



ANTI – DUMPING SPECIALISTS

ACN 056 514 213 ABN 87 056 514 213

12 February 2014

NON-CONFIDENTIAL

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

Dear Mr Bracic,

STATEMENT OF ESSENTIAL FACTS NO. 217

This submission in response to Statement of Essential Facts No. 217 (“the SEF”) is made on behalf of Conserve Italia Soc. Coop. Agr (“Conserve Italia”).

Despite having found that several factors other than dumping, eg undumped goods, consumer preference, high Australian dollar, private label strategies of supermarkets, contributed to the material injury experienced by SPC Ardmona Operations Ltd (“SPCA”) during the investigation period, the Anti-Dumping Commission (“the Commission”) wrongly used the “but for” principle to reach a conclusion that dumped imports from Italy of themselves caused material injury to SPCA in the principal forms of price depression/suppression and reduced profit/profitability. In the absence of dumping, the injurious effects of several other factors, those found by the Commission and those found by the Productivity Commission in its safeguards inquiry, would have prevailed and cumulatively caused material injury to SPCA in the said principal forms. This paramount matter is not addressed in the SEF.

The “but for” conclusion per section 8.9 of the SEF has no factual basis, it has been reached on unsustainable assumptions that, but for the dumping –

- retail shelf prices of imports from Italy would have been 9% higher;
- this assumed increase in the retail shelf prices of imports from Italy would have resulted in the retail shelf prices of SPCA’s products being 9% higher; and
- this assumed increase in the retail shelf prices of SPCA’s products would directly translate to a 9% increase in SPCA’s profitability.

These assumptions are unsustainable for the following reasons.

1. The assumption that the retail shelf prices of imports from Italy would have been 9% higher but for the dumping, is based on the assumption that export prices of imports would have been 9% higher but for the dumping, when this 9% is based on “the weighted average margin of dumping for all dumped goods exported to Australia,” the calculation of which –
 - includes the hypothetical penalty dumping margin of 26.35% for uncooperative exporters calculated from the lowest export price and highest normal value of cooperative exporters with a dumping margin of not less than 2%; and
 - does not include the zero margin determined for 44% of total exports.

It is paramount that, while the hypothetical penalty dumping margin of 26.35% for uncooperative exporters may have been legitimately calculated by the method followed by the Commission for the purpose of determining a dumping duty rate on their exports, it is illogical and irrational to take this hypothetical penalty dumping margin of 26.35% into account in determining the effect of dumping on export/market prices. It cannot be reasonably assumed that this margin reflects the effect of dumping on the export prices of uncooperative exporters when regard is had to its method of calculation and other relevant information before the Commission.

Besides its error in taking into account the hypothetical penalty margin of 26.35% in determining the average effect of dumping on export/market prices, the Commission erred in not taking into account the zero margin applicable to 44% of exports in this determination. It is necessary to take into account in this determination that the export prices of 44% of exports were unaffected by dumping.

The actual average effect of dumping on the export prices of the exporters investigated, who supplied the majority of exports from Italy, is less than 1%, ie less than \$0.005/400g can, calculated as follows:

Cooperative selected exporter	Price increase necessary to remove dumping	Share of exports
La Doria	0	44%
Feger	0	
De Clemente	3.25%	~ 20%
Conserve Italia	4.54%	
Weighted average	<1%	~ 64%

It is of important note that the Commission can reasonably accurately assess the likely effect of dumping on the export prices of uncooperative exporters, the largest being IMCA and Lodato Gennaro, from Customs' database (export price) and normal values determined for cooperative exporters.

2. It cannot be reasonably assumed that increases of export prices of imports to remove the effects of dumping would have resulted in increases in retail shelf prices of those imports in the amount of such increases. Sales strategies of retailers have a major influence on retail shelf prices, meaning that cost increases do not necessarily directly translate to higher shelf prices.

If the correctly calculated average increase of export prices necessary to remove the effects of dumping was less than \$0.01/400g can, as appears likely, it is highly unlikely that this increase would have resulted in any increase of retail shelf prices of imports.

3. Even if retail shelf prices of imports were increased to remove the effects of dumping, it cannot be reasonable assumed that retail shelf prices of SPCA's products would have been increased by the amount of such increases. Retailer sales strategies would again have had a major influence on this.
4. Even if the retail shelf prices of SPCA's products were increased because of increases in the shelf prices of imports to remove the effects of dumping, it cannot be reasonably assumed that retailers would have paid SPCA prices for its products which

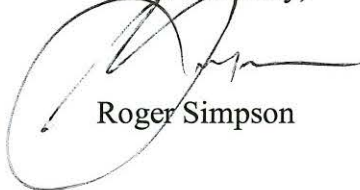
were higher in the amounts of such retail shelf price increases. It is very unlikely that this would have happened.

It is of important note in the context of the above that the Commission's assessment of whether the "lesser duty rule" should apply in this case (section 10.4 of the SEF), makes clear the paramount fact that, even if all exports from Italy were at undumped prices during the investigation period, their landed costs would be well below SPCA's cost to make and sell into the Australian market. This strongly reinforces the fact that factors other than dumping from Italy caused SPCA to sell into the Australian market at a substantial loss during the investigation period.

Finally, we draw your attention to section 269TAE(1)(aa) of the Customs Act which provides that in determining whether material injury has been caused by dumping, regard shall be had to the size of the dumping margin in respect of the exports to Australia. In this case, the weighted average dumping margin of the cooperative exporters investigated, whose exports constitute the majority of exports to Australia, is less than 1%, ie less than \$0.005/400g can. A dumping margin of this size cannot be the cause of material injury to SPCA. For reasons outlined above, the 26.35% hypothetical penalty dumping margin determined for uncooperative exporters does not reflect the effect of dumping on the export prices of these exporters and it is therefore inappropriate for it to be taken into account in the assessment of the size of the dumping margin for the purpose of s269TAE(1)(aa) and because the export prices of the 44% of the exports found to be undumped are unaffected by dumping, a zero margin for these exports should be taken into account in the assessment of the dumping margin for the purpose of s269TAE(1)(aa). As mentioned above, the Commission is in a position to calculate a likely dumping margin for uncooperative exporters from Customs' database and normal values of investigated exporters. If this is done and taken into account in the calculation of a weighted average dumping margin, together with the zero margin for 44% of exports, the dumping margin for the purpose of s269TAE(1)(aa) will be about 2%, which cannot be the cause of material injury to the Australian industry.

It is demonstrated by the above that the Commission's "but for" reasoning in section 8.9 of the SEF, upon which its conclusion that dumped imports caused material injury to the Australian industry is totally dependent, is unsustainable and this investigation should be promptly terminated.

Yours sincerely,



Roger Simpson