



Investigation into the alleged dumping of
PREPARED OR PRESERVED TOMATOES
Exported from Italy

Customs Act 1901 – Part XVB

Issues Paper – Suitability of domestic sales

10 July 2013

Purpose

The purpose of this issues paper is to outline the Anti-Dumping Commission's (the Commission) consideration of information relevant to the determination of normal values in regards to the alleged dumping of prepared or preserved tomatoes exported to Australia from Italy.

Background

On 17 June 2013, an application was lodged by SPC Ardmona Operations Limited (SPCA) requesting that the Minister for Home Affairs (the Minister) publish a dumping duty notice in respect of prepared or preserved tomatoes exported to Australia from Italy.

SPCA alleges the Australian industry has suffered material injury caused by prepared or preserved tomatoes exported to Australia from Italy at dumped prices.

The Commission considered the application and the delegate of the Commissioner was satisfied that the matters contained in the application appear to be reasonable for the publication of a dumping duty notice.

On 10 July 2013 the Commission initiated an investigation into the alleged dumping of prepared or preserved tomato products exported to Australian from Italy. The Commission released Australian Dumping Notice 2013/59 and published its decision in *The Australian* newspaper on 10 July 2013.

The investigation period is 1 July 2012 to 30 June 2013.

The Goods

The goods subject of the SPCA's application are prepared or preserved tomato products. The applicant provided further details of 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 applicant indicated that the goods excluded from this application are;

Pastes, purees, sauces, pasta sauces, juices and sundried tomatoes

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 exported from Italy are subject to 5% Customs duty.

Issue

In its application SPCA did not make any claims that a situation in the market of Italy is such that domestic sales of prepared or preserved tomatoes in that market are not suitable for determining normal values. The Commission however considers that there is relevant publicly available information to indicate that the European Union may affect the

interaction of supply and demand in the market for processed tomato products, to a considerable extent that prices and costs in that market can no longer be viewed as being established under those market principles.

Determination of normal value

Section 269TAC(1) of the Act provides that the normal value of any goods exported to Australia is the price paid or payable for like goods sold domestically in the ordinary course of trade in arm's length transactions.

However, s.269TAC(2)(a)(ii) provides that the normal value of the goods exported to Australia cannot be determined under subsection (1) where the Minister is satisfied that:

'...because the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under subsection (1)'.

One such situation may be where domestic selling prices in the country of export have been materially affected by government influence rendering those prices unsuitable for use in establishing normal values.

Where such a market situation exists, normal value cannot be established on the basis of domestic sales. Instead, the normal value may be determined on the basis of a cost construction¹ or third country sales.² Therefore, a determination as to whether there is a market situation has potential consequences for the assessment of normal value and dumping margins.

The Act provides that a cost construction of normal value comprises the sum of what the Minister determines to be the cost of production or manufacture of the exported goods and (on the assumption the goods were sold domestically in the ordinary course of trade rather than being exported) the administrative, selling and general costs associated with the sale and the profit on that sale.

In constructing normal value based on costs, s.269TAC(5A) provides that these costs must be worked out in accordance with the *Customs Regulations 1926*.

In terms of costs of manufacture or production, Regulation 180(2)³ requires that if:

1. an exporter keeps records relating to like goods that are in accordance with generally accepted accounting principles (GAAP) in the country of export; and
2. those records reasonably reflect competitive market costs associated with the production or manufacture of like goods;

the Minister must work out the cost of production or manufacture using information set out in the exporter's records.

¹ Section 269TAC(2)(c)

² Section 269TAC(2)(d)

³ *Customs Regulations 1926*

Where the conditions of Regulation 180(2)⁴ are not met, it is the Commission's position that the records kept by that exporter are not required to be used in working out their costs, and the Commission may resort to other relevant information for determining these affected costs.

Relevance of the European Union's Common Agricultural Policy to determining normal values

During previous investigations into the alleged dumping and/or subsidisation of goods exported from member countries within the European Union (EU), processed dried currants being the most recent example, the Commission has become aware of certain agricultural development and support policies that are administered by EU member states (in cooperation with the European Committee and other bodies). These policies provide for various forms of support and development assistance to be delivered to agricultural sectors including, but not limited to, the cultivation of products for processing.

The Commission is aware that the primary agricultural policy applicable throughout the EU (and administered by the EC) is referred to as the Common Agricultural Policy (CAP). From publicly available information and previous preliminary examination of the policy, the Commission understands that the common objectives of the CAP are to provide farmers with a reasonable standard of living, consumers with quality food at fair prices and to preserve rural heritage. To achieve its objectives, the CAP represents an integrated system of measures which, originally, comprised a number of specific mechanisms including:

- Import levies;
- Import quotas;
- Production quotas
- Internal price mechanisms (price interventions); and
- Direct subsidies

Publicly available information suggests that the CAP has undergone a process of significant reform since 2005 (commonly referred to generally as 'de-coupling' reforms) which has significantly changed the mechanisms through which support mechanisms and benefits are administered to achieve its key policy objectives. Available information also indicates that the CAP is still operational within the EU and, specifically, is administered within Italy.

However, due to lack of cooperation from exporters and manufacturers in recent dumping investigations, the Commission's understanding of the specific operation of programmes and policies administered in relation to agriculture within the EU is limited.

Preliminary research into publically available information has highlighted the following specific common policies enshrined in formal EC regulations which may be relevant to the assessment as to whether a market situation exists and/or whether exporter's records reasonably reflect competitive market costs associated with the production or manufacture of like goods:

⁴ *Customs Regulations 1926*

- **Council Regulation (EC) No.1782/2003**: reflecting a suite of significant reforms to the CAP;
- **Council Regulation (EC) No.73/2009**: pertaining to rules in relation to direct support schemes (including specific direct benefit provisions permissible under the CAP during specified periods of transition to the reforms of the CAP implemented in 2003);
- **Council Regulation (EC) No.2200/1996 (as amended by Council Regulation (EC) No.1182/2007)**: relating to the common organisation of fruit and vegetable markets by EU members;
- **Council Regulation (EC) No.2201/1996 (as amended by Council Regulation (EC) No.1182/2007)**: relating to the common organisation of markets in relation to processed fruits and vegetables including, inter alia, mechanisms of production aid and price intervention in relation to certain products produced from fruit and vegetables harvested in the European Community.
- **Council Regulation (EC) No.1698/2005**: relating to support of rural development by the European Agricultural Fund for Rural Development (EAFRD)

As a caveat to the above, the Commission notes that the list of specific areas of EU common policy is not intended to be exhaustive and there may be additional complimentary common policies and additional domestic policies which warrant further investigation. Additionally, the Commission concedes that it does not possess necessary information at this time to determine whether the specific regulations listed above are currently in force or whether all of the listed areas are relevant to Italian agriculture.

However, we are satisfied that the material listed above provides sufficient indicia of the existence of significant common agriculture policies within the EU, which may be implemented by the Italian government through specific domestic agricultural support programmes and policies and pursuant to which significant benefits may have been administered to agricultural sectors related to the cultivation of tomatoes for processing.

Further, the Commission specifically notes that, in accordance with the common policies of Council Regulation No.2201/1996, specific aid initiatives may have been implemented by the Italian government from 1996 onwards, subject to which benefits and market support mechanisms were applied specifically to producers of prepared or preserved tomatoes produced from tomatoes cultivated within the EU.

It is unclear whether the programmes and policies provided for this regulation No.2201/1996 are currently in force within Italy. It appears however, that following transition to the reformed CAP pursuant to Council Regulation 1782/2003, the goods subject to such aid regimes are specifically identified in Council Regulation 73/2009 as goods in relation to which transitional direct support by member countries is permissible under the CAP.

Therefore the Commission considers that there is sufficient information and reasonable bases for the inclusion of specific enquiries with the EC and Italian government which seek to identify the agricultural policies and specific programmes currently administered in Italy. The investigation also intends examining the extent to which agricultural policies currently administered within Italy affect the market for the cultivation of tomatoes for processing (the primary raw material used in the manufacture of the goods under consideration).

The information gathered in relation to agricultural support programs in Italy may be used to investigate whether, by virtue of policy programs applying to the cultivation of tomatoes in Italy, there is a situation in the Italian domestic market for prepared or preserved tomato products that renders domestic sales unsuitable for determining normal values (i.e. that a 'particular market situation' exists). Further, the information will also be used to assess whether the records of exporters of prepared or preserved tomatoes reasonably reflect competitive market costs associated with the production or manufacture of like goods.

Lodgement of Submissions

Interested parties are able to lodge responding submissions to matters raised in this issues paper, no later than the close of business on **19 August 2013** addressed to:

The Director
Operations 1
Anti-Dumping Commission
Customs House
5 Constitution Avenue
CANBERRA ACT 2601

Or by email operations1@adcommission.gov.au or by fax to 1300 882 506

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

Interested parties that respond to the issues paper and seek confidentiality over the material therein, must also lodge a non-confidential version or a summary of their submission, which will be placed on the public record.

Enquiries about this notice may be directed to the case manager on telephone number (02) 6275 4948, fax number 1300 882 506 or by email operations1@adcommission.gov.au.

John Bracic
Director Operations 1
Anti-Dumping Commission

10 July 2013