



CUSTOMS ACT 1901 - PART XVB

**CONSIDERATION REPORT
NO. 288**

**APPLICATION FOR REVIEW OF
ANTI-DUMPING MEASURES IN RELATION TO**

PRESERVED MUSHROOMS

**EXPORTED FROM
THE PEOPLE'S REPUBLIC OF CHINA**

27 April 2015

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PUBLIC RECORD

Abbreviation / short form	Full reference
ACBPS	Australian Customs and Border Protection Service
ADN	Anti-Dumping Notice
China	The People's Republic of China
CON 288	Consideration Report No. 288
GlobalCo	Global Procurement Pty Ltd
Jiangsu COF	Jiangsu Cereals, Oils & Foodstuff Import Export Group
REP 99	Trade Measures Report No. 99
REP 99A	Trade Measures Report No. 99A
REP 164	Trade measures Report No. 164
REP 166	Trade Measures Report No. 166
TCO	Tariff Concession Orders
the Act	<i>Customs Act 1901</i>
the Commission	Anti-Dumping Commission
the Commissioner	Commissioner, of the Anti-Dumping Commission
the goods	the goods the subject of the review application (also referred to as the goods under consideration or GUC)
Windsor Farm	Windsor Farm Foods Pty Ltd
Xiamen Gulong	Xiamen Gulong Import & Export Co., Ltd

2 Summary and recommendations

This Consideration Report (CON 288) provides the results of the Anti-Dumping Commission's (the Commission's) consideration of an application lodged by Global Procurement Pty Ltd (GlobalCo) for the review of the anti-dumping measures that apply to preserved mushrooms¹ exported to Australia from the People's Republic of China (China).

GlobalCo has applied for a review of the anti-dumping measures on the basis that the measures are no longer warranted in relation to preserved mushrooms exported to Australia from China. The current anti-dumping measures in place apply to certain exporters of preserved mushrooms from China. The current measures are due to expire on 13 January 2016.

GlobalCo's application is based on its claims that the voluntary administrators of Australia's sole manufacturer of preserved mushrooms, Windsor Farm Foods Pty Ltd (Windsor Farm), announced on 12 March 2013 that the company had ceased manufacturing at its Cowra facility (canning operation for preserved mushrooms) effective immediately. Further, the application has provided the Administrators annual report to creditors on 4 August 2014, updating on the progress of the liquidation.

2.1 Recommendation

The Commission recommends that the Anti-Dumping Commissioner (Commissioner) decide not to reject GlobalCo's application for a review seeking the revocation of the anti-dumping measures (dumping duty notice) as they apply to certain exporters from China.

If the Commissioner accepts this recommendation, to give effect to that decision, the Commissioner must publish the notice at **Non-Confidential Attachment 1** indicating that it is proposed to review the measures covered by the application.

GlobalCo has not applied for a review of the variable factors relevant to the measures. As such the review will only examine whether the measures are no longer warranted for preserved mushrooms exported to Australia from China.

2.2 Application of law to facts

Division 5 of Part XVB of the *Customs Act 1901* (the Act)² sets out, among other things, the procedures to be followed by the Commissioner in dealing with an application for the review of measures.

The Division empowers the Commissioner to reject or not reject an application for the review of anti-dumping measures.

2.3 Findings and conclusions

The Commission has examined the application and, in accordance with subsection 269ZC(2), is satisfied that:

¹ The full description of the goods subject to the dumping duty notice is at section 3.2 of this report.

² A reference to a division, section or subsection in this report is a reference to a provision of the Act, unless otherwise specified.

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- the application complies with the requirements of section 269ZB of the Act (as set out in section 3 of this report); and
- there appear to be reasonable grounds for asserting that the anti-dumping measures are no longer warranted (as set out in section 4 of this report).

Accordingly, the Commission recommends that the Commissioner does not reject the application and that a review of the anti-dumping measures applying to preserved mushrooms be initiated.

3 Background

On 7 April 2015, GlobalCo, an importer of preserved mushrooms from China, lodged an application requesting a review of the anti-dumping measures claiming that the measures are no longer warranted for preserved mushrooms exported to Australia from China.

3.1 Existing measures

Anti-dumping measures currently exist for all exporters of preserved mushrooms from China other than by Jiangsu Cereals, Oils & Foodstuffs Import/Export Group Corp (Jiangsu COF), and Xiamen Gulong Import & Export Co., Ltd (Xiamen Gulong).

On 5 April 2005, the Australian Customs and Border Protection Service (ACBPS) initiated an investigation into preserved mushrooms exported from China, following an application by Windsor Farm.

The then Minister for Justice and Customs accepted the ACBPS recommendation in Trade Measures Report No. 99 (REP 99) that anti-dumping measures be imposed on the goods exported from China other than by Jiangsu COF. The Minister published a dumping duty notice, on 12 January 2006, for preserved mushrooms exported to Australia from China other than by Jiangsu COF.

The Minister's decision was the subject of a reinvestigation following a review by the Trade Measures Review Officer. On 9 November 2006 the Minister accepted the ACBPS recommendation in Trade Measures Report 99A (REP 99A) that anti-dumping measures be imposed on the goods exported from China other than by Jiangsu COF and Xiamen Gulong. The Minister published a dumping duty notice, on 21 November 2006, for preserved mushrooms exported to Australia from China other than by Jiangsu COF and Xiamen Gulong.

The anti-dumping measures were originally due to expire on 12 January 2011.

On 28 June 2010, the ACBPS initiated a continuation inquiry following the consideration of an application by Windsor Farm. On 21 December 2010, the then Minister for Home Affairs accepted the recommendation of the ACBPS that the anti-dumping measures be continued for a further five years.

The current anti-dumping measures are due to expire on the 13 January 2016.

A review of anti-dumping measures was also initiated by ACBPS on 13 September 2010, following the consideration of an application made by Xiamen fortune Imp & Exp Co., Ltd (Xiamen Fortune) on behalf of itself and Fujian Zishan Group Co., Ltd (Fujian Zishan). The then Minister for Home Affairs accepted the ACBPS recommendations outlined in Trade Measures Report No. 166 (REP 166), that the dumping notice in respect of preserved mushrooms exported from China is taken to have effect, in relation to exporters of the goods generally, as if different variable factors had been fixed in respect of those exporters, relevant to the determination of duty.

3.2 The goods subject to the measures

The goods subject to anti-dumping measures (the goods) are:

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

3.3 Tariff classification of the goods

The goods under consideration are classified to tariff subheading 2003.10.00 (statistical code 87) of Schedule 3 to the *Customs Tariff Act 1995*.

The goods are subject to a 5 per cent rate of Customs duty.

3.4 Australian industry producing like goods

In 2010, the continuation inquiry found that there was an Australian industry producing like goods with Windsor Farm being the sole manufacturer of preserved mushrooms in Australia.

Information will be sought from the administrators of Windsor Farm during this review.

The Commission will also seek information on whether there are any other Australian industry members that produce preserved mushrooms.

4 Compliance with section 269ZA and section 269ZB

4.1 Finding

Based on the information provided in the application, the Commission is satisfied that the application complies with sections 269ZA and 269ZB of the Act.

4.2 Legislative framework

Pursuant to subsection 269ZA(1) of the Act, where anti-dumping measures have been taken in respect of goods, an 'affected party'³ may by application lodged with the Commissioner request that the Commissioner initiate a review of measures.

The application can be made by the affected party who considers that it may be appropriate to review those measures as they affect a particular exporter of those goods, or as they affect exporters of those goods generally. The applicant may apply for a review because:

- one or more variable factors have changed; or
- anti-dumping measures are no longer warranted.

Subsection 269ZA(2)(a) of the Act states, inter alia, that if measures involve the publication of a dumping notice, an application for review of anti-dumping measures must not be made earlier than 12 months after the publication of the notice or the publication of a notice declaring the outcome of the last review of the anti-dumping notice.

Subsection 269ZB(1) of the Act requires that the application be in writing, be in a form approved by the Commissioner for the purposes of this section, contain such information as the form requires and be signed in the manner indicated by the form.

Subsection 269ZB(2) of the Act requires an applicant to provide in the application:

- a description of the kind of goods to which the measures the subject of the application relate; and
- a description of the measures the subject of the application; and
- if the application is based on circumstances that, in the applicant's view, indicate that the anti-dumping measures are no longer warranted the applicant must provide evidence in accordance with the approved form, of the circumstances.

4.3 Particulars of the application

GlobalCo submitted an application for the initiation of a review of anti-dumping measures in respect of preserved mushrooms exported from China pursuant to sections 269ZA and 269ZB of the Act. GlobalCo claims that the measures are no longer warranted on the basis that Windsor Farm has ceased the

³ An affected party as defined by subsection 269T(1) of the Act includes 'a person who is directly concerned with the importation into Australia of the goods to which the measures relate or who has been directly concerned with the importation into Australia of like goods'.

manufacturing of preserved mushrooms in Australia, meaning there is no longer an Australian industry producing like goods.

On this basis the application requests the Commissioner to revoke the current measures.

In its application, GlobalCo provided a copy of a media release issued on 12 March 2013 from the voluntary administrators of Windsor Farm announcing that Windsor Farm had ceased manufacturing and terminated its workforce without pay. Further, the administrators' annual report to creditors, of 4 August 2014, updating on the progress of the liquidation, has also been provided.

4.4 Commission's assessment

Subsection 269T(1) of the Act states that an affected party includes a person who is directly concerned with the importation into Australia of the goods to which the measures relate or who has been directly concerned with the importation into Australia of like goods. In its application, GlobalCo stated that it was an importer of the goods from China. The Commission has confirmed, using the ACBPS import database, that GlobalCo was an importer of the goods during the original dumping investigation period and it has also imported the goods since the conclusion of the original investigation period. Therefore, the Commission is satisfied that GlobalCo meets the definition of an 'affected party' in accordance with the Act.

The Commission is satisfied that the application lodged by GlobalCo:

- is in writing;
- provides a description of the goods subject to the measures;
- provides a description of the measures the subject of the application; and
- provides evidence of the particular circumstances which the applicant believes indicate that the measures are no longer warranted (as outlined in section 5 below).
- the application was lodged on 7 April 2015, which is more than 12 months after the publication of the notice or the publication of a notice declaring the outcome of the last review of the notice⁴.

On the basis of the above, the Commission is satisfied that the application satisfies the form and the requirements under sections 269ZA and 269ZB of the Act.

⁴ Subsection 269ZA(2)(a)

5 Consideration of reasonable grounds

5.1 Finding

Having regard to the matters contained in the application and other relevant information, the Commission is satisfied that there is reasonable grounds for GlobalCo to assert that the anti-dumping measures are no longer warranted for preserved mushrooms exported to Australia from China.

5.2 Application for a revocation review

GlobalCo claims that the measures in respect of the goods subject to this application are no longer warranted on the basis that Windsor Farm ceased manufacturing preserved mushrooms in Australia and therefore is no longer an Australian industry producing like goods.

5.2.1 Applicant's claims

GlobalCo claims in its application that Windsor Farm was the sole Australian producer of preserved mushrooms.

GlobalCo provided a copy of a media release issued on 12 March 2013 from the Administrators of Windsor Farm notifying of the immediate closure of the Cowra canning operation in Cowra. In that media release, it was announced that *'unfortunately, it has been necessary to cease manufacturing and terminate the workforce without pay'*. A copy of the Windsor Farm Administrators' media release is at **Non-Confidential Attachment 2**.

GlobalCo claims that following the closure of operations at the Windsor Farm facility in Cowra, Windsor Farm's no longer undertakes production of like goods in Australia. Further, GlobalCo claimed it conducted extensive research into Australia's food processing industry that failed to show or indicate any party or entity produces like goods in Australia.

Therefore GlobalCo contends that there appears to be reasonable grounds for asserting that the anti-dumping measures are no longer warranted. As such GlobalCo requests the Commission initiate a revocation inquiry to examine whether the Australian industry is producing like goods and if satisfied recommend to the Minister that the notice be revoked generally.

5.2.2 Commission's assessment

The Commission has noted the media release from Windsor Farm's Administrators, released on 12 March 2013.

An annual report to creditors dated 4 August 2014, provided by the administrators, also indicates the closure of Windsor Farm's operations and sales of their plant and equipment and intellectual property (**Non-Confidential Attachment 3 refers**).

The administrators have also made available to the public, information on the Windsor Farm's liquidation via their website⁵. This includes:

⁵<http://www.grantthornton.com.au/creditors-information/creditors-information-a-f/cowra-canners-pty-limited/>

PUBLIC RECORD

- Notices and letters to creditors
- Letter to employees
- Annual reports to creditors

In the 2010 Continuation Inquiry into preserved mushrooms it was found that Windsor Farm was the sole producer of preserved mushrooms in Australia. As part of the Continuation Inquiry, it was stated in Trade Measures Report No. 164 (REP 164):

“There is an Australian industry producing like goods comprising Windsor Farm as the sole manufacturer of preserved mushrooms in Australia” and that “Windsor Farm stated that it is the sole manufacturer of preserved mushrooms in Australia. No other interested party has claimed to be an Australian producer of preserved mushrooms”.

Based on the available information before the Commission, it appears that the sole producer of preserved mushrooms in Australia, Windsor Farm, has ceased to produce preserved mushrooms in Australia from March 2013. No other Australian producer of preserved mushrooms has been identified in any previous investigation, inquiry or review conducted in relation to the preserved mushrooms.

5.2.3 Conclusion on “reasonable grounds”

The Commission is satisfied, on the basis of the application, supporting evidence provided by GlobalCo and other available information, that there appear to be reasonable grounds to assert that the anti-dumping measures are no longer warranted in relation to preserved mushrooms exported to Australia from China.

Accordingly, it is recommended that the Commissioner decide not to reject the application for a review of anti-dumping measures. It is also recommended that the Commissioner publish a notice under subsection 269ZC(4)(a) of the Act indicating that it is proposed to review whether the anti-dumping measures applying to preserved mushrooms are no longer warranted.

6 ATTACHMENTS

Non - Confidential Attachment 1	Notice of Review
Non - Confidential Attachment 2	Media Release from Windsor Farm's administrators
Non - Confidential Attachment 3	Letter from Windsor Farm's administrators to creditors