



ANTI-DUMPING NOTICE NO. 2015/100

Prepared or preserved tomatoes

Exported to Australia from Italy

Findings of an exemption inquiry

Customs Tariff (Anti-Dumping) Act 1975

I, Dale Seymour, the Commissioner of the Anti-Dumping Commission have completed the joint exemption inquiry in relation to certain goods which are the subject of anti-dumping measures applying to prepared or preserved tomatoes exported to Australia from Italy.

The exemptions were sought pursuant to subsection 8(7)(a) of the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act). Under these provisions the Parliamentary Secretary to the Minister for Industry and Science (Parliamentary Secretary) may exempt goods from interim dumping duty where she is satisfied:

‘that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.’

The Anti-Dumping Measures

Anti-dumping measures, were initially imposed on prepared or preserved tomatoes on 16 April 2014 by the Parliamentary Secretary following consideration of the *Anti-Dumping Commission Report No. 217* (REP 217). These measures are applicable to all exporters from Italy except La Doria S.p.A. and Feger di Gerardo Ferraioli S.p.A.

The dumping duty that had been determined was an amount worked out in accordance with the combination of fixed and variable duty method.

The Goods

The goods, the subject of the exemption inquiry, (the exemption goods) are:

- *Cherry 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.*

- *Certified organic 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.*
- *Protected denomination of origin (DOP) certified San Marzano 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 exemption goods are 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.

The inquiry

Applications for exemption have been made to the Commission by:

1. Leo's Imports and Distributors Pty Ltd in relation to cherry tomatoes, organic tomatoes and San Marzano tomatoes; and
2. Kadac Pty Ltd in relation to organic tomatoes.

The grounds for the applications are that there is no Australian producer of:

- cherry tomatoes (as claimed by Leo's);
- organic tomatoes (as claimed by Leo's and Kadac); and
- San Marzano tomatoes (as claimed by Leo's).

The applicants allege that their claims are evidenced by publicly available information from the sole Australian producer of canned tomatoes, SPC Ardmona Operations Ltd (SPCA).

Following the initiation of the exemption inquiry, further applications for exemption were received from:

1. Food and Wine Connection Pty Ltd in relation to organic tomatoes on 1 November 2014;
2. Spiral Foods Pty Ltd in relation to organic tomatoes on 23 December 2014;
3. Kirk Foods Associates Pty Ltd in relation to San Marzano tomatoes on 18 December 2014; and
4. Zintix (Australia) Pty Ltd trading as Italian Food Australia in relation to San Marzano tomatoes on 18 December 2014.

The post initiation applications were for the same goods and also claimed that there were no Australian producer(s) of organic, San Marzano and cherry tomatoes.

This joint exemption inquiry concerned all of these applications because they related to similar issues for all three goods.

I made a recommendation to the Parliamentary Secretary that the exemption goods not be exempted from interim dumping duty and dumping duty under subsection 8(7)(a) of the Dumping Duty Act, due to the finding that the Australian industry produces like or directly competitive goods to the exemption goods. The reasons for this recommendation are contained in *Anti-Dumping Commission Joint Exemption Inquiry Report*, available on the Anti-Dumping Commission's Public Record (accessible at www.adcommission.gov.au).

The Parliamentary Secretary has accepted my recommendation and has not exempted the goods the subject of the applications from interim dumping duties and dumping duties.

Further Information

The decision to not grant the exemptions does not prevent further applications for exemptions from dumping duty being considered. Parties can apply for an exemption where they believe their goods satisfy any of the conditions for exemption detailed in subsection 8(7) of the Dumping Duty Act. Further information on the application process can be found at the Commission website at:

<http://www.adcommission.gov.au/system/csi/exemption/how-to-apply.asp>

Anti-Dumping Commission contact

Enquiries about this notice may be directed to the case manager on telephone +61 3 8539 2413 or by email at operations4@adcommission.gov.au

Dale Seymour
Commissioner
Anti-Dumping Commission

14 August 2015