



ANTI-DUMPING NOTICE NO. 2018/106

Customs Act 1901 – Part XVB

**Prepared or preserved tomatoes
Exported from Italy
Initiation of a Continuation Inquiry into
Anti-Dumping Measures**

Notice under subsection 269ZHD(4) of the Customs Act 1901

I, Dale Seymour, the Commissioner of the Anti-Dumping Commission, have initiated an inquiry into whether the continuation of anti-dumping measures, in the form of a dumping duty notice, in respect of certain prepared or preserved tomatoes (the goods) exported to Australia from Italy by all exporters other than Feger di Gerardo Ferraioli S.p.A. (Feger) and La Doria S.p.A. (La Doria), is justified.

The anti-dumping measures are due to expire on 16 April 2019.¹

1. The goods

The goods subject to the anti-dumping measures 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.

The goods are currently classified to subheading 2002.10.00 (statistical code 60) in Schedule 3 of the *Customs Tariff Act 1995*.

2. Background to the anti-dumping measures

The anti-dumping measures were initially imposed by public notice on 16 April 2014, following consideration of *Anti-Dumping Commission Report No. 217* (REP 217). The measures are applicable to all exporters from Italy, with the exception of Feger and La Doria.

The investigation followed an application made by SPC Ardmoma Operations Limited (SPCA, or the applicant) representing the Australian industry.

¹ On and from 17 April 2019, if not continued, the anti-dumping measures would no longer apply.

A history of the measures applying to the goods and the current measures (including the fixed component of interim dumping duty (IDD) payable) are both summarised at Attachment A.

3. Application for continuation of the anti-dumping measures

On 23 April 2018, a notice² was published on the Anti-Dumping Commission (the Commission) website (www.adcommission.gov.au) inviting certain persons to apply for the continuation of anti-dumping measures regarding the goods exported to Australia from Italy in accordance with subsection 269ZHB(1) of the *Customs Act 1901* (the Act).³

On 22 June 2018, an application for continuation of the anti-dumping measures was received from SPCA.

3.1 Australian industry producing like goods

The application states that:

- SPCA is a manufacturer of the goods; and
- the Australian market is supplied by SPCA and by imports.

Based on information provided in the application and having regard to the previous investigation and publicly available information, I am satisfied that these statements in the application are supported by evidence. The requirements of subsection 269ZHB(1)(b)(ii) are therefore satisfied because the applicant represents a portion of the Australian industry producing like goods to the goods covered by the anti-dumping measures. In addition, the application satisfies the requirements under subsection 269ZHB(1)(b)(i) as it was SPCA's application under section 269TB that resulted in the existing anti-dumping measures.

3.2 Application of law to facts

Division 6A of Part XVB sets out, among other things, the procedures to be followed in dealing with an application for the continuation of anti-dumping measures.

Pursuant to subsections 269ZHD(1) and 269ZHD(2), I must reject an application for the continuation of anti-dumping measures if I am not satisfied that:

- the application complies with section 269ZHC; or
- there appear to be reasonable grounds for asserting that the expiration of the anti-dumping measures to which the application relates might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

² Anti-Dumping Notice (ADN) No. 2018/64 refers.

³ All legislative references in this notice are to the *Customs Act 1901*, unless otherwise stated.

3.3 Compliance with section 269ZHC

I consider that the application complies with the requirements of section 269ZHC, in that it is in writing, in a form approved by me for the purposes of this section, contains the information that the form requires, is signed in the manner indicated by the form, and was lodged in a manner approved under section 269SMS, being by email to the Commission's email address provided in the instrument under section 269SMS.

3.4 Assessment under subsection 269ZHD(2)(b)

SPCA's claims:

In its application, SPCA claims, among other things, that:

- export volumes from Italy have remained strong since the imposition of the anti-dumping measures;
- exporters of the goods from Italy have maintained distribution links in the Australian market;
- the goods are highly price sensitive, which means that the removal of the anti-dumping measures is likely to enable exporters to offer the goods at reduced prices, leading to an increased volume of the goods from Italy;
- SPCA would likely find it difficult to generate market share gains in an environment without anti-dumping measures;
- Australia continues to be an attractive market for Italian exporters as demonstrated by the number of new exporters seeking accelerated reviews; and
- the removal of anti-dumping measures will adversely affect SPCA's ability to compete with import prices, impacting profitability and its investment in the new processing plant.

As part of its application, SPCA provided TradeData Statistics to demonstrate that Italy continues to remain a strong exporter of the goods to Australia. The data also has import prices reported at cost, insurance and freight (CIF) terms. A non-confidential version of the application is available on the Commission's public record.

Consideration of reasonable grounds

The Commission has examined information it obtained from the Australian Border Force (ABF) import database and has found that the volume of prepared or preserved tomatoes exported from Italy by all exporters (i.e. including Feger and La Doria) has declined in the four years ending 30 June 2018. However, the Commission also observed that, for the exporters subject to the notice (i.e. excluding Feger and La Doria), the actual volume exported has remained relatively stable, and represents an increasing share of all exports. The ongoing nature and still significant volume of these exports demonstrates that Australia remains a significant destination market for the goods.

In REP 217, the Commission estimated that 82 per cent of all prepared or preserved tomato sales occur via the major supermarkets to the consumer. The Commission also found that there is a close relationship between prices in the Australian market and sales volume, that price is a significant factor in consumer purchasing decisions, and there is close price competition between the imported and the domestically produced goods.

In its application, SPCA was able to demonstrate the negative impact that a price decrease would likely have had on both its gross margin and profitability in the last of those three years. Noting the interim dumping duty actually paid, the Commission considers it reasonable to assert that the expiration of the anti-dumping measures might lead to lower export prices. In those circumstances, the Commission considers that SPCA may experience pricing pressure which may lead to reduced profits and profitability.

Conclusion

Having regard to SPCA's claims and other relevant information, and having examined the application, I am satisfied that, in accordance with subsection 269ZHD(2)(b), there appear to be reasonable grounds for asserting that the expiration of the anti-dumping measures might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

Based on the above findings, I have therefore decided to not reject the application.

4. Continuation inquiry

4.1 Inquiry period

For the purposes of this inquiry, I will use the period from 1 July 2017 to 30 June 2018 (the inquiry period) to determine whether the anti-dumping measures relating to the goods exported to Australia from Italy should:

- remain unaltered; or
- cease to apply to a particular exporter or to a particular kind of goods; or
- have effect in relation to a particular exporter or to exporters generally, as if different variable factors had been ascertained; or
- expire on the specified expiry date, 16 April 2019.

4.2 Sampling of exporters

Subsection 269TACAA(1) states that where the number of exporters from a particular country of export in relation to an investigation, review or inquiry is so large that it is not practicable to examine the exports of all of those exporters, then the investigation, review or inquiry may be carried out, and findings may be made, on the basis of information obtained from an examination of a selected number of those exporters who:

- c) constitute a statistically valid sample of those exporters; or
- d) are responsible for the largest volume of exports to Australia that can reasonably be examined.

I note that there were over 50 suppliers of the goods listed in the ABF import database during the inquiry period. Given the large number, it is not practicable to examine the exports of all exporters. Accordingly, I will carry out this inquiry on the basis of information obtained from an examination of a selected number of exporters who are responsible for the largest volume of exports to Australia that can reasonably be examined.

The ABF import database indicates that the five largest suppliers of the goods subject to measures are as follows:

- De Clemente Conserve S.p.A.
- Calispa S.p.A.
- Princes Industrie Alimentari S.r.L.
- Mutti S.p.A
- Attianese S.p.A.

These five suppliers accounted for approximately 90 per cent of the goods subject to the measures that were imported during the inquiry period. The Commission will contact these selected exporters and invite them to complete an exporter questionnaire with respect to the inquiry period. If a selected exporter does not cooperate with the inquiry or on consideration of further information, I may consider whether to include any additional exporter(s) as selected exporters.

If an exporter other than a selected exporter wishes to complete an exporter questionnaire, the exporter questionnaire can be found on the Commission website. If information is submitted by an exporter that is not a selected exporter, the inquiry must extend to that exporter unless to do so would prevent the timely completion of the inquiry. In assessing whether extending the inquiry to that exporter will prevent the timely completion of the inquiry, I may consider the following:

- the level of cooperation from the selected exporters;
- the number of other exporters seeking individual examination; and
- the available resources within the Commission to undertake either on-site or remote verification, and the time available to undertake the inquiry prior to the expiry of the measures.

Responses to the exporter questionnaire will be due by **22 August 2018**.

Residual exporters

Exporters of the goods other than the selected exporters that make themselves known to the Commission and provide a response to the preliminary information request (PIR) may be considered to be “residual exporters” if their exports are not examined as part of the inquiry and they are not an uncooperative exporter in relation to the inquiry. The PIR is available on the Commission website (www.adcommission.gov.au) and responses are due by **6 August 2018**.

In making assessments in relation to the variable factors for residual exporters, the Commission will not calculate:

- export prices that are less than the weighted average of export prices for cooperative exporters; and
- normal values that exceed the weighted average of normal values for cooperative exporters.⁴

⁴ Subsection 269TACAB(2) refers.

Uncooperative exporters

For the purposes of this inquiry, any exporter who does not cooperate with the inquiry by providing a completed PIR (or a completed exporter questionnaire response in the case of a selected exporter) may be considered as an uncooperative exporter. Assessments in relation to the variable factors for uncooperative exporters will be based on all relevant information.

4.3 Public record

I must maintain a public record for this inquiry. The public record must contain, among other things, a copy of all submissions from interested parties. Documents included in the public record may be examined at www.adcommission.gov.au or at the Commission's office by contacting the case manager on the details provided below.

4.4 Submissions

Interested parties, as defined in subsection 269T(1), are invited to lodge written submissions concerning this inquiry, no later than the close of business on **22 August 2018**, being 37 days after publication of this notice. The Commission's preference is to receive submissions by email to investigations1@adcommission.gov.au.

Submissions may also be addressed to:

The Director, Investigations 1
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601

or faxed to +61 3 8539 2499.

Interested parties wishing to participate in the inquiry must ensure that submissions are lodged promptly. Interested parties should note that I am not obliged to have regard to a submission received after the date indicated above if to do so would, in my opinion, prevent the timely placement of the statement of essential facts (SEF) on the public record.

Interested parties claiming that information contained in their submission is confidential, or that the publication of the information would adversely affect their business or commercial interests, must:

- (i) provide a summary containing sufficient detail to allow a reasonable understanding of the substance of the information that does not breach that confidentiality or adversely affect those interests, or
- (ii) satisfy me that there is no way such a summary can be given to allow a reasonable understanding of the substance of the information.

Submissions containing confidential information must be clearly marked "FOR OFFICIAL USE ONLY". Interested parties must lodge a non-confidential version or a summary of their submission in accordance with the requirement above (clearly marked "PUBLIC RECORD").

4.5 Statement of essential facts

The dates specified in this notice for lodging submissions must be observed to enable me to report to the Assistant Minister for Science, Jobs and Innovation (the Assistant Minister) within the legislative timeframe.⁵ The SEF will be placed on the public record by **3 November 2018**, or by such later date as I may allow in accordance with subsection 269ZHI(3).^{6,7} The SEF will set out the essential facts on which I propose to base a recommendation to the Assistant Minister concerning the continuation of the measures. Interested parties are invited to respond to the issues raised within 20 days of the SEF being placed on the public record.

Submissions received in response to the SEF within 20 days of the SEF being placed on the public record will be taken into account in completing my report and recommendation to the Assistant Minister.

4.6 Report to the Assistant Minister

A recommendation to the Assistant Minister will be made in a report on or before **18 December 2018** (or such later date as I may allow in accordance with subsection 269HI(3)).

The Assistant Minister must make a declaration within 30 days after receiving the report, or due to special circumstances, such longer period, ending before the day the dumping duty notice is due to expire, as the Assistant Minister considers appropriate.

4.7 Commission contact

Enquiries about this notice may be directed to the case manager on telephone number +61 3 8539 2440 or email at investigations1@adcommission.gov.au.

Dale Seymour
Commissioner
Anti-Dumping Commission

16 July 2018

⁵ On 20 December 2017, the Prime Minister appointed the Parliamentary Secretary to the Minister for Jobs and Innovation as the Assistant Minister for Science, Jobs and Innovation. For the purposes of this inquiry the Assistant Minister is the relevant decision maker.

⁶ The powers and functions of the Minister under section 269ZHI of the Act have been delegated to the Commissioner of the Anti-Dumping Commission. Refer to ADN No. 2017/10 for further information.

⁷ As this is a Saturday, the effective due date for the publication of the SEF will be the following business day (5 November 2018).

ATTACHMENT A

The following table summarises the history of the anti-dumping measures in respect of prepared or preserved tomatoes exported from Italy.

Case no. ⁸	ADN No.	Date	Findings
Investigation No. 217	2014/32	16/04/2014	As a result of the investigation a dumping duty notice was published in respect of the goods, with dumping margins ranging between 3.25 per cent and 26.35 per cent. Feger and La Doria were found not to be dumping, and therefore are not subject to the notice.
Review 349 Review 354	2017/46 2017/47	4/05/2017	A review of measures (349) was completed for the goods exported by AR Industrie Alimentari S.p.A (ARIA). A review of measures (354) was completed for the goods exported by all exporters from Italy, except for Feger, La Doria and ARIA. <i>Anti-Dumping Commission Report Nos. 349 and 354</i> details the recommendations and the reasons for the recommendations that resulted in a change in the variable factors applying to all exporters subject to the notice.
Accelerated Reviews	The Commission has completed various accelerated reviews that can be accessed on the Commission website .		

The following table summarises the anti-dumping measures currently applying to exports of the goods to Australia from Italy:

Exporter	Form of IDD	Fixed component of IDD
AR Industrie Alimentari S.p.A	Combination fixed and variable	17.8%
Calispa S.p.A.	Floor price	N/A
Conserve Italia Soc. Coop Agr	Combination fixed and variable	5.4%
De Clemente Conserve S.p.A.	Floor price	N/A
Della Peruta Vincenzo S.p.A	Floor price	N/A
La Vera Napoli Soc. Coop. Agr	Floor price	N/A
Le Specialità Italiane S.R.L	Floor price	N/A
Mutti S.p.A	Combination fixed and variable	3.2%
Residual exporters ⁹	Floor price	N/A
All other exporters	Combination fixed and variable	118%

⁸ Reports and documents relating to each of these matters are available on the corresponding public record, which can be found on the Commission website (www.adcommission.gov.au).

⁹ Residual exporters are listed in the [Dumping Commodity Register](#).