



Australian Government
Anti-Dumping Commission

CUSTOMS ACT 1901 - PART XVB

**CONSIDERATION REPORT
NO. 303**

**APPLICATION FOR CONTINUATION OF
ANTI-DUMPING MEASURES**

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

20 July 2015

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ABBREVIATIONS

\$	Australian dollars
ADN	Anti-Dumping Notice
the Act	<i>Customs Act 1901</i>
the applicant	Simplot Australia Pty Ltd (Simplot)
ABS	Australian Bureau of Statistics
ABF	Australian Border Force
ACBPS	Australian Customs and Border Protection Service
China	The People's Republic of China
the Commission	Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTMS	Cost to make and sell
EU	European Union
FOB	free on board
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
Jiangsu COF	Jiangsu Cereals, Oils and Foodstuffs Import/Export Group Corp
the Parliamentary Secretary	the Parliamentary Secretary to the Minister for Industry and Science
REP 99	Trade Measures Branch Report No. 99
REP 99A	Trade Measures Branch Report No. 99A
REP 164	Trade Measures Branch Report No. 164
USA	United States of America
WFF	Windsor Farm Foods Pty Ltd
Xiamen Gulong	Xiamen Gulong Import & Export Co., Ltd

1 SUMMARY AND RECOMMENDATIONS

This report provides the results of the consideration of an application lodged by Simplot Australia Pty Ltd (Simplot) for the continuation of anti-dumping measures¹ applying to preserved mushrooms exported to Australia from the People's Republic of China (China).

1.1 Recommendations

It is recommended that the Commissioner of the Anti-Dumping Commission (the Commissioner) decide not to reject the application.

If the Commissioner accepts this recommendation, to give effect to that decision, he must sign the instrument at **Attachment 1** and publish a notice indicating that it is proposed to inquire into whether the continuation of the anti-dumping measures is justified.

1.2 Application of law to facts

Division 6A of Part XVB of the *Customs Act 1901* (the Act) sets out, among other things, the procedures to be followed by the Commissioner in dealing with an application for the continuation of anti-dumping measures.²

The Division empowers the Commissioner to reject an application for continuation of anti-dumping measures if he is not satisfied that the application complies with section 269ZHC or there appear to be reasonable grounds for asserting that the expiration of anti-dumping measures might lead or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

If the Commissioner decides not to reject the application, the Commissioner must publish a notice indicating that it is proposed to inquire whether continuation of the measures is justified.

1.3 Findings and conclusions

Pursuant to subsections 269ZHD (1) and 269ZHD(2), the Commissioner must reject an application for the continuation of anti-dumping measures if he is not satisfied that:

- the application complies with section 269ZHC;³ and/or
- there appear to be reasonable grounds for asserting that the expiration of the anti-dumping measures to which the application relates might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.⁴

¹ A reference to anti-dumping measures is a reference to dumping measures and countervailing measures collectively.

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

³ Subsection 269ZHD(2)(a)

⁴ Subsection 269ZHD(2)(b)

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Simplot's application complies with the requirements of section 269ZHC, in that it is in writing, in a form approved by the Commissioner for the purposes of this section, contains the information that the form requires, is signed in the manner indicated by the form, and was lodged with the Commissioner as prescribed in subsection 269ZHC(2).

Having regard to the applicant's claims and other relevant information, there appear to be reasonable grounds for asserting that the expiration of the anti-dumping measures might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

The Commission recommends that the Commissioner not reject the application from Simplot for the continuation of anti-dumping measures applicable to preserved mushrooms exported from China.

2 BACKGROUND

On 30 April 2015, in accordance with subsection 269ZHB(1) of the Act, a notice was published in The Australian newspaper inviting certain persons to apply to the Commissioner for the continuation of anti-dumping measures on preserved mushrooms exported to Australia from China.

On 26 June 2015, Simplot, 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.⁵

2.1 History of the anti-dumping measures

Anti-dumping measures were imposed on exporters of preserved mushrooms from China on 12 January 2006, by the then Minister for Justice and Customs, following consideration of Trade Measures Branch Report No. 99 (REP 99).

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

Following an application for the continuation of measures by Windsor Farm Foods Pty Ltd (WFF), the then Australian Customs and Border Protection Service (ACBPS) commenced an investigation into the continuation of measures for a further five-years on 28 June 2010. On 23 December 2010 the then Minister for Home Affairs, following consideration of Trade Measures Branch Report No. 164 (REP 164), agreed to the continuation of the measures for a further five-year period. A notice of the then Minister's decision was published on 7 January 2011.

The anti-dumping measures applicable to exporters of preserved mushrooms from China are due to expire on 13 January 2016.

2.2 The goods

The goods, the subject of the current anti-dumping measures, 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.

⁵ In accordance with subsection 269ZHB(1)(b).

2.3 Tariff classification of the goods

The goods subject to the measures are classified to 2003.10.00 statistical code 87.

The current rate of duty for the goods exported from China is 5 per cent.

The statistical code for the goods altered with effect from 1 January 2012, with all imports of mushrooms of the genus *Agaricus* classified to the one statistical code. Previously, the goods were classified to statistical codes 81 and 82.

2.4 Australian industry producing like goods

In REP 164, the then ACBPS determined that WFF was the sole Australian manufacturer of preserved mushrooms.

In the application, Simplot advised that WFF ceased the production of preserved mushrooms in 2011 at which time Simplot recommenced production, under the Edgell brand as previously manufactured by WFF, at its Bathurst food processing plant. Simplot advised that in October 2014 it relocated production of preserved mushrooms to its Echuca food processing plant, following a reconfiguration of Simplot's vegetable supply footprint.

The Commission remains satisfied that there is an Australian industry producing like goods.

3 COMPLIANCE WITH SECTION 269ZHC

3.1 Legislative framework

Subsection 269ZHC(1) specifies that an application under section 269ZHB must:

- (a) be in writing;
- (b) be in a form approved by the Commissioner for the purposes of this section;
- (c) contain such information as the form requires; and
- (d) be signed in the manner indicated in the form.

Subsections 269ZHC(2) and (3) cover procedural matters in relation to lodgement of the application.

3.2 The Commission's assessment

Simplot's application was in writing, in the form approved by the Commissioner for the purposes of section 269ZHC, contained such information as the form requires and was signed in the manner indicated in the form.

The applicant also provided a non-confidential version of the application for distribution to interested parties.

The non-confidential version of the application adequately reflects the reasons for seeking a continuation of the anti-dumping measures. The non-confidential application will be available on the Commission's public record (which can be accessed electronically at www.adcommission.gov.au).

4 CONSIDERATION OF REASONABLE GROUNDS

4.1 Legislative framework

Subsection 269ZHD(2)(b) requires consideration of whether there appear to be reasonable grounds for asserting that the expiration of the anti-dumping measures might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

The applicant's claims have been examined and assessed according to the Commission's Instructions and Guidelines on the Application for the Continuation of Measures on whether it is reasonable to assert that, in the absence of anti-dumping measures, exports of the goods might:

- 1) continue;
- 2) be at dumped prices; and
- 3) lead to a continuation of, or recurrence of, the material injury that the measures are intended to prevent.

4.2 Continuation of exports

4.2.1 Applicant's claims

In the application, Simplot states that Chinese exporters remain the major supply source for imported preserved mushrooms globally. Simplot estimated that Chinese producers supply approximately 87 per cent of global demand. Simplot used Australian Bureau of Statistics (ABS) import data to estimate that Chinese imports account for approximately 85 percent of the volume of preserved mushrooms exported into Australia.

Simplot also noted that:

- anti-dumping measures continue to apply to Chinese preserved mushrooms exported to the United States of America (USA). The measures were imposed in 1999 and are the subject of regular administrative reviews, including, most recently, in June 2015; and
- the European Union (EU) currently operates a tariff rate quota system on imports of preserved mushrooms that commenced in 1995.

Simplot asserted as the world's largest supplier of preserved mushrooms and with antidumping measures applicable in the USA, China has available capacity to increase exports of preserved mushrooms to Australia should the current measures be allowed to expire.

4.2.2 The Commission's assessment

The Australian Border Force (ABF) import database shows imports of preserved mushrooms from China have continued since measures were imposed, demonstrating that exporters have maintained distribution links in Australia. The data shows that import volumes of preserved mushrooms from China have declined in 2014 and 2015 however

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still account for approximately 85 per cent of all imports. The Commission's analysis of the import market for preserved mushrooms is at **Confidential Attachment 1**.

With the continuation of anti-dumping measures in the US and the EU quota system on imports of preserved mushrooms, there appear to be reasonable grounds to assert that imports to Australia of preserved mushrooms from China may continue after the expiration of the anti-dumping measures as China accounts for the vast majority of current imports.

4.3 Continuation of dumping

4.3.1 Applicant's claims

Simplot considers that it is likely that Chinese exporters will resume exporting to Australia at dumped prices should anti-dumping measures be allowed to expire.

Simplot advised that it does not have information on domestic selling prices for preserved mushrooms in China, nor access to resources in China to be able to obtain domestic prices. Simplot advised that its understanding is that preserved mushrooms are not typically sold in China, with the local preference for fresh mushrooms outweighing the need and demand for preserved mushrooms. Simplot advised that it is therefore unable to determine a normal value for preserved mushrooms under subsection 269TAC(1).

Simplot advised that it similarly did not have access to producer's costs of production in China, and as such is unable to determine a normal value for preserved mushrooms under subsection 269TAC(2)(c).

Simplot asserted that export data for preserved mushrooms exported from China to other destinations is unlikely to be reliable as it will potentially include all types of mushrooms and not be limited to mushrooms of the *Agaricus* variety. As such Simplot advised that it is unable to determine a normal value for preserved mushrooms under subsection 269TAC(2)(d).

Simplot advised that it determined a normal value under subsection 269TAC(6) using all relevant information. Simplot asserted that the Commission's Dumping and Subsidy Manual is silent on the appropriate information for an Australian industry to rely on for normal value purposes in the absence of domestic selling prices and production costs in the exporting country. Simplot also noted that as Chinese producers supply approximately 87 per cent of global preserved mushroom exports, information on producers in other countries is limited.

Simplot proposed that in the absence of relevant "in country" information the Commission use Simplot's cost to make and sell (CTMS) data as the basis for determining a normal value for preserved mushrooms. Simplot provided CTMS information for the period 1 May 2014 to 30 April 2015 for both 220 gram cans and 410 gram cans. This data is contained at **Confidential Attachment 2**. Simplot noted that ABS import data for preserved mushrooms does not identify can size. Simplot asserted that the weighted average export price for preserved mushrooms from China to Australia for the period 1 May 2014 to 30 April 2015 was \$1.889 per kilogram.

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Simplot contrasted the normal value determined for each can size based on its CTMS with the weighted average export price for all preserved mushrooms regardless of can size and determined that preserved mushrooms exported to Australia were at dumped prices.

In addition to calculating a current dumping margin range, Simplot examined Chinese export prices of preserved mushrooms into New Zealand during the 2014 calendar year and the first three months of the 2015 calendar year. Simplot asserted that an analysis of Chinese export prices to New Zealand is relevant as the New Zealand market does not have anti-dumping measures applicable to Chinese preserved mushrooms.

Simplot made the following observations in regard the New Zealand market for Chinese exports of preserved mushrooms:

- in 2014, approximately 50 per cent by volume of Chinese exports were at free on board (FOB) prices below the weighted average export price for Chinese preserved mushrooms exported to Australia over the same period;
- in April 2014 the Chinese export price to New Zealand was approximately 12.5 per cent below the weighted average export price to Australia in 2014;
- the April 2014 export volume was the largest single volume exported to New Zealand over the 15-month examination period; and
- the weighted average export prices into New Zealand (for the approximate 50 per cent of volume below export prices to Australia) were approximately 8.2 per cent below the weighted average 2014 Chinese export prices to Australia.

Simplot contended that in the absence of the anti-dumping measures it is likely that Chinese exporters of preserved mushrooms would reduce export prices to secure increased export volumes into Australia, and that those export prices will be dumped.

4.3.2 The Commission's assessment

Simplot provided the Commission with its CTMS data to support its normal value determination as well as the ABS data relied upon to determine weighted average export prices. The Commission is satisfied that the information relied upon by Simplot to calculate its estimate of a current dumping margin is reasonable.

The Commission also compared the monthly export price of preserved mushrooms exported to New Zealand, as provided by the applicant, to the export price to Australia as determined from the then ACBPS import database, for the 2014 calendar year and the first three months of 2015. The Commission noted that the New Zealand data showed considerable variability in the monthly volume of preserved mushrooms exported to New Zealand, and in those months of low volume the export prices were erratic. The Commission noted however that in the eight months where exports to New Zealand were over 15,000 kilograms, export prices were more stable, and in six of those months export prices were lower than export prices to Australia in those months by a margin of up to 19 per cent. The comparison between the Australian and New Zealand prices is at **Confidential Attachment 3**.

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The Commission also noted that the USA has continued measures on preserved mushrooms exported from China effective June 2015, and the EU currently has quotas in place for preserved mushrooms.

The Commission is satisfied that the information provided by Simplot shows that Chinese exporters might lower their export prices to secure more sales if anti-dumping measures are allowed to expire, and that there appear to be reasonable grounds for asserting that exports of the goods might be at dumped prices.

4.4 Continuation or recurrence of material injury caused by dumping

4.4.1 Applicant's claims

Simplot noted in the application it is a relatively new producer of preserved mushrooms on the Australian market, having recommenced production following the closure of the previous sole Australian manufacturer, WFF.

Simplot prepared, in support of its application, financial data as per the Appendix A6.1 format for preserved mushrooms manufactured at its processing facility located at Echuca for the period May 2014 to April 2015. This data is contained at **Confidential Attachment 3**.

Simplot contended that the financial data indicates that declines in export prices of the magnitude evident on Chinese export prices into New Zealand will result in price undercutting of Australian industry prices, causing price depression, price suppression and reduced profit and profitability on the levels achieved in the period May 2014 to April 2015.

Simplot submitted that in the event that anti-dumping measures are not continued there is a high probability that Chinese export prices to Australia will decline and likely result in a fall in Chinese export prices to Australia, commensurate with the lower-priced Chinese exports into New Zealand.

In this event, Simplot contend that the Australian industry manufacturing preserved mushrooms will be exposed to a recurrence of material injury from the dumped exports.

4.4.2 The Commission's assessment

Based on the New Zealand import data and sales data provided by Simplot there are reasonable grounds to assert that, if the anti-dumping measures expire, future exports of preserved mushrooms from China at dumped prices may cause material injury to the Australian industry.

The applicant has provided sufficient evidence that an expiry of the measures might lead to reduced export prices which might lead to further price undercutting, price depression and suppression of the Australian industry's prices for preserved mushrooms.

As a consequence of the adverse volume and price effects, there appears to be reasonable grounds for asserting that the Australian industry may experience reduced profits and profitability.

4.5 The Commission's conclusion

For the purposes of considering subsection 269ZHD(2)(b), the applicant's claims have been examined and assessed according to the Commission's Instructions and Guidelines on the Application for the Continuation of Measures on whether it is reasonable to assert that, in the absence of anti-dumping measures, exports of the goods might:

- 1) continue;
- 2) be at dumped prices; and
- 3) lead to a continuation of, or recurrence of, the material injury that the measures are intended to prevent.

For the reasons detailed above, the Commission considers that there appear to be reasonable grounds for asserting that the expiration of the anti-dumping measures to which the application relates might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

Accordingly, it is recommended that the Commissioner not reject the application. If the Commissioner accepts this recommendation, in accordance with subsection 269ZHD(4), a notice will be published, indicating that the Commission will inquire into whether continuation of the anti-dumping measures is justified.

For the purpose of this inquiry, the Commission will use the period 1 April 2014 to 31 March 2015 in considering whether the variable factors should be altered.

5 LIST OF APPENDICES AND ATTACHMENTS

Attachment 1	Delegate's instrument
Confidential Attachment 1	Import market analysis
Confidential Attachment 2	Simplot financial data
Confidential Attachment 3	Comparison of export prices to New Zealand and to Australia
Non -Confidential appendix 1	Simplot's application