



Australian Government
Anti-Dumping Review Panel

Application for review of a Ministerial decision

Customs Act 1901 s 269ZZE

This is the approved¹ form for applications made to the Anti-Dumping Review Panel (ADRP) on or after 2 March 2016 for a review of a reviewable decision of the Minister (or his or her Parliamentary Secretary).

Any interested party² may lodge an application for review to the ADRP of a review of a ministerial decision.

All sections of the application form must be completed unless otherwise expressly stated in this form.

Time

Applications must be made within 30 days after public notice of the reviewable decision is first published.

Conferences

You or your representative may be asked to attend a conference with the Panel Member appointed to consider your application before the Panel gives public notice of its intention to conduct a review. Failure to attend this conference without reasonable excuse may lead to your application being rejected. The Panel may also call a conference after public notice of an intention to conduct a review is given on the ADRP website. Conferences are held between 10.00am and 4.00pm (AEST) on Tuesdays or Thursdays. You will be given five (5) business days' notice of the conference date and time. See the ADRP website for more information.

¹ By the Acting Senior Member of the Anti-Dumping Review Panel under section 269ZY *Customs Act 1901*.

² As defined in section 269ZX *Customs Act 1901*.

Further application information

You or your representative may be asked by the Panel Member to provide further information to the Panel Member in relation to your answers provided to questions 10, 11 and/or 12 of this application form (s269ZZG(1)). See the ADRP website for more information.

Withdrawal

You may withdraw your application at any time, by following the withdrawal process set out on the ADRP website.

If you have any questions about what is required in an application refer to the ADRP website. You can also call the ADRP Secretariat on (02) 6276 1781 or email adrp@industry.gov.au.

PART A: APPLICANT INFORMATION

1. Applicant's details

Applicant's name : Conserve Italia Soc. Coop. Agr.
Address : Via Paolo Poggi, 11
40068 – San Lazzaro di Savena (Bo)
Italy
Type of entity (trade union, corporation, government etc.) : Corporation

2. Contact person for applicant

Full name : Davide Mazzacurati
Position : Administrative Director
Email address : davide.mazzacurati@ccci.it
Telephone number : +39-051-6228 311

3. Set out the basis on which the applicant considers it is an interested party

Conserve Italia Soc. Coop. Agr. ("**Conserve Italia**") is an Italian exporter of prepared or preserved tomatoes targeted by investigation No. 354, upon which the Assistant Minister for Industry, Innovation and Science has imposed anti-dumping measures by virtue of Anti-Dumping Notice No. 2017/47 published under Sections 269ZDB(1) and (2) of the Customs Act 1901 (the "**Act**").

Considering that Conserve Italia is directly concerned with the importation of the goods subject to the reviewable decision, it is considered as an "interested party" pursuant to Section 269ZX of the Act.

4. Is the applicant represented?

Yes No

If the application is being submitted by someone other than the applicant, please complete the attached representative's authority section at the end of this form.

****It is the applicant's responsibility to notify the ADRP Secretariat if the nominated representative changes or if the applicant become self-represented during a review.****

PART B: REVIEWABLE DECISION TO WHICH THIS APPLICATION RELATES

5. Indicate the section(s) of the *Customs Act 1901* the reviewable decision was made under:

Subsection 269TG(1) or (2) – decision

of the Minister to publish a dumping
duty notice

Subsection 269TH(1) or (2) – decision

of the Minister to publish a third
country dumping duty notice

Subsection 269TJ(1) or (2) – decision

of the Minister to publish a
countervailing duty notice

Subsection 269TK(1) or (2) decision of

the Minister to publish a third country
countervailing duty notice

Subsection 269TL(1) – decision of the Minister
not to publish duty notice

Subsection 269ZDB(1) – decision of the Minister
following a review of anti-dumping measures

Subsection 269ZDBH(1) – decision of the
Minister following an anti-circumvention enquiry

Subsection 269ZHG(1) – decision of the Minister
in relation to the continuation of anti-dumping
measures

6. Provide a full description of the goods which were the subject of the reviewable decision

The goods which were the subject of the reviewable decision were defined in section 2.3 of the Final Report No. 354 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 sundried tomatoes.

7. Provide the tariff classifications/statistical codes of the imported goods

The goods which are concerned by the reviewable decision are classified under subheading 2002.10.00 (statistical code 60) to Schedule 3 of the Customs Tariff Act 1995.

8. Provide the Anti-Dumping Notice (ADN) number of the reviewable decision

If your application relates to only part of a decision made in an ADN, this must be made clear in Part C of this form.

The reviewable decision was published under Anti-Dumping Notice No. 2017/47.

9. Provide the date the notice of the reviewable decision was published

The reviewable decision was published on 4 May 2017.

Attach a copy of the notice of the reviewable decision (as published on the Anti-Dumping Commission's website) to the application*

Copy of the Anti-Dumping Notice No. 2017/47 is provided under [Attachment A](#).

PART C: GROUNDS FOR THE APPLICATION

If this application contains confidential or commercially sensitive information, the applicant must provide a non-confidential version of the grounds that contains sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Confidential or commercially sensitive information must be marked '**CONFIDENTIAL**' (bold, capitals, red font) at the top of each page. Non-confidential versions should be marked '**NON-CONFIDENTIAL**' (bold, capitals, black font) at the top of each page.

For lengthy submissions, responses to this part may be provided in a separate document attached to the application. Please check this box if you have done so:

10. Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision.

Please see [Attachment B](#) (submitted in clearly marked CONFIDENTIAL and NON-CONFIDENTIAL versions).

11. Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 10.

Please see [Attachment B](#) (submitted in clearly marked CONFIDENTIAL and NON-CONFIDENTIAL versions).

12. Set out the reasons why the proposed decision provided in response to question 11 is materially different from the reviewable decision.

Please see [Attachment B](#) (submitted in clearly marked CONFIDENTIAL and NON-CONFIDENTIAL versions).

Do not answer question 12 if this application is in relation to a reviewable decision made under subsection 269TL(1) of the Customs Act 1901.

PART D: DECLARATION

The applicant/~~the applicant's~~ authorised representative [*delete inapplicable*] declares that:

- The applicant understands that the Panel may hold conferences in relation to this application, either before or during the conduct of a review. The applicant understands that if the Panel decides to hold a conference *before* it gives public notice of its intention to conduct a review, and the applicant (or the applicant's representative) does not attend the conference without reasonable excuse, this application may be rejected;
- The information and documents provided in this application are true and correct. The applicant understands that providing false or misleading information or documents to the ADRP is an offence under the *Customs Act 1901* and *Criminal Code Act 1995*.

Signature:.....

Name : Gabriele Coppo
Position : Associate
Organisation : Van Bael & Bellis
Date : 01/06/2017

PART E: AUTHORISED REPRESENTATIVE

This section must only be completed if you answered yes to question 4.

Provide details of the applicant's authorised representative

Full name of representatives : Fabrizio Di Gianni
Gabriele Coppo

Organisation : Van Bael & Bellis

Address : Glaverbel Building
Chaussée de La Hulpe 166
1170 Brussels
Belgium

Email address : fdigianni@vbb.com
gcoppo@vbb.com

Telephone number : + 32(0)2.647.73.50

Representative's authority to act

****A separate letter of authority may be attached in lieu of the applicant signing this section****

Please refer to [Attachment C](#).

The person named above is authorised to act as the applicant's representative in relation to this application and any review that may be conducted as a result of this application.

Signature:.....

(Applicant's authorised officer)

Name:

Position:

Organisation

Date: / /

Anti-Dumping Review Panel

Application for a Review - ADC 354 - Prepared or preserved tomatoes exported from Italy by AR Industrie Alimentari S.p.A. and by all exporters other than by Feger di Gerardo Ferraioli S.p.A. and La Doria S.p.A.

Conserve Italia Soc. Coop. Agr.

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INTRODUCTION

On 25 May 2016, the Anti-Dumping Commission (the “**ADC**”) initiated the interim review No. 354 concerning the anti-dumping measures applicable to certain prepared or preserved tomatoes (“**PPTs**”) exported to Australia from the Republic of Italy by all exporters except Feger di Gerardo Ferraioli S.p.A., La Doria S.p.A. and AR Industrie Alimentari S.p.A.

On 5 April 2017, the ADC concluded the investigation by adopting the Final Report Nos. 349 and 354 (the “**Final Report**”), in which the ADC concluded that the normal value, export price and the non-injurious price leading to the imposition of original measures have changed, and consequently recommended the Parliamentary Secretary to modify the ascertained variable factors in relation to all exporters, including Conserve Italia Soc. Coop. Agr. (“**Conserve Italia**”).

On 4 May 2017, on the basis of the recommendations contained in the Final Report, the Assistant Minister for Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science (the “**Minister**”) published the Anti-Dumping Notice No. 2017/47 amending the anti-dumping measures in relation to imports of PPTs exported from Italy by all exporters except Feger di Gerardo Ferraioli S.p.A., La Doria S.p.A. and AR Industrie Alimentari S.p.A. (the “**reviewable decision**”), including the PPTs produced by Conserve Italia.

The present submission sets out the reasons why, in Conserve Italia’s view, the reviewable decision is not the correct or preferable decision within the meaning of Section 269ZDB of the Customs Act 1901 (the “**Act**”).

1. **FIRST GROUND: CERTAIN DOMESTIC SALES SHOULD HAVE BEEN EXCLUDED FROM THE NORMAL VALUE CALCULATION OF MODEL [CONFIDENTIAL – PRODUCT CODES]**

Conserve Italia submits that the ADC wrongly included certain domestic sales in the normal value calculation of model **[Confidential – Product Codes]**, thus causing a distorted assessment of Conserve Italia’s dumping margin in the Final Report. The Minister, in turn, accepted the ADC’s recommendations drawn up on the basis of such inaccurate assessment, thereby creating an unfair result for Conserve Italia.

1.1 **Grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision [Application form, question 10]**

Conserve Italia believes that the reviewable decision is not the correct decision since, in calculating the normal value of model **[Confidential – Product Codes]** the ADC:

- (i) wrongly considered **[Confidential – Product Codes]** domestic sales as **[Confidential – Product Codes]** sales, including them in the normal value calculation of model **[Confidential – Product Codes]**, and
- (ii) unfairly included in the normal value calculation of model **[Confidential – Product Codes]** certain domestic sales of **[Confidential – Product Codes]** tomatoes sold to the client **[Confidential – Customer Names]**, despite the particular physical characteristics of these goods, which are produced on the basis of a special tailored recipe that significantly differs from the recipe of all other **[Confidential – Product Codes]** products sold by Conserve Italia in both Italy and Australia.

Each of these claims will be discussed in greater detail in the following subsections.

1.1.1 Domestic sales of **[Confidential – Product Codes]** should be excluded from the normal value calculation of model **[Confidential – Product Codes]**

As explained in section 2.3 of Conserve Italia's Verification Report, for the purpose of model matching the ADC considered appropriate to take into account, *inter alia*, the criterion of the brand (i.e. whether the relevant PPTs were sold under a premium brand or under a private label). Therefore, for the purpose of the dumping margin calculation the ADC distinguished (i) premium-brand sales (under CIRIO trademark) and (ii) private-label sales.

Despite the above-described approach, the ADC has included Conserve Italia's domestic sales of **[Confidential – Product Codes]** made under **[Confidential – Product Codes]** in the domestic sales taken into account to calculate the normal value of model **[Confidential – Product Codes]**, which concerns private-label sales of **[Confidential – Product Codes]**. However, this is not correct. As a matter of fact, **[Confidential – Product Codes]** is a brand (i.e. a trademark) owned by Conserve Italia, like CIRIO (even though CIRIO is an historical brand with a much higher value).

Therefore, as indicated in Conserve Italia's domestic sales table submitted in response to the antidumping questionnaire, **[Confidential – Product Codes]** should be treated as brand products and not private-label products. This is clearly confirmed by a very simple price analysis: the average unit ex-works sales price of **[Confidential – Product Codes]** amounts to € **[Confidential – Prices]** whereas the average unit ex-works sales price of **[Confidential – Product Codes]** is € **[Confidential – Prices]**.

Furthermore, it must be noted that **[Confidential – Product Codes]** are not exported to Australia, and as a result, are not comparable to the **[Confidential – Product Codes]** produced by Conserve Italia and sold on the Australian market. Therefore, a

fair normal value calculation should not include these sales among the private-label sales of **[Confidential – Product Codes]** made on the domestic market.

1.1.2 [Confidential – Product Codes] sold to the client [Confidential – Customer Names] are produced on the basis of a special recipe and should therefore be excluded from the normal value calculation of model [Confidential – Product Codes]

[Confidential – Product Codes] sold to the **[Confidential – Customer Name]** are different from **[Confidential – Product Codes]** sold by Conserve Italia both on the domestic market and on the Australian market, because this customer requires Conserve Italia to manufacture the goods on the basis of a special recipe which is richer than the recipe used for producing **[Confidential – Product Codes]**.

The richer recipe mainly stems from the increased “brix” level of the **[Confidential – Product Codes]** produced for **[Confidential – Customer Name]**, as demonstrated by the specifications of product code **[Confidential – Product Codes]**. In order to reach a higher degree of brix, some of the water naturally present in the tomato juice is evaporated and as a result, a more concentrated tomato juice is obtained, containing a greater amount of fresh tomatoes compared to **[Confidential – Product Codes]**.

A higher brix level brings a better flavour to the product as a result of the thicker and richer outcome, which also affects the prices. As a matter of fact, the domestic sales listing of Conserve Italia reveals that the **[Confidential – Product Codes]** produced for **[Confidential – Customer Name]** on the basis of the above-described richer recipe were sold at an average unit ex-works price of € **[Confidential – Prices]** whereas the **[Confidential – Product Codes]** were sold at an average unit price of € **[Confidential – Prices]**.

It follows from the above that, for the purpose of a fair comparison, the sales of product code **[Confidential – Product Codes]** should be excluded from the normal value calculation of model **[Confidential – Product Codes]**. In fact, all the **[Confidential – Product Codes]** exported to Australia were produced on the basis of a standard recipe, having a lower brix content and therefore a lower market value.

In the alternative, a physical adjustment should be applied to the normal value of the domestic sales of product code **[Confidential – Product Codes]**, in order to re-establish an apple-to-apple comparison with the export price of **[Confidential – Product Codes]** exported to Australia. In fact, it has been clearly demonstrated that the higher quality of the product sold to the client **[Confidential – Customer Name]** has a “*demonstrable effect on the selling price of the goods*”, as requested by the Dumping and Subsidy Manual.

Finally, it should be noted that the above claim appears to be in line with the ADC's practice. For instance, in the framework of the original antidumping investigation No. 217 concerning imports of PPTs from Italy, the ADC acknowledged at section 3.2.2 of Feger's Verification Report that the brix of the tomato juice determines the quality of the product. This was also confirmed at section 5.2.2 of Final Report No. 217.

1.1.3 Conclusion on the first ground for review

In light of the foregoing, it is submitted that the reviewable decision is not the correct decision as Conserve Italia's dumping margin determinations are vitiated by the inclusion, in the normal value calculation of model **[Confidential – Product Codes]** (covering **[Confidential – Product Codes]**), of the following transactions:

- (i) **[Confidential – Product Codes]**, which are NOT private-label products, and
- (ii) **[Confidential – Product Codes]** sold to **[Confidential – Customer Names]**, which are manufactured on the basis of a special recipe.

In this respect, it must be noted that the Final Report simply disregarded the above claims without providing any solid ground for the rejection thereof, except for the timely completion of the investigation. However, such a procedural ground is ill-founded. The ADC in fact had sufficient time to complete the Final Report as the claims under discussion were raised as soon as possible, i.e. just 3 working-days after the disclosure of the dumping calculations by the ADC, which took place before the publication of the Statement of Essential Facts (the "**SEF**"). Moreover, they were also reiterated in Conserve Italia's response to the SEF.

1.2 Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be **[Application form, question 11]**

Based on the arguments illustrated under section 1.1 above, it is submitted that the normal value of model **[Confidential – Product Codes]** should have been determined on the basis of the domestic sales of **[Confidential – Product Codes]** with the exclusion of (i) **[Confidential – Product Codes]** sold under the **[Confidential – Product Codes]**, and (ii) **[Confidential – Product Codes]** with a higher brix degree sold to the client **[Confidential – Customer Name]**.

Had the ADC correctly calculated the normal value of model **[Confidential – Product Codes]** (in accordance with the methodology proposed by Conserve Italia) this would have resulted in a dumping margin of **[Confidential – Dumping Margin]**% (rather than the margin of 5.4% calculated by the ADC).

Moreover, should the Anti-Dumping Review Panel decide to uphold all the three grounds for review submitted in the present application, Conserve Italia's dumping margin would further decrease to **[Confidential – Dumping Margin]**%.

The Anti-Dumping Review Panel is therefore respectfully requested to recommend to the Minister, under sections 269ZZK(1) and (1A) of the Act, that the reviewable decision should be revoked and substituted (as the case may be) with:

- (i) a decision to publish a notice under subparagraph 269ZDB(1)(a)(ii) revoking the antidumping duties in relation to PPTs exported from Italy by Conserve Italia, its dumping margin being negative, or
- (ii) a decision to publish a notice under subparagraph 269ZDB(1)(a)(iii), imposing a reduced duty rate in relation to PPTs exported from Italy by Conserve Italia.

1.3 Set out the reasons why the proposed decision is materially different from the reviewable decision [Application form, question 12]

The reviewable decision made the imports of PPTs manufactured by Conserve Italia subject to the payment of a fixed antidumping duty in the rate of 5.4% plus a variable amount of duty if the export price is below the ascertained export price. The proposed decision is materially different from the reviewable decision since it entails either:

- revocation of the antidumping duties in accordance with subparagraph 269ZDB(1)(ii) in relation to the PPTs manufactured by Conserve Italia, or
- imposition of antidumping duties in accordance with subparagraph 269ZDB(1)(a)(iii) in relation to the PPTs manufactured by Conserve Italia, but at a reduced rate.

2. SECOND GROUND: THE NORMAL VALUE OF MODEL [CONFIDENTIAL – PRODUCT CODES] SHOULD HAVE BEEN ADJUSTED TO REFLECT THE DIFFERENT NET DRAINED WEIGHT OF THE GOODS SOLD DOMESTICALLY COMPARED TO THOSE EXPORTED TO AUSTRALIA

It is submitted that the ADC wrongly dismissed Conserve Italia's claim for a physical adjustment in order to reflect the existing difference between the net drained weight of [Confidential – Product Codes] sold in the domestic market and exported to Australia.

2.1 Grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision [Application form, question 10]

Conserve Italia submits that the reviewable decision is not correct, since the dumping margin calculation carried out by the ADC does not take into account the physical difference in terms of net drained weight that affects the price comparability between the [Confidential – Product Codes] sold in Italy and those sold in Australia.

The Dumping and Subsidy Manual allows physical adjustments for differences in physical characteristics (quality, chemical composition, structure or design) where the differences can be quantified to ensure fair comparison. Such quantification is clearly possible in the present case since **[Confidential – Product Codes]** sold in Italy and in Australia are affected by an objective difference in terms of net drained weight (indicating, in substance, the content of solid tomato in each can). In fact, the evidence provided to the ADC during the investigation clearly shows that:

- the **[Confidential – Product Codes]** sold in Italy have a net drained weight of **[Confidential – Business information]**;
- the **[Confidential – Product Codes]** exported to Australia clearly have a net drained weight of **[Confidential – Business information]**.

Moreover, the different net drained weight is reflected in the selling prices. The domestic and export sales listings of Conserve Italia reveal that the unit normal value of **[Confidential – Product Codes]** is € **[Confidential – Price]**, whereas the unit export price of the same product (but with a lower drained weight, i.e. less tomato substance) is € **[Confidential – Price]**. This clearly confirms that the physical difference in terms of net drained weight also has a “*demonstrable effect on the selling price of the goods*” as requested by the Dumping and Subsidy Manual.

In light of the above, it is submitted that the normal value of **[Confidential – Product Codes]** should be adjusted in order to reflect the existing physical difference between the goods sold on the domestic and Australian markets. To this effect, Conserve Italia requests that the normal value of model **[Confidential – Product Codes]** should be adjusted downwards by **[Confidential – Adjustment for Physical Difference]**%, as to make it comparable with the export price. In fact, the net drained weight (i.e. the tomato content) of the cans sold domestically is **[Confidential – Adjustment for Physical Difference]**% higher than the drained weight of the cans exported to Australia.

In this respect, it must be noted that the Final Report concluded that the normal value of model **[Confidential – Product Codes]** cannot be adjusted to reflect the higher net drained weight of the goods sold domestically (compared to the net drained weight of the goods exported to Australia) because “*the cost to make for both models was identical, as they were from the same components*”. Therefore, according to the ADC, “*the verified information demonstrated that the contents of the tins are identical, and thus cannot be different*”. However, this conclusion is clearly ill-founded. The higher net drained weight of the product sold domestically correspond to a higher tomato content in each can. Thus, Conserve Italia fails to understand how the ADC may conclude that “*the contents of the tins are identical, and thus cannot be different*”.

Therefore, it should be concluded that the different net drained weight is an objective difference which affects the price comparison. This was expressly acknowledged by the ADC in the Final Report No. 217 (adopted in the original investigation concerning imports of PPTs from Italy), which clarified that:

“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%”*

It follows that, in the ADC’s practice, the net drained weight is a relevant factor to be taken into account for the purpose of a fair comparison.

Finally, the ADC’s argument that analysing Conserve Italia’s claim regarding the difference of net drained weight would have prevented the timely completion of the investigation cannot be accepted. As a matter of fact, the ADC had sufficient time to complete the Final Report as the claim under discussion was raised just 3 working-days after the disclosure of the dumping calculations by the ADC, which took place before the publication of the SEF. Moreover, they were also reiterated in Conserve Italia’s response to the SEF.

2.2 Identify what, in the applicant’s opinion, the correct or preferable decision (or decisions) ought to be [Application form, question 11]

Based on the arguments illustrated under Section 2.1 above, it is submitted that the normal value of model **[Confidential – Product Codes]** should have been adjusted downwards by **[Confidential – Adjustment for Physical Difference]**% in order to reflect the physical difference in net drained weight between the products sold domestically and those exported to Australia.

Had the ADC correctly calculated the normal value of model **[Confidential – Product Codes]** (in accordance with the methodology proposed by Conserve Italia) this would have resulted in a dumping margin of **[Confidential – Dumping Margin]**% (rather than the margin of 5.4% calculated by the ADC).

Moreover, should the Anti-Dumping Review Panel decide to uphold all the three grounds for review submitted in the present application, Conserve Italia's dumping margin would further decrease to **[Confidential – Dumping Margin]**%.

The Anti-Dumping Review Panel is therefore respectfully requested to recommend to the Minister, under sections 269ZZK(1) and (1A) of the Act, that the reviewable decision should be revoked and substituted (as the case may be) with:

- (i) a decision to publish a notice under subparagraph 269ZDB(1)(a)(ii) revoking the antidumping duties in relation to PPTs exported from Italy by Conserve Italia, its dumping margin being negative, or
- (ii) a decision to publish a notice under subparagraph 269ZDB(1)(a)(iii) imposing a reduced duty rate in relation to PPTs exported from Italy by Conserve Italia.

2.3 Set out the reasons why the proposed decision is materially different from the reviewable decision [Application form, question 12]

The reviewable decision made the imports of PPTs manufactured by Conserve Italia subject to the payment of a fixed antidumping duty in the rate of 5.4% plus a variable amount of duty if the export price is below the ascertained export price. The proposed decision is materially different from the reviewable decision since it entails either:

- revocation of the antidumping duties in accordance with subparagraph 269ZDB(1)(ii) in relation to the PPTs manufactured by Conserve Italia, or
- imposition of antidumping duties in accordance with subparagraph 269ZDB(1)(a)(iii) in relation to the PPTs manufactured by Conserve Italia, but at a reduced rate.

3. THIRD GROUND: THE NORMAL VALUE OF MODELS [CONFIDENTIAL – PRODUCT CODES], [CONFIDENTIAL – PRODUCT CODES] AND [CONFIDENTIAL – PRODUCT CODES] SHOULD HAVE BEEN ADJUSTED TO REFLECT THE HIGHER MARKET VALUE OF THE CIRIO TRADEMARK IN ITALY COMPARED TO AUSTRALIA

Conserve Italia submits that the Final Report did not consider Conserve Italia's adjustment claim concerning the higher immaterial value of the CIRIO trademark in Italy compared to Australia.

3.1 Grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision [Application form, question 10]

Conserve Italia believes that the reviewable decision is not correct since the Final Report did not take into account the claims raised by Conserve Italia concerning the different value of the CIRIO trademark in Italy and Australia. In this respect, the following should be noted.

In Italy, CIRIO is a premium brand with an extremely long history dating back to 1856. The Italian consumers regard CIRIO-brand products as premium quality products with an extremely high reputation, as a result of which CIRIO is the leader on the Italian market.

The position of the CIRIO brand is significantly different in Australia. In that market, CIRIO is a young brand with a relatively small market share. More importantly, the CIRIO brand does not have amongst the Australian consumers the same reputation that it has amongst Italian consumers. In other words, the brand awareness of the CIRIO products in Italy is much higher than in Australia. Therefore, the added-value of the CIRIO brand (that is to say, the “immaterial value” of the CIRIO trademark) is much higher in Italy than in Australia. This affects, in turn, the selling price of CIRIO-brand products sold in Italy, compared to those sold in Australia.

In order to calculate the different added-value (or immaterial value) of the CIRIO brand in Italy and Australia, reference is made to the information reported in Conserve Italia’s questionnaire reply with regard to the selling prices of **[Confidential – Product Codes]** tomatoes, i.e. the only model to be sold in both Italy and Australia under (i) the CIRIO brand, and (ii) private labels.

In carrying out such analysis, it can be observed that:

- the normal value of CIRIO-brand **[Confidential – Product Codes]** sold in Italy is **[Confidential – Prices]**% higher than the normal value of private-label **[Confidential – Product Codes]** sold in Italy, whereas
- the export price of CIRIO-brand **[Confidential – Product Codes]** exported to Australia is just **[Confidential – Prices]**% higher than the export price of private-label **[Confidential – Product Codes]** exported to Australia.

This suggests that the immaterial value of CIRIO trademark in Australia is, at the very least **[Confidential – Trademark Value]**%, lower than in Italy.¹ This clearly

¹ In order to ensure a fair and sound assessment of the immaterial value of the CIRIO brand, the price difference between model **[Confidential – Product Codes]** and model **[Confidential – Product Codes]** has been calculated on the basis of (i) the export prices, as regard the Australian market, and (ii) the normal values as regards the Italian market (on the assumption that export prices and normal values are worked out as to make them fully comparable). Moreover, the normal value of model **[Confidential – Product Codes]** taken into account for the purpose of the present analysis is the normal value adjusted downwards to reflect the

demonstrates that the prices of CIRIO-brand products in the two markets are driven by the different brand awareness among consumers. In other words, the different brand awareness has a “*demonstrable effect on the selling price of the goods*”, as requested by the Dumping and Subsidy Manual.

This is confirmed, *inter alia*, by the market research conducted by IRI (a leading market research firm) which was provided to the ADC during the investigation, and which demonstrates that the average unit sales price of CIRIO-brand **[Confidential – Product Codes]** is the highest in the Italian market.

Finally, it must be noted that also the ADC’s practice confirms that a different level of brand awareness may justify an adjustment for the purpose of a fair comparison. For instance, in the framework of the review investigation No. 128 concerning the antidumping measures applicable to certain washing machines exported to Australia from Korea, the ADC adjusted downwards the price of certain washing machines sold under a premium brand in order to reflect the differences in the brand awareness of different trademarks. In this respect, Final Report No. 128 has clarified that:

“Customs generally requires that claims for adjustment for fair comparison are based on reasonable evidence that the factor has a price effect and that price effect can be reasonably quantified.”

In the case at hand, Conserve Italia’s claim for a downward adjustment to the normal value of CIRIO-brand products is based on verified information provided with the questionnaire response as well as documents issued by independent market research bodies. Furthermore, Conserve Italia’s questionnaire response provides the information for calculating the exact magnitude of the adjustment, by comparing the immaterial value of the CIRIO trademark in Italy and Australia.

As a result, Conserve Italia requests that a downward adjustment of **[Confidential – Adjustment for Trademark Value]**% should be applied to the normal value of models **[Confidential – Product Codes]**, **[Confidential – Product Codes]** and **[Confidential – Product Codes]** in order to reflect the difference between Italy and Australia in terms of immaterial value of the CIRIO trademark².

higher net drained weight of the products sold in Italy (otherwise, the difference would have been higher than **[Confidential – Trademark Value]**%).

² The added value of CIRIO trademark as regards the sales of **[Confidential – Product Codes]** in Italy is **[Confidential – Trademark Value]**%, which means that the value of CIRIO trademark accounts for **[Confidential – Trademark Value]**% of the price of CIRIO-brand **[Confidential – Product Codes]** sold in Italy. The added value of CIRIO trademark as regards the sales of **[Confidential – Product Codes]** in Australia is **[Confidential – Trademark Value]**%. The amount of the adjustment was calculated as follows: **[Confidential – Adjustment for Trademark Value]**%.

In this respect, it must be noted once again that the ADC simply disregarded the above claim without providing any solid ground for the rejection thereof, except for the timely completion of the Final Report. However, Conserve Italia submits that the ADC had sufficient time to complete the Final Report as the claim under discussion was raised as soon as possible, i.e. just 3 working-days after the disclosure of the dumping calculations by the ADC, which took place before the publication of the SEF. Moreover, they were also reiterated in Conserve Italia's response to the SEF.

3.2 Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be [Application form, question 11]

Based on the arguments illustrated under Section 3.1 above, it is submitted that the normal value of the models **[Confidential – Product Codes]**, **[Confidential – Product Codes]** and **[Confidential – Product Codes]** should have been adjusted downwards by **[Confidential – Adjustment for Trademark Value]**% in order to reflect the existing difference between the immaterial value of the CIRIO brand (i.e. the brand awareness) in Italy and Australia.

Had the ADC correctly calculated the normal value of models **[Confidential – Product Codes]**, **[Confidential – Product Codes]** and **[Confidential – Product Codes]** (in accordance with the methodology proposed by Conserve Italia), this would have resulted in a dumping margin of **[Confidential – Dumping Margin]**% (rather than the margin of 5.4% calculated by the ADC).

Moreover, should the Anti-Dumping Review Panel decide to uphold all the three grounds for review submitted in the present application, Conserve Italia's dumping margin would further decrease to **[Confidential – Dumping Margin]**%.

The Anti-Dumping Review Panel is therefore respectfully requested to recommend to the Minister, under sections 269ZZK(1) and (1A) of the Act, that the reviewable decision should be revoked and substituted (as the case may be) with:

- (i) a decision to publish a notice under subparagraph 269ZDB(1)(a)(ii) revoking the antidumping duties in relation to PPTs exported from Italy by Conserve Italia, its dumping margin being negative, or
- (ii) a decision to publish a notice under subparagraph 269ZDB(1)(a)(iii) imposing a reduced duty rate in relation to PPTs exported from Italy by Conserve Italia.

3.3 Set out the reasons why the proposed decision is materially different from the reviewable decision [Application form, question 12]

The reviewable decision made the imports of PPTs manufactured by Conserve Italia subject to the payment of a fixed antidumping duty in the rate of 5.4% plus a variable

amount of duty if the export price is below the ascertained export price. The proposed decision is materially different from the reviewable decision since it entails either:

- revocation of the antidumping duties in accordance with subparagraph 269ZDB(1)(ii) in relation to the PPTs manufactured by Conserve Italia, or
- imposition of antidumping duties in accordance with subparagraph 269ZDB(1)(a)(iii) in relation to the PPTs manufactured by Conserve Italia, but at a reduced rate.

CONCLUSION

In light of the foregoing, Conserve Italia respectfully requests the Anti-Dumping Review Panel to make a recommendation under paragraph 269ZZK(1)(b):

- (i) recommending the Minister to revoke the reviewable decision and substitute it with a decision to publish a notice under subparagraph 269ZDB(1)(a)(ii) revoking the antidumping duties in relation to PPTs exported from Italy by Conserve Italia; or
- (ii) as a subordinate ground, recommending the Minister to revoke the reviewable decision and substitute it with a decision to publish a notice under subparagraph 269ZDB(1)(a)(iii), imposing antidumping duties in relation to PPTs exported from Italy by Conserve Italia, but with a reduced duty rate.