

PUBLIC RECORD



J.BRACIC & ASSOCIATES
TRADE REMEDY ADVISORS

PO Box 3026
Manuka, ACT 2603
Mobile: +61 499 056 729
Email: john@jbracic.com.au
Web: www.jbracic.com.au

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National Manager Operations
Anti-Dumping Commission
Customs House
1010 Latrobe St
Docklands, VIC 3008

Dear Ms Hind,

I act on behalf of Conserve Dora SRL (Conserve Dora), a processor of tomato products in Italy that is seeking to undertake future exportation of prepared or preserved tomatoes to Australia.

Please find attached an application for an accelerated review of the dumping duty notice applying to prepared or preserved tomatoes.

If you have any questions concerning this application, please do not hesitate to contact me directly.

Yours sincerely,

John Bracic

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APPLICATION FOR ACCELERATED REVIEW

CONSERVE DORA SRL

1. Description of the goods to which the notice relates.

The Anti-Dumping Commission's (the Commission) Report No. 217 describes the goods as follows:

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. Grounds for review

Exports prior to the Statement of Essential Facts

A new exporter may request an accelerated review of a dumping duty notice, in so far as that notice affects that exporter.

New exporter is defined under s.269T of the *Customs Act 1901* as:

an exporter who did not export such goods to Australia at any time during the period:

(a) Starting at the start of the investigation period in relation to the application; and

(b) Ending immediately before the day the Commissioner places on the public record the statement of essential facts in relation to the investigation of the application.

Conserve Dora has never exported prepared or preserved tomatoes to Australia.

Related to investigated exporters

The Commissioner may reject the application if satisfied in accordance with s.269ZE(2)(b) that:

the exporter is related to an exporter whose exports were examined in relation to the application for publication of that notice; [emphasis added]

Conserve Dora is directly related to Corex S.p.A (Corex), an interested party in the original investigation. At the outset of the original investigation, Corex was identified as a potential exporter and classified as a 'selected exporter' following the Commission's decision to sample exporters for the purposes of determining individual dumping margins.

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During the investigation, Corex submitted information which it considered supported its view and claim that it was and should be found to be the exporter of the goods. However, following the Commission's examination of all relevant information related to this matter, the Commission determined that Corex did not meet or perform the functions and role of an exporter. Corex was effectively found to be a trading intermediary involved in the supply of the goods to Australia. The exporter(s) of the goods supplied by Corex were determined by the Commission to be the producers of those goods.

Given the Commission's finding that Corex was not the exporter of the relevant exports, Conserve Dora can confirm that it is not related to any 'exporter whose exports were examined in relation to the application for publication of the notice'.

Grounds for review

As outlined in the Commission's Dumping and Subsidy Manual, it is not required for a new exporter to have already exported a minimum quantity of the subject goods to Australia. This is supported by the findings of the WTO Panel and upheld by the Appellate Body which examined whether Article 9.5 of the Anti-Dumping Agreement subjected the right to an expedited new shipper review to a showing of a "representative" volume of export sales. The Panel found that:

Article 9.5 of the AD Agreement provides that the authorities shall promptly carry out a review, provided that the exporters or producers who have not exported the product subject to a duty during the period of investigation can show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product. In sum, in case a producer or exporter which (i) has not exported the product to the country concerned during the period of investigation and (ii) is not related to an exporter or producer already subject to the duty requests a new shipper review, the authority is required to promptly carry out such a review.

As outlined above, Conserve Dora complies with the two necessary requirements for an accelerated review.

Conserve Dora presently produces processed tomato products such as pastes and pasta sauces. It is in the process of converting its production facility to commence production of canned tomatoes with a view to exporting goods to Australia. Given that it has not yet commenced production of canned tomatoes and assuming a review period covering 1 April 2013 to 31 March 2014, Conserve Dora can advise that:

- it will not have exported canned tomatoes to Australia;
- it will not have exported canned tomatoes to third countries;

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- it will not have sold like goods on the domestic market in Italy, and
- it will not have incurred any production or selling costs for canned tomatoes.

Therefore, Conserve Dora has no like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions, to enable normal values to be determined under s.269TAC(1). However that subsection provides that where 'like goods are not so sold by the exporter', normal values can be determined under s.269TAC(1) by reference to "other sellers of like goods".

Conserve Dora notes that the Commission has initiated an accelerated review on behalf of another new exporter, Davia S.p.A. Industrie Alimentari. Conserve Dora considers that the Commission is obliged to firstly have regard to any relevant information from that review and any other subsequent accelerated reviews in establishing a normal value for Conserve Dora under s.269TAC(1).

Conserve Dora submits that a normal value using information from other sellers subject to accelerated reviews would be reasonable and appropriate in this circumstance given that it would reflect updated costs and sales information for the inquiry period covering the accelerate review.

Conserve Dora notes that the current interim dumping duties are in the form of a fixed amount of duty plus a variable amount of duty where actual export prices fall below the ascertained export prices. In these circumstances, Conserve Dora seeks an ascertained export price set equal to the determined ascertained normal value. This would effectively result in an undumped floor price with a zero fixed amount of duty payable.