



**CUSTOMS ACT 1901 - PART XVB**

# **TERMINATION OF PART OF INVESTIGATION**

## **TER. 217**

**ALLEGED DUMPING OF PREPARED OR PRESERVED  
TOMATOES**

**EXPORTED FROM ITALY**

**18 March 2014**

**TER 217 Prepared or preserved tomatoes - Italy**

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## **ABBREVIATIONS**

ADN	Anti-Dumping Notice
EUR	Euro
Feger	Feger di Gerardo Ferraioli S.p.A.
FIS	Free into store
FOB	Free On Board
GAAP	Generally accepted accounting principles
La Doria	La Doria S.p.A.
PAD	Preliminary Affirmative Determination
SEF	Statement of Essential Facts
SPCA	SPC Ardmona Operations Ltd
The Act	<i>Customs Act 1901</i>
The applicant	SPC Ardmona Operations Ltd
The Commission	The Anti-Dumping Commission
The Commissioner	The Commissioner of the Anti-Dumping Commission
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
the Minister	the Minister for Industry

## 1 SUMMARY AND FINDINGS

Investigation 217 is in response to an application lodged by SPC Ardmona Operations Ltd (SPCA) in relation to the allegation that dumped prepared or preserved tomatoes were being exported to Australia from Italy, and caused material injury to the Australian industry producing like goods.

This Termination Report No. 217 (TER 217) sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) has based the decisions to terminate the investigation so far as it relates to certain exporters.

### 1.1 Findings

As a result of the Anti-Dumping Commission's (Commission) investigation, the Commissioner is satisfied that in relation to prepared or preserved tomatoes there has been dumping by La Doria S.p.A. (La Doria) and Feger di Gerardo Ferraioli S.p.A. (Feger) however the dumping margin is less than two per cent.

Therefore, the Commissioner has decided to terminate the investigation of prepared or preserved tomatoes investigation so far as it relates to La Doria and Feger from Italy in accordance with section 269TDA(1)<sup>1</sup> of the *Customs Act 1901*<sup>2</sup> (the Act),

As a result of these findings, on 18 March 14, the Commissioner terminated those parts of the investigations.

A notice regarding the termination of the investigations was published in *The Australian* newspaper on 20 March 14. ADN 2014/XX also relates to the termination.

### 1.2 Application of the law to facts

#### 1.2.1 Authority to make decision

Division 2 of Part XVB of the Act sets out, among other matters, the procedures to be followed and the matters to be considered by the Commissioner in conducting investigations in relation to the goods covered by an application.

#### 1.2.2 Application

On 17 June 2013, SPCA lodged an application requesting that the Minister publish dumping duty notices in respect of prepared or preserved tomatoes exported from Italy.

The Commissioner was satisfied that the application was made in the prescribed manner by a person entitled to make the application.

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<sup>1</sup> Section 269 TDA(1) – The Commissioner must terminate the investigation where the dumping margin is less than 2%.

<sup>2</sup> A reference to a division, section or subsection in this report is a reference to a provision of the *Customs Act 1901*, unless otherwise specified.

### **1.2.3 Initiation of investigation**

On 10 July 2013, following consideration of the application, the Commissioner decided not to reject the application and the Commission initiated the investigation. Public notification of initiation of the investigations was made in *The Australian* newspaper on 10 July 2013 and the Commission published ADN 2013/59.

### **1.2.4 Statement of Essential Facts**

The statement of essential facts 217 (SEF 217) for these investigations was placed on the Public Record on 4 February 2014. In formulating SEF 217, the Commissioner had regard to the application concerned, any submissions concerning publication of the notice that were received by the Commission within 40 days after the date of initiation of the investigation and any other matters considered relevant.

SEF 217 should be read in conjunction with this report.

### **1.2.5 Submissions**

The Commissioner received and had regard to the following submissions in response to the dumping margins determined for La Doria and Feger:

- SPCA submission of 24 February 2014,
- SPCA submission of 7 March 2014, and
- Feger submission of 14 March 2014.

These submissions can be found on the Public Record.

## 2 BACKGROUND

### 2.1 Initiation

On 17 June 2013, an application was lodged by SPCA requesting that the Minister responsible for the Anti-Dumping Commission publish a dumping duty notice in respect of prepared or preserved tomatoes exported to Australia from Italy.

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

The applicant claims the industry has been injured through:

- loss of sales volume;
- reduced market share;
- reduced revenues;
- price depression;
- price suppression;
- reduced profits;
- reduced profitability;
- reduced cash flow; and
- reduced attractiveness for reinvestment in the tomato processing business.

The Commissioner was satisfied that the application was made in the prescribed manner by a person entitled to make the application.

Public notification of initiation of the investigation was made on 10 July 2013 in *The Australian* newspaper and Australian Dumping Notice (ADN) No. 2013/59.

### 2.2 Preliminary affirmative determination

The Commissioner, after having regard to the application and submissions, was satisfied that there were sufficient grounds for the publication of a dumping duty notice in respect of prepared or preserved tomatoes exported to Australia from Italy and made a preliminary affirmative determination (PAD) to that effect on 1 November 2013. PAD 217 contains details of the decision and is available on the public record at <http://www.adcommission.gov.au/cases/EPR217.asp>

The Commission decided to require and take securities in respect of any interim dumping duty that may become payable in respect of certain goods from Italy that were entered into home consumption on or after 1 November 2013.

Following further analysis after the verification visits to cooperating exporters<sup>3</sup> at their premises in Italy, the Commission amended the securities. On 4 February 2014, the Commission published a public notice in *The Australian* to give effect to the amended securities and released ADN 2014/09.

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<sup>3</sup> S.269T of the Act - Definition of cooperating exporter

La Doria and Feger, although found to be dumping, had dumping margins less than 2%. Accordingly, the Commissioner did not seek to impose securities for prepared or preserved tomatoes from those two exporters.

## **2.3 Statement of Essential Facts extensions**

The Commissioner must, within 110 days after the initiation of an investigation, or such longer period as the Minister allows, place on the public record a SEF on which the Commissioner proposes to base their recommendations in relation to the application.

Pursuant to s.269ZHI of the Act, the Commission sought and was granted two extensions by the Minister that provided more time to publish this statement of essential facts.

The initial extension was sought to allow exporters sufficient time to complete the exporter questionnaire as the timing of the initial response period conflicted with the harvest and processing of raw tomatoes. The granting of this extension allowed the Commission to publish this statement on 16 December 2013.

A second extension was requested when information came forth putting into question the determination of an exporter following the verification visit. The Commission needed to examine all the relevant circumstances of this trading relationship before it could conclude the dumping margin calculations for certain exporters. The second extension allowed the Commission to publish this statement on or before 4 February 2014. For more information on these extensions refer to ADNs 2013/84 and 2013/103.

The Final report with the Commission's recommendations is to be provided to the Minister on or before 21 March 2014.

The SEF for the investigations (SEF 217) was placed on the Public Record on 4 February 2014. In formulating the SEF 217, the Commissioner had regard to the application concerned, any submissions concerning publication of the notice that were received by the Commission within 40 days after the date of initiation of the investigations and any other matters considered relevant.

## **2.4 Relevant Legislation**

Sub-section 269TDA(1) of the Act provides:

*If:*

- (a) application is made for a dumping duty notice; and*
- (b) in an investigation, for the purposes of the application, of an exporter to Australia of goods the subject of the application, the CEO is satisfied that:*

- (i) there has been no dumping by the exporter of any of those goods; or*
- (ii) there has been dumping by the exporter of some or all of those goods, but the dumping margin for the exporter, or each such dumping margin, worked out under section 269TACB, when expressed as a percentage of the export price or weighted*

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*average of export prices used to establish that dumping margin,  
is less than 2%;*

*the CEO must terminate the investigation so far as it relates to the exporter.*



### 3 THE GOODS AND LIKE GOODS

#### 3.1 Finding

The Commission considers that locally produced prepared or preserved tomatoes are like to the goods the subject of the application (the goods).

#### 3.2 Legislative framework

Subsection 269TC(1) of the Act requires that the Commissioner must reject an application for a dumping duty notice if, inter alia, the Commissioner is not satisfied that there is, or is likely to be established, an Australian industry in respect of like goods.

In making this assessment, the Commissioner must firstly determine that the goods produced by the Australian industry are “like” to the imported goods. Subsection 269T(1) defines like goods as:

*“Goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration”.*

An Australian industry can apply for relief from injury caused by dumped or subsidised imports even if the goods it produces are not identical to those imported. The industry must however, produce goods that are “like” to the imported goods.

Where the locally produced goods and the imported goods are not alike in all respects, the Commission assesses whether they have characteristics closely resembling each other against the following considerations:

- i. physical likeness;
- ii. commercial likeness;
- iii. functional likeness; and
- iv. production likeness.

#### 3.3 The goods

The goods the subject of the application (the goods) are:

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 goods excluded from this definition are pastes, purees, sauces, pasta sauces, juices and sundried tomatoes.

### 3.4 Tariff classification

The goods are currently classified to subheading 2002.10.00 (statistical code 60) to Schedule 3 of the *Customs Tariff Act 1995*. For Italian prepared or preserved tomatoes a Customs duty rate of 5% applies.

### 3.5 The Commission's assessment of like goods

Based on information gathered from SPCA, importers and exporters during the investigation the Commission considers that the Australian industry produces like goods on the following grounds:

- *physical likeness* - the primary physical characteristics of imported and locally produced goods are similar. Whilst recipes differed slightly amongst the numerous producers, the key ingredient in the imported and locally produced goods are raw tomatoes and tomato juice. SPCA's products were also sold in the same packaging as the imported goods, being available in 400 gram (g) net weighted and 800g size cans; Whilst SPCA may use tomato paste to thicken the juice surrounding the tomatoes in the can, many Italian exporters used a tomato juice concentrate for similar purposes.
- *commercial likeness* - the imported and locally produced goods are commercially alike, directly competitive and are sold to common customers. Whilst differences exist in terms of the promotional activities associated with sales of proprietary and private label products, the Commission does not consider this diminishes the view that prepared or preserved tomatoes are commercially alike. This issue is further addressed at section 5.2.1 of this report;
- *functional likeness* - the imported and locally produced goods are functionally alike as they have the same end-uses; and
- *production likeness* – based on visits to SPCA and exporters of prepared or preserved tomatoes, the Commission has confirmed that the imported and locally produced goods are manufactured in a similar manner.

The Commission considers that SPCA produces like goods that have characteristics closely resembling, the goods the subject of the application. Consequently the Commission considers that the goods manufactured by SPCA are like goods to the goods under consideration.

## 4 MARKET SITUATION

### 4.1 Background

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 construction or third country sales. Therefore, a determination as to whether there is a market situation has potential consequences for the assessment of normal value and dumping margins.

In its application SPCA did not claim that a 'market situation' exists in Italy and domestic sales of prepared or preserved tomatoes are not suitable for 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 (EC) 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.

Preliminary research into publically available information highlighted a number of common policies established under formal EU regulations which may apply to the cultivation of tomatoes for processing, and the production of like goods sold into the Italian domestic market.

The Commission is aware that the primary agricultural policy applicable throughout the EU (and administered by the European Commission) is referred to as the Common Agricultural Policy (CAP). The European Commission states that the main aims of the CAP are: "[T]o improve agricultural productivity, so that consumers have a stable supply of affordable food. To ensure that EU farmers can make a reasonable living."<sup>4</sup>

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<sup>4</sup> European Commission, *The Common Agricultural Policy: A partnership between Europe and Farmers*, p.3, available at: [http://ec.europa.eu/agriculture/cap-overview/2012\\_en.pdf](http://ec.europa.eu/agriculture/cap-overview/2012_en.pdf).

The Commission understands that the CAP has undergone a number of reforms. In 2003 reforms were initiated shifting support towards direct aids to farmers, and away from price support (commonly referred to generally as 'de-coupling' reforms). This has significantly changed the mechanisms through which support mechanisms and benefits are administered to achieve its key policy objectives.

Available information also indicated to the Commission that the CAP is still operational within the EU and is administered, including within Italy.

At the time of initiation, the Commission considered that there was sufficient information to warrant inquiring into whether the EU's agricultural policies created a market situation that led to a distortion of competitive market conditions to such an extent that domestic sales were no longer suitable for establishing normal values.

## **4.2 Market situation**

The Act does not provide any definition of particular circumstances or factors which would satisfy the Minister that a 'market situation' exists in a domestic market. The WTO Anti-Dumping Agreement is similarly silent in relation to the definition of the concept of a 'particular market situation' referred to within Article 2.2.

The Commission considers that the nature of the consideration at the heart of the market situation analysis involves consideration of all relevant market variables in relation to the subject good in totality and, as such, the term 'a situation' for the purposes of the subsection defies precise definition. To this end, the Commission is of the view that 'a situation' refers to the presence of a factor or composite factors which collectively operate to cause a degree of distortion in the market that renders arm's-length transactions in the ordinary course of trade in that market unsuitable for use in determining normal values.

More specifically, the Commission considers that a market situation assessment involves an examination of factors which may affect the interaction of supply and demand in a sector, industry or particular market, to a considerable extent that prices and costs in that market can no longer be viewed as being established under those market principles. To that end, the Commission considers that governments can directly influence domestic prices through the imposition of restrictions on how prices are charged for a product. This can be in the form of direct price regulation (floor or ceiling pricing mechanisms) or indirect influence through policies that impact on the supply of the subject goods or the supply or price of inputs used in the production of the subjects goods.

The influence of government does not, in itself, mean that a 'market situation' exists. The Commission needs to examine the effect such influence has on the market and the extent to which domestic prices are distorted and unsuitable for proper comparison with corresponding export prices.

The Commission considers that, in the context of this analysis, evidence of Government policies and programs, including but not limited to the CAP, that confer benefits which specifically or indirectly flow to the relevant market under consideration, may have an effect on the domestic commerce with respect to the goods. The Commission holds that this information is relevant to analysis of whether factors exist which can be characterised as a 'market situation' for the purposes of s.269TAC(2)(a)(ii).

#### **4.2.1 Evidentiary threshold**

The Commission notes that the Act does not provide any guidance, implicit or explicit, to the evidentiary standard required to warrant a finding being made that a situation exists in the market for the purposes of s. 269TAC (2)(a)(ii). Ultimately, the Minister must be satisfied that because the situation in the domestic market, domestic prices are not suitable for determining normal values under s.269TAC(1).

The Commission considers that the issues as to whether or not a 'market situation' exists in the domestic market of an exporting country, is a matter for the Minister to consider whether he or she is satisfied on the basis of consideration of the totality of all relevant available evidence that a 'market situation' exists for the purposes of s. 269TAC(2)(a)(ii) in so far as the evidence provides a reliable understanding of the prevailing characteristics of the market for the goods in that country.

The Commission does not consider the fact that conclusive evidence cannot be reasonably acquired requires the Minister to find that a 'market situation' does not exist. Similarly, it does not consider it reasonable to suggest that the absence of conclusive information or evidence of quantifiable market distortion precludes the ability of the Minister to be satisfied that a 'market situation' does exist.

#### **6.2.2 Submissions on the Commission's basis for examining market situation**

The Commission notes that the EC and Italian Government made specific submissions questioning the validity of the Commission's enquiries regarding the operation of mechanisms and programmes administered by the EC and Italian Government through which benefits may have been provided to growers and processors of the goods in Italy.

The submissions provided by the EC and the Italian Government contend that the questionnaire provided by the Commission, which seeks specific information regarding the operation of such programmes, improperly introduces into an anti-dumping investigation, inquiries into subsidies that may only be investigated within a countervailing investigation.

As is discussed in detail above, consideration as to whether a situation exists in the market for the purposes of s.269TAC(2)(a)(ii) necessarily involves the analysis of all relevant factors and variables associated with the domestic market of the subject goods.

The Commission believes that the criticisms submitted by the EC and Italian Government reflect a misunderstanding of the differences between:

- a) analysis of Government policies which are appropriately characterised as subsidy programs for the purposes of determining countervailable subsidies and the calculation of applicable countervailing duties under s.269TJ; and
- b) consideration of subsidy programs for the purposes of market situation analysis for the purposes of s. 269TAC(2)(a)(ii).

The Commission emphasises that consideration of the existence and operative effect of government administered benefits upon a domestic market is distinctly different to specific investigation of subsidy programs under s. 269TJ.

Consideration of whether a situation exists in the relevant market is concerned with the operation of policies and regulations (whether overt or implied) and their potential impact on the suitability of domestic selling prices for normal value purposes. Accordingly, the question to be answered is whether the relevant policies operate in a manner which:

- a) leads to a distortion of competitive market conditions in relation to the subject goods such that domestic sales are unsuitable for the purposes of determining normal value; and
- b) affects the conditions of commerce related to the production or manufacture of like goods such that the records of exporters of prepared or preserved tomatoes cannot be relied upon to reasonably reflect competitive market costs associated with production in accordance with the provisions of Regulation 180(2) of the Customs *Regulations 1926*.

The Commission notes previous anti-dumping investigations<sup>5</sup> administered by the EC where it undertook an examination of factors which may potentially be actionable under the countervailing framework. Those inquiries examined whether:

- a) prices of raw material inputs were artificially low; and
- b) had regard to evidence of the operation of government support programs which apply to the relevant domestic industry for the production of subject goods.

The assessments were relevant to the EC's consideration of whether costs reasonably reflected the costs of production in relation to the goods. A process apparently very similar in nature to that undertaken by the Commission in this inquiry.

### **4.3 Enquiry framework**

The Commission was satisfied that, at the time of initiation of the investigation, that there was relevant publicly available information to indicate that the EU may affect the interaction of supply and demand in the market for processed tomato products. The impact of the EU's policies was believed sufficient to consider that prices and costs in that market can no longer be viewed as being established under those market principles and allowing normal values to be established pursuant to s.269TAC(1).

The Commission considered that there was sufficient information and reasonable bases for the inclusion of specific enquiries with the EC and Italian governments which seek to identify the agricultural policies and specific programmes currently administered in Italy. The Commission's assessment was set out in *Issues Paper – Suitability of domestic Sales* dated 10 July 2013.

The Commission submitted specific questionnaires with the EC and Italian governments which sought to identify the agricultural policies and specific programmes currently administered in Italy. Specific enquiries were also included within questionnaires submitted to Italian exporters for the purposes of acquiring an understanding of the form and substance of any benefits received by exporters of the goods pursuant to policies administered by the EC and/or Italian Government.

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<sup>5</sup> Cotton yarn from Brazil, Egypt, India, Thailand and Turkey, OJ L 271, 1991, p. 17, rec. 13; Silicon from Russia, OJ L 339, 2003 p. 3, rec 27; Potassium chloride from Belarus, Russia and Ukraine, OJ L 302, 2005, p. 14, rec. 31; Aluminium foil from Russia, OJ L 26, 2006, p.1, rec. 13; Welded tubes and pipes of iron or non-alloy steel from Belarus, Bosnia and Herzegovina, China and Russia, OJ L 343, 2007, p. 1, rec. 111; Ammonium nitrate from Ukraine, OJ L 75, 2008, p. 8, rec. 26.



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The information gathered in relation to agricultural support programs in Italy was requested by the Commission for two purposes:

- a) 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 in accordance with s. 269TAC(2)(a)(ii); and
- b) 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 in accordance with the provisions of Regulation 180(2) of the *Customs Regulations 1926*.

### 4.4 Responses

The EC provided a formal response to the Commission by letter on 5 and 7 August 2013.

The first letter articulated the EC's views regarding the Commission's issues paper regarding a 'market situation', and the 'market situation' questionnaire provided to the EC and the Italian Government by the Commission. The correspondence of 7 August 2013 provided further comment with respect to these issues and also provided specific submissions regarding the corresponding enquiries included in questionnaires submitted by the Commission to exporters.

The Italian Government provided formal submissions in relation to these issues dated 7 and 13 August 2013.

All but one exporter who provided completed questionnaire responses to the Commission indicated that the section relating to 'market situation' ("Section H" of the questionnaire) was not applicable as they did not receive any benefits. One exporter indicated that they did receive a small benefit and provided other relevant facts.

Notwithstanding the above, the Commission holds the view that enquiries into the situation of the domestic market in Italy to be relevant and reasonable within the framework of determining normal values and, specifically, costs are representative of market conditions and normal values can be determined in accordance with the Act.

### 4.5 The Commission's view

Consideration as to whether a 'market situation' exists for the purposes of s.269TAC(2)(a)(ii) involves the analysis of all relevant facts to determine whether competitive conditions have been materially distorted and price can no longer be viewed as being established under market principles.

To that end, the Commission considers that governments can directly influence domestic prices in a number of ways.

This can occur directly in the form of price regulation (floor or ceiling pricing mechanisms) or the dominance of government-owned or controlled enterprises to such an extent that those enterprises are price-leaders in the domestic market.

Governments can also indirectly influence domestic prices through instruments that indirectly impact on the supply of the subject goods or the supply or price of inputs used in the production of the subjects goods. For example:

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- governments can control import and export levels through licensing, quotas, duties or taxes to maintain domestic prices at certain levels;
- governments can subsidise producers by providing direct financial subsidies or low-price inputs in order to maintain selling prices of a product at certain levels;
- governments can purchase goods in sufficient quantities to raise the domestic price of goods or sell stockpiled goods to put downward pressure on prices;
- through taxation or other policies, governments can regulate the level of profits that a company can achieve which will affect selling prices; and
- the government can regulate or control production levels or the number of producers or sellers permitted in the market in order to affect domestic prices.

### **4.5.1 Consideration of exporter material**

During the course of the exporter verification program, the Commission investigated whether any benefits, payments or forms of support had been received from the Italian government, the EC or, any other affiliated agency or group by the selected exporters visited by the Commission. The Commission examined requested information which directly or indirectly related with the sale or production of prepared or preserved tomatoes for calendar years 2011, 2012 and year-to-date (YTD) June 2013.

### **4.5.2 Payments received by selected exporters**

#### Direct CAP payments

From the advice provided by selected exporters the Commission understands that prior to 2001, tomato processors in Italy were eligible for direct financial support from the Italian government under the auspices of the CAP. Between 2000 and 2001 the support policies applied under the CAP were amended and direct payments were provided to the growers of tomatoes rather than the processors.

The Commission understands that support payments under the CAP had undergone further amendments after 2001 to the effect that payments are no longer paid in relation to the cultivation of tomato crops specifically, and are instead (subject to relevant eligibility criteria) available to agricultural land holdings irrespective of the commodity cultivated upon the land.

The Commission investigated whether each exporter visited owned, operated or was affiliated with any agricultural land holdings associated with the cultivation of tomatoes or other crops, which may be eligible for payments under the CAP.

During the course of verification, the Commission found only one small instance where a selected exporter had received, or was eligible to receive, any payments under the auspices of the CAP related to agricultural land holdings. The Commission verified the payments to this exporter and was satisfied that the quantum of payment was not material.

#### Other government payments

Notwithstanding the above, the Commission notes that it identified a number of miscellaneous payments received by a number of selected exporters during the period of investigation, provided pursuant to initiatives and programs administered by the Italian government. The value of such payment was not considered material.

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In summary, payments were provided to manufacturers under the auspices of support initiatives and incentives associated with regional development agendas related to, inter alia, employment, technological development and innovation. The Commission notes that it found no evidence to suggest that such government initiatives relate specifically to the production of processed tomatoes.

#### **4.6 Submissions in response to SEF 217**

On 7 March 2014, SPCA lodged a submission responding to the market situation findings outlined in SEF 217. The submission references a 2011 Global Agricultural Information Network Report (GAIN Report) published by the USDA Foreign Agriculture Service. SPCA submits that the report contains sufficient information to consider that the single payment scheme operating within the EU has distorted the domestic market for prepared or preserved tomatoes.

On 17 March 2014, SPCA lodged a further submission relating to the Commission's market situation findings.

SPCA considers that the information submitted raises doubts about evidence gathered during the investigation and the findings set out in SEF217. In both submissions, SPCA requests the Commission to seek a further extension from the Parliamentary Secretary in order to properly consider the new information submitted.

The Commission notes that SPCA made no submissions to the investigation on the issue of market situation prior to the publication of the SEF. It did not respond to the issues paper published by the Commission soon after initiation, nor did it make any submissions in response to the exporter questionnaires or normal value visit reports which outlined that exporters had not received payments under the single payment scheme. In its primary submission of 24 February 2014, SPCA made no comment on the Commission's market situation finding.

These most recent submissions from SPCA, received after the due date for general submissions, contends that new information provides grounds for the Commissioner to request an extension to the due date for the Final Report.

In deciding firstly whether to have regard to this submission, the Commission notes that the Commissioner is not obliged to have regard to any submission made in response to the statement of essential facts:

- that is received after the end of the 20 days after the placing of the statement of essential facts on the public record, and
- if to do so would, in the Commissioner's opinion, prevent the timely preparation of the report to the Parliamentary.

The Commission has reviewed the *GAIN Report* attached to the submission of 7 March 2014 and whilst it contains relevant statistics relating to the level of production, consumption and trade of both fresh and prepared tomatoes, the information is not referenced to any source.

The report does include a section dealing with 'Policy' where it outlines that:

- negotiated price for fresh tomatoes 'was set significantly higher than the previous year',
- the estimated €183 million in EU aid will only benefit approximately 1000 of the possible 6000 Italian companies;

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- 75% of the support will be received by 15% of the farmers;
- 75% of total tomato volume is sourced from large companies;
- raw tomato prices are increasing; and
- land under tomato cultivation decreased by 14.6%

The report lacks sources to support the statistics and contains no new information that would alter or diminish the Commission's finding in relation to the existence of a market situation that would render domestic sales unsuitable for determining normal values.

As outlined in SEF 217, the Commission has already established that a large number of tomato growers exist in Italy and there was evidence that payments were made to growers on the basis of land under cultivation under the EU's single payment scheme. However, there is no evidence to be satisfied that these payments to growers ultimately resulted in a distortion of the price for fresh tomatoes purchased by processors or distorted competitive market conditions for processed tomatoes.

Therefore the Commission has had regard to the information submitted by SPCA on 7 March 2014 and does not consider that this information or any inferences that can be drawn from it would alter the Commission's finding that domestic sales of prepared or preserved tomatoes in Italy are suitable for determining normal values.

In respect of SPCA's submission of 17 March 2014, the Commission notes that the new information presented to the investigation includes reference to a number of detailed reports that provide commentary on the operation of the EU's common agricultural policies. Given the lateness of the submission, the Commission considers that there is insufficient time to properly have regard to this new information. To do so, would in the opinion of the Commissioner, prevent the timely preparation of the termination report and final report to the Parliamentary Secretary.

In accordance with s.269TEA(4), the Commissioner has not had regard to SPCA's submission of 17 March 2014.

### **4.7 The Commission's assessment**

The Commission must consider the impact of the relevant policies and whether these policies distort competitive market conditions in relation the subject goods such that domestic sales are unsuitable for the purposes of determining normal value pursuant to s.269TAC (1).

On the basis of the available evidence, the Commission was satisfied that there is evidence that manufacturers of processed tomato products were eligible for, and did receive, financial benefits from the Italian Government paid under the auspices of the CAP until 2001.

However, the Commission is also satisfied that, following reform of the operation of the CAP (and the benefit payment mechanisms prescribed therein) no direct CAP payments were received by any selected exporter during the investigation period.

Notwithstanding the above, the Commission notes that there is evidence that the majority of selected exporters received some form of government payment during the investigation period. The available evidence suggests that government payments received by one exporter during the period was administered under general support programs which does not specifically relate to the production of tomatoes but was paid in relation to the agricultural land on which crops (including, but not limited to tomatoes) are grown.

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The Commission considered the distortion, if any, that was likely to occur via the purchase prices of the raw tomatoes. From evidence gathered during the verification visits, the Commission found that there were many suppliers of tomatoes and that the prices did vary from region to region before such adjustments of brix levels and quality. Furthermore the Commission found that the price negotiations for the canned tomato products were not influenced by these payments to farmers. The Commission found this price was set via negotiations that considered numerous factors including harvest yield, business relationships and volumes ordered.

The Commission analysed the weighted average price of tomatoes purchased by the Australian industry from local suppliers as a notional price of fresh tomato paid by processors in a market unaffected by any support programs, payments or benefits which may distort the price of fresh tomatoes in the market.

The Commission then compared this notional benchmark against the verified raw material purchase price paid by selected exporters from tomato suppliers in Italy to assess whether there is any indication that payments paid to tomato growers have flowed through to distorted selling prices paid by the tomato processors in the form of lower prices.

In all instances, the Commission found that the price of fresh tomato paid by Italian processors was either similar or higher than the benchmark price of fresh tomato available in Australia.

On this basis, in the absence of positive evidence to the contrary, the evidence indicates that any payments provided directly to tomato growers in Italy are benefitting the growers in isolation and are not transferred to processors in the form of lower prices.

The Commission is satisfied that, whilst the evidence indicates that producers of processed tomatoes in Italy receive support from the Italian government under various domestic industry support programs, the evidence available to the Commission in the circumstances of the investigation is not sufficient to support a finding that these payments operate in a manner which distorts competitive market conditions and would lead the Commission to consider that it cannot use normal values pursuant to s.269TAC(1) (sales made in the ordinary course of trade).

## 5 DUMPING INVESTIGATION

### 5.1 Introduction

Dumping occurs when a product from one country is exported to another country at a price less than its normal value. The export price and normal value of goods are determined under sections 269TAB and 269TAC of the Act respectively.

### 5.2 Selected Exporters<sup>6</sup>

At the commencement of the investigation, a large number of potential exporters of prepared or preserved tomatoes from Italy were identified. Questionnaires were forwarded to all known exporters from Italy.

Following initial feedback, and completed responses to Part 1 of the Exporter Questionnaire, the Commission considered that the number of exporters that provided information was too large to determine individual dumping margins for each of them. As a result, the Commission undertook a sampling exercise where it identified 7 selected exporters which accounted for approximately 70% of the export volume to Australia.

Pursuant to s.269TACAA of the Act, La Doria and Feger were deemed selected exporters by the Commission. The Commission received exporter questionnaire responses from La Doria and Feger that were assessed by the Commission as being substantially complete.

The verification visit reports for each of the cooperating exporters are available at the Commission's website <http://www.adcommission.gov.au/> and provide additional detail to what is discussed below.

### 5.3 Approach to calculation of product dumping margins

In response to SEF 217, SPCA submitted that like goods sold on the domestic market in Italy should include prepared or preserved tomatoes in all variants and packaging formats, and that the ordinary course of trade test should be applied to all sales of the domestic like goods.

It argued that only after the 5% sufficiency test had been applied to the qualifying domestic sales, should the normal value (with adjustments) be compared to the corresponding export sales.

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 in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter, or if like goods are not so sold by the exporter, by other sellers of like goods.

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<sup>6</sup> S.269T of the Act refers – an exporter whose exportations were investigated for the purposes of deciding whether or not to publish that notice.

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Like goods are defined in s.269T as:

*...in relation to goods under consideration, means goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration*

At the outset of the investigation, the Commission requested Italian exporters provide domestic sales information covering all types of prepared or preserved tomatoes that conformed to the broad description of the goods under investigation. This included sales of products in all variants and packaging formats.

In instances where there are numerous and various types of export sales to Australia, the Commission will seek to establish model categories. These model categories will then be used to identify whether relevant domestic sales of comparable like goods exist and to identify a subset of corresponding normal values to ensure that like is being compared with like. These are commonly referred to as model export prices and model normal values.

This is a critical step in the determination of dumping as the Commission's practice is to apply the ordinary course of trade tests and sufficiency of sales tests to each model category. Hence, it is important to identify whether different types or models of goods have been exported before assessing whether domestic sales were sold in the ordinary course of trade and in sufficient quantities.

A model normal value is only warranted insofar as there are export sales of the particular model. For example, if an exporter has domestic sales of models A, B and C but only exported models A and C during the investigation period, the Commission would not require a normal value for model B to be determined.

For each cooperating exporter of prepared or preserved tomatoes, the Commission identified the principal physical characteristics of the goods exported in order to classify each export transaction into a particular model category. The characteristics generally included:

1. Type of tomato – whole, chopped, organic, etc
2. Recipe – standard, value-added
3. Can size – 500g, 800g, etc
4. Container – tin easy-open, lacquered, non-lacquered, etc
5. Drained weight – 60%, 70%

After identifying the export model categories, the next step was to identify relevant domestic sales for comparison with the exported goods by classifying each individual domestic transaction into a corresponding normal value model category. Following that, the Commission is able to assess for each of the exported models whether comparable like domestic sales exist.

The Commission then performs the ordinary course of trade test on all domestic sales of like goods (including both comparable like goods and like goods with no equivalent export model) to calculate whether each individual transaction is profitable or recoverable. The

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arranging of both export and domestic sales into model categories is important here as a weighted average cost to make and sell over the investigation period will be calculated for each model to determine whether unprofitable sales are ultimately recoverable.

Where the volume of unprofitable domestic sales exceeds 20% of the total volume for each corresponding model, sales that were found to not be recoverable over the investigation period are discarded from normal value calculations. After disregarding sales not in the ordinary course of trade, the remaining volume of domestic sales for each model are compared to the volume of export sales of the corresponding model to assess whether there is a sufficient volume exceeding 5%.

To illustrate this further, the table below provides an example of the model matching process undertaken by the Commission after performing the ordinary course of trade and sufficiency tests and shows that for models A and C that were exported to Australia, domestic sales of comparable like goods exist. Therefore, normal values for these exported goods can be determined under s.269TAC(1) using suitable domestic sales.

Model	Export model	Domestic model	Like goods
A	YES	YES	YES
B		YES	
C	YES	YES	YES
D	YES		NO
E		YES	

In the case of export model D, where there are no such comparable like goods sold on the domestic market, the Commission considered that domestic sales of other like good models were not appropriate for the purposes of establishing normal values under s.269TAC(1).

As a result, the Commission considered it appropriate to construct normal values using:

- the cost of production of the exported goods, plus
- an amount for selling, general and administrative expenses incurred on domestic sales, plus
- an amount for profit on the assumption that the goods had been sold on the domestic market.

Regulation 181A sets out the manner in which the Minister must determine an amount of profit to be included in a constructed normal value. Pursuant to reg. 181A(2), “the Minister must, if reasonably possible, work out the amount [for profit] by using data relating to the production and sale of like goods by the exporter or producer of the goods in the ordinary course of trade”.

As each of the cooperating exporters of preserved or prepared tomatoes had domestic sales of like goods in the ordinary course of trade, the Commission was able to use this verified data to determine a profit pursuant to reg. 181A(2). The Commission considers that the correct or preferable interpretation of reg. 181A(2) is that the actual profit achieved on domestic sales of all like goods be used.

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Referring again to the earlier example, a profit margin would have been derived from all like goods sold in the ordinary course of trade being domestic models A, B, C and E. It is important to note that sales of domestic models B and C are included as they meet the definition of like goods, even though the exporter did not export these particular models to Australia.

As submitted by SPCA, it is open to the Commission to have regard to other like models sold on the domestic market and make necessary adjustments for differences between the goods being compared. For example, using domestic sales of model C to compare with export sales of model D and adjusting for physical differences between them.

However, this is unlikely to result in a significantly different outcome to the approach preferred by the Commission. That is because the constructed normal value is based on the cost of production of the exported model and includes a profit component that is based on domestic sales of all like goods sold domestically.

The weighted average product dumping margin is then calculated by multiplying the weighted average unit normal value for each comparable like model by the export volume of the corresponding export model. This result would be a weighted average normal value for the goods exported during the investigation period, which is then compared to the corresponding weighted average export price for the goods exported during the investigation period, to provide a product dumping margin over the investigation period.

SPCA further submits that the ordinary course of trade test should be applied against all sales of like goods as defined before any domestic/export model analysis proceeds. As noted earlier, it is the Commission's practice to categorise sales into model groupings and then test whether each individual domestic sale was sold in the ordinary course of trade.

SPC refers to the following WTO Appellate Body finding<sup>7</sup> to support its view that the Commission's practice of using export model groupings to determine the comparable normal value groupings was in contradiction of the Anti-Dumping Agreement:

*Having defined the product at issue and the 'like product' on the Community market as it did, the European Communities could not, at a subsequent stage of the proceeding, take the position that some types or models of that product had physical characteristics that were so different from each other that these types or models were not "comparable". All types or models falling within the scope of a "like" product must necessarily be "comparable", and export transactions involving those types or models must therefore be considered "comparable export transactions" within the meaning of Article 2.4.2.*

The Commission is not persuaded by this argument. The relevant issue being considered by the Appellate Body in that matter was whether the European Communities then-practice of "zeroing" was consistent with the Anti-Dumping Agreement. The quote from

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<sup>7</sup> European Communities – Anti-dumping duties on imports of cotton-type bed linen from India (WT/DS141/AB/R). para. 58.

the Appellate Body Report relied on by SPCA was in response to the European Communities defending its practice of zeroing on the grounds:

*“...that export transactions involving different types or models of cotton-type bed linen are not “comparable” because different types or models of cotton-type bed linen have very different physical characteristics. Specifically, the European Communities suggests that the differences between the various model or types of bed linen involved in the relevant export transactions are “so substantial that they cannot be eliminated by making adjustments for differences in physical characteristics.”*

The Appellate Body ultimately concluded that the European Communities practice of zeroing was inconsistent with Article 2.4.2 of the Anti-Dumping Agreement and that all exported transactions falling within the product scope must be used when establishing the existence of the margin of dumping. The Commission has not practiced zeroing in its dumping margin determination and all export transactions are used to determine the “product” dumping margin.

SPCA further contends that the Commission’s approach to determining comparable export and normal value model groupings, renders the due allowance provisions redundant. In support, it makes reference to a WTO Panel finding<sup>8</sup> in its submission.

The relevance of the particular paragraph from the Panel’s Report referred to in SPCA’s submission is unclear to the Commission. However, the Commission notes the Panel’s finding that:

*Article 2.4 requires investigating authorities to ensure a fair comparison between the normal value and the export price, and provides explicit guidance on how this is to be done: where there are “differences” affecting price comparability between the export price and normal value, “[d]ue allowance shall be made” for those differences. These allowances can only be made after normal value and the export price have been established. [emphasis added]*

After establishing the relevant and suitable domestic sales for comparison with corresponding export sales, the Commission considered and made due allowance for numerous factors that affected their proper comparison.

SPCA pointed to another Panel Report<sup>9</sup> which they claim supports their argument that all domestic sales of like goods must be used to determine normal value and not just those comparable like goods to the exported goods. In that case, the Panel stated:

*We believe that the strict rules in Article 2 regarding the determination of normal value require that, in the usual case, normal value should be established by reference to all domestic sales of the like product in the ordinary course of trade.*

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<sup>8</sup> European Union – Anti-Dumping measures on certain footwear from China (WT/DS405/R). para. 7.264

<sup>9</sup> Argentina – Definitive Anti-Dumping duties on poultry from Brazil. (WT/DS241/R). para. 7.274



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It would appear that the Panel members in that dispute took a particular interpretation of Article 2.4.2 of the Anti-Dumping Agreement. However as outlined below, other WTO Panels have taken a different interpretation to that presented in the poultry dispute. Ultimately, the Appellate Body is the final arbiter and authority on legal interpretation of the WTO Agreements. The Commission considers that the Appellate Body has given clear and unambiguous guidance that model matching for the purposes of determining dumping margins is a reasonable approach that is open to an investigating authority.

The Commission notes that the determination of model categories for the purposes of comparing domestic and export sales is an accepted practice of most investigating authorities and has been accepted as being consistent with the Anti-Dumping Agreement.

In DS179<sup>10</sup>, United States submitted that:

*...while Article 2.4.2 provides that margins of dumping be based upon a comparison of an average of normal value prices with an average of the prices for export transactions, the transactions included in these averages must be "comparable". The reason for this limitation is that the inclusion in the averages to be compared of sales that are not comparable could result in a dumping margin based upon factors not related to dumping. The United States notes that Article 2.4.2 is subject to the provisions of Article 2.4, which requires that normal value and export price be compared "at the same level of trade . . . in respect of sales made at as nearly as possible the same time" and that allowance be made for, inter alia, differences in physical characteristics. Thus, a Member may create multiple averages in order to ensure that comparisons are not distorted by averaging of non-comparable transactions, such as transactions involving different models or at different levels of trade.*

In considering this issue, the Panel found:

*...that we do not consider that Article 2.4.2 prohibits the use of multiple averaging per se, as Korea's first submission could be taken to suggest. To the contrary, Article 2.4.2 provides that the existence of dumping shall normally be established "on the basis of a comparison of a weighted average normal value with a weighted average of all comparable export transactions" (emphasis added). The inclusion of the word "comparable" is in our view highly significant, as in its ordinary meaning it indicates that a weighted average normal value is not to be compared to a weighted average export price that includes non-comparable export transactions. It flows from this conclusion that a Member is not required to compare a single weighted average normal value to a single weighted average export price in cases where certain export transactions are not comparable to transactions that represent the basis for the calculation of the normal value.*

In DS397<sup>11</sup>, the Panel made the following observation:

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<sup>10</sup> United States – Anti-Dumping Measures on Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip from Korea (WT/DS179/R). paras. 6.107 and 6.111

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*There is no methodological guidance in Article 2.4 as to how due allowance for differences affecting price comparability is to be made. We understand that, in order to comply with the requirement of Article 2.4 to make due allowance for differences affecting price comparability between sales of the imported product and sales of the like product in the country of exports, most investigating authorities either make comparisons of transaction prices for groups of goods within the like product that share common characteristics, or by making an adjustments for each difference affecting price comparability to either the normal value or the export price of each transaction to be compared. It is clear to us that investigating authorities may find the first method more practical in certain cases, since it may minimize, or even eliminate, the need to make adjustments for each difference that affect price comparability, which may be a difficult task. However, the authorities are free to follow the second approach and make adjustments for each difference in physical characteristics that affects price comparability.*

On appeal, the Appellate Body in DS397<sup>12</sup> commented:

*In our view, as a starting point for the dialogue between the investigating authority and the interested parties to ensure a fair comparison, the authority must, at a minimum, inform the parties of the product groups with regard to which it will conduct the price comparisons. For example, the authority may choose to make comparisons of transaction prices for a number of groups of goods within the like product that share common characteristics, thus minimizing the need for adjustments, or it may choose to make adjustments for each difference affecting price comparability to either the normal value or the export price of each transaction to be compared. [emphasis added]*

The Appellate Body went on to add:

*Indeed, by using the PCNs (Product Control Numbers) as the organizing principle when gathering product information from the interested parties, the Commission's approach created a reasonable expectation that price comparisons would be conducted on a very particular basis. Moreover, in the light of the very precise nature of the physical characteristics listed under the PCNs, it was also reasonable to assume that few adjustments would be necessary, as prices of narrowly defined products by the Chinese producers would have been compared to prices of equally narrowly defined products in the analogue country, India.*

Therefore, the Commission considers that its practice of identifying exported models and comparable like goods in determining normal value is reasonable.

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<sup>11</sup> European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China (WT/DS397/R). para. 7.297

<sup>12</sup> European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China (WT/DS397/AB/R). paras. 490 and 496

Notwithstanding the Commission's preference for identifying comparable domestic like models for establishing normal values, it is worth noting that the final dumping margin will not differ greatly if all domestic sales were used to establish the normal value. This is because the construct normal values for export models where suitable domestic sales did not exist, was based on the cost of the goods exported plus a calculated profit margin derived from all like goods sold in the ordinary course of trade.

The approach being proposed by SPCA would involve using the domestic selling prices of all like goods sold in the ordinary course of trade and adjusting those prices to account for differences between them and the export model. In effect, it would result in a s.269TAC(1) normal value that is equal to the s.269TAC(2)(c) constructed normal value determined by the Commission.

## **5.4 La Doria**

### **5.4.1 SPCA – response to SEF**

SPCA raised numerous points specific to the negligible dumping margin determined for La Doria.

SPCA submitted that La Doria had exported to Australia a small proportion of goods in 390g 'combi safe' packaging and it was unclear whether such goods had been included in the dumping margin calculations.

The Commission is able to confirm that all products, including 390g combi safe goods, exported by La Doria during the investigation period were included in the dumping margin calculations.

SPCA also queried which of the can sizes sold domestically were used to establish a normal value for the 390g exported product. As noted at Section 3.5 of the La Doria visit report, the Commission identified can size as a relevant factor for the purpose of grouping products into model categories. As there were no comparable domestic sales of the 390g product, the Commission constructed a normal value using the production costs of the exported goods plus relevant SG&A and profit achieved on all like goods sold domestically in the ordinary course of trade.

SPCA queried whether the relationship between La Doria and its related entity, Eugea Mediterranea S.p.A. (Eugea), has impacted on La Doria's costs of production and as a result whether the ordinary course of trade test has been impacted. It presented various information detailing Eugea's financial position as suggesting that Eugea's costs have not been fully recorded and captured in La Doria's CTMS.

In order to test whether the transfer of products from Eugea to La Doria were at arms-length prices, the Commission sought to establish whether the transfer prices at the very least, recovered the fully absorbed cost to make and sell. All relevant information was accessible through La Doria's SAP accounting system.

The Commission found that prices were profitable when compared to their costs and that La Doria's costs of production for these goods accurately reflected the profitable transfer

prices. Therefore, the Commission is satisfied that for goods sourced from its related party, Eugea, the cost to make and sell information submitted by La Doria was reasonable.

SPCA noted that the ordinary course of trade test used a cost to make and sell excluding year-end bonuses, promotional expenses and promotions for free. It considered that promotional expenses and promotions for free were marketing costs and are selling expense that should be included in the cost to make and sell.

The La Doria visit report makes clear that the cost to make and sell “used for this purpose” was simply to assess whether domestic sales were profitable and/or recoverable. Given that domestic selling prices were calculated on a net-net basis, taking into account all on-invoice and off-invoice discounts, it was necessary to adjust the cost to make and sell to the same basis to ensure that selling prices could be properly compared to costs.

#### **5.4.2 Export price**

The Commissioner determines that export prices for La Doria be established pursuant s.269TAB(1)(a) where the goods were sold from the exporter to the importer. However La Doria also sold goods via an intermediary that subsequently on-sold the goods to the importer. In these instances export prices have been established pursuant to s.269TAB(1)(c), having regard to all the circumstances of exportation.

#### **5.4.3 Normal value**

The Commissioner has determined that for certain export sales by La Doria, comparable domestic like goods existed and normal values be established pursuant s.269TAC(1) on an ex-works basis using arms-length domestic sales made the ordinary course of trade.

To ensure the comparability of normal values to export prices, the Commissioner considered adjustments were required pursuant to s.269TAC (8) of the Act for:

- domestic inland freight (negative adjustment);
- domestic credit (negative adjustment);
- domestic commissions (negative adjustment); and
- handling and loading charges (negative adjustment for domestic charges and positive adjustment for export charges).

For export sales where no comparable domestic like goods existed or where there was an insufficient volume of domestic sales in the ordinary course of trade, the Commissioner has determined normal values pursuant to s.269TAC(2)(c) of the Act using La Doria’s cost of production of the exported goods plus appropriate amounts for selling, general and administration expenses<sup>13</sup> as if the goods were sold on the domestic market and an amount for profit<sup>14</sup> based on all sales of like goods sold in the ordinary course of trade.

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<sup>13</sup> *Customs Regulation 1926* Reg 180 Determination of cost of production and *Customs Regulation 1926* Reg 181 Determination of administrative, selling and general costs.

<sup>14</sup> *Customs Regulation 1926* Reg 181A Determination of profit.

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To ensure the comparability of normal values to export prices, the Commissioner considered adjustments were required pursuant to s.269TAC (9) for:

- domestic inland freight (negative adjustment);
- domestic credit (negative adjustment);
- domestic commissions (negative adjustment); and
- handling and loading charges (negative adjustment for domestic charges and positive adjustment for export charges).

The dumping margin was established in accordance with s.269TACB(2)(a) of the Act, by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period. The Commissioner has determined a negligible product dumping margin for La Doria.

### **5.5 Feger**

#### **5.5.1 SPCA – response to SEF**

SPCA queried whether Feger's own brand domestic sales or combined own brand and private label domestic sales were used to compare with the exported goods. The Commission is able to confirm that all domestic sales of comparable like goods were used in the determination of dumping, including Feger's own brand and private label sales.

SPCA stated that it was not clear whether the profit used to construct normal values for Feger was derived from domestic sales of all like goods sold in the ordinary course of trade or just those domestic sales considered to be comparable like goods.

The Commission can confirm that the profit used to construct normal values was calculated using all domestic sales of like goods and not just the profit achieved on comparable like goods.

#### **5.5.2 Export price**

The Commissioner determines that export prices for Feger be established pursuant to s.269TAB(1)(a) where the goods were sold from the exporter to the importer. However, where Feger also sold goods via a buying agent that subsequently sold the goods to the importer, the Commissioner has determined that export prices be established pursuant to s.269TAB(1)(c) having regard to all the circumstances of exportation, using the arm's length FOB invoice price paid by the trader to Feger.

#### **5.5.3 Normal value**

For three of the models exported to Australia by Feger, normal values were established pursuant to s.269TAC(1) based on a sufficient volume of domestic sales of like goods sold in the ordinary course of trade.

To ensure the comparability of normal values to export prices, the following adjustments were required pursuant to s.269TAC(8):

- packing (negative adjustment);

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- commissions (negative adjustment);
- domestic inland freight (negative adjustment);
- export inland freight (positive adjustment);
- domestic handling and logistics (negative adjustment)
- handling and FOB related export charges (positive adjustment); and
- domestic and export credit terms (negative and positive adjustments).

For the remaining three models exported to Australia, there was not a sufficient volume of relevant domestic sales sold in the ordinary course of trade.

The Commissioner has determined normal values pursuant to s.269TAC(2)(c) of the Act by using Feger's cost of production of the exported goods plus appropriate amounts for selling, general and administration expenses<sup>15</sup> as if the goods were sold on the domestic market and an amount for profit<sup>16</sup> based on domestic sales of like goods sold in the ordinary course of trade.

The dumping margin was established in accordance with s.269TACB(2)(a) of the Act, by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period. The Commissioner has determined a negligible product dumping margin for Feger.

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<sup>15</sup> *Customs Regulation 1926* Reg 180 Determination of cost of production and *Customs Regulation 1926* Reg 181 Determination of administrative, selling and general costs.

<sup>16</sup> *Customs Regulation 1926* Reg 181A Determination of profit.

## **6 APPENDICES AND ATTACHMENTS**

**Confidential Appendix 1**

Export prices, Normal values, dumping  
margin calculations