



CUSTOMS ACT 1901 - PART XV B

**STATEMENT OF ESSENTIAL
FACTS NO. 288**

**REVOCAION REVIEW OF ANTI-DUMPING
MEASURES**

PRESERVED MUSHROOMS

EXPORTED FROM

THE PEOPLE'S REPUBLIC OF CHINA

23 October 2015

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ABBREVIATIONS

ABF	Australian Border Force
ACBPS	Australian Customs and Border Protection Service
ADN	Anti-Dumping Notice
China	The People's Republic of China
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
GlobalCo	Global Procurement Pty Ltd
Jiangsu COF	Jiangsu Cereals, Oils and Foodstuffs Import/Export Group
SEF	Statement of Essential Facts
Simplot	Simplot Australia Pty Ltd
the Act	<i>Customs Act 1901</i>
the Commission	the Anti-Dumping Commission
the Commissioner	Commissioner of the Anti-Dumping Commission
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
the Parliamentary Secretary	the Parliamentary Secretary to the Minister for Industry, Innovation and Science
White Prince	White Prince Pty Ltd
Windsor Farm Foods	Windsor Farm Foods Pty Ltd
Xiamen Gulong	Xiamen Gulong Import & Export Co Ltd

1. SUMMARY AND RECOMMENDATIONS

1.1 Summary

This revocation review is in response to an application by Global Procurement Pty Ltd (GlobalCo) seeking the revocation of anti-dumping measures applying to preserved mushrooms exported to Australia from the People's Republic of China (China).

This statement of essential facts (SEF) sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) proposes to base his recommendations to the Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary).¹

1.2 Application of law to facts

Division 5 of Part XVB of the Act sets out, among other things, the procedures to be followed by the Commissioner in conducting a revocation review. This Division:

- outlines the procedures to be followed by the Commissioner in considering an application and preparing a report for the Parliamentary Secretary; and
- empowers the Parliamentary Secretary, after consideration of that report, to decide whether the measures be revoked, remain unaltered or have effect as if different variable factors had been fixed.

Pursuant to paragraph 269ZDA(1A)(b) of the *Customs Act 1901* (the Act)², the Commissioner must make a revocation recommendation to the Parliamentary Secretary in relation to the measures, unless he is satisfied that revoking the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the measures are intended to prevent.

1.3 Findings and conclusions

Based on the evidence currently available, the Commissioner's finding is that:

- preserved mushrooms have been exported to Australia from China between 1 April 2014 to 31 March 2015 (the review period);
- the sole Australian industry producer, Windsor Farm Foods Pty Ltd (Windsor Farm Foods), ceased production of like goods in June 2013;
- after making relevant inquiries the Commissioner is not satisfied that there is an industry producing 'like goods' in Australia; and
- as a result, the revocation of measures would not lead, or not likely to lead to a continuation of, or a recurrence of:

¹ The Minister for Industry and Science has delegated responsibility for anti-dumping matters to the Parliamentary Secretary. Accordingly, the Parliamentary Secretary is the relevant decision-maker for the review.

² Unless stated otherwise, all legislative references in this report are to the *Customs Act 1901*.

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- the dumping and subsidisation; and
 - the material injury
- that the anti-dumping measures are intended to prevent.

1.4 Proposed Recommendation

Based on the above findings and subject to any submissions received in response to this SEF, the Commissioner proposes to recommend to the Parliamentary Secretary that the dumping duty notice be revoked in relation to preserved mushrooms exported from China by all exporters generally.³

It is proposed that any decision by the Parliamentary Secretary in this matter take effect from 4 May 2015, the earliest date allowed under paragraph 269ZDB(6)(a), being the date of publication of the notice under section 269ZC indicating the Commissioner's proposal to undertake the revocation review.

The effect of the proposed recommendation would be that interim dumping duties would not apply to the goods entered for home consumption on and after 4 May 2015, and that importers who had paid such duties would be eligible for a refund.

³ Pursuant to subsection 269ZDB(1)(a)(iii) of the Act, the then Minister for Home Affairs declared that with effect from 4 March 2011, for the purposes of the Act and the *Customs Tariff (Anti-Dumping) Act 1975*, the original dumping duty notice applied to exporters generally, as if different variable factors relevant to the payment of duty had been fixed. The findings of this review of measures are in the Trade Measures Report No. 166 (REP 166). For further information, see also Australian Customs Dumping Notice No 2011/07.

2. BACKGROUND

2.1 Revocation review process

An affected party may apply for revocation of the measures if there are reasonable grounds to assert that the anti-dumping measures are no longer warranted.

If an application for a revocation of anti-dumping measures is received, and not rejected, the Commissioner has up to 155 days, or such longer period as the Parliamentary Secretary allows, to report to the Parliamentary Secretary with his recommendations regarding the review.⁴

Within 110 days of the initiation notice, or such longer period as the Parliamentary Secretary allows, the Commissioner must place on the public record, a SEF on which he proposes to base his recommendation to the Parliamentary Secretary.⁵

After conducting a review of anti-dumping measures, the Commissioner:

- must not make a revocation recommendation in relation to the measures unless a revocation review notice has been published in relation to the review; and
- otherwise must make a revocation recommendation in relation to the measures, unless the Commissioner is satisfied as a result of the review that revoking the measures would lead, or be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the measures are intended to prevent.⁶

In making recommendations in the final report to the Parliamentary Secretary, the Commissioner must have regard to:⁷

- the application for the revocation of the anti-dumping measures;
- any submission relating generally to the revocation of the anti-dumping measures to which the Commissioner has had regard for the purpose of formulating the SEF;
- the SEF; and
- any submission made in response to this SEF that is received by the Commission within 20 days of the SEF being placed on the public record.

The Commissioner may also have regard to any other matter that the Commissioner considers to be relevant to the review.⁸

⁴ Subsection 269ZDA(1)

⁵ Subsection 269ZD(1)

⁶ Subsection 269ZDA(1A)

⁷ Paragraph 269ZDA(3)(a)

⁸ Paragraph 269ZDA(3)(b)

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Where the Parliamentary Secretary decides to revoke the anti-dumping measures, the Parliamentary Secretary can declare that the dumping duty notice be revoked either in relation to a particular exporter or to exporters generally or in relation to a particular kind of goods.⁹

Following the Parliamentary Secretary's decision, a notice will be published advising of the decision.¹⁰

2.2 History of anti-dumping measures

A history of the anti-dumping measures applying to preserved mushrooms exported to Australia from China is summarised in the following table.

5 April 2005	The then Australian Customs and Border Protection Service (ACBPS) initiated an investigation into preserved mushrooms exported from China, following an application by Windsor Farm Foods.
12 January 2006	The then Minister for Home Affairs published a dumping duty notice (the original notice) for preserved mushrooms exported to Australia from China other than by Jiangsu Cereals, Oils & Foodstuff Import Export Group (Jiangsu COF). Trade Measures Report No.99 refers (REP 99).
21 November 2006	The then Minister for Home Affairs published new notices as a result of a reinvestigation of certain findings made in REP 99 following a review by the former Trade Measures Review Officer. <i>Trade Measures Report No. 99A</i> refers. The new notices amended the original notice to impose anti-dumping measures on preserved mushrooms exported to Australia from China other than by Jiangsu COF and Xiamen Gulong Import & Export Co Ltd (Xiamen Gulong).
7 January 2011	The then Minister for Home Affairs published a notice securing the continuation of anti-dumping measures for a further five years from 12 January 2011 as they apply to preserved mushrooms exported from China. <i>Final Report No. 164</i> refers.
4 March 2011	Publication of the outcome of a review of the anti-dumping measures, which altered the dumping duty notice as if different variable factors applied in respect of preserved mushrooms, as they apply to the exporters of the goods generally. <i>Final Report No. 166</i> refers.

Table 1 – History of the anti-dumping measures for preserved mushrooms

⁹ Subparagraph 269ZDB(1)(a)(ii)

¹⁰ Subsection 269ZDB(1)

2.3 Notification and participation in the revocation review

On 7 April 2015, Global Procurement Pty Ltd (GlobalCo), an importer of preserved mushrooms from China, lodged an application requesting a revocation review of the anti-dumping measures applying to preserved mushrooms exported to Australia from China in relation to exporters generally.

After examining the application and other relevant information the Commissioner was satisfied that:

- the application complied with the requirements of section 269ZB; and
- there appeared to be reasonable grounds for asserting that the anti-dumping measures are no longer warranted.

Following consideration of the application, the review was initiated on 4 May 2015. Public notification of initiation of the review was made in *The Australian* newspaper on 4 May 2015. Anti-Dumping Notice (ADN) No. 2015/52 provides further details of the initiation and is available at www.adcommission.gov.au.

After initiation, the Commission sent questionnaires to a number of exporters and importers that were identified either in Australian Border Force's records, in the application or by an identified importer, as a possible manufacturer or exporter of preserved mushrooms from China during the review period of 1 April 2014 to 31 March 2015. Importer questionnaire responses were due by 19 August 2015 and exporter questionnaire responses were due by 31 August 2015. The Commission did not receive any exporter questionnaire responses however did receive a number of importer questionnaire responses by the due date.

2.4 Responding to this statement of essential facts

This SEF sets out the essential facts on which the Commissioner proposes to base his final recommendations to the Parliamentary Secretary in relation to the revocation review.

This SEF represents an important stage in the revocation review. It informs interested parties of the facts established and allows them to make submissions in response to the SEF.

It is important to note that the SEF may not represent the final views of the Commissioner.

The Commissioner must have regard to submissions received in relation to this SEF within 20 days of the SEF being placed on the public record, in making his final report to the Parliamentary Secretary.¹¹ Responses to this SEF should be received by the Commissioner no later than **13 November 2015**. The Commissioner is not obliged to have regard to any submission made in response to the SEF received after this date, if to do so would, in the opinion of

¹¹ Paragraph 269ZDA(3)(iv).

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the Commissioner, prevent the timely preparation of the final report to the Parliamentary Secretary.¹²

Submissions should preferably be emailed to operations3@adcommission.gov.au.

Alternatively, submissions may be sent to fax number +61 3 8539 2418, or posted to:

Director Operations 3
Anti-Dumping Commission
GPO Box 1632
MELBOURNE VIC 3001

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the public record.

A guide for making submissions is available on the Commission's website at www.adcommission.gov.au.

The public record contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's reports and other publicly available documents. It is available online at www.adcommission.gov.au.

Documents on the public record should be read in conjunction with this SEF.

2.5 Final Report

The Commissioner must provide a final report and recommendations to the Parliamentary Secretary in relation to whether the anti-dumping measures applicable to preserved mushrooms exported to Australia from China should be revoked by **8 December 2015**.

¹² Subsection 269ZDA(4)

3. GOODS SUBJECT TO THE REVOCATION REVIEW AND AUSTRALIAN INDUSTRY

3.1 Findings

There is no longer an Australian industry producing like goods subsequent to the closure, in June 2013, of Windsor Farm Foods, the last known producer of preserved mushrooms in Australia.¹³

3.2 The goods

The goods the subject of the current 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.

Preserved mushrooms refer to fresh mushrooms that have been washed, blanched, prepared (e.g. sliced or diced), packed into containers in a suitable liquid medium, heated and cooled.

All other species of mushrooms, including straw, shiitake, and oyster, are not covered.'

3.3 Tariff classification

The goods are currently classified under tariff subheading 2003.10.00, statistical code 87 (previously 81 and 82) in Schedule 3 to the *Customs Tariff Act 1995*. The rate of customs duty on imports of preserved mushrooms from China is five per cent.

3.4 Is there an Australian Industry producing 'like goods'?

3.4.1 Windsor Farm Foods

In the original investigation, subsequent inquiries and reviews in respect of preserved mushrooms (as detailed in Section 2.2), the Commission (or the then ACBPS) found there to be an Australian industry producing like goods, that is Windsor Farm Foods, the applicant to the original investigation.¹⁴

Windsor Farm Foods previously produced preserved mushrooms under the Edgell brand on behalf of Simplot.

However, since completion of the most recent review of measures on 4 March 2011, Windsor Farm Foods, was placed into liquidation on 23 April 2013 and ceased operations in June 2013.

¹³ For the purposes of subsection 269T(1)

¹⁴ As of 1 July 2015, the former Australian Customs and Border Protection Service is now known as the Australian Border Force - see <https://www.border.gov.au/>

In a submission dated 25 May 2015, the Commission was advised by Windsor Farm Foods' appointed liquidators, Said Jahani, Paul Billingham and Trevor Pogroske (of Grant Thornton Pty Ltd), that Windsor Farm Foods' canning business was not sold as a going concern and the related assets sold at auction.¹⁵

3.4.2 Simplot

Following GlobalCo's application, Simplot submitted that it was a producer of 'like goods'. According to Simplot, following the cessation of production by Windsor Farm Foods in 2011, it took over the manufacture of preserved mushrooms under the Edgell brand, initially at its Bathurst facility in November 2011 and subsequently relocating to Echuca in October 2014.¹⁶

On 26 June 2015, Simplot, claiming to be a member of the Australian industry producing preserved mushrooms, lodged an application for the continuation of the measures, in accordance with the applicable legislative timeframes.

Subsequent to lodging its application for the continuation of measures, Simplot withdrew its application on 23 September 2015. Simplot's letter stated that "*The Company understands that the withdrawal of the application will result in revocation of the measures*". As a result, the Commission ceased the continuation of measures, ADN 2015/117 refers.

The Commission was intending to use the information provided by Simplot for the continuation inquiry in making recommendations to the Parliamentary Secretary in relation to whether the measures should be revoked. However, by withdrawing its application for the continuation inquiry and no longer participating in this review, the Commission has been unable to verify Simplot's status as a producer of 'like goods'. Further inquiries by the Commission did not establish that Simplot was a producer of 'like goods'.

3.4.3 White Prince

A second company, White Prince Pty Ltd (White Prince), also contested GlobalCo's claims that there was no Australian industry for preserved mushrooms.

The Commission contacted White Prince on 7 September 2015 to discuss its submission and seek further information regarding whether there is an Australian industry producing 'like goods'. White Prince contacted the Commission on 9 September 2015 and confirmed that it was not a producer of canned preserved mushrooms. Rather, White Prince's principal activity is that of a mushroom grower. White Prince did not identify any other company which was a producer of like goods and although it referred to Simplot as a potential producer, it did not provide any specific information or evidence to substantiate this claim.

¹⁵ Case 288 Public Record Item No.4

¹⁶ Case 288 Public Record Item No.5

3.4.4 Other inquiries

In order to be satisfied that no other producers of preserved mushrooms exist in Australia, the Commission contacted Costa Group Ltd (Costa) and the Australian Mushroom Growers Association (AMGA).

Costa

According to Costa, it is Australia's "*largest grower, pre-packer and marketer of fresh mushrooms*".¹⁷ Costa submitted on 12 June 2015 that "*it is not aware of any Australian producer engaged in the production and supply of preserved mushrooms...*".

AMGA

The AMGA conducted a mail out to its members in September 2015 in response to the Commission's inquiries. Responses to the AMGA's mail out were due by 12 October 2015. The Commission contacted the AMGA on 14 October 2015 seeking an update on the progress of the mail out. The AMGA advised that it had not received any feedback regarding the revocation of measures.

3.5 The Commissioner's assessment

Based on the information available, the Commissioner is satisfied that, with the closure of Windsor Farm Foods and in the absence of any other information to the contrary, there is no longer an Australian industry producing like goods to the preserved mushrooms which are the subject of the measures.

¹⁷ <http://costagroup.com.au/mushrooms>, September 2015.

4. REVOCATION OF THE ANTI-DUMPING MEASURES

4.1 Findings

The Commissioner has found that:

- the anti-dumping measures applying to preserved mushrooms are no longer warranted;
- revoking the measures would not lead or be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the measures are intended to prevent; and,
- Further, the Commissioner considers that the dumping duty notice should be revoked with effect from 4 May 2015, the date of publication of the notice under section 269ZC indicating the Commissioner's proposal to undertake the revocation review.

4.2 Applicant's submissions

GlobalCo claimed in its application for this revocation review that the measures were no longer warranted for preserved mushrooms exported to Australia from China. The application requested the Parliamentary Secretary revoke the current measures on the basis that Windsor Farm Foods had ceased manufacturing preserved mushrooms in Australia and, therefore, there was no longer an Australian industry producing like goods.

GlobalCo provided a copy of a media release, dated 12 March 2013, from the external administrators of Windsor Farm Foods to inform the market generally that voluntary administrators had been appointed to Windsor Farm Foods and its parent company Windsor Farm Foods Group Limited (ACN 001 249 038) on 12 March 2013. A second letter provided by GlobalCo, dated 4 August 2014, also from the external administrators, informed that all companies under Windsor Farm Foods Group Limited, which includes Windsor Farm Foods, had been placed into liquidation on 23 April 2013.

4.3 Submissions by other parties

The Commission received five submissions:

- Grant Thornton (liquidator and receiver);
- Simplot (Australian industry);
- White Prince (importer);
- GlobalCo (importer); and,
- Costa Group Ltd.

Copies of the non-confidential versions of the submissions were placed on the public record.

4.4 Grounds for revocation

As outlined in section 3.4 evidence before the Commission suggests that the last known manufacturer of preserved mushrooms in Australia was Windsor

Farm Foods, however this company ceased operations in June 2013. Although two companies initially objected to the revocation, the Commission's subsequent inquiries did not identify any evidence to substantiate that there are producers of 'like goods' in Australia.

After making the relevant inquiries the Commissioner is not satisfied that there are any other producers of 'like goods' in Australia

Accordingly, the Commissioner considers that, pursuant to paragraph 269ZDA(1A)(b), there are no grounds to be satisfied that revoking the measures would lead, or be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the measures are intended to prevent.

The Commissioner therefore finds that the anti-dumping measures currently applying to preserved mushrooms exported from China are no longer warranted and should be revoked.

4.5 Date of revocation

The Act provides for the Parliamentary Secretary to specify a date in the declaration that the dumping duty notice is effectively revoked from.¹⁸ The date specified cannot be earlier than the date of initiation of the review of a dumping duty notice, in this case 4 May 2015.¹⁹

4.5.1 Submissions

The Commission has not received any submissions concerning the timing of the date of revocation. One consideration which may be of relevance is the remaining stock on hand held by Windsor Farm Foods or the potential transfer of ownership of the Windsor Farm Foods business to new owners.

The 25 May 2015 submission received from Windsor Farms Foods' liquidators indicates that:

- the company had sold all stock on hand, including finished goods, bright stock and raw materials. This included the sale of the remaining stock of preserved mushrooms;
- the business was not sold as a going concern and all cannery assets used to make preserved mushrooms were sold at auction;
- it is not aware of any other manufacturers of preserved mushrooms; and,
- it is not aware of any entities seeking to commence manufacture of preserved mushrooms in Australia.

4.6 The Commissioner's assessment

The last known producer of preserved mushrooms ceased operations in June 2013. The Commission has not received any information or submission to conclude that dumping and material injury is likely to continue or recur if the

¹⁸ Subparagraph 269ZDB(1)(a)(ii)

¹⁹ Paragraph 269ZDB(6)(a)

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measures were revoked on a date after the last known producer of preserved mushrooms ceased operations.

As such, the Commissioner considers that the anti-dumping measures should be revoked on a date that occurs as soon as possible after June 2013 and is therefore of the view that the initiation date of this revocation review (4 May 2015) is an appropriate date for the revocation of the measures to take effect. This is the earliest effective date available to the Parliamentary Secretary to declare the measures as having been revoked. This date is almost two years after the closure of the last known Australian producer of preserved mushrooms, Windsor Farm Foods.

Therefore, the Commissioner considers that the anti-dumping measures applying to preserved mushrooms exported from China comprising a dumping duty notice should be revoked from 4 May 2015.

5. EFFECT OF THE REVOCATION REVIEW

The Commissioner has made the finding that the dumping duty notice (as amended on 4 March 2011) relating to anti-dumping measures applying to preserved mushrooms exported from China should be revoked in relation to all exporters generally. The Commissioner considers that the revocation should have effect from 4 May 2015.

The effect of the above would be that the anti-dumping measures applying to preserved mushrooms would cease to apply from 4 May 2015. Interim dumping duties do not apply to the goods entered for home consumption on and after this date.