



Anti-Dumping Review Panel
c/o Legal, Audit and Assurance Branch
Department of Industry, Innovation and Science
GPO Box 9839
Canberra ACT 2601
ADRP@industry.gov.au

Surrey Hills, 12th May 2016

Dear Sir/Madam,

Subject: Review of a decision by the Parliamentary Secretary to the Minister for Industry, Innovation and Science to publish a dumping duty notice in respect of prepared or preserved tomatoes exported from Italy by Feger di Gerardo Ferraioli S.p.A and La Doria S.p.A

I refer to an application for review of a decision by the Parliamentary Secretary to impose antidumping measures on prepared or preserved tomatoes exported from Italy by Feger di Gerardo Ferraioli S.p.A and La Doria S.p.A. The application was made by Feger di Gerardo Ferraioli S.p.A, La Doria S.p.A and the Government of the Italian Republic.

Orange and Green Pty Ltd is an importer of prepared or preserved tomatoes from Italy, including the goods manufactured by La Doria. The present submission is made pursuant to s.269ZZJ of the Customs Act 1901.

Orange and Green Pty Ltd would like to submit the following comments with regard to the ground discussed in section 3.1.1 of the applications:

- as explained in the applications, the Anti-Dumping Commission increased the cost of production of La Doria and Feger to reflect the alleged distortion caused by the CAP. This was made on the basis of Section 43(2) of the Regulation;
- Section 43(2) of the Regulation mirrors Article 2.2.1.1 of the WTO Anti-Dumping Agreement;
- the recent Panel Report in *EU – Biodiesel* held that Article 2.2.1.1 of the WTO Anti-Dumping Agreement 'calls for a comparison between, on the one hand, the costs as they are reported in the producer/exporter's records and, on the other, the costs actually incurred by that producer. We emphasize, however, that the object of the comparison is to establish whether the records reasonably reflect the costs actually incurred, and not whether they reasonably reflect some hypothetical costs that might have been incurred under a different set of conditions or circumstances and which the investigating authority considers more 'reasonable' than the costs actually incurred' (para. 7.242);



- in addition, the Panel Report made clear that *'the investigating authorities are free to examine whether all costs incurred are captured and none has been left out; they can examine whether the actual costs incurred have been over or understated; and they can examine if the allocations made, for example for depreciation or amortization, are appropriate and in accordance with proper accounting standards. They are also free to examine non-arms-length transactions or other practices which may affect the reliability of the reported costs. But [...] the examination of the records that flows from the term "reasonably reflect" in Article 2.2.1.1 does not involve an examination of the "reasonableness" of the reported costs themselves, when the actual costs recorded in the records of the producer or exporter are otherwise found, within acceptable limits, to be accurate and faithful (footnote 400).*

Based on the foregoing, it is submitted that the Commission increased the cost of production of La Doria and Feger in a way which is contrary to Article 2.2.1.1 of the WTO Anti-Dumping Agreement. In fact, this provision does not require the costs in the records of the exporters to be 'reasonable', or to reflect 'competitive market costs' associated with the production of the goods under consideration. It follows that the Commission was not entitled to depart from the records of La Doria and Feger insofar as these records were kept in accordance with GAAP and reflected the actual costs incurred for the production of prepared or preserved tomatoes.

For the above reasons, Orange and Green Pty Ltd considers that the ADRP should uphold the applications and recommend the Parliamentary Secretary to revoke the reviewable decision.

Yours sincerely,

Rudi van der Vlies
Managing Director