

**APPLICATION FOR REVIEW OF  
DECISION OF THE MINISTER WHETHER TO PUBLISH A DUMPING DUTY  
NOTICE OR COUNTERVAILING DUTY NOTICE**

Under s 269ZZE of the *Customs Act 1901* (Cth), I hereby request that the Anti-Dumping Review Panel reviews a decision by the Parliamentary Secretary to the Minister for Industry:

to publish :                    ☒ a dumping duty notice(s), and/or  
                                      ☐ a countervailing duty notice(s)

OR

not to publish :              ☐ a dumping duty notice(s), and/or  
                                      ☐ a countervailing duty notice(s)

in respect of the goods which are the subject of this application.


I believe that the information contained in the application:

- provides reasonable grounds to warrant the reinvestigation of the finding or findings that formed the basis of the reviewable decision that are specified in the application;
- provides reasonable grounds for the decision not being the correct or preferable decision; and
- is complete and correct to the best of my knowledge and belief.

I have included the following information in an attachment to this application:

- ☒ Name, street and postal address, and form of business of the applicant (for example, company, partnership, sole trader).
- ☒ Name, title/position, telephone and facsimile numbers and e-mail address of a contact within the organisation.
- ☒ Name of consultant/adviser (if any) representing the applicant and a copy of the authorisation for the consultant/adviser.
- ☒ Full description of the imported goods to which the application relates.
- ☒ The tariff classification/statistical code of the imported goods.
- ☒ A copy of the reviewable decision.
- ☒ Date of notification of the reviewable decision and the method of the notification.
- ☒ A detailed statement setting out the applicant's reasons for believing that the reviewable decision is not the correct or preferable decision.

☒ [If the application contains material that is confidential or commercially sensitive] an additional non-confidential version, containing sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Signature:  .....

Name: **Roger D Simpson**

Position: **Consultant**

Applicant Company/Entity: **Conserve Italia Soc. Coop. Agr**

Date: 2 / 5 / 14

**Attachment to the Application for Review of the Decision of the Minister to  
Publish a Dumping Duty Notice in relation to Prepared or Preserved Tomatoes  
from Italy**

**Applicant**

Conserve Italia Soc. Coop. Agr  
Via Poggi, 11  
40068 - San Lazzaro di Savena (Bo)  
Italy

Form of business: Company

**Contact person**

Mr Davide Mazzacurati  
Director Administration  
Tel: +39-051-6228498  
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**Consultant**

Roger Simpson  
Roger D Simpson & Associates Pty Ltd  
Tel: +61 8 8447 3699  
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Email: [roger@panpac.biz](mailto:roger@panpac.biz)

Copy of authorisation at attachment 1.

**Description of imported goods**

The goods to which the application relates 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.

**Tariff classification/statistical code of the imported goods**

2002.10.00/60

**The reviewable decision**

A copy of the reviewable decision is at attachment 2.

**Notification of the reviewable decision**

**Reasons for believing that the reviewable decision is not the correct or preferable decision**

The Parliamentary Secretary to the Minister for Industry's decision to publish a dumping duty notice in relation to preserved or prepared tomatoes ("tomatoes") from Italy is based on the Anti-Dumping Commission's finding that dumped imports of tomatoes from Italy have caused material injury to the Australian industry producing like goods ("SPCA"). We believe that the decision of the Parliamentary Secretary to the Minister for Industry to publish the said dumping duty notice is not the correct or preferable decision for the following reasons.

In reaching its conclusion that dumped imports of tomatoes from Italy have caused material injury to SPCA, contrary to the provisions of section 269TAE(2A) of the Customs Act ("the Act") and Article 3.5 of the WTO's Anti-Dumping Agreement ("the Agreement"), the Anti-Dumping Commission ("the Commission") has attributed injuries to SPCA caused by other factors to dumped imports of tomatoes from Italy.

The Commission's conclusion that dumped imports of tomatoes from Italy have caused **material injury** to SPCA in the form of –

- reduced revenues;
- price depression;
- price suppression;
- reduced profits;
- reduced profitability; and
- reduced return on income,<sup>1</sup>

is based solely on its consideration that dumped imports from Italy had a materially injurious effect on the price paid for like goods produced and sold in Australia by SPCA, as provided for in section 269TAE(1)(f) of the Act which has its origin in Articles 3.1 and 3.2 of the Agreement. In reaching the said conclusion on the basis of the abovementioned consideration, the Commission failed to distinguish and separate the injurious effect of factors other than dumping on the price paid for like goods produced and sold in Australia by SPCA. The Commission identified several factors other than dumping which had brought competitive price pressure on SPCA, viz undumped imports, appreciation of the Australian dollar and supermarket private label strategies, but despite its claim to have done so, the Commission has not separated the impact of these other factors on the price paid for like products produced and sold by SPCA to enable its assessment of the materiality of the injurious effect of dumping on this price.

The key elements of the Commission's analysis leading to the conclusion that the effect of dumped imports on the price paid for SPCA's products is the cause of **material injury** are –

- price undercutting;<sup>2</sup> and
- materiality of the effect of dumping on the price paid for SPCA's products.<sup>3</sup>

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<sup>1</sup> Final Report No. 217, section 8.10

<sup>2</sup> Ibid, section 8.5.2.

<sup>3</sup> Ibid, section 8.9.

Concerning price undercutting, notwithstanding the Commission's satisfaction that a strong correlation exists between free-into-store ("FIS") wholesale prices and retail shelf prices, it is price undercutting of SPCA's wholesale selling price by the FIS price of imports from Italy which is the essential consideration in the determination of the effect of dumped imports on the price paid for SPCA's products. While the Commission has examined both, the key focus of its price undercutting analysis is price comparison at the retail level. It is of important note in this regard that the comparison of retail shelf prices of imports from Italy and like goods produced by SPCA is affected by retailers' sales and marketing strategies. This is the reason why it is comparison at the wholesale level that is essential to determining the effect of dumped imports on the price of like goods produced and sold by the Australian industry.

It is also of important note that the Commission has established that there are different pricing tiers for the following label categories:

- Proprietary labels;
- Premium private labels; and
- Generic or value private labels,

with private label products (premium and generic) being lower price than proprietary label products.<sup>4</sup> Despite having established this and with knowledge that the vast majority of imports from Italy are private label products and the vast majority of SPCA's products are proprietary label products, the Commission did not take this important factor into account in its price undercutting analysis. We invite your attention to Customs' finding on "Price undercutting" in the investigation into the alleged dumping of pineapple from Thailand, where in similar circumstances Customs decided to *give little weight to this evidence of undercutting in its causal link assessment, as there are a number of factors other than dumping, that can explain the disparity in prices between these products.*<sup>5</sup>

In addition to the above factors having influenced the relativity of the price of imports from Italy to the price paid for SPCA's products, the following factors other than dumping identified by the Commission will have substantially affected that relativity:

- Undumped imports;
- Appreciation of the Australian dollar; and
- Supermarket private label strategies,

yet the effect of these other factors was not taken into account in the Commission's price undercutting analysis. By not taking them into account in its price undercutting analysis, the Commission has attributed the effect of these other factors to dumping, contrary to provisions of section 269TAE(2A) of the Act and Article 3.5 of the Agreement.

It is clear from the Commission's finding that retail prices of Italian tomatoes are between 16% and 55% below SPCA's prices<sup>6</sup> that factors other than dumping have made a substantial contribution to the retail undercutting of the price of SPCA's products by the price of imports from Italy. According to the Commission's analysis

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<sup>4</sup> Final Report No. 217, section 5.2.5.

<sup>5</sup> Final Report No. 173b, section 7.6.3.

<sup>6</sup> Final Report No. 217, section 8.5.2.

of the effect of dumping on the price of imports from Italy per section 8.9 of Final Report No. 217, the weighted average margin of dumping for **dumped** imports is 9%, meaning that the weighted average effect of dumping on the weighted average price of all imports from Italy is 5% (<AUD 0.02/can), as 44% of imports from Italy have been found to be undumped. This paramount matter of the materiality of the effect of dumping on the price of imports from Italy is discussed hereunder.

The Commission's conclusion that the injury caused by dumped imports from Italy is **material**, is based solely on its finding that in the absence of dumping, the retail shelf price of imports from Italy would have been 9% higher during the investigation period, which would have translated into a higher retail shelf price for SPCA's products, a higher price paid by retailers to SPCA for its products and a 9% increase in SPCA's profitability.<sup>7</sup> This finding is not based on positive evidence or objective analysis. The flaws in this finding, which is vital to the Commission's conclusion that the injury caused by dumped imports is **material**, are as follows:

1. The ad valorem weighted average dumping margin used by the Commission to adjust retail prices to remove the effect of dumping on them, ie 9%, refers to the weighted average of the relativity of unit margins of dumping to FOB unit export prices. It does not refer to the relativity of the weighted average unit dumping margin to retail shelf prices, which are significantly higher than FOB export prices of imports. Consequently the upward adjustment of retail shelf prices to remove the effect of dumping on them must be a unit (per can/kg) rather than ad valorem (%) amount. 9% of FOB export prices of imports (about AUD 0.03/can) is less than 3% of the retail shelf price of SPCA's products.
2. The determination of the effect of dumping on the price of imports from Italy must take into account the fact that 44% of these imports were undumped. In determining that in the absence of dumping the retail shelf price of imports from Italy would have been 9% higher, the Commission did not take into account the fact that 44% of these imports were undumped. To determine the materiality of the injurious effect of dumping on the price paid for SPCA's product and its profitability, the Commission at first adjusted retail shelf prices upward by 9% to remove the effect of dumping on these prices. The Commission's consideration that dumping has a 9% effect on retail shelf prices is not based on positive evidence and nor does it involve an objective analysis. It is based on the estimated weighted average margin of dumping for **dumped goods** only and does not take into account the zero effect of dumping on 44% of imports which were found to be undumped. In removing the effect of dumping on the price of imports, which the Commission has used as the effect on the retail shelf price of tomatoes, the zero effect of dumping on 44% of those imports must be taken into account. To not do so is attributing the effect of the price of undumped imports on SPCA's retail shelf prices to dumping.

In section 8.9 of Final Report No. 217 the Commission states that –

*In deciding whether the injury caused by dumping was **material**, the*

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<sup>7</sup> Final Report No. 217, section 8.9; Statement of Essential Facts No. 217, section 8.9.

*Commission considered the **likely impact of undumped import prices** in the market during the investigation period.*

This appears to be a false statement as we cannot see where the Commission has considered the impact of undumped import prices on the market during the investigation period and separated it from the impact of dumped import prices in its examination of the materiality of the injurious effect of dumping on the price paid for SPCA's products.

Furthermore, it cannot be assumed that because SPCA's economic performance during the investigation period was poor for various reasons, "*any adverse market condition that causes injury could be considered material*".<sup>8</sup> It needs to be determined on the basis of positive evidence and by objective analysis that the injurious effect of dumping is of itself material. This has not been done by the Commission.

3. The 9% that the Commission claims to be the weighted average margin of dumping for all dumped goods is not the weighted average of dumping margins determined by the Commission on the basis of positive evidence, ie by individual investigation. The Commission determined dumping margins on the basis of positive evidence, ie evidence of the difference between actual normal values and actual export prices for just the following "selected exporters", whose exports constitute the major portion of Italian exports to Australia (60-70%):

<b>Selected exporter</b>	<b>Dumping margin</b>
La Doria	Negligible
Feger	Negligible
De Clemente	3.25%
Conserve Italia	4.54%

The weighted average dumping margin for the above selected exporters is about 1%, ie **less than AUD 0.005/can**, meaning that the effect of dumping on the import price of the majority of Italian exports to Australia (60-70%) was <AUD 0.005/can during the investigation period.

The Commission took this weighted average dumping margin of about 1% (<AUD 0.005/can), established on the basis of positive evidence of export prices and normal values, to 9% by including in its calculation "*declared import values*"<sup>9</sup> We assume that these "declared import values" are FOB values of exports according to Customs import database, which do not provide evidence of dumping margins. There is no evidence of this investigation having determined normal values for any exports other than those of the said selected exporters and therefore the 9% claimed by the Commission to be the weighted average margin of dumping for all dumped imports is not based on positive evidence.

It is of note that the dumping margins for all exporters other than the four selected exporters are calculated as follows:

- Residual exporters (4.24%)  
By the comparison of the weighted average export price and normal value of selected exporters with a dumping margin >2%.

<sup>8</sup> Final Report No. 217, section 8.9.

<sup>9</sup> Ibid.

- Uncooperative exporters (26.35%)  
By the comparison of the lowest export price with the highest normal value of selected exporters with a dumping margin >2%, which can have absolutely no relevance to the effect of dumping on the prices of imports from these exporters – it is a hypothetical margin determined for the purpose of imposing a high penalty dumping duty rate on exports of uncooperative exporters.

4. The Commission's conclusion that the 9% effect of dumping on the price of imports from Italy has caused material injury to SPCA is based on conjecture that an increase of 9% to the retail shelf price of imports from Italy translates to a 9% increase to the price paid by retailers to SPCA for their products. There are no grounds or evidence to support this opinion included in either SEF or Final Report No. 217. The only ground provided by the Commission to support this opinion is "*the strong correlation between wholesale prices and retail prices*".<sup>10</sup>

It cannot be reasonably assumed that an increase of 9% to the retail shelf price of imports from Italy directly translates into a 9% increase to the retail shelf price of SPCA's products, as retailer sales and marketing strategies will influence this translation, which could bring no increase to the retail shelf price of SPCA's products.

It similarly cannot be reasonably assumed that a 9% increase to the retail shelf price of SPCA's products will directly translate into a 9% increase to the price paid by retailers to SPCA for their products. It does not automatically follow that in these circumstances retailers would pay SPCA more for their products – it is likely that retailers, eg Coles and Woolworths, would be reluctant to pay them more.

The Commission notes that section 269TAE(1)(aa) allows for the size of dumping margins to be a relevant factor in assessing material injury.<sup>11</sup> This is true, but the 9% weighted average dumping margin used by the Commission as the sole basis for its conclusion that dumped imports from Italy had a materially injurious effect on the price paid for like goods produced by SPCA is not worked out in respect of the exports to Australia found by individual investigation to have been dumped. It includes dumping margins worked out on the exports of non-investigated exporters which are not based on positive evidence as the Commission did not investigate the normal values of these exports. Nor does it involve objective examination as it does not have regard to the 44% of imports found to be undumped and their prices therefore unaffected by dumping. Flaw 1 above is also relevant to this issue.

We reiterate that the Commission's conclusion that dumping of imports from Italy, has, of itself, caused **material** injury to SPCA during the investigation period is solely based on what it claims to be the effect of dumping on the price of imports translating into a materially injurious effect on the price paid for SPCA's products, and this finding is fundamentally flawed as outlined above. It does not take into account the effect of factors other than dumping of imports from Italy on the price paid for SPCA's products identified by this investigation and the Productivity Commission's

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<sup>10</sup> Final Report No. 217, section 8.9.

<sup>11</sup> Ibid.



Safeguards' Inquiry, contrary to the provisions of section 269TAE(2A) of the Act and Article 3.5 of the Agreement.

The Commission has applied the “but for” principle in reaching its conclusion that dumped imports from Italy have caused **material** injury to SPCA per section 8.9 of the Final Report No. 217. It has found that, but for the dumping of imports from Italy, SPCA would have achieved a 9% higher price and profitability from the sale of its products and therefore would not have experienced material injury. It is important that the “but for” principle cannot be applied unless it is established that without dumping, injury caused by factors other than dumping is insufficient to be considered material, ie without dumping the domestic industry would not have experienced material injury. This has not been established by the Commission in this case. In fact the Commission’s citing of the Productivity Commission’s finding in its Safeguards’ Inquiry that *“It is likely the accumulation of the long term competitive pressures has culminated in the difficult commercial situation SPC Ardmona currently faces”*<sup>12</sup> indicates that the Commission is aware that in the absence of dumping SPCA would still have experienced material injury caused by other factors.

Concerning the Productivity Commission’s Safeguards Inquiry findings, while we agree with the finding cited by the Commission that *“there should be no expectation that a finding that measures are warranted under one system would lead to a similar finding under the other”*,<sup>13</sup> the Productivity Commission’s finding that SPCA’s has suffered serious injury from a combination of a number of factors other than dumped imports,<sup>14</sup> is extremely important to this dumping investigation. These other factors are as follows:

- Comparative cost advantage of other countries (including Italy).
- Competitive long-term pressure from imports.
- Increased promotion of private label brands by supermarkets and increased consumer acceptance of private label products.
- Floods in 2011.
- Decreased domestic supply and appreciation of the Australian dollar.
- Decreased Australian exports.<sup>15</sup>

While the Commission has agreed that some of these other factors have contributed to SPCA’s injury during the investigation period it has not –

- a) separated the injurious effects of the other factors found by the Productivity Commission to have caused serious injury to SPCA to enable a finding that the injurious effects of dumping are material; and
- b) found that, in the absence of dumping, SPCA would not have suffered material injury from the combined effect of the other factors found by the Productivity Commission to have caused serious injury to SPCA.

## Confidentiality

This application contains no material that is confidential.

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<sup>12</sup> Final Report No. 217, section 8.9.

<sup>13</sup> Ibid, section 2.4.

<sup>14</sup> Productivity Commission Inquiry Report No. 68, section 2.4 and 2.5.

<sup>15</sup> Ibid, Box 2.5.



Mr Roger D. Simpson  
Roger D Simpson & Associates Pty Ltd  
Port Adelaide SA 5015  
Australia

San Lazzaro di Savena, 30<sup>th</sup> April 2014

Dear Mr Simpson,

We hereby authorise Roger D Simpson & Associates Pty Ltd to act on our behalf in seeking a review by the Anti-Dumping Review Panel of the decision of the Parliamentary Secretary to the Minister for Industry to impose anti-dumping measures on prepared or preserved tomatoes from Italy.

Yours sincerely,

Angel Sanchez  
General Manager



Davide Mazzacurati  
Director Administration





Australian Government  
Anti-Dumping Commission

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***Customs Act 1901 – Part XVB***

**Prepared or Preserved Tomatoes**

**Exported from Italy**

**Findings in Relation to a Dumping Investigation**

***Public notice under subsections 269TG(1) and (2) of the Customs Act 1901***

The Commissioner of the Anti-Dumping Commission (the Commissioner) has completed the investigation into the alleged dumping of prepared or preserved tomatoes (the goods), exported to Australia from Italy.

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

A full description of the goods is available in Anti-Dumping Notice (ADN) No. 2013/59. This ADN is available on the internet at [www.adcommission.gov.au](http://www.adcommission.gov.au)

The Commissioner reported the findings and recommendations to the Parliamentary Secretary to the Minister for Industry (the Parliamentary Secretary) in *Anti-Dumping Commission Report No. 217* (REP 217), in which it outlines the investigations carried out by the Commissioner and recommends the publication of a dumping duty notice in respect of the goods. The Parliamentary Secretary has considered REP 217 and has accepted the Commissioner's recommendations and reasons for the recommendations, including all material findings of fact or law on which the Commissioner's recommendations were based, and particulars of the evidence relied on to support the findings.

I accepted the Commissioner's recommendation to impose a retrospective notice in relation to the goods.

On 20 March 2014, the Commissioner terminated the dumping investigation into the goods exported from Italy by La Doria S.p.A. and Feger di Gerardo Ferraioli S.p.A. Termination Report No. 217 sets out the reasons for these terminations. This report is available at [www.adcommission.gov.au](http://www.adcommission.gov.au)

Particulars of the method used to compare export prices and normal values and the dumping margins established are set out in the following table:



Exporter	Dumping Margin	Method to establish dumping margin
Attianese S.p.A.	4.24%	Weighted average export prices were compared with weighted average corresponding normal values over the investigation period in terms of ss.269TACB(2)(a) of the Customs Act 1901.
Conserve Italia Soc. Coop Agr	4.54%	
De Clemente Conserve S.p.A.	3.25%	
Fiamma Vesuviana Srl	4.24%	
Greci Industria Alimentare S.p.A.	4.24%	
I.M.C.A. S.p.A.	26.35%	
Lodato Gennaro & C. S.p.A	26.35%	
Menu Srl	4.24%	
Mutti S.p.A	4.24%	
Nolana Conserve Srl	4.24%	
Princes Industrie Alimentari SRL	4.24%	
Rispoli Luigi & C (S.R.L.)	4.24%	
Steriltom Srl	4.24%	
Uncooperative exporters	26.35%	

*NB: Pursuant to section 12 of the Customs Tariff (Anti-Dumping) Act 1975 (the Dumping Duty Act), conversion of securities to interim duty will not exceed the level of security taken. The rate of conversion for securities will be required per the notices published on 1 November 2013 and 4 February 2014.*

I, ROBERT CHARLES BALDWIN, Parliamentary Secretary to the Minister for Industry, have considered, and accepted, the recommendations of the Commissioner, the reasons for the recommendations, the material findings of fact on which the recommendations are based and the evidence relied on to support those findings in REP 217.

I am satisfied, as to the goods that have been exported to Australia, that the amount of the export price of the goods is less than the normal value of those goods and because of that, material injury to the Australian industry producing like goods might have been caused if the security had not been taken. Therefore under subsection 269TG(1) of the *Customs Act 1901* (the Act), I DECLARE that section 8 of the Dumping Duty Act applies to:

- (i) the goods; and
- (ii) like goods that were exported to Australia after 1 November 2013 (when the Commissioner made a Preliminary Affirmative Determination under section 269TD of the Act that there appeared to be sufficient grounds for the publication of a dumping duty notice) but before the publication of this notice.

I am also satisfied that the amount of the export price of like goods that have already been exported to Australia is less than the amount of the normal value of those goods, and the amount of the export price of like goods that may be exported to Australia in the future may be less than the normal value of the goods and because of that, material injury to the Australian industry producing like goods has been caused or is being caused. Therefore under subsection 269TG(2) of the Act, I DECLARE that section 8 of the Dumping Duty Act applies to like goods that are exported to Australia after the date of publication of this notice.

This declaration applies in relation to all exporters of the goods and like goods from Italy excluding those exported by La Doria S.p.A. and Feger di Gerardo Ferraioli S.p.A..

The considerations relevant to my determination of material injury to the Australian industry caused by dumping are the size of the dumping margins, the effect of dumped imports on prices in the Australian market in the form of price undercutting and the consequent impact on the Australian industry including price depression, price suppression and reduced profits and profitability.

In making my determination, I have considered whether any injury to the Australian industry is being caused or threatened by a factor other than the exportation of dumped goods, and have not attributed injury caused by other factors to the exportation of those dumped goods.

Interested parties may seek a review of this decision by lodging an application with the Anti-Dumping Review Panel, in accordance with the requirements in Division 9 of Part XVB of the Act, within 30 days of the publication of this notice.

Particulars of the export prices, non-injurious prices, and normal values of the goods (as ascertained in the confidential tables to this notice) will not be published in this notice as they may reveal confidential information.

Clarification about how measures securities are applied to 'goods on the water' is available in ACDN 2012/34, available at [www.adcommission.gov.au](http://www.adcommission.gov.au).

REP 217 and other documents included in the public record may be examined at the Anti-Dumping Commission office by contacting the case manager on the details provided below. Alternatively, the public record is available at [www.adcommission.gov.au](http://www.adcommission.gov.au).

Enquiries about this notice may be directed to the case manager on telephone number 02 62744948, fax number 1300 882 506 or +61 2 6275 6888 (outside Australia) or [operations1@adcommission.gov.au](mailto:operations1@adcommission.gov.au).

Dated this 14<sup>th</sup> day of April 2014

ROBERT CHARLES BALDWIN  
Parliamentary Secretary to the Minister for Industry





## **ANTI-DUMPING NOTICE NO. 2014/32**

### **Prepared or Preserved Tomatoes**

### **Exported from Italy**

### **Findings in Relation to a dumping investigation**

#### ***Customs Act 1901 – Part XVB***

I, Dale Seymour, Commissioner of the Anti-Dumping Commission have completed the investigation, which commenced on 10 July 2013, into the alleged dumping of prepared or preserved tomatoes (“the goods”), exported to Australia from Italy.

The goods are currently classified to tariff subheadings 2002.10.00 statistical code 60 in Schedule 3 of the *Customs Tariff Act 1995*.

A full description of the goods is available in Anti-Dumping Notice (ADN) No. 2013/59. This ADN is available at the Anti-Dumping Commission website [www.adcommission.gov.au](http://www.adcommission.gov.au). Findings and recommendations were reported to the Parliamentary Secretary to the Minister for Industry (the Parliamentary Secretary) in *Anti-Dumping Commission Report No. 217* (REP 217), in which it outlines the investigations carried out by the Commission and recommends the publication of a dumping duty notice in respect of the goods. The Parliamentary Secretary has considered REP 217 and has accepted the recommendations and reasons for the recommendations, including all material findings of fact or law on which the recommendations were based, and particulars of the evidence relied on to support the findings.

Notice of the Parliamentary Secretary’s decision was published in *The Australian* newspaper and the *Commonwealth of Australia Gazette* on 16 April 2014.

On 20 March 2014, I terminated the dumping investigation into the goods exported by La Doria SpA and Feger di Gerardo Ferraioli from Italy. *Termination Report No. 217* sets out the reasons for these terminations. This report is available on the Commission’s website.

In REP 217, it was found that:

- prepared or preserved tomatoes exported from Italy to Australia were dumped with margins ranging from 3.25% to 26.35%;
- the dumped exports caused material injury to the Australian industry producing like goods; and
- continued dumping may cause further material injury to the Australian industry.

The duty that has been determined is an amount worked out in accordance with the combination of fixed and variable duty method, as detailed in the table below.

Particulars of the dumping margins established for each of the exporters and the effective rates of duty are set out in the following table.

Exporter / Italy	Dumping Margin	Effective rate interim dumping duty	Duty Method
De Clemente Conserve S.p.A.	3.25%	3.25%	<i>combination of fixed and variable duty method</i>
Attianese S.p.A.	4.24%	4.24%	
Fiamma Vesuviana Srl	4.24%	4.24%	
Greci Industria Alimentare S.p.A.	4.24%	4.24%	
Menu Srl	4.24%	4.24%	
Mutti S.p.A.	4.24%	4.24%	
Nolana Conserve Srl	4.24%	4.24%	
Princes Industrie Alimentari SRL	4.24%	4.24%	
Rispoli Luigi & C (S.R.L.)	4.24%	4.24%	
Steriltom Srl	4.24%	4.24%	
Conserve Italia Soc. Coop Agr	4.54%	4.54%	
I.M.C.A. S.p.A.	26.35%	26.35%	
Lodato Gennaro & C. S.p.A.	26.35%	26.35%	
<b>Uncooperative exporters (All other)</b>	26.35%	26.35%	

*NB: Pursuant to section 12 of the Customs Tariff (Anti-Dumping) Act 1975 (the Dumping Duty Act), conversion of securities to interim duty will not exceed the level of security taken. The rate of conversion for securities will be required per the notices published on 1 November 2013 and 4 February 2014.*

Where the non-injurious price (NIP) is the operative measure the lesser duty rule has taken effect to reduce the duties to a level sufficient to remove the injury caused by dumping.

Measures apply to goods that are exported to Australia after publication of the Parliamentary Secretary's notice.

The actual duty liability may be higher than the effective rate of duty due to a number of factors. Affected parties should contact the Commission on 1300 884 159 or +61 2 6275 6066 (outside Australia) or at [clientsupport@adcommission.gov.au](mailto:clientsupport@adcommission.gov.au) for further information regarding the actual duty liability calculation in their particular circumstance.



Any dumping securities that have been taken on and from 1 November 2013 will be converted to interim dumping duty.<sup>1</sup> Importers will be contacted by the National Temporary Imports Securities Section detailing the required conversion action for each security taken.

To preserve confidentiality, the export price, normal value and non-injurious price applicable to the goods will not be published. Bona fide importers of the goods can obtain details of the rates from [clientsupport@adcommission.gov.au](mailto:clientsupport@adcommission.gov.au).

Clarification about how measures securities are applied to 'goods on the water' is available in ACDN 2012/34, available at the Commission website.

Interested parties may seek a review of this decision by lodging an application with the Anti-Dumping Review Panel in accordance with the requirements in Division 9 of Part XVB of the Act within 30 days of the publication of the Parliamentary Secretary's notice.

REP 217 and *Termination Report No.217* have been placed on the Commission's public record, which may be examined at the Commission office by contacting the Case Manager on the details provided below. Alternatively, the public record is available at [www.adcommission.gov.au](http://www.adcommission.gov.au).

Enquiries about this notice may be directed to the case manager on telephone number 02 62744948, fax number 1300 882 506 or +61 2 6275 6888 (outside Australia) or [operations1@adcommission.gov.au](mailto:operations1@adcommission.gov.au).

Dale Seymour  
Commissioner  
Anti-Dumping Commission

16 April 2014

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<sup>1</sup> Within the time limitations of section 45 of the *Customs Act 1901*.