



## EUROPEAN UNION QUESTIONNAIRE

**Product:** Prepared or preserved tomatoes, exported from Italy by La Doria S.p.A. and Feger di Gerardo Ferraioli S.p.A.

**Period of Investigation:** 1 January 2014 to 31 December 2014

**Response due by:** 16 March 2015

**Investigation case managers:** Ms Thalia Brazdil and Mr Steven Spears

**Phone:** +61 3 9244 8609 / +61 3 9244 8413

**Fax:** +61 3 9244 8902

**E-mail:** [operations1@adcommission.gov.au](mailto:operations1@adcommission.gov.au)

**Anti-Dumping Commission website:** [www.adcommission.gov.au](http://www.adcommission.gov.au)

### Return of completed questionnaires:

**By mail on (CD-ROM or USB):**

Attention: Director, Operations 1
Anti-Dumping Commission
Customs House, 1010 Latrobe St
Docklands Vic 3008
AUSTRALIA

**By email:**

[operations1@adcommission.gov.au](mailto:operations1@adcommission.gov.au)

**PUBLIC RECORD**

PART A: BACKGROUND AND GENERAL INSTRUCTIONS..... 3

A1. Background ..... 3

A2. The goods under consideration ..... 3

A3. Investigation period..... 4

A4. Purpose of this questionnaire ..... 4

A5. Response to this questionnaire..... 4

A6. If the EU decide to respond ..... 5

A7. Declaration..... 6

A8. Coordination of responses..... 6

A9. Consultants/parties acting on your behalf ..... 6

A10. Provision of documents ..... 6

A11. Lodgement ..... 7

A12. General matters ..... 7

A13. Clarification ..... 7

A14. Further questions and verification ..... 7

PART B: QUESTIONS..... 8

B1. Current framework of the Common Agricultural Policy (CAP) ..... 8

B2. Access to the (CAP)..... 8

B3. Administration of the CAP and other benefit frameworks..... 8

B4. Complementary benefit frameworks ..... 9

B5. Administration of the CAP in relation to Italian agriculture ..... 9

B.6 Additional queries regarding the sector under consideration.....10

B.7 Additional queries regarding import regulations.....11

PART - C DECLARATION ..... 13

## PART A: BACKGROUND AND GENERAL INSTRUCTIONS

### A1. Background

Following a dumping application by SPC Ardmona Operations Limited (SPCA), the Anti-Dumping Commission (the Commission) has initiated an investigation into allegations that prepared or preserved tomatoes exported from Italy by Feger di Gerardo Ferraioli S.p.A. and La Doria S.p.A. have been exported to Australia at dumped prices, and because of that dumping, material injury has been caused to an Australian industry producing like goods.

The abovementioned dumping investigation will also investigate whether there is a situation in the Italian domestic market that renders domestic sales unsuitable for determining normal values (i.e. that a 'particular market situation' exists).

A notice advising initiation of the investigation was published in *The Australian* newspaper on 19 January 2015. Anti-Dumping Notice (ADN) No. 2015/05 outlining the details of the investigation and the procedures to be followed during the investigation can be accessed on the Commission's website at [www.adcommission.gov.au](http://www.adcommission.gov.au).

The dumping investigation will examine whether there is a situation in the Italian domestic market for prepared or preserved tomatoes that renders domestic sales of prepared or preserved tomatoes unsuitable for determining normal value under section 269TAC(1) of the *Customs Act 1901* (the Act) (i.e. that a 'market situation' exists). The assessment of market situation will include an examination of factors that affect the supply and price of raw tomatoes.

### A2. The goods under consideration

The goods under consideration (the goods) ie the goods exported to Australia allegedly at dumped prices 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 (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.*

Throughout the questionnaire, the goods are referred to as 'prepared or preserved 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 prepared or preserved tomatoes 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.

### **A3. Investigation period**

The existence and amount of any dumping in relation to prepared or preserved tomatoes exported to Australia from Italy by Feger di Gerardo Ferraioli S.p.A. and La Doria S.p.A. will be determined on the basis of an investigation period from **1 January 2014 to 31 December 2014** (herein after referred to as ‘the investigation period’).

The Commission will examine details of the Australian market from 1 January 2010 for injury analysis purposes.

### **A4. Purpose of this questionnaire**

The purpose of this questionnaire is to assist the Commission to obtain information from the European Union (EU) it considers necessary for investigating whether a particular market situation exists in the Italian domestic market that renders sales of prepared or preserved in that market not suitable for use in determining normal value.

Any additional questions relating to a particular market situation in Italy will be posed to the EU in the form of supplementary questionnaires.

A separate Exporter Questionnaire has been Feger di Gerardo Ferraioli S.p.a and La Doria S.p.A to complete, if they chose to cooperate with the investigation.

The exporter questionnaire also has a section requesting information on market situation.

### **A5. Response to this questionnaire**

The EU does not have to complete the questionnaire. However, if the EU does not respond, the Commission may be required to rely on all available information in making its conclusions and recommendations, including:

- information supplied by other parties (including information supplied by the Australian industry – the applicant for the anti-dumping measures);

## PUBLIC RECORD

- information gathered during the previous investigation concerning prepared or preserved tomatoes exported from Italy to Australia.

Therefore, it is considered to be in the EU's best interests, and the interest of the Italian exporters of prepared or preserved tomatoes, to provide a complete response.

If the EU chooses to respond to this questionnaire, the response is due by **COB 16 March 2015**.

### **A6. If the EU decide to respond**

Should the EU choose to provide a response to this questionnaire, please note the following.

#### **For official use only and Public Record**

If the EU chooses to respond to this questionnaire, it is required to lodge one confidential version (for official use only) and one non-confidential version (for public record) of your submission by the due date. Please ensure that each page of information you provide is clearly marked either "**FOR OFFICIAL USE ONLY**" or "**PUBLIC RECORD**" in the header and/or the footer.

All information provided to the Commission in confidence will be treated accordingly. The non-confidential version of your submission will be placed on the Commission's public record which is available at [www.adcommission.gov.au](http://www.adcommission.gov.au).

Please note, Australia's anti-dumping and countervailing legislation requires that to the extent that information given to the Commission is claimed to be confidential or whose publication would adversely affect a business or commercial interest, the person giving the information must ensure that a summary of that information contains sufficient detail to allow a reasonable understanding of the substance of the information, but does not breach confidentiality nor adversely affect those interests.

The legislation allows that a person is not required to provide a summary for the public record if the Commission can be satisfied that no such summary can be given that would allow a reasonable understanding of the substance of the information. However, such a summary would add considerably to an interested party's understanding of information contained in a document.

As provided for in Australia's anti-dumping and countervailing legislation, all submissions are required to have a bracketed explanation of deleted or blacked out information for the non-confidential version of the submission. Note that if such an explanation is not provided, the Commission may disregard the information in the submission. If, for some reason, you cannot produce a non-confidential summary, please contact the investigation case manager.

## **A7. Declaration**

You are required to make a declaration that the information contained in the EU's response is complete and correct. You must return the signed declaration of an authorised EU official at Section C of this questionnaire with the EU's response.

## **A8. Coordination of responses**

In completing the questionnaire, if a question requires information from various EU authorities/ agencies/ departments, please forward the questions to the correct source.

However, it is the responsibility of the EU to ensure that a full and complete response to all sections of the questionnaire is submitted, and that responses from various EU authorities/ agencies/ departments are collated and coordinated in the one response. Please note, the Commission has also sent a questionnaire to the Government of Italy.

## **A9. Consultants/parties acting on your behalf**

If you intend to have another party acting on your behalf please advise the Commission of the relevant details.

The Commission will require a written authorisation from the EU for any party acting on its behalf.

## **A10. Provision of documents**

Numerous documents are requested from the EU throughout this questionnaire. In some cases, the titles or description of these documents within the questionnaire may not correlate to the official title of each document, but is rather a descriptor of the document to the best of the Commission's knowledge.

If the listed title is unknown to the EU but a document that appears to be similar to the requested document, relates to a similar topic area, or otherwise would be considered to contain useful information is identified by the EU, please provide this document.

Further, when providing requested documents, please indicate whether the documents:

- are current/in force;
- were current/in force during the investigation period; or
- have been repealed, revised or superseded.

Where the documents have been repealed, revised or superseded, where applicable:

- indicate when this revision occurred;
- provide any notice of repeal;
- provide the revised version;
- provide the document that supersedes the requested document; and;
- indicate whether the revised version was in force during the investigation period.

## **A11. Lodgement**

You may lodge your response by mailing it to the address for lodgement shown on the front cover of this questionnaire. Alternatively, you are welcome to lodge your response by email. The email address for lodgement is shown on the front cover of this questionnaire. If you lodge by email you are still required to provide a confidential and a non-confidential version of your submission by the due date.

In completing any lists of data requested throughout this questionnaire, electronic responses in a Microsoft Excel spreadsheet would be preferred. If lodging your response in hard copy, please include these lists in electronic format on an included CD-ROM or USB device.

## **A12. General matters**

Responses to questions should:

- be as accurate and complete as possible, and attach all relevant supporting documents, even where not specifically requested in this questionnaire;
- be in English (with fully translated versions of all requested and other applicable documents submitted);
- list your source(s) of information for each question;
- identify all units of measurement used in any tables, lists and calculations;
- show any amounts in the currency in which they were originally denominated.

Please note that answers such as "Not Applicable" may not be considered by the Commission to be adequate.

## **A13. Clarification**

If you have any difficulties in completing the questionnaire, or require clarification on any questions asked, contact the case manager as soon as possible (contact details are provided on Page 1 of this questionnaire).

## **A14. Further questions and verification**

The Commission may seek to carry out a visit to the EU to examine relevant records and to verify the information provided. It is common practice for Commission officers to visit government officials, exporters and manufacturer(s) of the goods in order to verify the information submitted. You will be contacted in advance of such a meeting to make arrangements as to the time and place of the verification meeting.

A complete response, including all of the documentation requested, must be submitted to the Commission before a verification meeting will be considered.

If such a verification is undertaken, it is preferable that the key government officials involved in preparing the response and who have knowledge of the source documentation and the information contained therein be available to meet with Commission officers and to provide additional clarification and explanation, as required.

If verification meetings are unreasonably delayed, cancelled, or otherwise hindered, the assessment of a particular market situation may be based on the facts available to the Commission.

The purpose of the verification meeting is to verify information already provided to the Commission in your submission prior to the meeting. It is not intended to be a second opportunity for the EU to provide new or additional information. Accordingly, your original response should be complete and accurate.

## **PART B: QUESTIONS**

We seek your assistance to gain an understanding of the frameworks of the Common Agricultural Policy administered by the EU.

Our specific enquires are set out in detail below. We respectfully request that you provide a completed response to each of the enquiries listed below. **Where questions are not applicable, please clearly indicate the reasons why they are not applicable.**

### **B1. Current framework of the Common Agricultural Policy (CAP)**

- B1.1 The Commission understands that the CAP underwent significant reform pursuant to a suite of changes outlined in Council Regulation (EC) no. 1782/2003. What were the key objects and purposes of the reforms?
- B1.2 Which reforms were applicable to the cultivation of raw tomatoes grown for processing in Italy?

### **B2. Access to the (CAP)**

- B2.1 Please provide a list of all agricultural benefits schemes and associated complimentary initiatives available to member states under the CAP from 1 January 2011 to 31 December 2014?
- B2.2 Please provide a list of all benefits schemes and associated complimentary initiatives accessed by the Italian Government from 1 January 2011 to 31 December 2014?

### **B3. Administration of the CAP and other benefit frameworks**

#### General

- B3.1 Provide an explanation of the role and responsibilities of the EU with respect to the ongoing administration of the CAP within the EU.
- B3.2 Please explain the specific nature of the EU's involvement in the administration of the CAP within each member of the EU.
- B3.4 Are member states in receipt of financial benefits or complimentary initiatives under the CAP subject to any compliance programs? If so, please describe the nature of ongoing monitoring, inspection and or auditing that the EU conducts to ensure compliance with the CAP?



Administration of the CAP budgeting

The Commission seeks to gain an understanding of how budgetary ceilings are set for each of the categories of payment provided for (or permissible under) the CAP as it is currently administered.

For each of the benefits schemes and complimentary initiatives identified in your response to question B2.2, please provide a response to the following questions:

- B3.5 How are annual CAP budgetary ceilings determined for each benefit scheme and complimentary initiative?
- B3.6 If calculated as a total CAP budget, to what extent are budgetary constraints applied to specific categories of benefit payment – for example, Single Payment Scheme (SPS), transitional payments and direct benefit schemes?
- B3.7 How does the EU monitor and ensure the payments made by the member states under the budget ceiling are appropriately allocated to the requisite benefit schemes and or complimentary initiative accessed by the member state?

**B4. Complementary benefit frameworks**

The Commission understands that, following the implementation of reforms to the CAP in 2003 (operational from 2005), other benefit frameworks or initiatives may have been implemented by the EU to compliment the CAP and contribute to the achievement of its objectives (such as the establishment of the European Agricultural Fund for Rural Development (EAFRD)).

- B4.1 Please provide a brief summary of the objectives and purpose of the EAFRD and its interaction with the CAP?
- B4.2 Please explain how member states deliver the benefits under the EAFRD?
- B4.3 Please identify any other programmes, initiatives or funds other than the EAFRD which are currently implemented by the EU in relation to the delivery of benefits and support to agricultural sectors within the EU.

**B5. Administration of the CAP in relation to Italian agriculture**

- B5.1 When did Italy commence transition to the SPS?
- B5.2 To the EU's knowledge how is the SPS administered by the Italian Government?
- B5.3 What other specific support programs and/or transitional payment schemes other than the SPS have been operational in Italy since 2011?
- B5.4 For all identified support programs and or transitional payments that have been provided to Italy during the period 2011 -2014 please provide:
  - Any source documentation (or comprehensive summary thereof) reflecting relevant national strategic plans and specific programmes for which funding was provided;

## PUBLIC RECORD

- A summary of the core objectives of the national programmes for which funding was provided/administered by the EU;
- The annual budgetary ceilings for funding of national policies/programmes in Italy;
- The total value of funding administered in relation to the Italian strategic plans/policies from any relevant funding mechanisms administered or facilitated by the EU.
- Copies of any relevant monitoring reports prepared by the EU in relation to the implementation of relevant strategic plans in Italy in relation to agricultural development/support (or summaries thereof).

### **B.6 Additional queries regarding the sector under consideration**

The Commission understands that Italy has applied specific direct payments permissible under the terms of Article 68 of EC regulation 73/2009 in relation to tomato growers. The Commission also understands that transitional payments pursuant to Article 54 (1) of EC Regulation 73/2009 may have been applied in Italy to tomato growers until 31 December 2011.

Further, the Commission also understands that, pursuant to Article 54(2) of the same regulation, Italy may have applied significant transitional payments up until 31 December 2014 for the support of the production of tomato crops which are supplied for processing, by virtue of being crops harvested for the production of products that were eligible under the aid schemes set out in EC regulation 2201/96.

B6.1 If not specifically addressed in your response to question B3.7 above, please provide a detailed explanation of any specific programs, administered by the Italian Government under the auspices of the CAP in relation to the cultivation of raw tomatoes grown for processing.

B6.2 In providing your response, and where applicable, please indicate:

- The relevant percentage of annual CAP budgetary ceilings allocated to transitional payments specific to tomatoes grown for processing in 2011, 2012, 2013 and 2014;
- The total value of benefits paid to growers of raw tomatoes for processing under such payment schemes; and
- Details of all recipients during 2011, 2012, 2013 and 2014 , if available

B6.3 Please confirm if the supply of raw tomatoes grown for processing in the Italian market and the production of prepared or preserved tomatoes have been the subject of Common Market Organisation (CMO) regulations 2200/96 and 2001/96 respectively. Please confirm that these regulations have progressively been amended and consolidated within a single CMO, regulation 1580/2007, relating to agricultural markets and agricultural products, which have been aligned with the objectives and mechanisms of the CAP.

B6.4 Provide a summary of the major changes in the CMOs which cover the cultivation of raw tomatoes grown for processing and how the current single CMO is situated in relation to transitional CAP support.

Specifically, in your response, could you please advise whether:

## PUBLIC RECORD

- any form of aid is directly or indirectly provided to growers of raw tomatoes or processors?;
- any minimum price requirements are enforced between growers and processors?;
- growers and processors (previously the subject of separate CMO principles) are eligible for SPS payments?; *and*
- Any form of aid is directly or indirectly provided to producer associations or producer organisations?

### **B.7 Additional queries regarding import regulations**

The Commission wishes to gain an understanding of the applicable common EU regulations and associated mechanisms applicable to the importation of products associated with the production of the goods in Italy and, in particular, the supply of raw tomatoes for processing in the Italian domestic market.

The Commission understands that, by virtue of the operation of the terms of council regulation (EEC) No 2658/87 as amended by subsequent regulations, Common Customs Tariffs are determined annually and are applied erga omnes within the EU.

The Commission wishes to gain a more comprehensive understanding of the current import mechanisms in place within the EU with respect to raw tomatoes and would appreciate your response to the following.

B7.1 The Commission understands that imported raw tomatoes are classified within the TARIC codification system within Chapter 7 of Section II, 'Vegetable Products' and superficially fall under code 0702, of Division 7; 'Tomatoes Fresh or Chilled'.

The Commission understands that prepared or preserved tomatoes are separately classified within Chapter 20 of Section IV – which covers 'preparations of vegetables, fruit, nuts or other parts of plants', and specifically are classified to code 2002 10 10 and 2002 10 90; 'Tomatoes prepared or preserved otherwise than by vinegar or acetic acid'.

Could you please confirm the relevant tariff classifications above and, where relevant advise of any other tariff codes which may apply to raw tomatoes and prepared or preserved tomatoes imported for use in production?

B7.2 The Commission understands that Common Customs Tariff levels for 2012 were set under EC Regulation 1006/2011. The Commission understands that, under this regulation, certain goods (including those classified to code 0702 are subject to an Entry Price System (EPS)).

Conversely, we understand that prepared or preserved tomatoes (classified within code 2002) are not covered by an EPS and are, instead, subject to a common conventional rate of duty – otherwise known as an ad valorem tariff rate (14.4% in 2012).

Could you please confirm the above understanding of and provide the current rates of duty applicable to raw tomatoes for processing and prepared or preserved tomatoes exported to the EU and, where relevant, provide further detail or clarification?

Please provide an explanation of the way in which Entry Price Systems are administered by the EU. In providing your responses please indicate:

**PUBLIC RECORD**

- a) How long have tomatoes been subject to EPS mechanisms within the EU?
- b) How the minimum price is determined for periods of the calendar year?
- b) How the conventional rate of duty for specific periods of the calendar year are calculated; and
- c) What forms of additional duties are applied in relation to imported products which do not satisfy the set minimum entry price and what is the methodology by which these are determined?

B7.3 Please indicate how the EPS applied to tomatoes is administered within the EU and, specifically, outline the role of the EC in administering the EPS system in relation to importations of the goods entering Italy.

B7.4 With reference to question B.7.3 above, please explain the roles and responsibilities of Italy in administering applicable EPS's in relation to importation of raw tomatoes. Where relevant, please outline the extent to which Italy, can adopt complementary domestic policies in relation to the administration of Common Customs Tariff levels including SPS mechanisms?

The Commission is aware of the existence of specific inward processing arrangements which were introduced into operation within the EU under the terms of Council Regulation (EEC) No. 2931/92.

B7.5 Please explain whether these arrangements were applicable during 2011, 2012, 2013 and 2014 and provide a summary of how inward processing arrangements are administered in relation to the suspension or refund of applicable duties on applicable importations of goods.

B7.6 Outline the roles and responsibilities undertaken by the EU and member countries in relation to the administration of inward processing arrangements.

B7.7 Please provide the total value of duty suspended or refunded when completing the table at B7.9 below.

B7.8 Please advise whether member countries (and Italy specifically) are permitted to adopt domestic policies in relation to the conditional application of Common Customs Tariff levels and/or systems involving duty refunds for goods imported for use in the production of goods subsequently exported.

B7.9 Please explain the nature of all import quotas placed on tomatoes into Italy or any other type of volume restriction in place for tomatoes entering Italy?

Please identify any such programmes or policies applied within Italy that the EU is aware of.

B7.10 If available please complete the following table in relation to imports of raw tomatoes for processing to Italy for CY 2011, 2012, 2013 and YTD 2014.

<b>CALENDAR YEAR</b>	<b>Total imported volume (tonnes)</b>	<b>Total imported value (Euro)</b>	<b>Total duty value (Euro)</b>	<b>Total value of suspended or refunded duty</b>

**PUBLIC RECORD**

2012				
2013				
2014				

**PART - C        DECLARATION**

The undersigned certifies that all information supplied herein in response to the questionnaire (including any data supplied in an electronic format) is complete and correct to the best of his/her knowledge and belief.

**Date**

**Signature of authorised official**

**Name of authorised official**

**Title of authorised official**