MEASURES BRANCH**  
**STATEMENT OF ESSENTIAL FACTS NO. 99**

**Preserved mushrooms exported from the People's  
Republic of China**

**13 August 2005**

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## 1 ABBREVIATIONS

ACDN	Australian Customs Dumping Notice
CEO	Chief Executive Officer of Customs
CEP	Cowra Export Packers Limited
COFCO	Fujian Provincial Cereals, Oils & Foodstuffs Imp/Exp Corporation Xiamen Company
CTMS	cost to make and sell
Customs	Australian Customs Service
China	The People's Republic of China
FOB	free on board
Fujian Zishan	Fujian Zishan Group Co Ltd
GUC	goods under consideration
Jiangsu COF	Jiangsu Cereals, Oils & Foodstuffs Import/Export Group Corp
Minister	Minister for Justice and Customs
NIP	non-injurious price
SEF	statement of essential facts
the Act	the <i>Customs Act 1901</i>
the investigation period	1 January 2004 to 31 December 2004
USP	unsuppressed selling price
WFF	Windsor Farm Foods Pty Ltd
Windsor	Windsor Farm Foods Group Limited
WTO	World Trade Organization
Xiamen Cannery	Xiamen Cannery Factory
Xiamen Fortune	Xiamen Fortune Import & Export Co Ltd
Xiamen Gulong	Xiamen Gulong Import & Export Co Ltd

## 2 INTRODUCTION

On 10 March 2005 Windsor Farm Foods Pty Ltd (WWF) lodged an application requesting that the Minister for Justice and Customs (the Minister) publish a dumping duty notice in respect of preserved mushrooms exported to Australia from the People's Republic of China (China). WWF claimed to be the sole Australian producer of preserved mushrooms.

WWF alleged that preserved mushrooms were exported to Australia from China at prices less than their normal values and that the dumping has caused material injury to the Australian industry through:

- lost market share
- lost sales volume
- price undercutting
- price depression
- price suppression
- reduced profits and profitability
- under-utilisation of capacity
- reduced employment numbers.

Following examination of the applicant's claims, Customs considered that there appeared to be reasonable grounds for the publication of a dumping duty notice. Initiation of the investigation was announced in *The Australian* newspaper on 5 April 2005. The investigation was also notified in Australian Customs Dumping Notice No. 2005/20 and on the internet at <http://www.customs.gov.au>.

Customs examined exports of preserved mushrooms to Australia during the period 1 January 2004 to 31 December 2004 to determine whether dumping had occurred. Customs examined the Australian market from 1 July 1999 for injury analysis.

Customs is required to place on the public record within 110 days of initiation (unless the Minister extends the date) a statement of essential facts (SEF) that sets out the facts on which it proposes to base its recommendations to the Minister. For this investigation, the Minister granted a 20-day extension (to 13 August 2005) to the date by which the SEF must be placed on the public record.

Interested parties have 20 days to respond to issues raised in the SEF, that is by 5 September 2005. Customs is not obliged to have regard to any submissions made after that date if to do so would prevent the timely preparation of the report to the Minister.

Submissions should be limited to the issues of fact as outlined in this document. Because of the statutory time limit to make a report to the Minister, it will generally not be possible for Customs to consider new issues or facts raised at this stage.

Submissions should be sent to:

Director Operations 3  
Trade Measures Branch  
Australian Customs Service  
Customs House  
5 Constitution Avenue  
CANBERRA ACT 2601

Interested parties responding to the SEF must include a non-confidential version of their submission for placement on the public record. The confidential version of the submission must be clearly marked "In-Confidence".

The SEF should be read in conjunction with material on the public record. The public record contains:

- the SEF
- non-confidential submissions received from interested parties
- non-confidential versions of Customs reports dealing with normal values, export prices and material injury.

Any party wishing to examine the public record before lodging a submission in response to this SEF should contact the Trade Measures Office Management staff on 02 6275 6547.

All references in this SEF to sections of legislation, unless otherwise specified, are to the *Customs Act 1901*.

Customs will present its final recommendation to the Minister by 27 September 2005.

## 3 THE GOODS

### 3.1 Goods under consideration

The goods under consideration (GUC) are 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.

The application does not cover other species of mushrooms, including straw mushrooms, shiitake mushrooms, and oyster mushrooms.

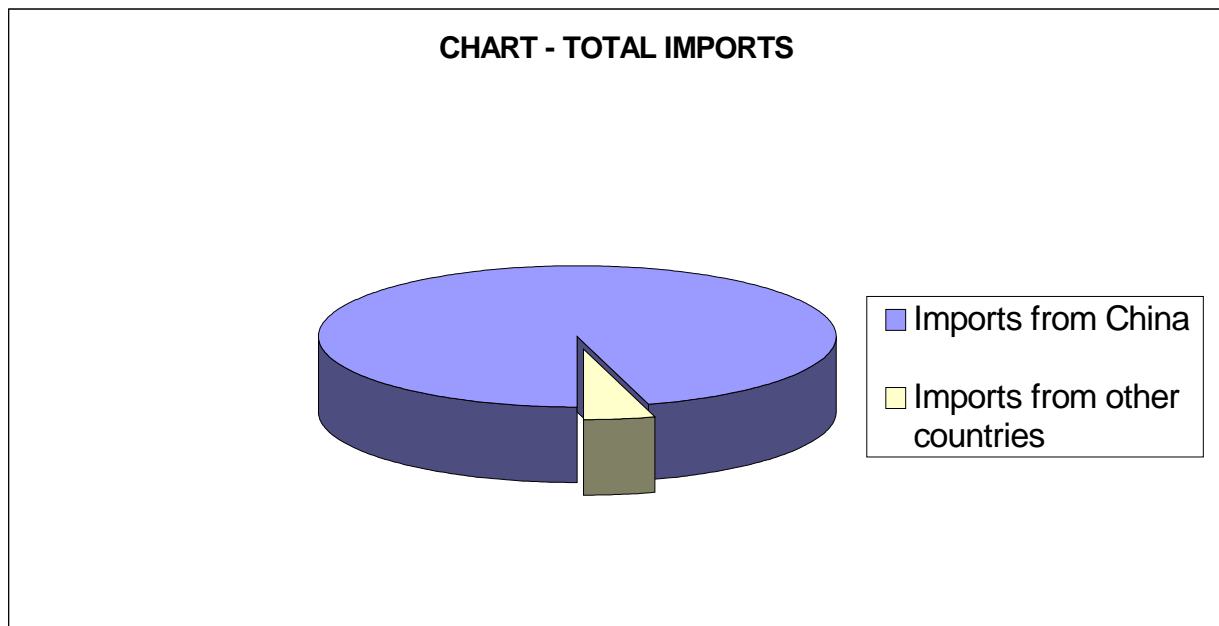
The GUC as classified in 2003.10.00, statistical codes 81 and 82 of the *Customs Tariff Act 1995*. The rate of duty is five per cent.

### 3.2 Imports

Using its commercial database and information provided by importers Customs calculated import statistics for preserved mushrooms as shown in the table below.

	2001	2002	2003	2004
China	86%	89%	92%	96%
Other countries	14%	11%	8%	4%

The following chart depicts the proportion of imports from China compared with other countries over the investigation period. This demonstrates the significant presence of Chinese importations in the Australian market.



### 3.3 Like goods

WFF stated in its application that the preserved mushrooms in containers that it produced at Cowra were like goods to the imported goods. The company said 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 as:

- cans ranging in size from 130 grams (g) to 2.8 kilograms (kg);
- pails in 10 kg and 20 kg sizes; and
- bags in 2.5 kg and 10 kg sizes.

WFF stated that its mushroom products competed with mushrooms in containers of similar types and sizes imported from China. Customs visited Cowra and observed the industry's production facilities and products.

In Customs' initiation report for this investigation, Customs concluded on the basis of information available to it at the time that the goods produced by WFF were like goods to the imported goods. Customs noted, however, that the goods produced by WFF were not identical to the imported goods, and that this issue would be examined further during the course of the investigation. To this end Customs placed an issues paper on its Internet website requesting submissions from interested parties on the issue of like goods.

Customs has subsequently received submissions addressing the like goods issues. In addition, Customs received feedback during its visits to interested parties. Non-confidential versions of these submissions, and reports on Customs' visits, are available on the public record.

Customs has not finalised its considerations of this issue and invites further submissions from interested parties in response to this SEF. Customs will consider any such responses, as well as submissions received to date, before finalising its position on the matter.

## **4 AUSTRALIAN INDUSTRY**

### **4.1 Produced in Australia**

Subsections 269T(2) and 269T(3) of the Act specify that for goods to be regarded as produced in Australia:

- they must be wholly or partly manufactured in Australia; and
- where the goods have been partly manufactured in Australia then at least one substantial process in the manufacture of the goods must be carried out in Australia.

At confidential attachment A-3.6 to the application WWF provided a description of its production process.

Customs visited the Cowra canning facility and observed the production process.

Customs was satisfied that preserved mushrooms are wholly produced in Australia by WWF.

### **4.2 Australian industry**

Subsection 269T(4) of the Act specifies that the Australian industry consists of the producer or producers of like goods in Australia.

WWF stated that it was the only producer of preserved mushrooms in Australia and, as such, comprised the Australian industry. Prior to November 2000, there was a second participant to the Australian industry. Windsor acquired this participant, Cowra Export Packers Limited (CEP), in November 2000.

WWF is wholly owned by Windsor Farm Foods Group Limited (Windsor), an unlisted Australian public company. Until November 2000, Windsor carried on its mushrooms operation at its cannery located at Windsor in NSW. After acquiring CEP, WWF closed its Windsor canning facility and moved these operations to CEP's production site at Cowra, NSW. Windsor subsequently expanded the Cowra facility.

During the investigation, Customs did not find any other Australian manufacturer of preserved mushrooms.

Customs is satisfied that WWF is the Australian industry producing like goods.

## 5 AUSTRALIAN MARKET

### 5.1 Market structure

The Australian market for preserved mushrooms is supplied by:

- production by WWF
- imports from China
- imports from other countries.

There are three market sectors - retailers, food service customers and industrial food processors.

Industrial users purchase large quantities of preserved mushrooms to be used in packaged foods. Food service customers include restaurants, take-away outlets and other corporate customers. Retail customers include the supermarket chains and independent grocery stores.

Customs understands that the retail sector typically buys containers up to 425g in size, the food service sector between 1.5kg to 3.0kg in size, and the industrial food processing sector 10kg and over.

Customs analysed the sales information provided to it by the industry and the exporters visited. Those exporters accounted for about half of the imports from China in 2004. The results, depicted in the following table, show that both the industry (mushrooms in butter sauce products) and importers (mushrooms in brine) sold to the retail sector. They also both sold to the food services sector (the industry sold mushrooms in brine as well as mushrooms in sauce). Only the Australian industry sold to the industrial sector (mushrooms in brine).

<b>Market Segments</b>			
		<b>Brine</b>	<b>Sauce</b>
<b>RETAIL</b>	<b>Up to 425 grams</b>	Imports	Industry
<b>FOOD SERVICE</b>	<b>1.5 kg to 3 kg</b>	Imports/Industry	Industry
<b>INDUSTRIAL</b>	<b>10 kg and over</b> Bags / Barrels / Pails	Industry	

Sales of containers up to 425 grams accounted for 82% of the industry's sales, with most of the balance of sales being container sizes 1.5kg to 3.0kg.

## **5.2 Market size**

Customs estimated the market size for the GUC using verified sales data from Australian industry and importers, and Customs' commercial database.

From the data available, Customs estimated the Australian market in 2004 to be about 7,100 tonnes.

## **6 THE DUMPING INVESTIGATION**

Dumping occurs when the export price of a product is less than its normal value. This chapter details Customs' investigations into whether preserved mushrooms were exported from China to Australia at dumped prices during the investigation period.

### **6.1 Domestic market situation**

When this investigation was initiated China was regarded as an economy in transition and subject to the relevant provisions under the Act. These requirements included that the exporters complete a supplementary exporter questionnaire addressing matters relevant to that situation. The Chinese exporters and producers that Customs visited completed the questionnaire, and non-confidential versions of those submissions were placed on the public record.

The Australian government subsequently granted China market-economy status. Notwithstanding this change, Customs examined, for purposes of s 269TAC(2)(a)(ii), information submitted in the questionnaires.

In particular, Customs found the following.

- Some exporters were found to have state ownership. However, there was no evidence that any national or provincial government officials occupied executive or senior management positions in these or the other exporters and producers visited by Customs. Customs was given an extract from Chinese company law that forbids government officials from holding such positions.
- Companies are required to obtain from the relevant registration body a business license that establishes the scope of its business. The license imposes a condition that the licensee must not operate outside its scope, otherwise the license may be revoked and the company no longer able to conduct business. Except for the obligation to conduct business in accordance with the Company Law of China and other laws, there are no other government influences over how the business is run, such as in the production, marketing or pricing of products. Article Five of the Company Law requires companies to operate independently, to be responsible for losses and profits, and to conduct business in accordance with market demand.
- All companies visited by Customs provided financial statements that were audited. All were reported to maintain accounting records in accordance with Chinese generally accepted accounting principles. While one company had a qualified audit report, Customs' inspection of accounting records during its verifications did not reveal any accounting treatments inconsistent with this claim.
- Producers claimed that there was no government control of major inputs, particularly mushrooms and containers (80% of the cost). Documentation viewed by Customs did not reveal any such control, Customs noting that producers generally had different cost structures and sourced inputs from different suppliers. An exception was salt, which is controlled by a state monopoly. However, salt is a minor cost in the production of preserved

mushrooms. Chinese producers also said that some utility costs like electricity and water may also be supplied by state owned enterprises, but once again the cost of these inputs is minor.

In summary, Customs did not find any evidence that indicated 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.

## **6.2 Cooperation**

In its application, WWF stated that it did not have information that identified exporters of the GUC to Australia. The ABS data it had obtained revealed the quantity of imports from China, but not the names of the exporters. From its own research the industry nominated China Foods, Cereal & Oil Company as a major exporter, and also suggested that exporters that had been identified in the recent U.S. Administration's review of normal values would be likely exporters to Australia. The applicant nominated four importers.

Customs' researched its commercial database to identify importers and exporters of the GUC during the investigation period.

Customs identified 25 exporters and/or manufacturers of the GUC and sent exporter questionnaires to each of them. Completed submissions were received from seven companies, and all were visited.

Customs identified a large number (more than 30) of importers of the GUC, but many imported very small volumes. Importer questionnaires were sent to all identified importers. Because of the large number of importers Customs only visited the largest 14 importers, which were responsible for more than 90% of imports from China.

## **6.3 Xiamen Gulong Import & Export Co Ltd**

### **6.3.1 Export price**

Xiamen Gulong Import & Export Co Ltd (Xiamen Gulong), a Chinese trading company, sold preserved mushrooms to three customers in Australia during the investigation period. Customs visited Xiamen Gulong, two of its Chinese suppliers and two of the Australian customers.

Having regard to all of the circumstances surrounding Xiamen Gulong's sales of preserved mushrooms to each of the Australian customers, Customs considers that Xiamen Gulong retained control of the export transactions and management of the goods to the point of export, and made the necessary arrangements to ensure that the goods were exported to Australia. Bills of lading applicable to the export transactions identified Xiamen Gulong as the 'exporter'. Customs was satisfied that:

- Xiamen Gulong was the exporter in all cases, and
- the Australian customers were the importers.

Customs concluded that:

- the goods were exported to Australia other than by the importers;

- the goods were purchased by the importers from the exporter; and
- the purchases of the goods were arms length transactions (in terms of s. 269TAA).

Therefore, Customs established export prices under s. 269TAB(1)(a) using the price paid by the importers, less any charges arising after exportation of the goods.

### **6.3.2 Normal value**

Xiamen Gulong did not sell preserved mushrooms in China. Customs established, however, that another company, Xiamen Cannery Factory (Xiamen Cannery), a producer of preserved mushrooms in China, did sell in the domestic market. Customs visited this company and verified the domestic sales and cost information it had provided to the investigation.

Customs found that of the different container sizes/content types of preserved mushrooms exported to Australia by Xiamen Gulong only three of them could be matched to goods of similar size/content sold in the domestic market. For the others, no similar goods were sold in the domestic market.

For the three exported goods for which there were domestic sales of similar goods, Customs found that there were sufficient domestic sales of those goods that were arms length transactions, in the ordinary course of trade, and suitable for comparison to the exported goods. Customs therefore determined normal values under s. 269TAC(1) of the Act based on prices paid in respect of those domestic sales.

For the other exported goods, Customs was satisfied that there were no domestic sales that were relevant for determining normal value under s. 269TAC(1). Therefore Customs determined normal value under s. 269TAC(2)(c) in most instances. A small volume of goods exported to Australia was sourced from a producer in China who did not cooperate with the investigation, and therefore costs of production were not available. In these instances, normal values were determined under s. 269TAC(6).

In terms of s. 269TAC(8) and (9) of the Act, certain adjustments 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. Adjustments were also made for physical differences, where applicable.

## **6.4 Jiangsu Cereals, Oils and Foodstuffs**

### **6.4.1 Export price**

During the investigation period, Jiangsu Cereals, Oils and Foodstuffs Import Export Group Corp. (Jiangsu COF), a Chinese trading company, sold preserved mushrooms to a buyer located in a country other than Australia or China, who on-sold the goods to an Australian customer. Customs visited Jiangsu COF, the Chinese producers who supplied the preserved mushrooms to Jiangsu COF, and the Australian customer.

Having regard to all the circumstances, Customs considers that Jiangsu COF had control of the export transactions to the point of export and made the necessary arrangements to ensure that the goods were exported to Australia. Bills of lading applicable to the transactions identified Jiangsu COF as the 'shipper'. Customs is satisfied that:

- Jiangsu COF was the exporter of the goods to Australia, and
- the Australian customer was the importer.

Customs concluded that:

- the goods were exported to Australia other than by the importer;
- the goods were not purchased by the importer from the exporter; and
- the purchases of the goods were arms length transactions (in terms of s. 269TAA).

Therefore, export prices for these sales cannot be established under s. 269TAB(1)(a) or s. 269TAB(1)(b) of the Act. As Customs is aware of all the circumstances of the exportations Customs established export prices under s. 269TAB(1)(c) using Jiangsu COF invoiced export prices, less any charges arising after exportation of the goods.

#### **6.4.2 Normal value**

Jiangsu COF did not sell preserved mushrooms in China. Customs established, however, that another company, Xiamen Cannery, a producer of preserved mushrooms in China, did sell in the domestic market. Customs visited this company and verified domestic sales and cost information it provided to the investigation.

Customs found that of the different container sizes/content types of preserved mushrooms exported to Australia by Jiangsu COF only some could be matched to a similar good sold in the domestic market. For the others, no similar goods were sold in the domestic market.

For the exported goods for which there were domestic sales of similar goods, Customs found that there were sufficient domestic sales of those goods that were arms length transactions, in the ordinary course of trade, and suitable for comparison to the exported goods. Customs therefore determined normal values under s. 269TAC(1) of the Act based on prices paid in respect of those domestic sales.

For the other exported goods, Customs was satisfied that there were no domestic sales that were relevant for determining normal value under s. 269TAC(1). Therefore Customs determined normal value under s. 269TAC(2)(c).

In terms of s. 269TAC(8) and (9) of the Act, certain adjustments 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, 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.

## 6.5 Fujian Zishan Group Co Ltd

### 6.5.1 Export price

Fujian Zishan Group Co Ltd (Fujian Zishan), a Chinese producer and exporter of preserved mushrooms, sold the GUC to an Australian trading company, who sold the goods to customers in Australia. Two of these customers entered the goods they had purchased. Customs visited Fujian Zishan, the Australian trader, and the two customers (of the trader) who had entered the goods.

Having regard to all of the circumstances surrounding Fujian Zishan's sales of preserved mushrooms Customs considers that Fujian Zishan retained control of the export transactions and management of the goods to the point of export, and made the necessary arrangements to ensure that the goods were exported to Australia. Bills of lading applicable to the export transactions identified Fujian Zishan as the 'exporter'. Customs is satisfied that:

- Fujian Zishan was the exporter in all cases, and
- the Australian trader and the two Australian customers who entered the goods were the importers.

Customs concluded that, for goods imported by the trader:

- the goods were exported to Australia other than by the importer;
- the goods were purchased by the importer from the exporter; and
- the purchases of the goods were arms length transactions (in terms of s. 269TAA).

Therefore, 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.

For goods imported by the customers of the Australian trader Customs concluded:

- the goods were exported to Australia other than by the importer;
- the goods were not purchased by the importer from the exporter; and
- the purchases of the goods were arms length transactions (in terms of s. 269TAA).

Therefore, export price for these sales cannot be established under s. 269TAB(1)(a) or 269TAB(1)(b) of the Act. As Customs is aware of all the circumstances of the exportations, 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

### 6.5.2 Normal value

Fujian Zishan did not sell preserved mushrooms in China's domestic market during the investigation period. Customs established, however, that another company, Xiamen Cannery, a producer of preserved mushrooms in China, did sell in the domestic market. Customs visited this company and verified domestic sales and cost information it provided to the investigation.

Customs found that of the different container sizes/content types of preserved mushrooms exported to Australia by Fujian Zishan none of them could be matched to goods of similar size/content sold in the domestic market.

Customs was satisfied that there were no domestic sales that were relevant for determining normal value under s. 269TAC(1). Therefore Customs determined normal value under s. 269TAC(2)(c).

In terms of s. 269TAC(9) of the Act, certain adjustments were made in the normal value calculations to ensure fair comparisons with export prices. Negative adjustments were made for domestic inland transport; exhibition and advertising; domestic sales expenses. Positive adjustments were made for export inland freight, terminal handling charges, and VAT price effect.

## **6.6 Fujian Provincial Cereals, Oils & Foodstuffs Imp/Exp Corporation Xiamen Company**

### **6.6.1 Export price**

Fujian Provincial Cereals, Oils & Foodstuffs Imp/Exp Corporation Xiamen Company (COFCO), a Chinese trading company, sold preserved mushrooms to a trader in Australia 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 visited COFCO, COFCO's Chinese supplier, the Australian trader and the trader's customer who had entered the goods.

Having regard to all of the circumstances surrounding COFCO's sales of preserved mushrooms to Australia, Customs considers that COFCO retained control of the export transactions and management of the goods to the point of export, and made the necessary arrangements to ensure that the goods were exported to Australia. Bill of lading documents applicable to the export transactions identified COFCO as the 'exporter'. Customs was satisfied that:

- COFCO was the exporter in all cases, and
- the Australian trader, and the customer who entered the goods it bought from the trader, were the importers.

Customs concluded that, for goods imported by the Australian trader:

- the goods were exported to Australia other than by the importer;
- the goods were purchased by the importer from the exporter; and
- the purchases of the goods were arms length transactions (in terms of s. 269TAA).

Therefore 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.

For goods imported by the Australian trader's customer:

- the goods were exported to Australia other than by the importer;
- the goods were not purchased by the importer from the exporter; and

- the purchases of the goods were arms length transactions (in terms of s. 269TAA).

Therefore, export price for these sales cannot be established under s. 269TAB(1)(a) or 269TAB(1)(b) of the Act. As Customs is aware of all the circumstances of the exportations, Customs established export prices under s. 269TAB(1)(c) using COFCO's invoiced prices, less any charges arising after exportation of the goods.

### **6.6.2 Normal value**

COFCO did not sell preserved mushrooms in China. Customs established, however, that another company, Xiamen Cannery, a producer of preserved mushrooms in China, did sell in the Chinese market. Customs visited this company and verified domestic sales and cost information it provided to the investigation.

Customs found that of the different container sizes/content types of preserved mushrooms exported to Australia by COFCO none of them could be matched to goods of similar size/content sold in the domestic market.

Customs was satisfied that there were no domestic sales that were relevant for determining normal value under s. 269TAC(1). Therefore Customs determined normal value under s. 269TAC(2)(c).

In terms of s. 269TAC(9) of the Act, certain adjustments 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, 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.

## **6.7 Xiamen Fortune Import & Export Co Ltd**

### **6.7.1 Export price**

Xiamen Fortune Import & Export Co Ltd (Xiamen Fortune), a Chinese trading company, sold preserved mushrooms to a trader in Australia 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.

Having regard to all of the circumstances surrounding Xiamen Fortune's sales of preserved mushrooms to each of the Australian buyers, Customs considers that Xiamen Fortune retained control of the export transactions and management of the goods to the point of export, and made the necessary arrangements to ensure that the goods were exported to Australia. Bills of lading applicable to the export transactions identified Xiamen Fortune as the 'exporter'. Customs was satisfied that:

- Xiamen Fortune was the exporter in all cases; and
- the Australian trader, and the customers who had entered the goods were the importers of the goods.

Customs concluded that, for goods imported by the trader:

- the goods were exported to Australia other than by the importer;
- the goods were purchased by the importer from the exporter; and
- the purchases of the goods were arms length transactions (in terms of s. 269TAA).

Therefore, 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.

For goods imported by the trader's customers Customs concluded:

- the goods were exported to Australia other than by the importer;
- the goods were not purchased by the importer from the exporter; and
- the purchases of the goods were arms length transactions (in terms of s. 269TAA).

Therefore, export price for these sales cannot be established under s. 269TAB(1)(a) or 269TAB(1)(b) of the Act. As Customs is aware of all the circumstances of the exportations, 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

### **6.7.2 Normal value**

Xiamen Fortune did not sell preserved mushrooms in China. Customs established, however, that another company, Xiamen Cannery, a producer of preserved mushrooms in China, did sell in the Chinese market. Customs visited this company and verified the domestic sale and cost information it provided to the investigation.

Customs found that of the different container sizes/content types of preserved mushrooms exported to Australia by Xiamen Fortune none of them could be matched to a good of similar size/content sold in the domestic market.

Customs was satisfied that there were no domestic sales that were relevant for determining normal value under s. 269TAC(1). Therefore Customs determined normal value under s. 269TAC(2)(c).

In terms of s. 269TAC(9) of the Act, certain adjustments 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, 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.

## **6.8 Dumping margins**

Customs found that dumping margins for the five exporters visited by Customs fell within the range –5% to 25%.

## **7 ECONOMIC CONDITION OF THE INDUSTRY**

### **7.1 Applicant's injury claims**

WWF claimed that dumping caused material injury in the form of:

- lost market share
- lost sales volume
- price undercutting
- price depression
- price suppression
- reduced profits and profitability
- under-utilization of capacity
- reduced employment numbers.

### **7.2 Customs assessment**

The industry claimed that material injury from dumped imports from China began in the second half of 1999. Where possible, Customs examined data from 1999 to 2004 to assess injury. However, for some analyses the data was not available.

The following assessment is based on industry and other data verified by Customs.

#### **7.2.1 Price effects**

##### Price undercutting

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

Australian industry claimed that its prices were being undercut by dumped imports of Chinese mushrooms. Customs examined price information provided by the Australian industry and importers in considering this claim. Customs assessed information at the wholesale level as this is the level at which the applicant, WWF, sold its goods in competition with imports.

WWF sold preserved mushrooms in a variety of sauces in different can sizes (refer section 4.3 of this SEF). The company claimed that price undercutting was particularly occurring in the 220g and 410g can sizes, its largest selling varieties.

Customs compared the selling prices of the five largest importers with the Australian industry's selling prices during the investigation period. Customs observed that most imported product was not an identical size to that sold by the Australian industry. For example, the Australian produced 220g can was compared with the imported 184g and 190g can sizes, whilst the Australian produced 410g can was compared with the imported 400g, 415g, and 425g can sizes. None of the importers imported all sizes.

For the 220g size, Customs found that one importer undercut the industry's prices by up to 37% over the investigation period, while another importer's prices undercut the industry by between 7% and 19% over the period.

For the 410g can, all five importers examined imported preserved mushrooms in a similar sized container. Prices for two of the importers were above those of the industry, however three of the importers had prices that were well below the prices of the industry – one by up to 34%, another by up to 27% and the third up to 24% over the investigation period.

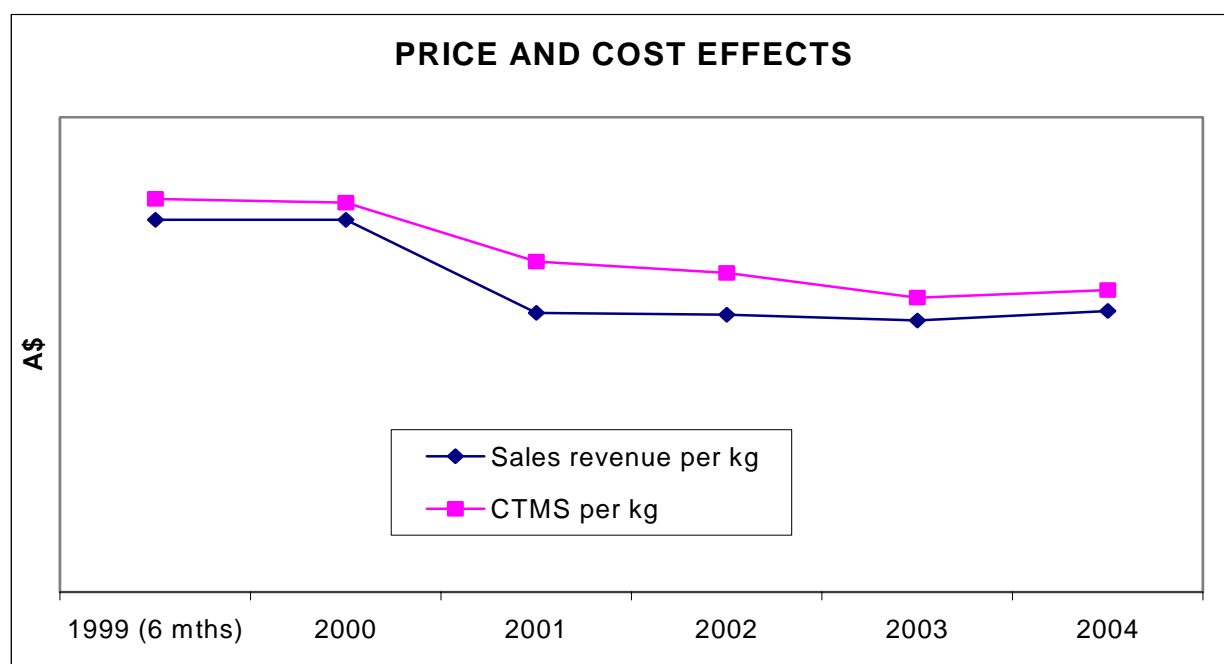
For other sizes, Customs found significant price undercutting when comparing prices of the imported A10 (2.8kg to 2.9kg) size product to those of the Australian industry (for both its mushrooms in brine and mushrooms in butter sauce products), but no undercutting for the 310g product.

The 220g, 410g and A10 size containers are the industry's largest selling products. Customs is satisfied that the industry suffered injury from price undercutting.

### Price depression

Price depression occurs when prices are reduced for some reason.

The chart below shows average selling prices for the industry from the second half of 1999 to 2004 inclusive.



Average sales revenue per kilogram declined significantly in 2001. It 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 is satisfied the industry suffered injury from price depression.

### Price Suppression

Price suppression occurs when the margin between a company's costs and prices is reduced (or, if in a loss situation, increased).

The price and cost effects chart above illustrates that in 2001 the average CTMS per kilogram of preserved mushrooms fell significantly (by about 16%) following WWF's purchase of CEP in late 2000. The CTMS continued to decline slightly for the next two years before marginally increasing in 2004.

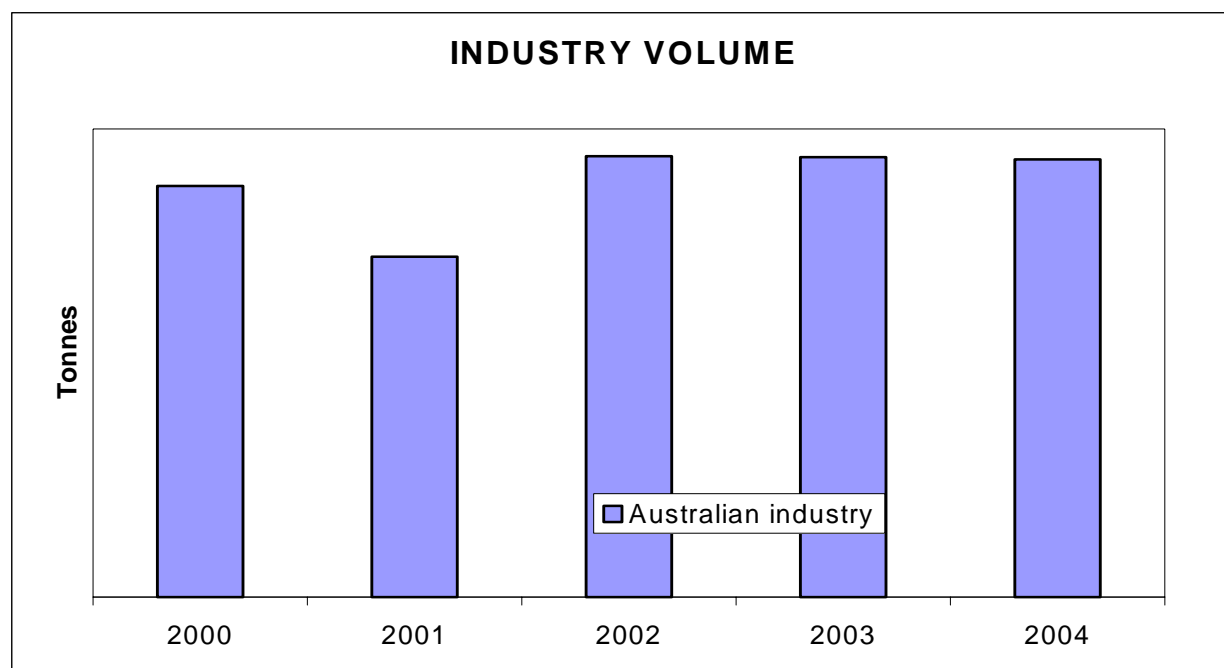
Although the unit CTMS was above the unit sales revenue for the whole period, the gap widened considerably in 2001. The gap declined slightly in each of the next three years and by 2004 was almost back to the level of 2000. WWF commented that in 2004 this reduction in the gap between cost and price was misleading as there were significant cost increases in that year, especially in can prices, which ordinarily would have increased the unit cost and led to WWF raising its prices to compensate. However it said that because of pricing pressure from Chinese imports it was unable to do this (increase prices) and instead negotiated a 'temporary' reduction in mushroom prices with its suppliers to offset the other cost pressures.

Customs is satisfied the industry suffered injury from price suppression.

## 7.2.2 Volume effects

### Sales volume

The industry's sales volumes are depicted in the chart below. Note that figures for 2000 includes an estimate by Customs for CEP's production.

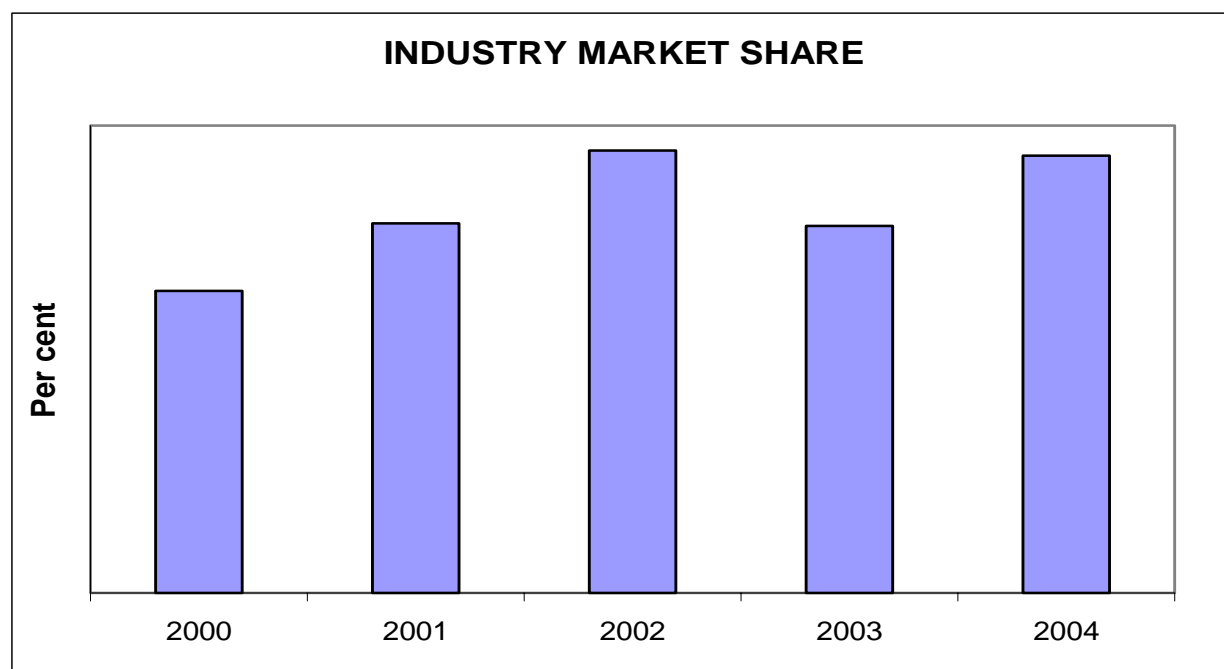


The industry's sales volumes dipped sharply in 2001. Otherwise the industry's sales volumes remained relatively steady across the period. Customs examined the sales volume pattern for the three highest volume selling product lines and found that the sales pattern for each followed a similar pattern to that for the combined business.

Customs is not satisfied the industry suffered injury from loss of sales volume.

Market share

Industry market share for the period 2000 to 2004 inclusive is graphed below.



The chart shows that the industry's market share climbed in 2001 and 2002. It reduced considerably in 2003, back to the levels of 2001, but recovered almost all the loss in 2004.

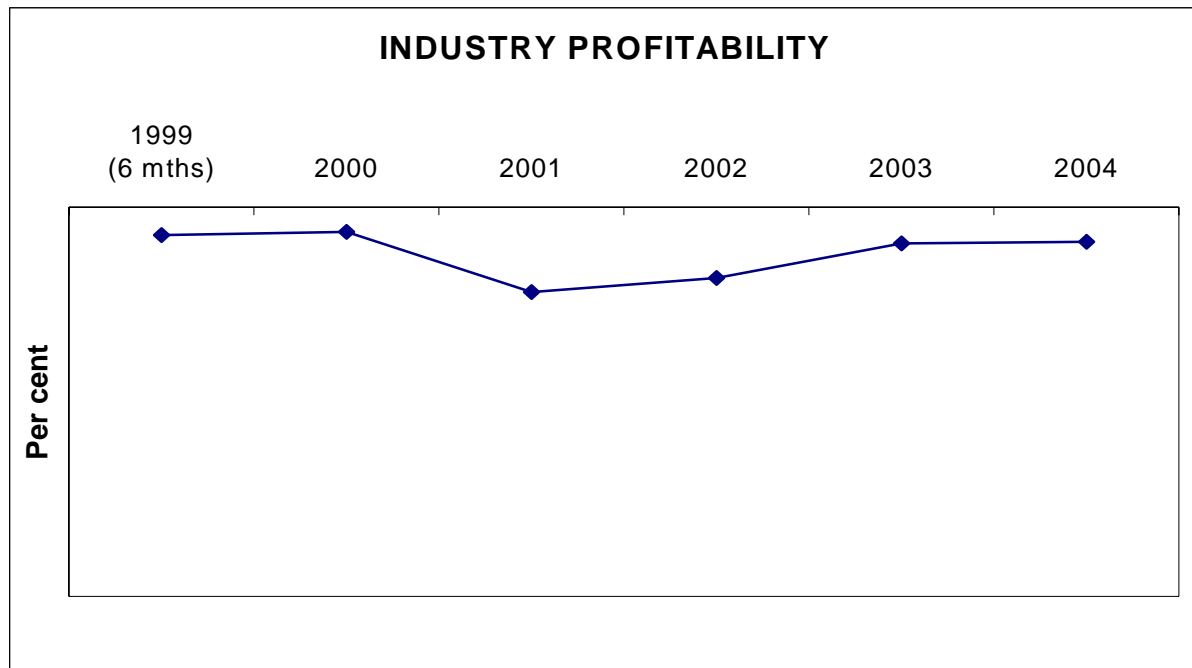
The industry suffered loss of market share in 2003 but across the period from 2000 to 2004 its market share rose. Customs is not satisfied that the industry suffered injury from loss of market share.

### 7.2.3 Profit and profitability

Profitability relates to net profit as a percentage of sales revenue.

The following chart is based on data provided by WFF. For 1999, the profitability is based on the last six months data. The data in 1999 and 2000 does not include financial information from CEP, and therefore the profitability shown for those years is based on WFF's results.

WFF provided financial statements for the 1998 and 1999 financial years that showed that the preserved mushroom business was profitable in those years, although unprofitable in the second half of 1999 (as the chart depicts).



The chart demonstrates that WFF's preserved mushrooms business has been unprofitable for the five and a half years depicted (the X-axis represents zero profitability). WFF commented that the anticipated improvement in profit and profitability that was expected following the industry rationalisation in 2000 did not occur because of imported goods from China being sold at dumped prices.

Customs considers the industry suffered injury from reduced profits and profitability.

#### **7.2.4 Other relevant economic factors**

##### Capacity utilisation

WFF transferred its preserved mushroom production facilities to Cowra following the industry rationalisation at the end of 2000. Since then, the company has been operating at about 25% of capacity. This percentage is based on total operational capacity of the plant, which exceeds the current size of the Australian market. Hence the company could supply the total Australian market.

Customs is satisfied the industry suffered injury from capacity under-utilisation.

##### Employment and wages

WFF provided information that showed that its workforce declined by about 20% between 2002 and 2004. The company does not have a dedicated workforce on preserved mushrooms; instead employees work interchangeably on preserved mushrooms and other areas, depending on workflows and priorities. Therefore the company was unable to identify job losses that could be directly associated with the mushrooms business.

WFF indicated, however, that should it be forced to cease production of preserved mushrooms there would be a loss of 20-25 full time jobs because the remaining

businesses could not support all of the present workforce. The company would also incur significant redundancy costs.

While Customs considers that the number of employees declined at WFF between 2002 and 2004, Customs was not satisfied that the part of the business comprising the preserved mushroom industry suffered injury in terms of numbers employed.

#### Other factors

Customs sought information from the industry in respect of injury factors, other than those identified above, in Appendix A7 in the application and later during the verification visit. WFF stated that due to its business mix it could not accurately determine measurements that would quantify other injury factors specifically for the preserved mushroom business.

### **7.3 Conclusion**

Customs is satisfied on the basis of verified information that the Australian preserved mushroom industry has suffered injury from:

- price undercutting;
- price depression;
- price suppression;
- reduced profits and profitability; and
- under-utilisation of capacity.

## **8 CAUSE(S) OF MATERIAL INJURY**

### **8.1 Dumping**

#### **8.1.1 Applicant's claim**

WFF claimed that the cause of its injury since 1999 was imports of Chinese preserved mushrooms being sold to Australia at dumped prices. WFF considered that Chinese exports to Australia prior to 1999 were also likely to have been dumped, depressing local prices below what they may otherwise have been; however the industry was still able to operate profitably, albeit with small margins. From 1999, WFF claimed, Chinese pricing became more injurious.

WFF stated that in 2000, the Australian preserved mushrooms industry, comprising WFF and CEP, agreed to rationalise their operations in order to compete effectively with Chinese imports. WFF purchased CEP and subsequently merged its preserved mushrooms operations with the Cowra operations, intending to achieve scale efficiencies. WFF's Appendix A-6 demonstrates that these efficiencies occurred with a 10% reduction in WFF's average per kilogram cost to make and sell in 2001 compared with the previous year.

However the expected improvements in profitability did not occur because, WFF claimed, of the significant decline in prices of imports from China from 1999. WFF stated that it began to lose business, as reflected by the loss in sales volumes in 2001, and had to lower its prices to match the price of Chinese imports to retain sales. Consequently, the expected improvement in profitability from the industry rationalisation never materialised.

### **8.2 Other possible causes of injury**

During the investigation, interested parties described other causes of injury to the Australian industry. These are discussed below.

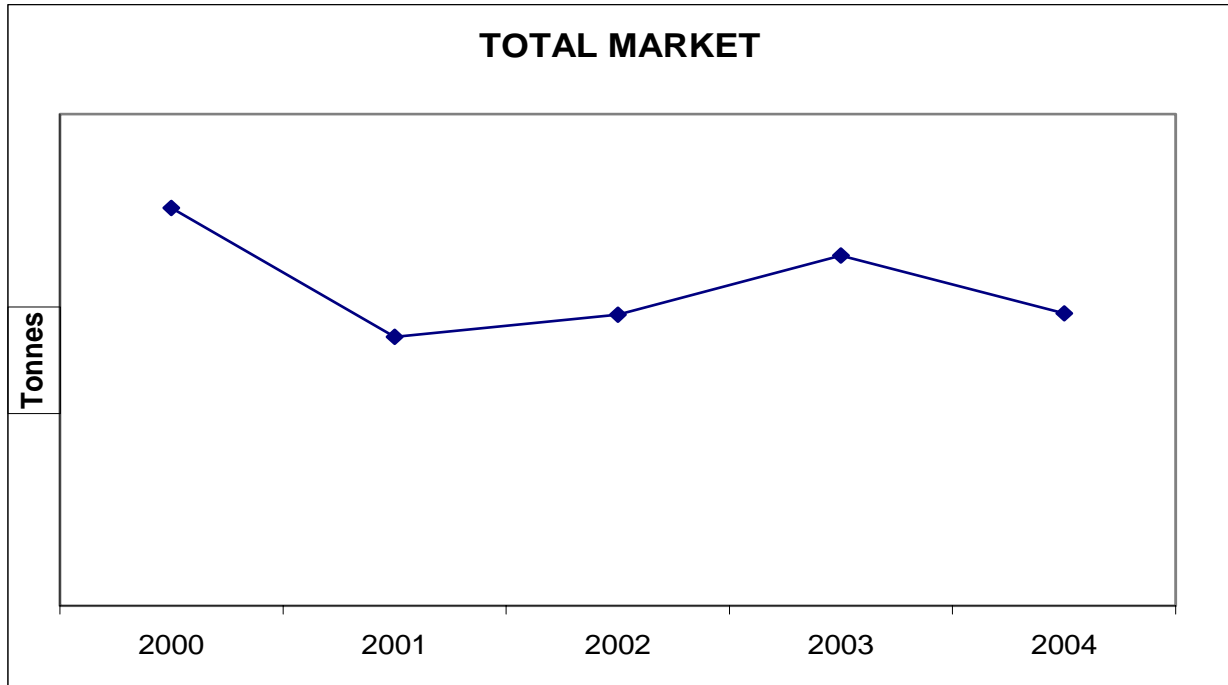
#### **8.2.1 Mature and declining market**

A reason advanced for the industry's poor performance was that the market for preserved mushrooms, particularly mushrooms in sauce, was mature and declining. Tastes have changed, and middle-aged and younger consumers were not seen as buyers of preserved mushrooms in sauce. Consumers who continued to purchase them were generally older people who were raised in times when mushrooms in containers were often the only way to obtain mushrooms and dishes such as buttered mushrooms on toast and buttered mushrooms on steak were popular. Nowadays there are many alternative condiments and snack foods preferred by consumers.

It was said the ready supply and availability of fresh mushrooms was also significantly impacting on the preserved mushroom market. To retain existing consumers of preserved mushrooms, the industry has had to keenly price its products to encourage customers not to change.

Most interested parties were of the view that the market for mushrooms in sauce will continue to decline.

Using data provided by the industry, importers and Customs' commercial database, Customs estimated the market. The result is depicted in the following chart.



The chart confirms a decrease in the market in 2001 from 2000. It has remained relatively steady since then. Except for 2003, the industry's sales (refer the chart in section 8.2.2) have followed a similar trend.

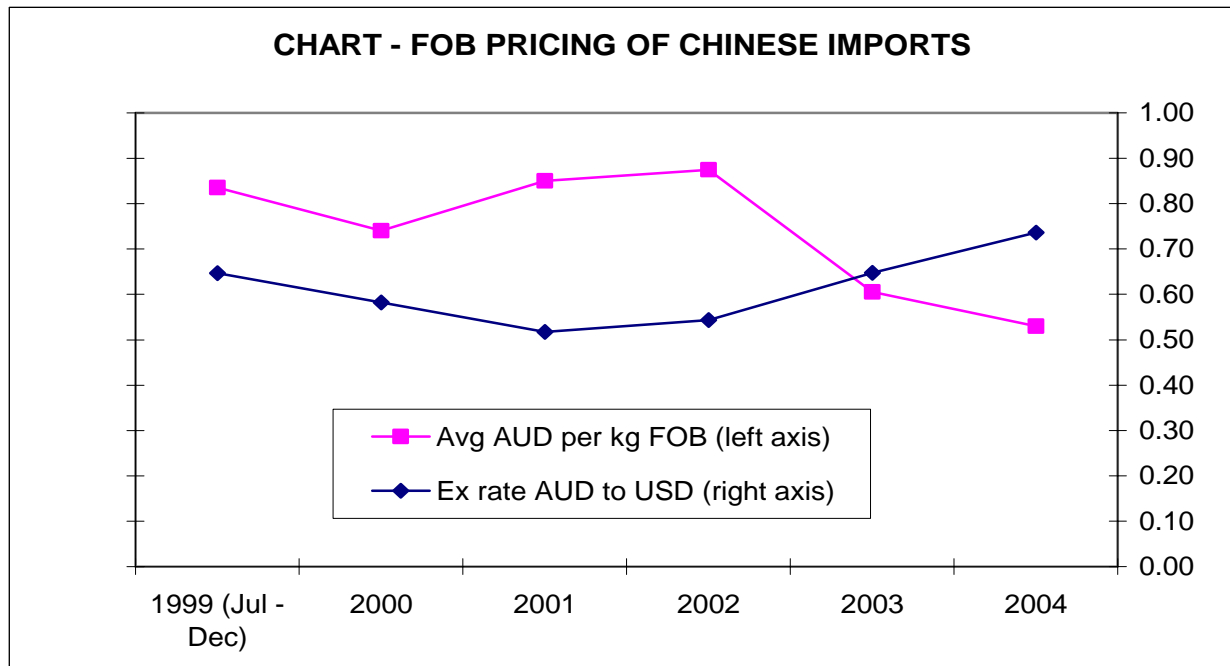
### 8.2.2 Retailer concentration

It was claimed that retailer concentration was causing much of the industry's problem. Retailing in Australia is dominated by a small number of large supermarket chains that exert substantial pressure on suppliers to keep their (the suppliers') selling prices low. The supplier, if it wants to sell to these large chains, often must be a price-taker because if the supplier does not co-operate the retailer will source the goods from another supplier or substitute similar goods.

### 8.2.3 Exchange rate movements

Most sales from China are conducted in USD and in recent years the Australian dollar has appreciated significantly against the USD. Some interested parties claimed that it was this exchange rate movement that has resulted in cheaper priced imports, not dumping.

Using its commercial database, Customs examined the relationship between average AUD FOB unit prices from 1999 (half year) to 2004 and movements in the exchange rate. The results are shown in the following chart.



Sales of preserved mushrooms to Australia are negotiated in USD. The AUD appreciated against the USD by about 13% between 1999 and 2004. However, the decline in the average AUD FOB unit price across this period was about 36%. This suggests that while exchange rate movements between 1999 and 2004 may have contributed to cheaper import prices, there were also other causes for the decrease in import prices.

## **9 NON-INJURIOUS PRICE**

Dumping duties may be applied where it is established that dumped imports have caused or threaten to cause injury to the Australian industry producing like goods. The level of dumping duty cannot exceed the margin of dumping, but a lesser duty may be applied if it is sufficient to remove the injury. This lesser duty provision is contained in the World Trade Organisation Anti-Dumping agreement and s. 8(5A) of the *Customs Tariff (Anti-Dumping) Act 1975*.

The non-injurious price (NIP) provides the mechanism whereby this lesser duty provision is given effect; it is the price that would be sufficient to remove the injury caused to the Australian industry by the dumping. The NIP is defined in s. 269TACA.

Anti dumping is based on FOB prices in the country of export. Therefore a NIP is calculated in FOB terms for the country of export.

### **9.1 Unsuppressed selling price**

Customs generally derives the NIP by first establishing a price at which the local industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the unsuppressed selling price (USP).

Customs' preferred approach to establishing USPs observes the following hierarchy:

1. industry selling prices at a time unaffected by dumping;
2. constructed industry prices – industry CTMS plus profit; or
3. selling prices of un-dumped imports.

Having calculated the USP, Customs then calculates a NIP by deducting the costs incurred in getting the goods from the export FOB point (or another point if appropriate) to the relevant level of trade in Australia. The deductions normally include overseas freight, insurance, into store costs and amounts for importer expenses and profit.

### **9.2 Customs consideration of USP & NIP**

The Australian industry submitted that the industry's selling prices at a time unaffected by dumping would be an appropriate basis for the calculation of the USP. The industry suggested that 1999/2000 prices could be used as the price base year. These prices would then be adjusted each year to reflect annual inflationary trends in the market (using the Consumer Price Index).

Should it be necessary to calculate a USP and NIP, Customs proposes to adopt this approach (subject to responses to this SEF).