



File No.

Director

Trade Measures Operations 3

**CONSIDERATION OF AN APPLICATION LODGED UNDER SUB-SECTION
269TB(1) OF *THE CUSTOMS ACT 1901***

OLIVE OIL EXPORTED FROM GREECE, ITALY & SPAIN

Summary

On 13 October 2003, Inglewood Olive Processors Ltd (Inglewood) lodged an application under sub-section 269TB(1) of the *Customs Act 1901* (the Act) requesting that the Minister publish dumping duty and countervailing duty notices in respect of olive oil exported to Australia from Greece, Italy and Spain.

Sub-section 269TC(1) of the Act specifies the three matters that must be considered in making a decision whether to reject the application or part thereof. These matters are:

- the application complies with sub-section 269TB(4) of the Act;
- there is, or is likely to be established, an Australian industry producing like goods;
- and
- that there appear to be reasonable grounds for the publication of dumping duty or countervailing duty notices in respect of the goods.

Compliance

Sub-section 269TB(4) of the Act requires that the application:

- be in writing;
- be in an approved form;
- contain such information as the form requires;
- be signed in the manner indicated in the form; and
- be supported by sufficient part of the domestic industry.

I am satisfied that these requirements have been met.

The application is in writing, is in the approved form, contains such information that the form requires and is signed in a manner indicated in the form.

Section 269ZJ requires that the CEO maintain a public file for each investigation. Accordingly, each application must be accompanied by a non-confidential version suitable

as a public document. I have examined the non-confidential summary and am satisfied that it complies with requirements.

Sub-section 269TB(6) of the Act requires that the application be supported by a sufficient part of the Australian industry. The application is taken to be supported by a sufficient part of the Australian industry when the person(s) who produce or manufacture the goods and who support the application:

account for at least 50 percent of the total production of that part of the domestic industry that have commented; and
account for at least 25 percent of the total production of like goods.

The information contained in Appendix A1 of the application indicates that Inglewood significantly exceeds the above criteria. A total of 21 other Australian olive oil processors support the application. No companies contacted by the applicant oppose the application.

Based on my examination of the evidence supplied by the applicant I am satisfied that the application complies with sub-section 269TB(4) of the Act.

I am satisfied that there are reasonable grounds contained in the application for the publication of a countervailing duty notice for goods exported from Greece, Italy and Spain. I am not satisfied that there are reasonable grounds contained in the application for the publication of a dumping duty notice in respect of Greece or Spain.

Recommendation

I recommend you decide not to reject the application in respect of subsidy of goods exported from Greece, Italy and Spain and dumping from Italy.

I recommend you decide to reject the application in respect of dumping of goods exported from Greece and Spain.

If you accept my recommendations, in accordance with sub-section 269TC(4), the necessary notifications are attached for your signature.

Andrew Mumberson
Customs Manager
Trade Measures Operations 3

**ALLEGED DUMPING AND SUBSIDY OF OLIVE OIL
FROM GREECE, ITALY AND SPAIN**

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BACKGROUND

Introduction

On 13 October 2003 Inglewood Olive Processors Limited (IOP) lodged an application under s. 269TB(1) of the Act, requesting the Minister publish countervailing duty and dumping duty notices in respect of olive oil exported to Australia from Greece, Italy and Spain.

Under s. 269TC(1), the CEO must reject the application unless satisfied that:

- (a) the application complies with subsection 269TB(4); and
- (b) there is, or is likely to be established, an Australian industry in respect of like goods; and
- (c) there appear to be reasonable grounds:
 - I. for the publication of a dumping duty notice or a countervailing duty notice, as the case requires, in respect of the goods the subject of the application; or
 - II. for the publication of such a notice upon the importation into Australia of such goods.

The goods the subject of the application are packaged olive oil exported to Australia from Greece, Italy and Spain. The goods are packaged in containers up to and including four litres.

Pursuant to s. 269TC(1), Customs must examine the application within 20 days after receipt and decide whether to reject the application. This decision must be made no later than **12 November 2003**.

The applicant is Inglewood Olive Processors Ltd (Inglewood). Inglewood is both a grower and a processor of olives for the manufacture of olive oil.

The applicant alleged injury caused by dumped and subsidised olive oil in the form of:

- price undercutting;
- price depression;
- price suppression;
- negative profit and profitability;
- negative return on investment; and
- reduced ability to raise capital;

If you decide to initiate the case, I recommend the following procedural arrangements be published by ACDN.

“The investigation period is from 1 October 2002 to 30 September 2003. Customs will examine exports to Australia of the goods under consideration to determine if goods at

dumped and/or subsidised prices have caused injury to the Australian industry. Customs will examine details of the Australian market from the period 1 July 1999 to 30 September 2003 for injury analysis purposes.

“A preliminary affirmative determination may be made not less than 60 days from the date of initiation. Provisional measures may be imposed after a preliminary determination has been made.

“Interested parties will be invited to lodge submissions no later than close of business on **22 December 2003** addressed to:

The Director
Trade Measures, Operations 3
Australian Customs Service
Customs House
5 Constitution Avenue
CANBERRA ACT 2601

“All submissions must be accompanied by a version suitable for placement on the public file. Parties claiming that information contained in its submission is commercial-in-confidence, or that the publication of the information would adversely affect their business, must:

provide a summary containing sufficient detail to allow a reasonable understanding of the substance of the information, or

satisfy the CEO that there is no way such a summary can be given to allow a reasonable understanding of the substance of the information.

“Submissions containing confidential information must be clearly marked ‘In-confidence’

“Customs will place a statement of essential facts (SEF) on the public file by **1 March 2004** or such later date as the Minister may allow. A recommendation to the Minister will be made by **15 April 2004**, or such later date as the Minister may allow, unless the investigation is terminated before then. Interested parties may respond to the SEF by **21 March 2004** at the above address.

“Interested parties have 30 days after the publication of the Minister’s decision in respect of this investigation to request a review of the decision by the Trade Measures Review Officer. The contact details are:

Trade Measures Review Officer
Robert Garran Offices
National Cct
BARTON ACT 2600

Phone: +61-2-6250 6046

Fax: +61-2-6250 5914”

PART A – AUSTRALIAN INDUSTRY

Australian production

Inglewood identifies the Australian industry as consisting of itself and approximately 20 other smaller producers of Australian olive oil. The applicant also acknowledges the existence of a number of very small producers of olive oil that have no impact on the market.

The applicant provided an estimate at appendix 1 to its application, showing the relativity in terms of production, of Australian producers of olive oil. Inglewood appears to be, by far, the biggest single producer of Australian olive oil.

Based on this I am satisfied that the applicant has demonstrated reasonable grounds to conclude that there is an Australian industry producing like goods.

A-1 & A-2 Company information

Inglewood provided the information sought in respect of its operations and that of associated companies.

A-3 The imported and locally produced goods

Imported goods

The applicant describes the goods as:

The subject product imported is packaged olive oil (excluding lampante and olive pomace) presumably complying with the definition set out in European Commission Regulation No 1638/1998 (Attachment C-1.1) and by the International Olive Council (“IOOC”) as follows:

Virgin olive oils

Oils obtained from the fruit of the olive tree solely by mechanical or other physical means under conditions that do not lead to alteration in the oil, which have not undergone any treatment other than washing, decantation, centrifugation or filtration, to the exclusion of oils obtained using solvents or using adjuvants having a chemical or biochemical action, or by re-esterification process and any mixture with oils of other kinds.

Extra virgin olive oil

- *Virgin olive oil having a maximum free acidity, in terms of oleic acid, of 0.8 g per 100 g, the other characteristics of which comply with those laid down for this category.*

Virgin olive oil

Virgin olive oil having a maximum free acidity, in terms of oleic acid of 2 g per 100 g, the other characteristics of which comply with those laid down for this category.

Lampante olive oil

Virgin olive oil having a free acidity, in terms of oleic acid, of more than 2 g per 100 g, and/or the other characteristics of which comply with those laid down for this category.

Refined olive oil

Olive oil obtained by refining virgin olive oil, having a free acidity content expressed as oleic acid, of not more than 0.3 g per 100 g, and the other characteristics of which comply with those laid down for this category.

Olive oil –

Composed of refined olive oils and virgin olive oils (pure and light olive oil including extra light)¹.

Olive oil obtained by blending refined olive oil and virgin olive oil other than lampante oil, having a free acidity content expressed as oleic acid, of not more than 1g per 100 g, and the other characteristics of which comply with those laid down for this category.

Olive-Pomace oil

This is another oil derived from the olive that keeps its initial chemical structure. It is made of the oil extracted from olive pomace using solvents, which is then refined and blended with virgin olive oil. In no case may the degree of acidity exceed 1.5%.

Olive oil the subject of the application is imported in package sizes up to and including four litres.

Tariff classification

In the application, the tariff classification of the goods is as follows:

From ABS information in Attachment A-5 it is considered, that up to 30 June 2002, imported extra virgin olive oil has been entered under tariff item 1509.10.00 statistical code 16 and the balance under tariff items 1509.90.00 statistical code 17 and 1510.00.00 statistical code 18. From 1 July 2002, imported extra virgin olive appears to have been entered under 1509.10.00 statistical codes [10] for packaged and 11 for bulk. Similarly, the balance is now entered under tariff items 1509.90.00 statistical codes 30 for packaged and 31 for bulk and 1510.00.00 statistical code 18. However, in view of the EU definitions, it is considered that the “other” olive oils (pure and light) should also have been entered under tariff item 1509.10.00 as virgin olive oil.

I obtained advice from Tariff Classification Review in respect of the goods the subject of the application. It advised that:

up to 30 June 2002 extra virgin olive oil, virgin olive oil and lampante olive oil were classified to 1509.10.00 statistical code 16;

from 1 July 2002 the correct classification for these olive oils is 1509.10.00, but with two statistical codes. Statistical code 10 for packaged olive oil and 11 for goods in bulk;

¹ Description in brackets added.

up to 30 June 2002, other olive oils (refined, olive oil composed of refined olive oils and virgin olive oils, and olive-pomace oil) were classified to the residual item of 1509.90.00 statistical code 17;

from 1 July 2002 the correct classification for these residual olive oils is 1509.90.00, but with two statistical codes. Statistical code 30 for packaged olive oil and statistical code 31 for goods in bulk.

The rate of duty for the goods the subject of the application is FREE.

Like goods

Sub-section 269T(1) defines like goods as:

goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

Inglewood's extra virgin olive oil is manufactured to the standards set out in EC Regulation No 1638/1998. It only produces extra virgin olive oil at this time.

The applicant considers the Australian industry produces like goods to extra virgin olive oil, virgin olive oil, olive oil and refined olive oil (marketed as pure olive oil and light olive oil). It claims the olive oil produced in Australia is identical to extra virgin olive oil and to have characteristics closely resembling other types of oil in terms of physical characteristics, end use, substitutability and tariff item & statistical key. The applicant provided technical data to support its statement that its extra virgin olive oil meets the EC standard for extra virgin olive oil.

I am satisfied that the applicant has demonstrated that there are reasonable grounds to conclude that its extra virgin olive oil, if not identical, has characteristics closely resembling imported extra virgin olive oil.

The applicant considers its olive oil is like goods to imported olive oil (except lampante and pomace) as it has characteristics closely resembling the imported product.

As noted previously, the applicant states that extra virgin olive oil falls within the EC specifications for refined olive oil and olive oil. It states that olive oil and refined olive oil may fall outside the specifications for extra virgin olive oil.

It also notes similarities between imported olive oil and the olive oil it produces in such areas as:

- tariff heading (1509);
- end use;
- substitutability
- distribution channels;
- competition in the market place; and
- chemical composition.

No one characteristic is decisive in the issue of determining like goods. In general terms, the above matters are considered by Customs when determining whether goods are like goods or not.

For the purposes of initiation, based on this evidence contained in the application and advice from Tariff Classification Review, I am satisfied that reasonable grounds exist to determine that the goods produced in Australia are like goods to the imported olive oil. The issue of like goods will be examined further over the course of the investigation.

Production process

The applicant provided a detailed explanation of its production process. Presently, Australian produced olive oil is supplemented with bulk imported olive oil. Inglewood expects that sufficient Australian grown olives will be available in the 2004 harvest year to supply all its needs.

Conclusion

Based on the information provided in the application, I am satisfied that there is an Australian industry producing like goods to the goods the subject of the application.

A-4 Australian market

As well as Australian production, Inglewood stated that olive oil sold in Australia is also sourced from Greece, Italy and Spain, with a small amount from (mainly) other Mediterranean countries. Custom's commercial data base supports this statement.

Appendix 2 to the application, showing volume and value of imports and Australian production, has been completed. The amounts for imported olive oil are based Australian Bureau of Statistics (ABS) data.

Olive oil is generally used in the preparation of food. It may be used in conjunction with salads, as a bread dip or as a cooking medium. In some cases, olive oil is used therapeutically.

The application states that the decision to use a particular type of olive oil depends on price and the desired quality of the oil. Research into Coles and Woolworths selling prices indicate that extra virgin olive oil is generally, but not always, more expensive than other types of olive oil the subject of the application.

Inglewood stated that the majority of sales of olive oil are to supermarkets (Coles, Woolworths, IGA etc) and larger independents, which sell at the retail level. A smaller market exists for delicatessens and smaller gourmet stores who purchase the larger container sizes of 3 and 4 litres. These tend to be more expensive "boutique" oils. A secondary market is the food service sector, such as restaurants and hotels.

Inglewood stated that competition in the major supermarket sector is at the retail point of sale. This has the effect of restricting purchase prices offered by the supermarkets. Also, according to the application, competition between imported olive oils, at allegedly dumped and subsidised prices, has the effect keeping prices down.

Inglewood stated that there are no significant market substitutes for olive oil – it has its own stand-alone market.

For the purpose of initiation, based on the evidence provided in the application and from other sources, I conclude that Inglewood has provided a reasonable description of the Australian olive oil market.

A-5 Applicant's sales

The applicant completed appendix A3, providing summary information of sales revenues and quantities for the period 1999/2000 to 2002/2003. Additionally, detailed sales data for the period 2002/2003, was provided at appendix A4, including any discounts and rebates. Supporting documentation, as required by the application form was provided in support of appendix A4.

For the purpose of initiation, I am satisfied that the applicant has provided reasonable evidence of its sales data over the injury period.

A-6 General accounting/administration information

Inglewood's accounting year is from July to June.

The applicant provided a detailed description of its accounting processes, which it stated was consistent with generally accepted accounting practices. Audited accounts and management statements were provided in support of this statement.

A-7 Cost information

The applicant has provided cost to make and sell data at appendix 6.1 to the application. It did not provide a separate spreadsheet showing export sales (appendix 6.2 to the application), because of the small volumes. Export sales were included in appendix 6.1, but deducted from the total to provide amounts for costs and sales in Australia. I have examined the amounts given in appendix 6.1 for exports sales and concur, for the purpose of initiation that the amounts are insignificant. A more detailed examination of export sales will be conducted during the industry visit.

I am satisfied that, for the purpose of initiation, there is sufficient information contained within the application to quantify injury to the Australian industry.

A-8 Material injury

Inglewood claims that it had suffered material injury from the commencement of its olive oil production in 1999. It claims to have suffered material injury in the form of:

- price undercutting;
- price depression;
- price suppression;
- negative profits and profitability;
- negative return on investment; and
- reduced ability to raise capital;

Australian market

The applicant estimated the Australian market based on ABS statistics. However, the ABS data prior to 1 July 2002 includes bulk olive oil.

I examined the Customs commercial database, with obvious incorrect broker inputs removed, to obtain an assessment of the size of the Australian market for the period 2002/03. The amounts from the Customs' commercial database are consistent with the amounts in ABS statistics for the period. This analysis is at **confidential appendix 1**. A more detailed assessment for the investigation period will be made after importer visits have been conducted.

Volume effect

Inglewood's data at appendix 6.1 and elsewhere indicates that its volume of sales has increased substantially over the four years of the injury period. Inglewood is not claiming any volume related injury. Both Customs commercial database and ABS statistics suggest that there has been an increase in imports of about 50% of the goods over that time. A more complete analysis will be made after major importers have been visited.

Price effect

Price undercutting

Price undercutting occurs when an imported product sells below the price of its Australian equivalent.

Inglewood provided Woolworths scan data in the application for February 2003. This information showed that, when the various bottle sizes are converted to a one litre equivalent, price undercutting is occurring.

I also obtained prices from the Woolworths and Coles Internet home pages for August and October 2003. This information also showed that Inglewood's 'Viva' brand had suffered price undercutting. Summary of the level of price undercutting from these companies is at **confidential appendix 2**.

In considering whether the available data concerning price was relevant, I had regard to the package sizes of imported olive oil and package sizes of domestically produced 'Viva' brand. The comparisons at confidential appendix 2 and the application convert all package sizes to a per litre equivalent. It is worth noting that the 'Viva' brand is sold in 375 ml bottles, a size not found in imported olive oil. The closest size of imported extra virgin olive oil is 500 ml. It is a reasonable presumption to conclude that the relative cost of packaging for 375 ml bottles is greater than that of 500 ml bottles when converted to a per litre equivalent. This in turn suggests that there should be some price (and cost) advantage for the 500 ml bottles in terms of packaging. However the level of price undercutting (up to 42%) is such that, even with a packaging differential, this form of injury has been reasonably demonstrated for the purpose of initiation.

Viva olive oil is also available in 2 litre sized containers, a package size that is imported although relatively rarely. Comparisons to 1, 2, 3 and 4 litre-sized extra virgin olive oil containers also indicate that when differences in packaging have been considered (eg size

and glass compared to plastic bottles and tins), price undercutting (up to 31%) has been reasonably demonstrated for the Viva 2 litre container size.

Price depression

Price depression is when an industry, for some reason, lowers its prices.

Inglewood has demonstrated in appendix 6.1 to the application and other supporting documents that it has suffered price depression over the injury period but not prior to then – **confidential appendix 3** refers.

Price suppression

Price suppression is when the margin between an industry's costs and prices is reduced.

Inglewood claims that it has suffered price suppression in that it has not been able to raise prices sufficiently to sell olive oil profitably or break even. From the data provided in the application, price suppression has been demonstrated over the investigation period but not prior to then - confidential appendix 3 refers.

Profit effect

Inglewood has not sold olive oil at a profit since the first commercial sales in 1999. It was stated in the application that a period of selling at a loss was expected during the start-up phase of the industry after which the company would sell at a profit. It further stated that price undercutting by allegedly dumped and subsidised olive oil forced it to keep prices down, in order to achieve market share. This inability to raise prices meant that its olive oil was sold at a loss.

Evidence contained in the application shows that Inglewood has sold olive oil at a loss over the injury period. The same evidence also shows that losses have increased over 2002/03 relative to the previous year.

For the purpose of initiation, I conclude that Inglewood has demonstrated that it has suffered profit related injury. Because olive oil has been sold at a loss over the injury period, it follows that profitability is also negative. Details of the company's losses over the injury period are at **confidential appendix 4**.

Other injury factors

Inglewood provided information or comments on other injury factors, summarised at appendix 7 to the application.

Other factors concerning Inglewood's economic performance are, in summary:

- its assets have declined slightly over the injury period;
- capital investment has declined significantly over the injury period;
- overall sales revenue for olive oil has increased;
- return on investment is negative;
- capacity has increased;
- its performance has led to an adverse effect on the ability to raise capital;
- capacity utilisation increased up to 2001/02 but declined in 2002/03;
- employment in the production of like goods has increased; and

production increased up to 2001/02 but declined in 2002/03.

Conclusion

For the purposes of initiation the applicant has sufficiently demonstrated that material injury has been suffered by Australian industry.

A-9 Link between injury and dumped and/or subsidised imports

As noted previously, Inglewood does not claim any volume related injury. It has increased production and increased market share over the injury period. The application notes that these increases were achieved by maintaining prices at unprofitable levels.

In the early years of the company, it is likely that it would trade at a loss due to the company going through its start-up phase. However, sufficient time has passed for me to infer that the company is now beyond the start-up phase. It follows that injury that the applicant is currently suffering is likely to be caused by other factors.

Inglewood has provided data that indicates that price undercutting, among other factors, has led to it not being able to compete profitably in the Australian market. It claims that significant levels of price undercutting can only occur if imported olive oil was sold in Australia at dumped and/or subsidised prices.

Confidential appendix 6 indicates that that both price and profit related injury has occurred and is likely to continue to occur. The application notes that a recent attempt to increase prices is likely to result in a loss of sales to a particular customer. It also alleges that in the absence of dumped and/or subsidised imports it would be able to increase its prices and trade profitably.

The applicant states that, in effect, its only market for olive oil is in Australia. Although it exports very small quantities it claims it cannot compete with subsidised European olive oil sold in third countries.

Conclusion

Inglewood has demonstrated that it has suffered injury in the form of price undercutting. I believe it is reasonable to conclude that price undercutting has caused downwards price pressure which in turn has led to price depression, price suppression and profit related injury, among other forms of injury. Apart from allegedly subsidised and/or dumped imported olive oil, I have not identified any other factor that may be causing injury to the applicant at this time.

For the purpose of initiation, I am of the view that there is reasonable evidence to support the applicant's claim that it has suffered injury and that such injury was likely to have been caused by subsidised and/or dumped olive oil.

PART B DUMPING

B-1 Source of exports

The applicant named the countries from which it believed dumped olive oil was being exported to Australia. These countries, Greece, Italy and Spain are also the country of origin of the goods.

A number of major importers and exporters were nominated in the application. An examination of Customs' commercial database revealed that, in addition to the nominated exporters and importers, there were a large number of smaller exporters and importers. Some of these smaller exporters and importers were only concerned with volumes of a few litres over the investigation period.

Inglewood did not claim injury from cumulated volumes of dumped exports.

B-2 Export Price

The applicant calculated export prices by the deductive method, with alternative amounts of 5%, 10% and 20% provided for importer margins. The reason for this was '...because of our lack of absolute knowledge of these [importer] margins, we have calculated ... deductive exporter prices conservatively assuming importer gross margins of 5%, 10% and 20%.'

Customs commercial database did not provide a clear indication of export prices of the goods from the countries the subject of the application.

In many cases, the imported volumes were small and had relatively high unit values. In other cases there appeared to be errors in the data input in the entries for home consumption. These errors for example, appeared to be inputting of litres or number of bottles in the unit of quantity field, instead of the required unit of quantity – tonnes. In other cases, goods described as 'bulk' were entered as packaged olive oil. Bulk olive oil has had its own statistical key since 1 July 2002 and should not be entered with packaged olive oil. Prior to then both bulk olive oil and packaged olive oil were included under the same statistical key.

Customs data only rarely indicates the package size, which varies from 250 ml up 4 litres. Presumably the larger package sizes are cheaper on a per litre basis, which may affect any consolidated export prices derived from the Customs commercial database. Also whether the oil is virgin, extra virgin or lampante is not always shown in the description field of the database, which may also affect an examination of consolidated data.

Because of these problems, I could only place a limited reliance on Customs' data.

I compared the three exporter margins nominated by the applicant with known importer margins obtained during previous investigations into similar products. One product in particular, has certain similarities to olive oil in terms of container sizes, end-use, purchasing arrangements by retailers and, presumably, import arrangements. The

importer margin for this product approximated 10%. The deductive export prices calculated by using a 10% importer margin were similar to certain export prices of those few lines in Customs' database where descriptions detailed both package size and oil type.

Conclusion

There is considerable difficulty in calculating export prices from Customs' commercial database. The next option is to use the applicant's deductive export prices, if the assumptions made therein are considered reasonable. For the reasons given above, and for the purpose of initiation or rejection of the application, I consider the applicant's deductive export price using a 10% importer margin provides the most reasonable estimation of export price at this time. Export price calculations are at **confidential appendix 5**

B-3 Normal value

Inglewood based its normal values for Greece, Italy and Spain on a publication titled *Feuille d'Information* (Information Sheet) No. 971/16.04.2003. This document bears the imprimatur of the International Olive Oil Council. It lists the producer prices of bulk extra virgin and other types of olive oil, at mill, in Euros per tonne, for the 2002/2003 crop year for Greece, Italy and Spain.

Inglewood's calculation of normal values used these published prices as a starting point. The applicant made adjustments for packaging, inland freight, customs and wharf handling charges in all three countries. The inland freight, customs and wharf handling adjustments were supported by evidence. The claimed adjustment for packaging appears reasonable for the purpose of initiation. The resultant amounts were Inglewood's calculation of normal values, for each country under reference, after adjustments to make it comparable to a packed FOB export price.

The applicant's calculation of normal value contains an apparent flaw. The basis of the calculation for all three countries is the published prices in Euros per tonne. To make these prices comparable to an FOB export price per litre, a conversion from tonnes (or kilograms) to litres must also be made.

In the application, Inglewood has assumed that 1 kg of olive oil has a volume of 1.1 litres. From its own assumptions of the relativity between volume and weight, the applicant's calculation of normal value in litres should be reduced by 1/11th.

Greece

I have estimated normal values for Greece, based on the International Olive Council data supplied by the applicant, converted to litres, adjusted for packaging and pre FOB costs. The calculation of normal value for Greece is at **confidential appendix 6**.

Italy

I have estimated normal values for Italy, based on the International Olive Council data supplied by the applicant, converted to litres, adjusted for packaging and pre FOB costs. The calculation of normal value for Italy is at confidential appendix 6.

Spain

I have estimated normal values for Spain, based on the International Olive Council data supplied by the applicant, converted to litres, adjusted for packaging and pre FOB costs. The calculation of normal value for Spain is at confidential appendix 6.

B-4 Estimate using another method

The applicant did not use another method to calculate normal values for the countries under reference.

B-5 Adjustments

Adjustments have been discussed in Section B.3 above.

B-6 Dumping Margin

Dumping margins were estimated by comparing export prices to normal values. Export prices were determined from Australian selling prices in February 2003. Normal value data was for November 2002 to February 2003 for Greece, November 2002 to February 2003 for Italy and for January 2003 to February 2003 for Spain.

I estimate dumping margins to be:

Greece: minus 16.0%;
Italy: plus 10.6%; and
Spain: plus 1.8%

For the purpose of initiation I conclude that the applicant has not demonstrated that the goods have been exported at dumped prices from Greece.

For the purpose of initiation I conclude that the applicant has demonstrated that the goods have been exported to Australia at dumped prices from Italy and that the margin is not negligible in terms of s. 269TDA of the Act.

For the purpose of initiation I conclude that the applicant has not demonstrated that goods have been exported from Spain at prices that are actionable in respect of a dumping duty notice.

Dumping margins are at confidential appendix 6.

PART C – SUPPLEMENTARY SECTIONS

C-1 Subsidy

The applicant claims that exports of olive oil from Greece, Italy and Spain are exported to Australia at a price that is less than would otherwise be the case, because of the presence of a subsidy administered by the European Commission.

Specifically, the subsidy is referred to as 'production aid' and is cited as such in various European Commission regulations and documents detailing the operation of the subsidy.

In the application, Inglewood described the nature of the production aid subsidy as:

... the primary support mechanism and is designed to contribute towards ensuring a fair income for olive oil producers. Growers receive aid payment calculated on their actual production of virgin olive oil, which is defined in EC Regulation No 1638/1998 as follows:

Oils obtained from the fruit of the olive tree solely by mechanical or other physical means under conditions, particularly thermal conditions, that do not lead to alterations in the oil, which have not undergone any treatment other than washing, decantation, centrifugation and filtration, to the exclusion of oils obtained using solvents or re-esterification processes and any mixture with oils of other kinds.

The European Commission is the agency responsible for administering the subsidy paid, generally through grower organisations, to growers of olives. These subsidised olives are intended for further processing into olive oil at approved mills. The application states that such mills:

... may be owned by growers, grower organisations or private concerns, but irrespective of the ownership of the mills the olive oil produced at them remains the property of the growers who pay toll processing charges to the mills. That is, it is the growers who are the producers of the olive oil that is exported to Australia and it is the growers who are the recipients of the production aid.

The granting of production aid is subject to certain conditions. Olive oil from olive trees planted after 1998 do not receive the subsidy, unless conditional exemption is granted. Also, the production of olive oil is subject to quotas for each country that may affect the amount of subsidy paid. In some, apparently rare, circumstances a small proportion of the amounts paid to growers may be transferred over to the production of table olives, but this is clearly not the intention of the subsidy.

The application describes the operation of the production aid and details the current amounts paid on a country basis per 100 kgs of oil. The amounts of the production aid for each country is sourced from the Official European Journal of the European Communities (European Journal) of 9 October 2002, page L272/12 (Regulation No. 1793/2002).

It is of relevance to note the terminology of the European Journal in respect of the payment of the production aid subsidy. For example Regulation No. 1793/2002 detailed in the European Journal of 10 October 2002, page L272/11, paragraph (3) of the preamble

refers to: ‘...laying down general rules on the granting of aid for the production of olive oil and of aid to olive oil producer organisations’ (emphasis added).

The European Journal at page 210/34 of 28 July 1998 at Article 1 (3) (Regulation No. 1638/98) states that: ‘Production aid shall be granted for olive oil. Such aid shall be intended to contribute to establishing a fair income for producers’ (emphasis added). In this context, I believe the reference to ‘producers’ means olive growers.

From this I can reasonably infer that, without the presence of the production aid, olive growers would not receive a fair income unless they raised prices, which in turn, would increase the price of olives to the olive oil processor. It remains a reasonable inference that the price of olive oil would increase because of an increase in raw materials cost to the processor. In other words, the price of olive oil is artificially depressed because of the presence of the subsidy.

It is also apparent from the above quotes from European Journals that the purpose of the production aid is connected to the production of olive oil, even though the subsidy is paid to the growers.

The application made a number of claims in respect of other subsidies administered by the European Commission. There is no evidence to suggest that these subsidies either currently exist or have been paid in recent years.

Conclusion

For the purpose of initiation I have reasonable grounds to conclude that the applicant has demonstrated that a subsidy in the form of production aid exists in connection with the manufacture of olive oil exported from Greece, Italy and Spain to Australia.

I am of the view that production aid is a countervailable subsidy in that it appears to be neither a specific subsidy nor an excluded subsidy in terms of s. 269TAAC of the Act.

I am also of the view that, for the purpose of initiation, the production aid is a subsidy in terms of s. 269T(1) of the Act that confers a benefit in relation to the goods under consideration.

List of confidential appendices

Confidential appendix 1	Market analysis
Confidential appendix 2	Price undercutting
Confidential appendix 3	Price depression and suppression
Confidential appendix 4	Profit analysis
Confidential appendix 5	Export prices
Confidential appendix 6	Normal values and dumping margins