



Australian Government
**Department of Industry,
Innovation and Science**

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

CONSIDERATION REPORT NO. 349

**CONSIDERATION OF AN APPLICATION FOR REVIEW OF
ANTI-DUMPING MEASURES**

**CERTAIN PREPARED OR PRESERVED TOMATOES
EXPORTED FROM ITALY**

BY

AR INDUSTRIE ALIMENTARI S.P.A.

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ABBREVIATIONS

Abbreviation	Full title
the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
the applicant	AR Industrie Alimentari S.p.A. (ARIA)
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
Feger	Feger di Gerardo Ferraioli S.p.A.
the goods	the goods to which the anti-dumping measures apply (defined in Chapter 2.3)
La Doria	La Doria S.p.A.
REP 217	The Commissioner of the Anti-Dumping Commission's Final Report No. 217
REP 276	The Commissioner of the Anti-Dumping Commission's Final Report No. 276
Original investigation period	1 July 2012 to 30 June 2013
the Parliamentary Secretary	the Parliamentary Secretary to the Minister for Industry, Innovation and Science, or other relevant decision maker at the time
SPCA	SPC Ardmona Operations Limited

1 SUMMARY AND RECOMMENDATIONS

This report outlines the Anti-Dumping Commission's (the Commission's) consideration of an application lodged by AR Industrie Alimentari S.p.A. (referred to as ARIA or the applicant in this report) for a review of the anti-dumping measures applying to certain prepared or preserved tomatoes (the goods) exported to Australia from Italy in so far as the anti-dumping measures affect the applicant.

The application, at **Confidential Attachment 1**, is based on a change in the variable factors.¹ The variable factors relevant to the taking of the measures in relation to that exporter, relevant to the application, are the normal value and export price in respect of the goods.

1.1 Recommendation

The Commission recommends that the Commissioner of the Anti-Dumping Commission (the Commissioner) not reject the application and initiate a review into the anti-dumping measures as they relate to the applicant.

1.2 Legislative background

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

Division 5 empowers the Commissioner to reject or not reject an application for review of anti-dumping measures.

If the Commissioner does not reject the application, he is required to publish a notice indicating that it is proposed to review the measures covered by the application.

1.3 Findings and conclusions

ARIA's application for review of the anti-dumping measures applying to certain prepared or preserved tomatoes exported to Australia from Italy has been examined and the Commission is satisfied that:

- the application complies with section 269ZB; and
- having regard to the applicant's claims and other relevant information, there appear to be reasonable grounds for asserting that one or more of the variable factors relevant to the taking of the anti-dumping measures have changed.

¹ A public version of the application is at **Non-Confidential Attachment 1**.

² A reference to a division, section or subsection in this report is a reference to a provision of the *Customs Act 1901*, unless otherwise specified.

2 BACKGROUND

2.1 Existing measures

2.1.1 The original investigation

On 10 July 2013, the Commissioner initiated a dumping investigation into certain prepared or preserved tomatoes exported to Australia from Italy following an application by SPC Ardmona Operations Limited (SPCA). In that investigation, and as outlined in Report No. 217 (REP 217), it was found that:

- in the case of two exporters, Feger di Gerardo Ferraioli S.p.A. (Feger) and La Doria S.p.A. (La Doria), the goods were exported to Australia from Italy at dumped prices, but the dumping margins were negligible (less than 2%);
- in the case of all other exporters, the goods were exported to Australia from Italy at dumped prices ranging from 3.25% to 26.35%;
- the dumped goods caused material injury to the Australian industry producing like goods; and
- continued dumping may cause further material injury to the Australian industry.

Accordingly, the Commissioner recommended that the then Parliamentary Secretary to the Minister for Industry (Parliamentary Secretary) impose anti-dumping measures on the goods exported from Italy, with the exception of two exporters, Feger and La Doria, against whom the investigation was terminated. The Parliamentary Secretary accepted that recommendation and, on 16 April 2014, notice of the Parliamentary Secretary's decision was published in the Commonwealth Gazette³ and *The Australian* newspaper. Anti-Dumping Notice No. 2014/32 (ADN 2014/32) refers. The measures are in place until 15 April 2019.

As part of the Commission's exercise to select a sample of exporters, ARIA did not provide a response to Part 1 of the exporter questionnaire, and as such, the Commission considered ARIA to be an uncooperative exporter in the investigation. As a result, exports of the goods to Australia by ARIA are currently subject to the 'all other exporters' rate outlined in the notice of the Parliamentary Secretary's decision, which is a duty of 26.35%. Further information about the rates of duty can also be found in the Dumping Commodity Register.⁴

2.1.2 Subsequent investigation

On 19 January 2015, the Commissioner initiated a dumping investigation into certain prepared or preserved tomatoes exported to Australia from Italy by Feger and La

³ Available on the legislation.gov.au website at <https://www.legislation.gov.au/Details/C2014G00626>.

⁴ Available on the Commission's website at <http://www.adcommission.gov.au>.

Doria following an application by SPCA. In that investigation, and as outlined in Report No. 276 (REP 276), it was found that:

- the goods were exported from Italy by Feger and La Doria at dumped prices (8.4% and 4.5%, respectively);
- the dumped goods caused material injury to the Australian industry producing like goods; and
- continued dumping may cause further material injury to the Australian industry.

Accordingly, the Commissioner recommended that the Assistant Minister for Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary)⁵ impose anti-dumping measures on the goods exported from Italy by Feger and La Doria. The Parliamentary Secretary accepted that recommendation and, on 10 February 2016, notice of the Parliamentary Secretary's decision was published in Anti-Dumping Notice No. 2016/13 (ADN 2016/13).

2.2 The current review application

On 1 April 2016, ARIA lodged an application requesting a review of the anti-dumping measures as they apply to its exports of prepared or preserved tomatoes to Australia from Italy. ARIA claims that certain variable factors relevant to the taking of the anti-dumping measures have changed. The application relates to measures imposed in REP 217.

ARIA manufactures the goods for sale in domestic and international markets, including the Australian market. The goods exported to Australia are subject to dumping duties.

The Commission considers that ARIA falls within the definition of "affected party" in subsection 269T(1) because ARIA is directly concerned with the exportation to Australia of the goods to which the measures relate. Accordingly, ARIA is eligible to lodge an application for a review of measures under subsection 269ZA(1).

The application is not precluded by subsection 269ZA(2)(a), which requires that an application for review must not be lodged earlier than 12 months after the publication of a dumping duty notice or countervailing duty notice, or the publication of a notice declaring the outcome of the last review of the dumping or countervailing duty notice, because no such notice was published within the 12 months preceding ARIA's application.

Pursuant to subsection 269ZC(1), the Commissioner must examine the application and, within 20 days after the lodgement date, decide whether to reject the application. The decision must be made no later than 21 April 2016.

⁵ The Minister for Industry, Innovation and Science has delegated responsibility with respect to anti-dumping matters to the Parliamentary Secretary, and accordingly, the Parliamentary Secretary is the relevant decision maker.

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If the Commissioner is not satisfied, having regard to the application and to any other relevant information, of one or more matters referred to in subsection 269ZC(2), the Commissioner must reject the application.

2.3 The goods subject to the anti-dumping measures

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

Tomatoes, whether 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.

The goods excluded from this definition are pastes, purees, sauces, pasta sauces, juices and sundried tomatoes.

2.4 Tariff classification

The goods are currently classified to subheading 2002.10.00 (statistical code 60) to Schedule 3 of the *Customs Tariff Act 1995*. The general rate of Customs duty is currently 5% for the goods imported from Italy.

2.5 Relevance of other investigations

The findings of other investigations including REP 276 and any other investigations, reports or reviews the Commissioner deems relevant will be considered during this review.

3 CONSIDERATION OF THE APPLICATION

3.1 Finding

Having regard to the applicant's claims and other relevant information, the Commission is satisfied that the application complies with section 269ZB and that there appear to be reasonable grounds for asserting that one or more of the variable factors relevant to the taking of anti-dumping measures have changed.

3.2 Legislative framework

Subsection 269ZB(1) requires that the application be in writing, be in an approved form for the purposes of section 269ZB, contain such information as the form requires, be signed in the manner indicated by the form, and be lodged in the manner approved under section 269SMS.

Subsection 269ZB(2) states that the application must include:

- (a) *a description of the kind of goods to which the measures the subject of the application relate; and*
- (b) *a description of the measures the subject of the application; and*
- (c) *if the application is based on a change in variable factors—a statement of the opinion of the applicant concerning:*
 - (i) *the variable factors relevant to the taking of the measures that have changed; and*
 - (ii) *the amount by which each such factor has changed; and*
 - (iii) *the information that establishes that amount;*

Subsection 269ZC(2) specifies the matters which the Commissioner must consider in making a decision whether to reject the application. These matters are:

- (a) *that the application complies with section 269ZB; and*
- (b) *that there appear to be reasonable grounds for asserting either, or both, of the following:*
 - (i) *that the variable factors relevant to the taking of anti-dumping measures have changed;*
 - (ii) *that the anti-dumping measures are no longer warranted.*

3.3 Compliance with section 269ZB

The application lodged by ARIA:

- is in writing;
- is in the approved form;
- is signed in the manner indicated by the form;
- provides a description of the kind of goods to which the measures the subject of the application relate;
- provides a description of the measures the subject of the application; and
- was lodged in the manner approved under section 269SMS.

The approved form requires that the application include information about the applicant's opinion on the causes of the change in the variable factor(s) and whether these causes are likely to persist.

3.4 Variable factors

To comply with subsection 269ZB(2)(c), the application must include a statement of the applicant's opinion concerning the relevant variable factors that have changed, the amount by which those variable factors have changed, and information that establishes the amount of change. The applicant is not required to demonstrate that all the variable factors have changed.

In its application, ARIA states that it is subject to the uncooperative exporter rate of duty following REP 217. This rate was determined by reference to the lowest export price and highest normal value from cooperative selected exporters found to have a dumping margin greater than 2%.

3.4.1 Normal value

ARIA states that more than three and a half years have passed since the beginning of the investigation period in REP 217 (1 July 2012 to 30 June 2013). Over this time, ARIA claims that it has observed variations in the price of fresh tomatoes, which has resulted in corresponding fluctuations in the price of the goods sold on the domestic market in Italy.

To support this claim, ARIA provided:

- a selection of domestic invoices for a range of canned tomato products sold during each quarter of 2015 (**Confidential Attachment 2** refers); and
- a spreadsheet listing its domestic sales related to the above domestic invoices (**Confidential Attachment 3** refers).

In the domestic sales listing, ARIA listed the date of sale, customer, shipping terms, product type, can size, number of cans, net weight and invoice value.

Using the net weight and invoice value for its transaction in the domestic sales listing, ARIA estimated the weighted average normal value for 2015. ARIA estimates that the weighted average normal value is lower in 2015 than in the original investigation period. ARIA claims that, as such, there appears to be reasonable grounds for asserting that the normal value relevant to the taking of anti-dumping measures has changed.

3.4.2 Export price

ARIA claims that, over the past 12 months, it has not exported the goods to Australia. Given this, ARIA asserts that a contemporary export price should be determined by having regard to a contemporary normal value. ARIA claims that the export price should be equal to the contemporary normal value, for which it has provided an estimate regarding 2015 (outlined in section 3.4.1 of this report).

3.4.3 Non-injurious price

ARIA did not make any claims in its application in relation to whether the non-injurious price had changed.

3.5 The Commission's assessment

In the original investigation, as part of the Commission's exercise to select a sample of exporters, ARIA did not provide a response to Part 1 of the exporter questionnaire. As such, the Commission considered ARIA to be an uncooperative exporter.

The Commission considers that all transactions in the domestic sales listing provided by ARIA relate to the goods. In its application, ARIA did not make clear whether this domestic sales listing was a comprehensive listing of all its sales during 2015 or whether it is a sample of sales. However, the Commission considers that it exhibits adequate information relating to a range of product types, customers, order sizes and invoice values, and can therefore be considered in determining whether the normal value has changed.

The Commission found that there were a number of transactions, for which ARIA provided invoices, which were not included in the domestic sales listing. As such, the Commission included information from these invoices in the domestic sales listing, and updated ARIA's estimate of the weighted average normal value.

Further, the Commission found that ARIA's estimate of the weighted average normal value was based on a different delivery term to the Commission's calculation of the normal value for uncooperative exporters. To ensure a fair comparison, the Commission adjusted ARIA's estimate of the normal value to reflect the terms used in REP 217. The amended and adjusted domestic sales listing is set out in ***Confidential Attachment 4***.

The Commission considers that, after having made the two abovementioned adjustments to ARIA's estimate of the normal value in 2015, ARIA has provided information to suggest the normal value for the goods has decreased since the original investigation period.

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ARIA has provided limited information to suggest the export price may have changed since the original investigation period. ARIA has not exported the goods to Australia in the 12 months preceding this application and is therefore unable to provide information on exports for this period. Due to the passage of time between the investigation period assessed in REP 217 and the date of this application, the Commission believes it is reasonable to assume the export price may have changed.

The Commission has previously been provided with information which demonstrates that, despite a lack of exports in the past 12 months, ARIA is ineligible for an accelerated review.

Given the above considerations, the Commission concludes that there appear to be reasonable grounds for asserting that the variable factors relevant to the taking of anti-dumping measures have changed.

4 CONCLUSION AND RECOMMENDATIONS

The Commission has considered the application made by the applicant in accordance with sections 269ZB and 269ZC.

The Commission concludes, on the basis of the information provided in the application and other relevant information, that:

- the application complies with section 269ZB; and
- there appear to be reasonable grounds for asserting that one or more of the variable factors relevant to the taking of the anti-dumping measures have changed.

Accordingly, the Commission recommends that the Commissioner not reject the application for review of the anti-dumping measures applying to certain prepared or preserved tomatoes exported to Australia from Italy, in so far as the measures affect the applicant.

Should the Commissioner decide not to reject this application for a review, the Commission recommends that the review period be from 1 April 2015 to 31 March 2016.

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5 ATTACHMENTS

Confidential Attachment 1	Application
Confidential Attachment 2	Domestic sales invoices
Confidential Attachment 3	Domestic sales listing
Confidential Attachment 4	Commission's calculations of domestic sales
Confidential Attachment 5	Department of Immigration and Border Protection import data
Non-Confidential Attachment 1	Public record version of the application