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Sent by email: [john.bracic@customs.gov.au](mailto:john.bracic@customs.gov.au)

Dear Mr Bracic

**Subject: Anti-Dumping Investigation into Processed Tomato Products**

Please find attached a submission by the European Commission on the Preliminary Affirmative Determination Report.

Should you have any questions on this reply please contact John Tuckwell in this office on 02 6271 2734.

Yours Sincerely

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First Counsellor

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# EUROPEAN COMMISSION

Directorate-General for Trade

Directorate H - Trade defence

Investigations IV Relations with third countries for Trade defence matters

Brussels, 25 November 2013

## ANTI-DUMPING INVESTIGATION BY THE AUSTRALIAN GOVERNMENT ON IMPORT OF PROCESSED TOMATO PRODUCTS

### Written submission of the European Commission on the Preliminary Affirmative Determination Report

On 1<sup>st</sup> November the Australian Anti-Dumping Commission published the Preliminary Affirmative Determination ("PAD") Report NO. 217 assessing the grounds for imposition of provisional duties on imports of prepared or preserved tomatoes from Italy. As result of this assessment, provisional anti-dumping duties were imposed.

The European Commission is deeply concerned about this decision since it considers that the arguments on injury and causation given by the Anti-Dumping Commission are not strong enough to justify the imposition of provisional measures.

It is recalled that according to Article 7.1 of the WTO Anti-Dumping Agreement (ADA), "*provisional measures may be applied only if (...) a preliminary affirmative determination has been made of dumping and consequent injury to a domestic industry*". In this context the Commission considers that at least some of the elements mentioned in Article 3.2 should be analysed for the demonstration of injury.

In the opinion of the European Commission, the PAD does not contain sufficient elements to justify the imposition of provisional measures. First, the evaluation of price effects is essentially inconclusive, providing no basis to support the preliminary findings on price depression and suppression. A similar approach is taken for the assessment of the market share variations or the profit performance of the domestic industry. Lastly, there is no analysis on the other relevant economic factors as mentioned in the WTO Anti-Dumping Agreement.

As for the preliminary determination on causation, the European Commission regrets that the (very weak) grounds on which this determination is made are not reflected in this report. More importantly, the PAD simply lacks any analysis of causes other than the alleged dumped imports which would have caused any injury. Even if the Anti-Dumping Commission states in this regard that it will continue to examine other possible causes of injury, the European Commission is of the view that such analysis should have been carried out before considering the imposition of provisional measures.

In this context, the European Commission would like to encourage the investigating authorities to pay special attention to the preliminary findings<sup>1</sup> of the Australian Productivity Commission on the causes of injury of the Australian prepared or preserved tomatoes industry. The notification of such findings to the WTO under Article 12.1 (B) of the Agreement on Safeguards on finding serious injury or threat thereof caused by increased imports read as follows:

*"The Commission found that the injury to the domestic industry has been caused by a combination of long-term industry and market trends and recent acute events including extreme weather events, such as floods, and the appreciation of the Australian dollar. The Commission identified that the floods in 2011 reduced the supply of processing tomatoes by two thirds and significantly decreased the production of processed tomatoes. Decreased domestic supply and the appreciation of the Australian dollar caused retailers to source private label products from imports.*

*The Commission found that developments in supermarket private label strategies, decreased exports and ongoing competition from imports, contributed to the injury to the domestic tomato processing industry.*

*The Commission found that sourcing decisions by supermarkets on pricing strategies and product sourcing of private label products were made domestically and not by changes in the world market for processed tomato products."*

As the Anti-Dumping Commission may be well aware the Productivity Commission found that provisional safeguard measures were not warranted for imports of processed tomato products for the reasons explained above.

The European Commission considers that the preliminary findings in the safeguard investigation should equally be valid for the injury determination of the anti-dumping investigation. As a matter of fact it points to a number of factors other than the dumped imports which were causing injury to the domestic industry. This seems to be confirmed by the fact that the PAD underlines that the sales of the domestic industry have been unprofitable over the investigation period and the injury analysis period. In sum, the domestic industry must be suffering from structural problems in addition to the other causes identified by the Productivity Commission and the importance of these factors would clearly break any causal link between the allegedly dumped imports and the injury, if any.

In this regard, it would be difficult to understand that the Australian Anti-Dumping Commission would not take them into consideration for the on-going investigation.

The European Commission trusts that the Australian authorities will carefully look into the issues raised in this submission in order to ensure that the WTO provisions are respected in the current investigation.

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<sup>1</sup> Accelerated report – Safeguards Inquiry into the Import of Processed Tomato Products – 18 Sept. 2013