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**ANTI-DUMPING INVESTIGATION BY THE AUSTRALIAN GOVERNMENT ON IMPORTS OF
PROCESSED TOMATO PRODUCTS**

**Written submission by the European Commission in the framework of the
accelerated review**

According to information received from the European industry and information available on the Australian authority's web-site, it appears that Australia has changed its methodology for the calculation of the normal value. Following a court ruling it now favours a single "consolidated" level for anti-dumping measures rather than by model.

While this approach maybe appropriate under certain circumstances, in the present case, this is clearly not viable. Indeed, we do not see any legal basis under WTO law for using the highest normal value based on cherry tomatoes as the Australian authorities propose.

In the absence of exports there are two possibilities:

- (a) a weighted average normal value, based on all eligible domestic sales,;
- (b) different normal values by type/model. Such variable AD duties have been acknowledged as lawful under WTO, *i.a.* in the case farmed salmon from Norway¹.

We therefore urge the Australian authorities to reconsider their position on this issue. AD duties imposed on the basis of this highest normal value would be WTO incompatible for all exports other than cherry tomatoes. The duty collected would be way above any actual level of dumping because of a wrong normal value, *i.e.* the wrong benchmark for measuring whether or not an export transaction is dumped.

¹ WT/DS337/R of 16.11.2007 EC-AD measure on farmed salmon from Norway (para 7.740 et seq).