



Australian Government
**Department of Industry,
Innovation and Science**

**Anti-Dumping
Commission**

Application for a
review of
anti-dumping measures

APPLICATION UNDER SECTION 269ZA OF THE *CUSTOMS ACT 1901* FOR A REVIEW OF ANTI-DUMPING MEASURES

In accordance with section 269ZA of the *Customs Act 1901* (the Act), I request that the Anti-Dumping Commissioner initiate a review of anti-dumping measures in respect of the goods the subject of this application to:

1. **revise the level of the measures** because one or more of the variable factors relevant to the taking of measures have changed (a variable factors review)

In this case the factors that I consider have changed are:

- normal value
- export price
- non injurious price
- subsidy

The variable factors review is in relation to:

- a particular exporter (*if so provide name and country details*)
- exporters generally

or

2. **revoke the measures** because the anti-dumping measures are no longer warranted (a revocation review)

In this case the measure I consider should be revoked is:

- the dumping duty notice
- the countervailing duty notice
- the undertaking

The revocation review is in relation to:

- a particular exporter (*if so provide name and country details*)
- exporters generally

NOTE

Where seeking variable factors review as well as a revocation review, indicate this in *both* 1 and 2 above.

DECLARATION

I believe that the information contained in this application:

- provides reasonable grounds for review of the anti-dumping measure; and
- is complete and correct to the best of my knowledge and belief.

Signature: 

Name: **Maurizio Gabola**

Position: **Chief Executive Officer**

Company: **Feger di Gerardo Ferraioli SpA**

ABN: 

Date: **February 25, 2019**

Signature requirements

Where the application is made:

By a company - the application must be signed by a director, servant or agent acting with the authority of the body corporate.

By a joint venture - a director, employee, agent of each joint venturer must sign the application. Where a joint venturer is not a company, the principal of that joint venturer must sign the application form.

On behalf of a trust - a trustee of the trust must sign the application.

By a sole trader - the sole trader must sign the application.

In any other case - contact the Commission's client support section for advice.

Assistance with the application

The Anti-Dumping Commission has published guidelines to assist applicants with the completion of this application. Please refer to the '*Instructions and guidelines for applicants: Application for review or revocation of measures*' on the Commission's website.

The Commission's client support section can provide information about dumping and countervailing procedures and the information required by the application form. Contact the team on:

Phone: 13 28 46 or +61 2 6213 6000 (outside Australia)

Fax: (03) 8539 2499 or +61 3 8539 2499 (outside Australia)

Email: clientsupport@adcommission.gov.au

Other information is available from the Commission's website at www.adcommission.gov.au.

Small and medium enterprises (i.e., those with less than 200 full-time staff, which are independently operated and which are not a related body corporate for the purposes of the *Corporations Act 2001*), may obtain assistance, at no charge, from the International Trade Remedies Advisory (ITRA) Service. For more information on the ITRA Service, visit www.business.gov.au or telephone the ITRA Service Hotline on +61 2 6213 7267.

Review Period

The review period is *generally* the 12 month period preceding the initiation date and ending on the most recently completed month or quarter.

For the purposes of information requested in this application, please consider the review period as the 12 month period ending on the most recently completed quarter prior to the date that you submit the application.

The actual review period will be set by the Commissioner if a review is initiated, and may differ to that used by the applicant in the application form.

Required information

1. Provide details of the name, street and postal address, of the applicant seeking the review.
2. Provide details of the name of a contact person, including their position, telephone number and facsimile number, and e-mail address.
3. Name other parties supporting this application.
4. Describe your interest as an affected party (e.g. are you concerned with the exportation of the goods, the importation of the goods, or part of the

Australian industry, or acting on behalf of the Government of an exporting country).

5. Provide details of the current anti-dumping measure(s) the subject of this review application and the goods subject to the measure(s), including:
- tariff classification
 - the countries and/or companies
 - specified date of publication of the measure
6. If you are an exporter of the goods the subject of this application please answer the following questions:
- Have you exported the goods to Australia during the review period?
 - o If yes, what was the total quantity and total value of the goods exported to Australia during the review period?
 - Have you previously (prior to the review period) exported the goods to Australia?
 - o If yes, please provide the total quantity and total value of the goods exported to Australia each year during the three years prior to the review period.
 - Have you exported like goods to countries other than Australia during the review period?
 - o If yes, please provide the total quantity and total value of exports of the goods to each other country during the review period. Please indicate if any of the sales are to a related party.

NB: In relation to the goods the subject of this application, 'like goods' means goods that are identical in all respects to the goods the subject of this application or, although not alike in all respects to the goods the subject of this application, have characteristics closely resembling those goods (s 269T(1) refers).

NB: Please note you must provide this information if you are an exporter of the goods the subject of the application. If you are not an exporter of the goods, you may choose to provide information relevant to this question.

7. Provide the names, addresses, telephone numbers and facsimile numbers of other parties likely to have an interest in this matter e.g. Australian manufacturers, importers, exporters and/or users.

Applications for review of variable factors

If you are applying for a variable factors review (in box 1 above) provide a detailed statement setting out your reasons. Include information about:

- the factor(s) you wish to have reviewed;
- the amount by which that factor is likely to have changed since anti-dumping measures were last imposed, and evidence in support; and
- in your opinion the causes of the change and whether these causes are likely to persist.

Application for a revocation review

If you are applying for a revocation review (in box 2 above), provide a detailed statement setting out your reasons.

Include evidence in support of your view that there are reasonable grounds

for asserting that the measures are no longer warranted. Refer to the *'Instructions and guidelines for applicants: Application for review or revocation of measures'* as part of preparing your response. If you consider anti-dumping measures are no longer warranted because of:

- *no dumping or no subsidisation*: provide evidence that there is no dumping, or no subsidy, and why dumping or subsidisation is unlikely to recur if measures were revoked.
- *no injury*: provide evidence that there is no current injury, and there is unlikely to be a recurrence of injury if the measures were to be revoked.

Lodgement of the application

In accordance with subsection 269SMS(2) of the Act, this application, together with the supporting evidence, must be lodged by either:

- preferably, email, using the email address clientsupport@adcommission.gov.au, or
- post to:

The Commissioner of the Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601, or
- facsimile, using the number (03) 8539 2499 (or +61 3 8539 2499 if outside Australia)

Public Record

During a review all interested parties are given the opportunity to defend their interests, by making a submission. The Commission maintains a public record of these submissions. The public record is available on the Commission's website at www.adcommission.gov.au.

At the time of making the application both a confidential version (for official use only) and non-confidential version (public record) of the application must be submitted. Please ensure each page of the application is clearly marked "FOR OFFICIAL USE ONLY" or "PUBLIC RECORD". The non-confidential application should enable a reasonable understanding of the substance of the information submitted in confidence, clearly showing the reasons for seeking the review, or, if those reasons cannot be summarised, a statement of reasons why summarisation is not possible. If you cannot provide a non-confidential version, contact the Commission's client support section for advice.

5. Provide details of the current anti-dumping measure(s) the subject of this review application and the goods subject to the measure(s), including:

- **tariff classification**

The goods are prepared or preserved tomatoes (PPTs) described as follows:

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 sun dried tomatoes.

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

- **the countries and/or companies**

The measures at stake were imposed by ADN 13/2016 (as modified by the Parliamentary Secretary's Decision Notices published on 5 January 2017 and 3 April 2017) and concern the goods (PPTs) exported from Italy by Feger di Gerardo Ferraioli S.p.A.

- **specified date of publication of the measure**

The Dumping Duty Notice whose revocation is requested was adopted on 10 February 2016 and published on 11 February 2016 (ADN 13/2016).

6. If you are an exporter of the goods the subject of this application please answer the following questions:

- **Have you exported the goods to Australia during the review period? If yes, what was the total quantity and total value of the goods exported to Australia during the review period?**

During the review period (i.e. the 12 month period ending on 31 December 2018) Feger di Gerardo Ferraioli S.p.A. exported the goods to Australia. For more details, please see the table below.

- **Have you previously (prior to the review period) exported the goods to Australia? If yes, please provide the total quantity and total value of the goods**

already identified by the Commission in, *inter alia*, REP 217, REP 276, REP 354 and SEF 488.

8. Grounds for revocation

Feger di Gerardo Ferraioli S.p.A. (**Feger**) seeks the termination of the measures imposed by ADN 13/2016, as these measures are no longer warranted. In particular, it is submitted that: (i) the PPTs exported by Feger to Australia are not dumped and the dumping is not likely to recur in the future, and (ii) the PPTs exported by Feger to Australia are not causing injury to the Australian industry, nor are likely to cause injury in the future.

Absence of current dumping and/or likelihood of recurrence of dumping

Feger is currently subject to antidumping measures in the form of an *ad valorem* duty of 2.3% and a floor price (AEP) of ██████████.

However, the analysis of Feger's sales data reveals that during the review period the weighted average unit price of the goods exported to Australia was higher than the weighted average unit price of the like goods sold in the domestic market, as shown in the table below:

Country	Net quantity (Kg)	Net invoice value (EUR)	Unit Price/kg
Australia	██████████	██████████	██████████
Italy	██████████	██████████	██████████

The same holds true when comparing the ex-works unit price (i.e. after deduction of discounts, commissions, transportation, handling, packing and other ancillary costs) of the models exported to Australia with the weighted average ex-works unit price of the same models sold in the domestic market, as shown in the tables below.

Australian sales

Model	Net Quantity (Kg)	Net Value (EUR)	Net Value EXW (EUR)	Price/kg EXW (EUR)
████████████████████	██████████	██████████	██████████	██████████
████████████████████	██████████	██████████	██████████	██████████
████████████████████	██████████	██████████	██████████	██████████
████████	██████████	██████████	██████████	██████████

Domestic sales

Model	Net Quantity (Kg)	Net Value (EUR)	Net Value EXW (EUR)	Price/kg EXW (EUR)
████████████████████	██████████	██████████	██████████	██████████
████████████████████	██████████	██████████	██████████	██████████
████████████████████	██████████	██████████	██████████	██████████
████████	██████████	██████████	██████████	██████████

Comparison

Model	Price/kg EXW Australia	Price/kg EXW Italy	Difference
████████████████████	████	████	████
████████████████████	████	████	████
████████████████████	████	████	████
████████████████████	████	████	████

The above figures clearly suggest that during the review period the PPTs exported to Australia by Feger were not dumped, and therefore that the measures currently targeting Feger's exports to Australia are no longer warranted.

Moreover, the available evidence suggests that the dumping is not likely to recur in case the Commission revokes the measures targeting Feger's exports, for a number of reasons.

First, it must be recalled that in recent years Feger was involved in two antidumping investigations, in which the Commission established very low dumping margins for Feger:

- in the investigation No. 217 - initiated on 10 July 2013 and terminated *vis-à-vis* Feger on 20 March 2014 (see ADN 2014/22) - Feger's dumping margin was found to be *de minimis*;
- in the investigation No. 276 - initiated on 19 January 2015 and concluded on 10 February 2015 (see ADN 2016/13) – Feger's dumping margin was found to be 2.3%, i.e. just slightly above the *de minimis* threshold.

All the above constitutes clear evidence that Feger does not generally engage in dumping practices, and therefore is not likely to engage in dumping practices in the future.

Second, it must be noted that in the context of the ongoing review of the antidumping measures targeting all Italian exporters except Feger and La Doria (continuation review 488) the Commission established negative dumping margins for the vast majority (four out of five) of the sampled exporters. These largely negative dumping margins are in line with the margins established by the Commission in the previous interim review of the same measures (interim review 354), when the majority (four out of six) of the cooperating sampled exporters were found to be *de minimis*, while the other two cooperating exporters (Mutti SpA and Conserve Italia Soc. Coop.) were found to have very modest dumping margins (3.2% and 5.4% respectively). All the foregoing clearly demonstrates that the Italian PPTs industry considered as a whole is generally not engaged in dumping practices, and therefore is not likely to engage in these practices in the future. This is confirmed by the Commission's findings in SEF 488, where the Commission observed that "*the large negative dumping margins indicates that a number of the exporters [...] could reduce their export prices even further and still not dump; there is no economic incentive for these exporters to do so, noting that the Australian market is small by global standards, declining in volume,*

and already subject to a high degree of price competition (SEF 488, p. 42). Based on this finding, the Commission further concluded that the expiration of the measures targeting the Italian PPTs exporters is not likely to lead to a continuation or a recurrence of dumping.

In light of the foregoing it is respectfully submitted that Feger, as well as the Italian PPTs industry as a whole, does not generally engage in dumping practices. Moreover, there is no economic incentive for Feger to dump, given that the Australian market is small by global standards and already subject to a high degree of price competition. As a result, the revocation of the measures targeting Feger is not likely to lead to a continuation and/or a recurrence of dumping.

Absence of current injury and/or likelihood of recurrence of injury

Feger respectfully submits that the measures imposed on Feger's exports by ADN 13/2016 have been, and still are, completely ineffective in terms of protection of the Australian industry from injury. Moreover, the available evidence demonstrates that the revocation of these measures is not likely to cause continuation and/or recurrence of injury.

In this respect, it is important to draw the Commission's attention to some important implications deriving from the conclusion reached in SEF 488:

- in SEF 488 the Commission concluded that the antidumping measures adopted on 16 April 2014 (ADN 2014/32) against all Italian exporters except Feger and La Doria, as well as the measures adopted on 10 February 2016 against Feger (ADN 2016/13) did not have a material impact on the volumes of PPTs imported from Italy and therefore on the market share of the Australian Industry (see SEF 488, pp. 39-40). Based on these findings, it can be concluded that the alleged injury suffered by the Australian Industry in term of loss of sales volumes and market share was certainly not caused by the Italian imports subject to antidumping measures, including Feger's imports. It follows that the the revocation of such measures, including the measures targeting Feger, is not likely to cause injury to the Australian industry;
- in SEF 488 the Commission also noted that the imposition of antidumping measures on Italian PPTs did not result in any improvement of SPCA's sales prices (see SEF 488, p. 40). On the contrary, the Commission found that the retail prices for both SPCA's proprietary labels and the Italian private labels was driven down in 2014 by the major supermarkets and remained stable since then. The Commission thus concluded that the pricing of the goods sold in the Australian market, whether imported or domestically produced, is mainly influenced by factors other than dumping (namely, the major supermarkets' commercial strategies). Needless to say, such a conclusion also applies vis-à-vis Feger. In fact, Feger sells the goods to the same major supermarkets whose behaviour has been analysed in SEF 488. It follows that Feger's exports were not responsible for the alleged price suppression suffered by SPCA and that the revocation of the antidumping measures targeting Feger is likely not to cause any injury to the Australian industry;

- in SEF 488 the Commission further noted that the continuation of the measures targeting all Italian PPTs exporters except Feger and La Doria would be likely to have little, if any, impact on the situation of the Australian industry. In particular, the Commission noted that the goods found to be dumped in review 488 (i.e. the export by Princes) represented less than 10% of the Australian market and that the lost revenue which could be attributed to such goods, in the worst scenario, was insignificant (i.e. less than 1% of SPCA's revenue). For these reasons, it was considered unlikely that any material injury to SPCA will continue or recur due to future dumping. Bearing the above in mind, it is respectfully submitted that the same conclusion should be reached, *a fortiori*, with regard to Feger's exports. As a matter of fact, Feger's exports in the review period represented no more than [REDACTED] of the whole Australian PPTs market. Therefore, even assuming that Feger could engage in dumping practices in the future, *quod non*, the impact of such dumping would be absolutely negligible in light of Feger's marginal market share, especially if the measures currently applicable *vis-à-vis* all other Italian PPTs exporters will actually terminate, as envisaged in SEF 488.

For the above reasons, Feger respectfully submit that the revocation of the measures imposed by ADN 13/2016 is not likely to cause continuation and/or recurrence of injury to the Australian industry.