



18 July 2014

The Anti-Dumping Commissioner  
Customs House  
5 Constitution Avenue  
Canberra ACT 2601

*By email*

Dear Mr Seymour,

**Prepared or Preserved Tomatoes from Italy: Request for reinvestigation under s269ZZL.**

I refer to the applications for review by the Government of Italy, Associazione Nazionale Industriali Conserve Alimentari Vegetali and others of the decision of the Parliamentary Secretary to impose anti-dumping measures on exports of prepared or preserved tomatoes from Italy.

As you are aware, I am currently conducting the review.

Pursuant to section 269ZZL of the Customs Act 1901, I require that the finding that dumped prepared or preserved tomatoes exported from Italy had caused material injury to the Australian industry producing like goods<sup>1</sup> be reinvestigated.

To clarify, this request for re-investigation does not cover the finding that there was material injury suffered by the Australian injury or the findings with respect to the dumping of exports by the selected exporters who were cooperating exporters.

I provide below a summary of my reasons for making the request under s.269ZZL. More detailed reasons will be provided in my report to the Parliamentary Secretary.

Briefly, my reasons are:

1. In determining whether dumped goods caused material injury, it cannot be simply assumed that residual or non-examined exporters were dumping or dumping at the dumping margins determined under subsections 269TAB (3) and 269TAC(6). In making use of any dumping margins determined under subsections 269TAB(3) and 269TAC(6) for the purpose of the investigation, it is necessary to consider whether the material relied upon to determine such dumping margins, or other available material, supports a conclusion that those exporters were dumping and dumping at those or similar margins.

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<sup>1</sup> Para 8.10 of Final Report No.217 dated 21 March 2014

2. In investigating whether or not material injury has been caused by dumping, assumptions can be drawn as reasonable inferences from available material, including any material relied upon to determine dumping margins for residual or non-cooperating exporters. Any assumptions made need to be tested to ensure they are appropriate and credible.
3. The finding that material injury was being caused by dumping in Final Report No .217 relied, at least in part, from the comparison of declared import values for residual exporters with the weighted average normal value for all cooperating exporters<sup>2</sup>. It is not clear, however, that there was any testing of the assumption that such a normal value is a valid one to use for the residual exporters. The suitability of using that normal value could be affected by, for example, any differences in the products being exported.
4. Similarly, the finding also relied upon a comparison of export prices<sup>3</sup> and it is not clear whether an analysis was conducted to ensure that any such comparison was valid and not affected by any factors such as differences in the products being exported.
5. In using the results derived from the methodology described at paragraphs 8.4.1 and 8.4.2 of Final Report No 217, there is reliance on the average dumping margins or average prices, but there does not appear to have been consideration given to material indicating that individual exporters may not be dumping or the declared import values for individual exporters were not undercutting undumped prices.
6. Finally, while there was reliance on material other than simply the margins determined for the non-examined exporters under subsections 269TAB(3) and s.269TAC(6), there also appears to have been reliance on such margins as if those margins were evidence of the actual size of dumping margins<sup>4</sup>.

Please report the result of the reinvestigation by **Monday 18 August 2014**.

Thank you for your cooperation.

Yours sincerely,



Ms. Joan Fitzhenry  
Anti-Dumping Review Panel Member.

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<sup>2</sup> Final Report No.217,para 8.4.1, page 53

<sup>3</sup> Ibid para 8.4.2, page 53

<sup>4</sup> Ibid para 8.9.1 and Confidential Attachment 9 to Attachment A to the letter from the ADC dated 23 June 2014