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**CONTINUATION ENQUIRY -EXPIRY REVIEW- BY THE AUSTRALIAN GOVERNMENT INTO
ANTI-DUMPING MEASURES
PREPARED OR PRESERVED TOMATOES EXPORTED FROM ITALY
EXCEPT FEGER AND LA DORIA**

Written submission of the European Commission on the Essential Facts No. 488

On 16 July 2018, Australia initiated a continuation enquiry (or expiry review) of the anti-dumping measures imposed on 16 April 2014 against Italian imports of prepared or preserved tomatoes except Feger and La Doria.

On 25 January 2019, Australia issued the Statement of Essential Facts No. 488, in compliance with Article 6.9 of the WTO Anti-dumping Agreement ('ADA'), according to which: "*The authorities shall, before a final determination is made, inform all interested parties of the essential facts under consideration which form the basis for the decision whether to apply definitive measures*".

The European Commission already made comments regarding the initiation of this review on 21 August 2018, and would like to thank the Australian authorities for this new opportunity to express its views.

At the outset, it is important to recall that Article 11.1 of the WTO ADA provides that "*An anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury*".

An expiry review is a complex investigation as it also involves a prospective analysis. In the present case, imports of processed tomatoes from Italy continued during the period of imposition of measures. Italian companies have provided all the relevant information requested by the Australian authorities in their questionnaire replies. On that basis, the authorities have found that Italian exporters (except one) have not been dumping during the period of review.

Since dumping did not take place during the period of imposition of measures, it is highly unlikely that dumping would recur if measures were allowed to lapse, as there is no economic reason or justification to do so.

Considering the above, the European Commission has analysed in detail the Essential Facts No. 488 and appreciates that the arguments raised at initiation were taken into account.

Moreover, from the disclosed facts, the only possible conclusion is the termination of this investigation without continuation of measures.

Indeed, the following findings and conclusions were drawn by the Anti-Dumping Commission, in particular:

- During the investigation period, the Italian producers of processed tomatoes considered in this review (except for one) have exported to Australia at non-dumped prices. Imports of the only producer found to be dumping did not materially impact the performance of the domestic industry. Moreover, the propensity to dump of the majority of the analysed exporters is limited and the others are selling at higher prices than those of all other exporters.¹
- Each of the cooperating exporters has spare production capacity available. However, their sales to Australia represent a minor share of their export sales. Moreover, on average, their domestic sales and sales to Australia are profitable.²
- The imposition of measures did not have a material impact on import volumes from Italy. The continuation of measures would be likely to have little, if any, impact on future import volumes.³
- The imposition of anti-dumping measures has had little, if any, impact on the economic condition of the complainant, who has been in an unprofitable position on a per unit basis throughout the period of analysis. This was however due to an additional recurring indirect cost and not linked to imports.⁴
- Finally, the Anti-Dumping Commission is not satisfied that the expiration of measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measure is intended to prevent.⁵

Based on the above findings, the criteria to prolong these anti-dumping measures for another five years are not met. Therefore, the European Commission trusts that the Australian authorities will terminate the investigation without continuation of measures in full compliance with its WTO obligations.

¹ Statement of Essential Facts No. 488. Section 7.3.2.

² Statement of Essential Facts No. 488. Section 7.3.3.

³ Statement of Essential Facts No. 488. Section 7.4.2.

⁴ Statement of Essential Facts No. 488. Chapter 5.

⁵ Statement of Essential Facts No. 488. Chapter 7, Conclusion.