



ANTI – DUMPING SPECIALISTS

ACN 056 514 213 ABN 87 056 514 213

11 December 2013

Mr John Bracic
Director
Australian Anti-Dumping Commission
Customs House
5 Constitution Avenue
Canberra ACT 2600

NON-CONFIDENTIAL

Dear Mr Bracic,

PROCESSED TOMATOES FROM ITALY – INJURY/CAUSATION

This further injury/causation rebuttal submission is made on behalf of Italian exporter of processed tomatoes from Italy, Conserve Italia Soc. Coop. Agr (“Conserve Italia”).

As discussed at our meeting on 28 November 2013, there is nothing on the public record demonstrating SPC Ardmona’s (SPCA’s) economic performance during the investigation period, ie July 2012-June 2013.

SPCA’s application for the imposition of anti-dumping measures (“the application”) is based on injury experienced during 2009-2012, which it attributes in total to allegedly dumped imports from Italy. The application provides no information in relation to injury during the investigation period (“the IP”).

The Commission initiated this investigation on the grounds of SPCA’s application, ie alleged injury because of dumped imports from Italy during 2009-2012, and its initiation report (CON No. 217) provides no information concerning SPCA’s economic performance during the IP.

Neither the Commission’s verification report re SPCA nor the Preliminary Affirmative Determination (PAD) provide information in respect of SPCA’s economic performance during the IP.

The Commission’s determination of material injury by reason of dumping is going to be based on the impact of allegedly dumped imports on SPCA’s economic performance during the IP. You claim that the economic performance during the IP has been established by the Commission to enable this determination, but the public record provides no information in respect of it and at our meeting on 28 November you informed me that there will be no such information on the public record until publication of the Statement of Essential Facts (“the SEF”)

Unfortunately, for reasons stated above, this submission can only be based on assumptions made from information on the public record, ie the application, CON No. 217 and the Commission’s visit report re SPCA. These assumptions are that during the IP (July ’12-June ’13) the situation in respect of SPCA’s alleged key injury indicators is as follows:

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- SPCA's domestic sales volume of the goods under consideration ("the GUC") increased or stabilised;
- SPCA's domestic selling prices of the GUC increased or stabilised; and
- SPCA's profit and profitability increased or stabilised.

That is, **SPCA suffered no volume, price (depression or suppression) or profit injury during the IP.**

We reiterate that SPCA's poor current economic performance is due to the following factors during the period 2009-2012:

- Appreciation of the Australian dollar;
- Supermarkets' development of private label products;
- The 2011 floods;
- Comparative cost advantage of Italian producers;
- SPCA's decreased exports;
- Consumer preference for Italian products; and
- Long-term import competition.

There is no doubt that the above factors caused a significant downturn in SPCA's economic performance during the 2009-2012 period, a downturn which cannot be attributed to dumping, as dumping has not been determined for this period.

It can be reasonably assumed from our meeting on 28 November that, despite the likelihood of a finding of no volume, price or profit injury experienced by SPCA during the IP, the Commission's finding per the SEF will be a "but for" finding. That is, a finding of – but for dumping of Italian exports of the GUC, SPCA would have achieved higher prices and profits. This finding assumes that if the Italian exports of the GUC were not dumped during the IP, SPCA would have achieved domestic selling prices which were higher in the amount of the dumping margin during the IP (an unsubstantiated assumption).

The Commission's conclusion in its visit report re SPCA ("the visit report") is that SPCA experienced injury in the form of:

- Loss of sales volume;
- Loss of market share;
- Reduced revenues;
- Price depression;
- Reduced profits;
- Reduced profitability;
- Loss of employment;
- Lower (sic) closing stocks; and
- Falling capacity utilisation.

It is clear from the visit report that these injuries were incurred between 2009 (or 2010) and 2012 rather than during the IP.

We reiterate that the visit report does not address SPCA's economic performance during the IP. However, its findings per section 7 of the visit report do strongly suggest that SPCA did not experience the key injury forms listed above during the IP. These key forms are –

- loss of sales volumes and market share;
- reduced revenues;
- price depression;
- price suppression; and

– reduced profits and profitability.

It is likely then that SPCA also did not experience consequential injury forms of loss of employment, lower (sic) closing stocks and falling capacity utilisation during the IP.

There is no doubt that SPCA is in a very poor economic condition due to cumulation of the factors outlined above since 2009. Given SPCA's poor economic condition during the IP, albeit somewhat improved from the preceding period, it is impossible to conclude that, but for dumping of imports of the GUC from Italy during the IP, SPCA would not have experienced material injury, ie dumping of itself caused material injury to SPCA during the IP. For the same reason it is impossible to conclude that imposition of anti-dumping measures will remedy SPCA's poor economic condition brought by cumulation of the other factors outlined above since 2009.

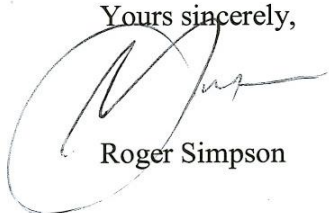
In addition, it cannot be assumed that, if export prices were higher in the amount of the dumping margin during the IP, SPCA's selling prices would have been higher in that amount. It is an established fact that import prices from Italy do not necessarily influence SPCA's Australian selling prices. During 2010-2011 import prices from Italy decreased while SPCA's Australian selling prices increased. It similarly cannot be assumed that if import prices were higher in the amount of the dumping margin during the IP, SPCA's sales volume and market share would have increased by more than it did because of the depreciation of the Australian dollar during that period. It must be borne in mind that there are factors other than the prices of imports from Italy which influence SPCA's sales volume and prices, eg supermarket customers' sales and marketing strategies.

Having regard to the above, it will be an absolute travesty if the Commission reaches a conclusion that dumping has, of itself, caused material injury to SPCA on "but for" grounds, when established facts demonstrate that the cumulation of several factors other than dumping has caused SPCA's poor economic condition during the IP, a condition that will not be remedied by the imposition of anti-dumping measures.

It must be borne in mind that, even if there is (unjustifiable) imposition of anti-dumping measures and consequent increased prices paid by consumers of Italian processed tomatoes –

- a) it does not necessarily follow that Coles and Woolworths will pay SPCA higher prices for their branded products; and
- b) because dumping has not been a major contributor to SPCA's poor economic position during the investigation period, this poor economic condition will continue because of the following:
 - Strong Australian dollar;
 - Coles' and Woolworths' housebrand strategies;
 - Comparative cost advantage of Italy (in 2012 Australian production volume represented just 4% of Italian production volume);
 - Consumer preference for Italian products; and
 - Low export volumes by SPCA.

Yours sincerely,



Roger Simpson