



ANTI – DUMPING SPECIALISTS

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

Having just learnt that the Commission’s assessment of the materially injurious effects of dumped imports per section 8.10 should include loss of sales and reduced market share, we provide the following response to this assessment. This submission proves that the non-inclusion of loss of sales volume and reduced market share in materially injurious effects of dumped imports per section 8.10 is correct.

The Commission’s finding that SPCA’s **market share increased** in a declining market during the investigation period, *reflecting SPCA’s volume trend*,<sup>1</sup> directly contradicts the Commission’s finding that dumped imports were a contributing factor to the Australian industry suffering injury in the form of **lost sales and reduced market share** during the investigation period.<sup>2</sup> No such injury was suffered during the investigation period.

It appears from section 8.6.1 of SEF 217 that the Commission has incorrectly attributed SPCA’s decreases in sales volumes and market share from June 2010 to June 2013 to dumped imports, when the established facts show increases in sales volume and market share during the investigation period, the period during which the dumping occurred. Decreases between June 2010 and June 2012 cannot be attributed to dumping.

As acknowledged by the Commission in section 8.6.1 of SEF 217, *several other factors were present in the Australian market which also contributed to SPCA’s fall in volume, viz –*

- retailers’ sales and marketing strategies in relation to their private labels;
- a significant volume of undumped imports; and
- consumer preference for Italian products.

It also acknowledges in this section that SPCA’s decrease in sales volume (and market share) because of these other factors *cannot be attributed to dumped imports*.

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<sup>1</sup> SEF 217. Section 8.6.1.

<sup>2</sup> Ibid

While not mentioned in section 8.6.1 as a contributing factor to SPCA's loss of volume and market share, it is reported in section 8.8.3 that –

- *The Commission considers the appreciation of the AUD is a significant contributing factor to the injury suffered by the Australian industry by reducing the FOB value in Australian dollar terms thereby improving the competitiveness of the imported goods.*

This consideration is based on the Commission's finding that the Australian dollar (AUD) appreciated against the euro (EUR) by 37% between 2009 and 2013, peaking at 42% in 2012. The Commission also found that, while FOB unit prices of imports from Italy in AUD terms decreased by 45% between 2009 and 2013, at the same time FOB Euro export prices of these imports decreased by just 11.9%, leading to the obvious conclusion that, even if dumped, (which cannot be assumed), decreases in EUR export prices had a much lesser impact than AUD appreciation on prices of imports from Italy between 2009 and 2013.

It is of note that the AUD depreciated by 4% during the investigation period, coinciding with SPCA's increase in sales volume and market share and reinforcing the point that SPCA's loss of sales volume and market share between 2009 and 2013 is essentially due to the significant appreciation of the AUD against the EUR during that time.

As with the Commission's consideration per section 8.6.1 that SPCA's loss of sales volume (and market share) because of the other factors listed above, SPCA's loss of sales (and market share) between 2009 and 2013 because of the significant appreciation of the AUD against the EUR cannot be attributed to dumping.

In addition to appreciation of the AUD and the other factors referred to in section 8.6.1 of SEF 217, decreased export sales by SPCA and floods in 2011 also contributed to SPCA's loss of sales volume and market share between 2009 and 2013, the period apparently taken into account by the Commission in finding that SPCA has lost sales volume and market share.

Putting aside the paramount fact that SPCA does not appear to have lost sales volume or market share during the investigation period, it is impossible to conclude that, but for the dumped imports, SPCA would not have lost sales volume or market share, when the other said factors made a substantial contribution to SPCA's loss of sales volume and market share.

There is actually no loss of volume or market share by SPCA that can be attributed to dumping, as no loss of sales volume or market share was experienced by SPCA during the investigation period. However, if the Commission does somehow claim that SPCA has lost sales volume and market share during the investigation period, the contribution of dumped imports to these injury forms is negligible because of –

- a) the negligible impact of dumping on import prices;<sup>3</sup> and
- b) the substantial negative effect of factors other than dumped imports on SPCA's sales volume and market share, ie undumped exports (44% of total imports), appreciation of the AUD, retailers' sales and marketing strategies and consumer preference.

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<sup>3</sup> Roger D Simpson & Associates' submission of 12 February 2014.



In view of the forgoing, the contribution of dumped imports through loss of sales volume and reduced market share to SPCA's reduced profitability during the investigation period, which the Commission considers constitutes material injury, is either nil or negligible.

We would like to add that the Commission's consideration that *in a market unaffected by dumped prices of prepared or preserved tomatoes from Italy prices of undumped goods would be higher*<sup>4</sup> has no factual basis – it is mere conjecture.

It is more likely that it was the effect of the prices undumped exports from La Doria and/or Feger, which represent 44% of total imports, on Australian market prices which caused the prices of competing exports to be at dumped prices. That is, to be competitive in the Australian market, exporters other than La Doria and Feger had to export at prices below the normal values determined by the Commission for their exports.

The Commission's mere conjecture that the prices of undumped goods would have been higher but for the dumping cannot be taken into account in the consideration of whether dumped imports caused material injury to the Australian industry producing like goods. What is to be taken into account in this consideration is that any injury caused by undumped imports, which constitute 44% of total exports, cannot be attributed to dumping. The Commission has acknowledged this.<sup>5</sup>

This submission reinforces our submission of 17 February 2014 that the facts established by this investigation do not demonstrate that without dumping the Australian industry would not have experienced material injury. That is, they do not demonstrate that dumping has, of itself, caused material injury to the Australian industry.

Yours sincerely,



Roger Simpson

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<sup>4</sup> SEF 217, section 8.8.1.

<sup>5</sup> Ibid, section 8.6.1.