



ANTI- DUMPING NOTICE NO. 2015/05

Prepared or Preserved Tomatoes

Exported from Italy

by Feger di Gerardo Ferraioli S.p.A. and La Doria S.p.A

Initiation of an Investigation into Alleged Dumping

Customs Act 1901 – Part XVB

I, Dale Seymour, the Commissioner of the Anti-Dumping Commission have initiated an investigation following an application lodged by SPC Ardmona Operations Limited (SPCA), a manufacturer of prepared or preserved tomatoes (“the goods”) in Australia. The application seeks the publication of a dumping duty notice in respect of prepared or preserved tomatoes exported to Australia from Italy by Feger di Gerardo Ferraioli S.p.A. and La Doria S.p.A.

The application alleges that the goods have been exported to Australia by Feger di Gerardo Ferraioli S.p.A. and La Doria S.p.A. at prices less than their normal value and that the dumping has caused material injury to the Australian industry through:

- reduced sales volumes;
- reduced market share;
- price undercutting;
- price depression;
- price suppression;
- reduced profits;
- reduced profitability; and
- reduced capacity utilisation.

The non-confidential version of the application, which contains the basis of the alleged dumping, is available on the public record.

A notice under subsection 269TC(4) of the *Customs Act 1901* (the Act) advising initiation of this investigation was published in *The Australian* newspaper on 19 January 2015.

The Goods

The goods subject of the application are:

Tomatoes (peeled or unpeeled) prepared or preserved otherwise than by vinegar or acetic acid, either whole or in pieces (including diced, chopped or crushed) with or without other ingredients (including vegetables, herbs or spices) in packs not exceeding 1.14 litres in volume (prepared or preserved tomatoes), exported from Italy by La Doria S.p.A. and Feger di Gerardo Ferraioli S.p.A. The following tomato products do not form part of this application: pastes, purees, sauces, pasta sauces, juices and sundried tomatoes.

The application contains the following further information in relation to the goods the subject of the application:

The common container sizes of the imported prepared or preserved tomatoes the subject of this application are 300grams to 850grams, but the application covers all container sizes up to and including 1.14L.

The imported goods could be packaged in different containers such as cans, glass jars, pouches or Tetra packs.

Products sold in multi-unit packs, for example 3x400gram cans, are to be considered as three single packs.

The imported prepared or preserved tomatoes can be labelled with a generic, a house brand / private label for retailer or a proprietary label. The imported goods the subject of this application covers all imported prepared or preserved tomatoes regardless of how labelled.

The goods are currently classified to the tariff subheading 2002.10.00 (statistical code 60) of Schedule 3 to the *Customs Tariff Act 1995*. These goods are subject to 5% Customs duty.

Investigation Process

The investigation period is 1 January 2014 to 31 December 2014. The Anti-Dumping Commission (the Commission) will examine exports to Australia of the goods by Feger di Gerardo Ferraioli S.p.A. and La Doria S.p.A. during that period to determine whether dumping has occurred. The Commission will examine details of the Australian market from 1 January 2010 for injury analysis purposes.

Where the Minister for Industry and Science (the Minister) is satisfied, as to goods of any kind, that:

- (a) the amount of the export price of the goods that have already been exported to Australia is less than the normal value of those goods, and the amount of the export price of like goods that may be exported to Australia in the future may be less than the normal value of the goods; and
- (b) because of that, material injury to an Australian industry producing like goods has been or is being caused or is threatened, or the establishment of an Australian industry producing like goods has been or may be materially hindered;

the Minister may, by public notice, declare that section 8 of the Dumping Duty Act apply in respect of the goods meaning that interim dumping duties are payable on the importation of those goods.

Where there are grounds for the Minister to publish a dumping duty notice in respect of the goods, I will examine whether the trade in the dumped goods give rise to retrospective notices being published pursuant to section 269TN of the Act, and make recommendations to the Minister accordingly.

As the application alleges matters relevant to the Minister's consideration of the lesser duty rule, namely there is a "particular market situation" pursuant to subparagraph 269TAC(2)(a)(ii) of the Act; I will examine these matters and make recommendations to the Minister as to the proposed level of duty to be applied in any dumping duty notice.

It is important to note that a dumping duty notice already applies to prepared or preserved tomatoes exported to Australia from Italy by all exporters other than Feger di Gerardo Ferraioli S.p.A. and La Doria S.p.A. Anti-Dumping Commission Report No. 217 refers: <http://www.adcommission.gov.au/cases/ADC217.asp>.

Public Record

I must maintain a public record of each inquiry. Documents included in the public record may be examined at the Commission office by contacting the Case Manager on the details provided below. Alternatively the public record is available at www.adcommission.gov.au

The public record will contain, among other things, a copy of the application, *Anti-Dumping Commission Consideration Report No. 276* (which sets out the reasons for my decision to initiate this investigation), and a copy of all submissions from interested parties.

Lodgement of Submissions

Interested parties, as defined by subsection 269T(1) of the Act, are invited to lodge submissions concerning the publication of the dumping duty notice sought in the application, no later than the close of business on **28 February 2015**, addressed to:

The Director, Operations 1
Anti-Dumping Commission
Customs House
1010 La Trobe St
DOCKLANDS VIC 3008

or by email operations1@adcommission.gov.au, or fax number 1300 882 506 or +61 3 9244 8902 (outside Australia).

Interested parties wishing to participate in the investigation must ensure that submissions are lodged by the due date. Interested parties should note that I am not obliged to have regard to a submission received by the Commission after the date above if to do so would, in my opinion, prevent the timely placement of the statement of essential facts on the public record.

Interested parties may reply to matters raised by other parties during the course of the investigation and in response to the statement of essential facts.

The public record must contain, among other things, a copy of all submissions from interested parties. Letters and electronic mail are generally regarded as submissions if

they contain information relevant to the inquiry.

Interested parties claiming that information contained in their submission is confidential, or that the publication of the information would adversely affect their business or commercial interests, must:

- (i) provide a summary containing sufficient detail to allow a reasonable understanding of the substance of the information that does not breach that confidentiality or adversely affect those interests, or
- (ii) satisfy me that there is no way such a summary can be given to allow a reasonable understanding of the substance of the information.

Submissions containing confidential information must be clearly marked "FOR OFFICIAL USE ONLY".

Interested parties must lodge a non-confidential version or a summary of their submission in accordance with the requirement above (clearly marked "PUBLIC RECORD").

Provisional Measures

A preliminary affirmative determination may be made not earlier than 60 days after the date of initiation provided that there appears to be sufficient grounds for the publication of a dumping duty notice.

In accordance with section 269TD of the Act, provisional measures, in the form of securities in respect of interim dumping duty that may become payable on the goods, may be imposed where a preliminary affirmative determination has been made.

Statement of Essential Facts

A statement of essential facts will be placed on the public record by **9 May 2015**, or by such later date as the Minister may allow in accordance with section 269ZHI of the Act. The statement will set out the essential facts on which I propose to base a recommendation to the Minister in relation to the investigation. That statement will invite interested parties to respond to the issues raised within 20 days of the statement being placed on the public record.

Submissions received in response to the statement of essential facts within the relevant timeframes will be taken into account in completing the report and recommendation to the Minister.

Report to the Minister

The dates specified in this notice for lodging submissions must be observed to enable my report to the Minister within the legislative timeframe.

A recommendation to the Minister will be made in a report on or before **23 June 2015** (or such later date as the Minister may allow), unless I terminate the investigation.

The Minister must make a declaration within 30 days after receiving the report, or due to special circumstances, such longer period as the Minister considers appropriate.

Anti-Dumping Review Panel

Certain parties will have the right to seek review with the Anti-Dumping Review Panel in accordance with Division 9 of Part XVB of the Act of either a decision that may be made by the Commissioner to terminate the investigation, or a decision of the Minister after considering my report.

Anti-Dumping Commission Contact

Enquiries about this notice may be directed to the case manager by email to operations1@adcommission.gov.au, by telephone number 03 9244 8609 or by fax number 1300 882 506 or +61 3 9244 8902 (outside Australia).

Dale Seymour
Commissioner
Anti-Dumping Commission

19 January 2015