



Australian Government
Anti-Dumping Review Panel

Customs Act 1901

Notice under section 269ZZI

PREPARED OR PRESERVED TOMATOES exported from Italy by Feger di Gerardo Ferraioli S.p.A and La Doria S.p.A

The Anti-Dumping Review Panel (ADRP) has received applications from Feger di Gerardo Ferraioli S.p.A (Feger), La Doria S.p.A (La Doria) and the Government of the Italian Republic (Italy) for a review of a decision by the Parliamentary Secretary under sections 269TG(1) and (2) of the *Customs Act 1901* (the Act) made on 10 February 2016 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 (the Reviewable Decision).

Notice of the Reviewable Decision was published on the Anti-Dumping Commission (ADC) website on 11 February 2016.

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

- (a) The initiation of the investigation lacked legal basis under World Trade Organisation (WTO) law as the application for the investigation did not meet the standard of evidence, the investigation was initiated less than 12 months after the conclusion of another investigation, and the scope of the fresh investigation should have been country-wide.
- (b) The injury and causality assessment carried out by the ADC was flawed in relation to the period of injury assessment, the undercutting analysis, the conclusion reached on price suppression, consideration of all relevant economic factors and non-attribution analysis.
- (c) The adjustment to the cost for raw materials infringes WTO law and does not meet the conditions under section 43(2) of the *Customs (International Obligations) Regulation 2015*.
- (d) The ADC wrongly determined the magnitude of the cost adjustment and its impact on the dumping margin of Feger and La Doria, due to the calculation of the alleged subsidy per kg of raw tomatoes produced in Italy, the pass-through analysis and incorrect profit margin used when constructing normal value for Feger and La Doria.
- (e) The calculation of Feger's dumping margin was incorrect as the ADC unduly rejected downward domestic adjustments in relation to 'advertising', 'quality control' and 'administration costs' and the ADC over estimated Feger's 'finance costs'.

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 La Doria S.p.A and Feger di Gerardo Ferraioli S.p.A. The following tomato

products do not form part of this application: pastes, purees, sauces, pasta sauces, juices and sundried tomatoes.

The ADRP proposes to conduct a review of the decision. Interested parties may make submissions to the Panel within **30 days** after the date of publication of this notice.

Submissions may be emailed to ADRP@industry.gov.au, or posted to:

the Anti-Dumping Review Panel
c/o ADRP Secretariat
Legal, Audit and Assurance Branch
Department of Industry, Innovation and Science
GPO Box 9839
ACT 2600 Australia.

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

Leora Blumberg
Panel Member
Anti-Dumping Review Panel