



**ANTI – DUMPING SPECIALISTS**

ACN 056 514 213 ABN 87 056 514 213

17 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, on behalf of Conserve Italia Soc. Coop. Agr (“Conserve Italia”), is supplementary to our submission of 12 February 2014 which conclusively demonstrates that the Commission’s sole reasoning for its preliminary conclusion that *dumped imports caused material injury to the Australian industry producing like goods*<sup>1</sup> is unsustainable. Among other things, it provides commentary on other elements of Statement of Essential Facts No. 217 (“SEF 217”), adding weight to the rebuttal of the said conclusion by the Commission.

**Materiality of injury caused by dumping**

It is paramount that the only form of injury considered by the Commission to be material because of dumped imports is reduced profitability.<sup>2</sup> The Commission has wrongly used the “but for” principle to reach this conclusion when this investigation and the Productivity Commission’s safeguards inquiry found that there are several factors other than dumping which would have contributed to SPCA’s reduced profitability, eg undumped imports (44% of total imports from Italy), high Australian dollar, supermarket private label strategies, consumer preference, Italy’s economy of scale. There is nothing in SEF 217 which demonstrates that the Commission has established any facts leading to a conclusion that, without the dumping of imports from Italy, SPCA would not have experienced material injury in the form of reduced profitability. There is nothing in SEF 217 providing grounds upon which it can be concluded that in the absence of dumping the reduced profitability caused by factors other than dumping would be insufficient to be deemed material injury. That is, there is nothing to support a conclusion that dumping directly produced material injury in the form of reduced profitability and without dumping there would have been no such material injury.

There are further comments on this critical matter in the “Profit and profitability” section hereunder.

**Safeguards inquiry**

It is of no relevance to this investigation that –

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<sup>1</sup> SEF 217, section 8.9.

<sup>2</sup> *ibid.*

- (a) the injury test for the imposition of safeguards measures is different to that for the imposition of anti-dumping measures; and
- (b) the term *serious* injury used in the safeguards context and *material* injury used in the anti-dumping context have different thresholds.

What is important to this investigation is the Productivity Commission's finding that injury has been caused to the Australian industry by a number of factors, including –

- *Processed tomatoes are an internationally traded product, Australia is a minor producer and other countries have a comparative advantage in tomato processing;*
- *Imports have been a source of significant competitive pressure for at least the past two decades;*
- *Increased promotion of private label brands by supermarkets and increased consumer acceptance of private label products have reduced the premiums that producers of branded products can charge without losing market share;*
- *Floods in 2011 reduced the supply of processing tomatoes by two thirds, and significantly decreased SPC Ardmona's production of processed tomatoes;*
- *Decreased domestic supply and the appreciation of the Australian dollar led retailers to source private label products from imports. Sales of domestically produced private label products have not recovered to date; and*
- *Exports of Australian processed tomatoes have decreased significantly over the past five years, coinciding with the appreciation of the Australian dollar.*<sup>3</sup>

### Price injury

Little weight should be placed on the Commission's finding that the FIS prices of imports from Italy undercut the prices of SPCA's prices during the investigation period.

It is not dumping which has caused "price undercutting", it has been brought about by the fact that imports from Italy include products in the lower pricing tiers of premium and generic private labels, whereas SPCA's product is in the top pricing tier of local proprietary labels ("SPC" and "Ardmona").

We invite your attention to Customs' finding on "Price undercutting" in the investigation into the alleged dumping of consumer pineapple from Thailand (no. 173b), where in similar circumstances Customs decided to *give little weight to this evidence of undercutting in its causal link assessment, as there are a number of factors other than dumping, that can explain the disparity in prices between these products.*<sup>4</sup>

The Commission's finding that dumped imports have been a **contributing factor** to the *Australian industry suffering injury in the form of price depression and price depression* [sic]<sup>5</sup> (emphasis added) acknowledges that there are factors other than dumped imports that have caused price injury to SPCA. These other factors include undumped goods, supermarket private label promotion strategies, high Australian dollar, comparative cost advantage of Italian producers and consumer preference.

The contribution of dumping to SPCA's price injury was negligible, given that the average effect of dumping on the price of imports from Italy during the investigation period was

<sup>3</sup> Safeguards Inquiry Report No. 68, section 2.5.

<sup>4</sup> Report No, 173b, section 7.6.3.

<sup>5</sup> SEF 217, section 8.5.2.

about 2%.<sup>6</sup> Also the price of Italian imports was reasonably stable during the investigation period.

Because of the substantial contribution of other factors, it cannot be concluded that without dumping SPCA's price injury during the investigation period would not have occurred.

### **Volume injury**

As with price injury, the Commission's finding that dumped imports from Italy have been a *contributing factor to the Australian industry suffering injury in the form of lost sales and reduced market share during the investigation period*<sup>7</sup> (emphasis added) acknowledges contribution to this volume injury by factors other than dumped imports. These other factors include those mentioned above in relation to price injury.

While SPCA's sales volume and market share decreased over the injury analysis period, there is no evidence of decreases during the investigation period.

If the Commission maintains its finding that SPCA suffered volume injury during the investigation period, it must take into account the fact that the contribution of dumping to this volume injury was negligible, given that the average effect of dumping on the price of imports from Italy was about 2% during the investigation period.

Because of the substantial contribution of other factors, it cannot be concluded that without dumping any volume injury experienced by SPCA during the investigations would not have occurred.

### **Profit and profitability**

Lost profit and profitability are the only injury forms that the Commission found *can be attributed* to dumped imports,<sup>8</sup> with its findings in respect of price and volume injury being that dumped imports were *contributing factors* to SPCA's price and volume injury.

We reiterate that findings that dumped imports were contributing factors to price and volume injury acknowledges that factors other than dumped imports also contributed to such injury.

The Commission found that SPCA's costs fell during the investigation period,<sup>9</sup> meaning that the reduced profit and profitability found by the Commission must have been the result of reduced unit revenue, ie selling prices. As the Commission had found that factors other than dumped imports had also contributed to the price injury experienced by SPCA, it follows that these other factors also contributed to SPCA's lost profit and profitability

It also follows that, if the contribution of dumped imports to SPCA's price injury was negligible because of the negligible effect of dumping on import prices and there was a substantial contribution to this price injury by factors other than dumping, it cannot be found that without the dumped imports SPCA would not have experienced lost profit and profitability.

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<sup>6</sup> Roger D Simpson & Associates' submission of 12 February 2014.

<sup>7</sup> SEF 217, section 8.6.1.

<sup>8</sup> SEF 217, section 8.6.2.

<sup>9</sup> SEF 217, section 8.5.2.

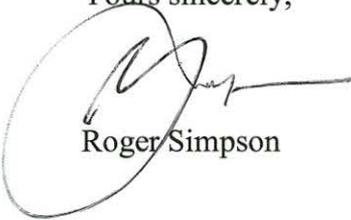
We reiterate that the Commission's conclusion that dumped imports caused **material** injury to the Australian industry is solely reliant on its "but for" conclusion that without dumping, SPCA's lost profitability would have been 9% higher. For reasons provided above and in our submission of 12 February 2014, this conclusion is fatally flawed because –

- a) when properly calculated by removing the hypothetical 26.35% dumping margin and including the zero dumping margin for 44% of exports, the weighted average effect of dumping on the prices of imports from Italy is negligible;
- b) there is no factual basis for the consideration that removal of the effect of dumping on import prices would have directly translated into increased SPCA profitability – it is mere conjecture; and
- c) this investigation and the Productivity Commission's safeguards inquiry found that there were several factors other than dumping which contributed to SPCA's material injury during the investigation, but this investigation has not established on a factual basis that without dumping the injury cumulatively caused by these other factors would not have been material.

It must be understood by the Commission that the "but for" principle cannot be applied in circumstances where there are factors other than dumping which are sufficient to cause material injury. In circumstances where there are causal factors other than dumping, it is necessary for the Commission to ensure that, without dumping, the injury caused by these other factors would be insufficient to be considered material before it can apply the "but for" principle. That is, it must ensure that without dumping the domestic industry would not have experienced material injury. This has not been done in this case. The Commission has not ensured that the many other causal factors identified by it and the Productivity Commission have not cumulatively produced injury which is material.

This submission and that of 12 February 2014 clearly demonstrate that it cannot be reasonably concluded that dumped imports were, of themselves, the cause of material injury to the Australian industry producing like goods and therefore this investigation should be promptly terminated.

Yours sincerely,



Roger Simpson