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Dumping investigation ADC 217 – Prepared or preserved tomatoes from Italy – Statement of Essential facts - Preliminary comments on La Doria's dumping margin calculation

The present submission – filed on behalf of our client La Doria S.p.A. ("La Doria") – is aimed at illustrating La Doria's preliminary comments on the revised dumping margin calculation received on Friday 4 September 2015 together with the Statement of Essential Facts ("SEF").

The attention of the Anti-dumping Commission ("ADC") is drawn to the fact that the present submission does not address the issue of the lawfulness of the adjustment (or "replacement") of La Doria's CTM carried out by the ADC in accordance with Regulation 43 (see SEF, Section 6.3.4). La Doria reserves the right to lodge additional comments regarding the lawfulness of such a cost adjustment by way of a separate submission.

This clarified, La Doria wishes to emphasise that the correction of the material errors and the reconsideration of the matters dealt in the present submission would be sufficient to bring La Doria's dumping margin well below the *de minimis* threshold.

La Doria respectfully requests the ADC to carefully review all the points extensively addressed below.

1. THE PROFIT MARGIN USED IN THE DUMPING CALCULATION IS NOT CORRECT

In constructing the normal value for the models which were sold in the Australian market but not in the domestic market in the investigation period, the ADC has used a profit margin [Confidential]. This profit margin was computed by comparing the domestic selling prices with a "non-adjusted" CTM, i.e. the CTM net of the "increase" applied by the ADC pursuant to Regulation 43 in order to reflect the impact of alleged subsidies to tomatoes growers.

The above-mentioned profit margin [Confidential] has however been subsequently applied to the "adjusted" CTM, i.e. the CTM increased by the amount of the alleged subsidy granted to tomatoes growers under the CAP, in order to calculate the normal value pursuant to section 269 TAC(2)(c) of the Act.

La Doria respectfully submits that the above-described approach is misleading and ill-founded.

In fact, if the profit margin is calculated by comparing the domestic selling prices with a certain CTM, then the same CTM should be used to construct the normal value pursuant to section 269 TAC(2)(c) of the Act. In the case under discussion, this means that if the CTM is adjusted to take into account the alleged subsidy granted to tomato growers, then the normal value constructed in accordance with section 269 TAC(2)(c) of the Act must be based on the profit margin which results from the "adjusted" CTM.

To construct the normal value by using the profit margin resulting from the "non-adjusted" CTM and then applying it to an "adjusted" CTM amounts, in substance, to double counting the impact of the alleged subsidy granted to tomatoes growers, since it would be indeed reflected both in the CTM and in the profit.

The above conclusion is confirmed by the wording of Regulation 45(2), dealing with the "determination of profit", according to which:

"The Minister must, if reasonably practicable, work out the amount by using data relating to the production and sale of like goods by the exporter or producer of the goods <u>in the ordinary course of trade</u>."

This means that <u>the same cost used for carrying out the ordinary course of trade test</u> (for the purpose of establishing which domestic transactions can be taken into account in the normal value calculation) <u>must also be used for calculating the domestic profit margin</u> to be used for the purpose of subsection 296 TAC(5B). This is confirmed also by the wording of Article 2.2.2 of the WTO Anti-dumping Agreement.

In light of the above it must be concluded that, if the ADC is willing to increase of the CTM pursuant to Regulation 43, then a profit margin [Confidential] should be used for the purpose of constructing La Doria's normal value pursuant to section 269 TAC(2)(c).

2. THE ADC HAS NOT DEDUCTED THE APPLICABLE ADJUSTMENTS FROM THE DOMESTIC NET INVOICE VALUE

[Confidential]

3. THE ADC HAS NOT DEDUCTED THE DOMESTIC CREDIT COST ADJUSTMENT WHEN CONSTRUCTING THE NORMAL VALUE PURSUANT TO SECTION TAC (2)(C)

[Confidential]

4. THE ADC'S REFUSAL TO GRANT A DOMESTIC ADJUSTMENT FOR "[CONFIDENTIAL]" IS UNJUSTIFIED

In the questionnaire reply La Doria requested a downward domestic adjustment for [Confidential].

In light of the foregoing, La Doria respectfully submits that:

- the amounts for [Confidential] should be deducted from the net invoice value in order to calculate the normal value pursuant to section 269 TAC(1);
- the weighted average amount for [Confidential] should be deducted from the normal values constructed pursuant to section 269 TAC(2)(c) [Confidential].

5. CONCLUSION

The correction of the material errors and the reconsideration of the points discussed above would lead to a dumping margin of [Confidential] *de minimis* [Confidential]. La Doria trusts that the ADC will revise its calculation on the basis of the above comments and will conclude that **La Doria's dumping margin is *de minimis***.