



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

Customs Act 1901

Notice under section 269ZZI

Certain Prepared or Preserved Tomatoes 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 (ADN 2017/47)

Certain Prepared or Preserved Tomatoes Exported to Australia from the Republic of Italy by AR Industrie Alimentari S.p.A (ADN 2017/46)

The Anti-Dumping Review Panel (“ADRP”) has received applications for a review of decisions by the Parliamentary Secretary to the Minister for Industry, Innovation and Science under section 269ZDB(1) of the *Customs Act 1901* (“the Act”) to vary dumping duty notices in respect of Certain Prepared or Preserved Tomatoes Exported to Australia from the Republic of Italy by all exporters except Feger di Gerardo Ferraioli S.p.A (“Feger”), La Doria S.p.A (La Doria) and AR industrie Alimentari S.p.A. and in respect of Certain Prepared or Preserved Tomatoes Exported to Australia from the Republic of Italy by AR Industrie Alimentari S.p.A (“the Reviewable Decisions”).

Notice of the Reviewable Decisions were published on the Anti-Dumping Commission (“ADC”) website on 5 May 2017 ([ADN 2017/46](#) and [ADN 2017/47](#)).

The ADRP accepted applications for review from:

- SPC Ardmona Operations Ltd (“SPCA”);
- Conserve Italia Soc. Coop. Agr. (“Conserve Italia”);
- Mutti S.p.A. (“Mutti”); and
- Le Specialità Italiane Srl (“LSI”).

The ADRP is satisfied that the following grounds are reasonable grounds for the reviewable decision not being the correct or preferable decision:

SPC Ardmona Operations Ltd

1. The ADC inappropriately relied on data to the exclusion of other data in concluding that the evidence supplied by Feger and La Doria in ADC Reinvestigation Report No. 360 (“REP 360”) was reliable in assessing the impact of historical tomato Common Agricultural Policy (“CAP”) payments and new payments received by tomato growers supplying other exporters in ADC Report No. 349 & 354 (“REP 349 & 354”);

2. The data supplied by Feger and La Doria in REP 360 and applied in REP 349 & 354 was not properly analysed in REP 349 & 354 and led to the incorrect conclusion which was applied to the other exporters;
3. When compared with other data, the Feger and La Doria analysis applied to REP 349 & 354 is inconsistent with other information and should not have been used in the reviewable decision;
4. The ADC did not take into account SPCA's arguments on the data and analysis used in REP 349 & 354 which originated in REP 360;
5. The ADC's conclusion that an exporter (not a selected exporter and not a residual exporter) was selling at arm's length was not based on an examination of the exporter's accounts, and therefore the ADC could not investigate the claims made in the confidential application for review; and
6. The assessment that there was no market situation was not sound as a result of the errors in the ADC's understanding of the Single Payment Scheme ("SPS") in 2014 and the new Basic Payment Scheme ("BPS") in 2015.

Conserve Italia Soc. Coop. Agr.

1. The ADC wrongly included certain domestic sales in the normal value calculation of a particular model, thus causing a distorted assessment of Conserve Italia's dumping margin;
2. 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 a particular product sold in the domestic market and exported to Australia;
3. The ADC did not take into account the claims raised by Conserve Italia concerning the different value of the CIRIO trademark in Italy and Australia.

Mutti S.p.A.

1. The ADC failed to correctly work out Mutti's Ascertained Export Price (AEP) insofar as the amounts of the deferred rebates that Mutti paid to certain Australian importers have not been deducted from the FOB price paid by such importers.

Le Specialità Italiane Srl.

1. The methodology followed by the ADC to ascertain LSI's variable factors in ADC Review No. 354 is flawed in that:
 - a. The ADC should have calculated LSI's normal value on the basis of the data provided by LSI and previously verified by the ADC, resulting in the same normal value ascertained in the framework of ADC Review No. 351 (which concerned the same investigation period of ADC Review No. 354);
 - b. The ADC's calculation of LSI's ascertained export price on the basis of the export prices of other exporters is unwarranted and LSI's export price should have been established at the same level of LSI's weighted average normal value, in line with well-established practice; and

2. The reviewable decision is incorrect since LSI's dumping margin was established as negative and therefore the investigation should be terminated and no Anti-Dumping measure should be imposed.

The goods to which these applications relate are:

Tomatoes (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 (prepared or preserved tomatoes), exported from Italy by ARIA and by all other exporters other than by Feger and La Doria. The following tomato products do not form part of this application: pastes, purees, sauces, pasta sauces, juices and sundried tomatoes.

Copies of the applications for review, which set out the grounds for seeking review in full, and other documents are available on the public record of the review at www.adreviewpanel.gov.au

The reports of the original investigation are available on the ADC website at www.adcommission.gov.au

Submissions

Interested parties have 30 days from the date this notice is published to provide the Review Panel with a submission.

If your submission contains confidential information you must provide a public version that can be published on the ADRP website. Failure to do so will result in your submission not being considered.

You may either email your submission to adrp@industry.gov.au or mail the submission to –

Anti-Dumping Review Panel Secretariat
GPO Box 2013
Canberra City ACT 2601

Persons wishing to make further inquiries about this review should telephone (02) 6276 1781.



Leora Blumberg
Panel Member
Anti-Dumping Review Panel
11 July 2017