



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

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

**CONSIDERATION REPORT
NO. 508**

**APPLICATION FOR REVOCATION REVIEW
IN RELATION TO
PREPARED OR PRESERVED TOMATOES
EXPORTED TO AUSTRALIA FROM
ITALY BY FEGER DI GERARDO FERRAIOLI S.P.A.**

29 March 2019

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ABBREVIATIONS

the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
Feger	Feger di Gerardo Ferraioli S.p.A
IDD	interim dumping duty
La Doria	La Doria S.p.A
PPT, or the goods	certain prepared or preserved tomatoes the subject of the dumping duty notice
REP 276	<i>Anti-Dumping Commission Report No. 276</i>
SEF 488	<i>Statement of Essential Facts No. 488</i>
SPCA	SPC Ardmona Operations Limited

1 SUMMARY AND RECOMMENDATIONS

1.1 Background

This report provides the results of the consideration by the Anti-Dumping Commission (the Commission) of an application lodged by Feger di Gerardo Ferraioli S.p.A (Feger). Feger requests that the anti-dumping measures (in the form of a dumping duty notice) which apply to its exports of certain prepared or preserved tomatoes (PPT, or the goods) exported to Australia from Italy be revoked, on the basis that the anti-dumping measures are no longer warranted.¹

1.2 Application of law to facts

Division 5 of Part XVB of the *Customs Act 1901* (the Act)² sets out, among other things, the procedures to be followed by the Commissioner of the Anti-Dumping Commission (the Commissioner) in dealing with an application for a review of anti-dumping measures.

The Division empowers the Commissioner to reject or not reject an application for a review of anti-dumping measures.

1.3 Findings and conclusions

The Commission has examined the application and is satisfied that:

- the application complies with the requirements of section 269ZB (as set out in chapter 3 of this report); and
- there appear to be reasonable grounds for asserting that the anti-dumping measures are no longer warranted (as set out in chapter 3 of this report).

1.4 Recommendation

The Commission recommends that the Commissioner not reject Feger's application for a review seeking the revocation of the anti-dumping measures applying to exports to Australia from Italy by Feger.

If the Commissioner accepts this recommendation, to give effect to that decision, the Commissioner must publish the notice at **Attachment 1** indicating that the Commission will conduct a review into whether the anti-dumping measures should be revoked.

If the recommendation is accepted, the Commission will examine the period from 1 January to 31 December 2018 to assess whether dumping has occurred, and will obtain additional information from 1 January 2015, particularly in terms of Feger's past export sales, to assess whether the measures are no longer warranted.

¹ Subsection 269ZA(1)(b)(ii).

² All legislative references in this report are to the *Customs Act 1901*, unless otherwise specified.

2 BACKGROUND

2.1 Application

On 9 March 2019, Feger lodged an application requesting a revocation review. Feger claims that the anti-dumping measures are no longer warranted on the basis that:

- it is not dumping, and dumping is unlikely to recur in the future; and
- the PPT exported by Feger to Australia are not causing injury to the Australian industry, nor are likely to cause injury in the future.

A non-confidential version of Feger's application will be available on the public record on the Commission website if the review is initiated. A confidential version of the application is available at **Confidential Attachment 2**.

Feger's claims are discussed further in chapter 3 of this report.

2.2 Existing measures

The anti-dumping measures were imposed on 11 February 2016 by publication of the dumping duty notice, Anti-Dumping Notice (ADN) No. 2016/13, following the relevant Minister's consideration of *Anti-Dumping Commission Report No. 276* (REP 276).³

Following a review of the Minister's decision by the Anti-Dumping Review Panel (ADRP) and a reinvestigation of certain findings, the anti-dumping measures applying to Feger were revised.⁴ Exports of PPT by Feger currently attract an interim dumping duty calculated by reference to the combination of fixed and variable duty method. The fixed component is calculated as a percentage (2.3 per cent) of the export price or the ascertained export price, whichever is higher, plus a variable amount of duty if the actual export price (per kilogram) is below the ascertained export price.

The dumping duty notice will expire (unless continued) on 11 February 2021.⁵

2.3 The goods subject to the measures

The goods subject to the anti-dumping measures and therefore this review 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 These documents are available on the electronic public record on the Commission [website](#).

⁴ [Anti-Dumping Commission Reinvestigation Report No. 360](#), ADRP [Report No. 35](#) and the [notice](#) of the decision of the then Parliamentary Secretary to the Minister for Industry, Innovation and Science, refer.

⁵ There is another dumping duty notice applying to PPT exported from Italy, which does not apply to goods exported by Feger. These measures were imposed following *Anti-Dumping Commission Report No. 217*, and is currently the subject of a continuation inquiry ([Statement of Essential Facts No. 488](#) refers).

2.3.1 Tariff classification of the goods

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

2.4 Australian industry producing like goods

Based on its findings in other cases concerning PPT, the Commission considers that SPC Ardmona Operations Limited (SPCA) is the largest manufacturer of PPT in Australia, accounting for the vast majority of Australian production.

The Commission therefore remains satisfied that there is an Australian industry producing like goods.

3 CONSIDERATION OF THE APPLICATION

3.1 Legislative framework

Pursuant to section 269ZA, where anti-dumping measures have been taken in respect of goods, an affected party⁶ may, by application lodged with the Commissioner, request that the Commissioner initiate a review of measures.

Subsection 269ZA(2) states, inter alia, that an application for review of anti-dumping measures must not be made earlier than 12 months after the publication of a notice declaring the outcome of the last review of the anti-dumping notice.

The application can be made by the affected party who considers that it may be appropriate to review those measures as they affect a particular exporter of those goods, or as they affect exporters of those goods generally, on the grounds that the anti-dumping measures are no longer warranted.

Subsection 269ZB(1) requires that an application be in writing, be in a form approved by the Commissioner for the purposes of this section, contain such information as the form requires, be signed in the manner indicated by the form and be lodged in a manner approved under section 269SMS.

Subsection 269ZB(2) requires an applicant to provide:

- a description of the kind of goods to which the measures the subject of the application relate; and
- a description of the measures the subject of the application; and
- if the application is based on circumstances that, in the applicant's view, indicate that the anti-dumping measures are no longer warranted, the applicant must provide evidence in accordance with the approved form, of the circumstances.

Subsection 269ZC(2) specifies the matters which must be considered in making a decision whether to reject an application. These matters are:

- that the application complies with section 269ZB; and
- that there appear to be reasonable grounds for asserting either, or both, of the following:
 - that the variable factors relevant to the taking of anti-dumping measures have changed;
 - that the anti-dumping measures are no longer warranted.

⁶ An "affected party", in relation to an application under Division 5 for review of anti-dumping measures imposed on particular goods, is defined under section 269T to be:

- a) a person who is directly concerned with the exportation to Australia of the goods to which the measures relate or who has been directly concerned with the exportation to Australia of like goods; or
- b) a person who is directly concerned with the importation into Australia of the goods to which the measures relate or who has been directly concerned with the importation into Australia of like goods; or
- c) a person representing, or representing a portion of, the Australian industry producing like goods; or
- d) the Government of a country from which like goods have been exported to Australia.

3.2 Compliance with sections 269ZA and 269ZB

When considering the requirements of subsections 269ZA(1), 269ZB(1) and (2), the Commission notes that the application submitted:

- meets the definition of an affected party as Feger is a producer of like goods and a party directly concerned with the exportation of the goods;
- was lodged 12 months after the publication of the anti-dumping notice;⁷
- is in writing;
- is in the approved form (*Form B602 – Application for a review of measures*) and contains such information as the form requires. This includes evidence in support of the view that there are reasonable grounds for asserting that the measures are no longer warranted;
- is signed in the manner required by the form;
- was lodged in a manner approved under section 269SMS, being by email to the Commission's nominated email address (as nominated in the Commissioner's instrument made under section 269SMS);
- provides a description of the kind of goods to which the anti-dumping measures the subject of the application relates;
- provides a description of the anti-dumping measures the subject of the application; and
- includes a statement of the opinion of the applicant concerning the circumstances that in the applicant's view indicate that the anti-dumping measures are no longer warranted.

The Commission considers that Feger has satisfied the requirements of subsections 269ZA(1), 269ZB(1) and (2).

3.3 Compliance with section 269ZC - assessment of 'the appearance of reasonable grounds'

Feger has claimed that it is not currently dumping. To support this view, Feger has provided information in relation to its export price and normal value for the products it exported to Australia during the 12 months ending 31 December 2018. The Commission's preliminary analysis of this information (set out in **Confidential Attachment 3**) supports Feger's claim.

Feger has further indicated that it does not have a history of dumping behaviour. The Commission notes that in *Anti-Dumping Commission Report No. 217* Feger's dumping margin was *de minimis*; in REP 276, following the ADRP review of the decision, Feger's dumping margin was 2.3 per cent.

Feger also notes the preliminary findings reported in *Statement of Essential Facts No. 488* (SEF 488) that almost all other Italian exporters of PPT were not dumping during the 12 months ending 30 June 2018, and suggests that Italian exporters generally do not engage in dumping behaviour. Further, Feger repeats the Commission's observations in SEF 488, that:

⁷ The relevant anti-dumping notice was published on 11 February 2016. There have been no subsequent reviews of the notice.

“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.”

Feger concludes that the revocation of measures in these circumstances is not likely to lead to a continuation and / or recurrence of dumping.

Feger goes on to claim that the anti-dumping measures examined in SEF 488 were ineffective in protecting the Australian industry from injury, suggesting that those measures did not have a material impact on the volumes of PPT exported from Italy and therefore on the market share of the Australian industry. Feger also claims that SEF 488 shows that the imposition of those anti-dumping measures did not result in any improvement to SPC's prices, which suggests the Australian market for PPT is mainly influenced by factors other than dumping. Feger suggests that the Commission's findings with respect to the only selected exporter that was found to have been dumping (Princes Industrie Alimentari S.r.L.), which was that its dumping would not have caused injury to the Australian industry, ought to also apply to Feger's own exports.

The Commission considers that the claims put forward by Feger with respect to dumping are reasonable grounds for asserting that its future exports are unlikely to be dumped. The Commission notes that Feger's current export volumes are small, it has previously exported much larger volumes of PPT which, on their own, may be a potential cause of injury to the Australian industry. However, the Commission also notes the following view, expressed in SEF 488, that:

“[...] whilst there is a close relationship between price and volume in terms of consumer purchasing behaviour, this occurs in a market which is almost entirely unaffected by dumping. Consumers have clear preferences for particular products in terms of origin and price point, and changes in pricing have little impact on those preferences. SPCA's prices are, in the main, higher than those achieved by exporters that have been found not to be dumping. Whilst some consumers have a preference for an Australian product, the anti-dumping measures have no bearing on that decision.”

The Commission recognises that this view could be reasonably expected by Feger to prevail regardless of Feger's future export volume and whether those future exports are at dumped prices. On this basis, the Commission considers that there are also the appearance of reasonable grounds for asserting that its future exports are also unlikely to cause material injury.

Based on the information provided in the application, the Commission considers that Feger provided sufficient reasonable grounds to satisfy the requirements of subsection 269ZC(2).

3.4 Conclusion and recommendation

The Commission has considered Feger's application in accordance with sections 269ZA, 269ZB and 269ZC. The Commission is satisfied, on the basis of the information provided in the application, Feger's supporting evidence and other available information (including from previous cases), that Feger:

- is an affected party in accordance with section 269ZA;
- has submitted an application that complies with section 269ZB; and
- has provided reasonable grounds for asserting that the anti-dumping measures are no longer warranted in accordance with section 269ZC.

The Commission therefore recommends that the Commissioner:

- *not reject* the application for a review of the anti-dumping measures; and
- publish a notice that the Commission will conduct a review in relation to whether the anti-dumping measures applying to PPT's exported from Italy by Feger are no longer warranted.

4 ATTACHMENTS

Attachment 1	Anti-Dumping Notice for initiation
Confidential Attachment 2	Feger's confidential application with export price, normal value and exported volumes
Confidential Attachment 3	Commission's analysis of Feger's data