



26 June 2014

NON - CONFIDENTIAL

Ms Joan Fitzhenry
Anti-Dumping Review Panel
c/- Legal Services Branch
Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
Canberra ACT 2601

Dear Ms Fitzhenry,

REVIEW – PREPARED OR PRESERVED TOMATOES FROM ITALY

As you know, we represent Italian exporter of the subject goods Conserve Italia Soc. Coop. Agr (“Conserve Italia”). Our comments follow in response to the Anti-Dumping Commission’s submission of 23 June 2014 in response to your invitation to comment on the subject review as it relates to the review application of Conserve Italia.

8a Injury from other factors

The Commission identified certain factors other than dumped imports from Italy which caused injury to the Australian industry (SPCA), but it did not determine the extent of the injurious effect of these other factors in order to determine the materiality of the injury caused by the dumped imports.

Paras 3.2 to 3.10 of the Commission’s submission of 23 June 2014 (“the submission”) do not demonstrate that the Commission met the abovementioned obligation.

8b Price undercutting analysis

The submission does not refute the fact that the Commission’s price undertaking analysis did not take into account –

- a) the effect of the lower retail shelf price of generic or value private price label products, the majority of imports; or
- b) the impact of identified factors other than dumping on the retail shelf price of imports.

The Commission has not commented on the fact that it had calculated a weighted average margin of 9% for dumped imports but found that retail shelf prices of Italian tomatoes were between 16% and 55% below SPCA’s retail shelf prices.

8c The effect of the 9% notional dumping margin

The Commission has not commented on the important and obvious fact that the 9% dumping margin it calculated relates to the relativity of the dumping margin to the FOB export price and does not relate to the relativity of the dumping margin to retail shelf prices which are

significantly higher. Consequent upon this, any upward adjustment to be used to remove the effect of dumping of dumping from retail prices must be a unit amount, ie \$ per can/kg, which results in a significantly less percentage increase.

The Commission has also not commented on the fact that the 9% dumping margin is not based on positive evidence and that the weighted average dumping margin for selected exports who were actually investigated is about 1%, or less than \$0.005/can.

8d Consideration of undumped import prices and injurious effects of dumping is of itself material.

We do not understand this comment.

8e 9% weighted average dumping margin is not a correct basis for analysis

The 26.35% dumping margin determined for uncooperative exporters, which the Commission now admits that it has included in the 9% weighted average dumping margin, has no relevance to the effect of dumping on the prices of imports from these exporters. It is merely a hypothetical margin determined for the purpose of imposing a high penalty dumping duty rate on the exports of uncooperative exporters.

Our comments per 8c above are also relevant to this item.

8f ‘But for’ principle

Despite its comments to the contrary in the submission, the Commission’s finding in relation to the materiality of the injury by reason of dumped imports from Italy relies solely on its finding per section 8.9 of Final Report No. 217 that “but for” the dumping of imports from Italy, SPCA would have achieved a 9% higher price and profitability from the sale of its products and would therefore not have experienced material injury. Its other injury findings do not address the materiality of the injury caused by dumping or other factors.

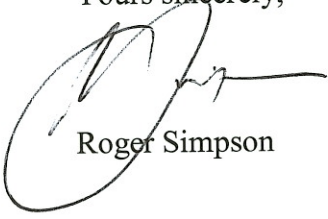
As noted in our application, the “but for” principle cannot be applied unless it is established that without dumping, injury caused by factors other than dumping is insufficient to be considered material, ie without dumping the domestic industry would not have experienced material injury. This was not established in this case.

8g Consideration of the PC Report

Our application acknowledges that a finding of serious injury caused by the cumulation of several injury factors other than dumped imports by the PC does not necessarily translate to a finding of no material injury caused by dumped imports. However, such finding by the PC should have caused the Commission to separate the serious injury caused by these other factors to enable an objective assessment of whether the injury caused by dumped imports was material. It did not do this.

We note that the Commission has offered to meet with you to “provide further clarification or relevant material”. We too would like to meet with you for the same purpose as it relates to our application. In addition, if the Commission does meet with you as offered, we expect a public version of that meeting to be posted on the ADRP’s public file.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Roger Simpson', with a large, sweeping loop at the beginning and a horizontal line extending to the right.

Roger Simpson