

VAN BAEL & BELLIS

JEAN-FRANÇOIS BELLIS *1
PHILIPPE DE BAERE *1
ANDRZEJ W.J. KMIĘCIK *2
PETER L'ECLUSE *1
RICHARD W.D. LUFF *1
CATHERINE LONGEVAL *1
FABRIZIO DI GIANNI *3
BENOÎT SERVAIS *1
KRIS VAN HOVE *1
MARKUS WELLINGER *1
PORTER ELLIOTT *5
RESHAD FORBES *2
MARTIN FAVART *1
TIMOTHY M. KASTEN *6
YURIY RUDYUK *7
RICHARD BURTON *2
PABLO MUÑIZ *8

AVENUE LOUISE 165 LOUIZALAAN
1050 BRUSSELS

TELEPHONE +32 (0)2 647 73 50
TELEFAX +32 (0)2 640 64 99
WWW.VBB.COM

MICHEL BONNE *1
JOHAN VAN ACKER *1
DAVID W. HULL *2
STEPHANIE REINART *4
CHARLOTTE NASSOGNE *1

S.N.C./V.O.F.
1 AVOCAT/ADVOCAAT
2 SOLICITOR (ENGLAND & WALES)
3 AVVOCATO CASSAZIONISTA
4 RECHTSANWÄLTIN
5 MEMBER OF THE GEORGIA BAR
6 MEMBER OF THE WISCONSIN BAR
7 MEMBER OF THE UKRAINIAN BAR
8 ABOGADO
* S.P.R.L./B.V.B.A.

Director Operations 1
Anti-Dumping Commission
Customs House
1010 La Trobe Street
Docklands VIC 3008
Australia

NON-CONFIDENTIAL

Brussels, 9 December 2015

Dear Sir/Madam,

In view of SPCA's submission placed in the EPR on 23 November 2015, Feger di Gerardo Ferraioli S.p.A. and La Doria S.p.A. (respectively 'Feger' and 'La Doria', collectively 'our clients') would like to submit the following comments.

At the outset, it is recalled that according to Subsection 269TEA(4) of the Act, the Anti-dumping Commission (the 'ADC') is not obliged to have regard to any submission made in response to the SEF received after the statutory deadlines of 20 days (in our case, 24 September 2014). Therefore, Feger and La Doria respectfully claim that SPCA's submission published on 23 November 2015 (hereinafter, 'SPCA's submission') should be disregarded by the ADC.

Without prejudice to the above, our clients would like in any case to point out the following with regard to the substance of SPCA's submission.

1. The national ceiling corresponding to tomatoes transferred to the SPS during the transition period in 2008-2010 is still available through the activated entitlements based on historical allocations from the national ceiling corresponding to tomatoes (SPCA's submission, paragraphs 1-7)

The statements and allegations contained in paragraphs 1-7 of SPCA's submission suggest that SPCA is deliberately attempting to create confusion about the functioning of the SPS system which, on the contrary, has been clearly and extensively explained to the ADC throughout the ongoing investigation.

It is common knowledge that - as already clarified in our clients' submission dated 14 August 2015 - from the year 2003 the 'ad hoc' national funds dedicated to each agricultural product (i.e. tomatoes, olives, etc.) were progressively transferred and merged into a single national fund (the 'SPS fund') aimed at financing the payments granted under the SPS. Therefore, the Italian Ministerial Decree of 17 October 2013 attached to SPCA's submission does not provide any additional information or element in this respect.

What SPCA seems to deliberately overlook is that – as repeatedly explained by our clients and confirmed in writing by the Italian authorities - the last year in which Italy granted coupled payments to tomatoes growers was 2010. It follows that in 2014 the national ceiling for tomatoes did no longer exist, since all the 'ad hoc' funds have been replaced by the SPS.

Therefore, SPCA's theory according to which Italian farmers would have "*different payment entitlements for different crops*" (paragraph 5) and "*payment entitlements [relating to tomatoes] must be activated or else they would be allocated to the national reserve*" is just deprived of any legal and factual basis. On the contrary, it is clear that the SPS payments cannot be linked to any particular agricultural product, since the purpose of the SPS as from its creation is exactly that of replacing all the 'ad hoc' funds dedicated to single agricultural products.

Lastly, it is once again recalled that the payments granted under the SPS are fully decoupled from production (i.e. the payments are made irrespective of whether, what and how much the farmers produce) and WTO compatible. Therefore, such payments cannot - by definition - have any distorting impact on the Italian market for raw tomatoes.

2. The proposition that the SPS cannot be examined in a trade remedy investigation because of a misguided notion that it is WTO compatible has no basis (SPCA's submission, paragraphs 8-9)

With regard to paragraphs 7-8 of SPCA's submission, suffices it to note that SPCA's allegations are totally unsubstantiated. On the contrary, in the previous submission filed by our clients as well as by the European Commission, it has been clearly

demonstrated that the SPS is fully WTO compatible and, as such, cannot have distorting effects.

3. The reintroduction of coupled support is another significant indicator of a market situation (SPCA's submission, paragraphs 10-13)

Again, the claims at paragraphs 10-13 of SPCA's submission are totally groundless:

- first of all, it must be recalled that the SEF has concluded that no market situation exists in Italy;
- second, even assuming that such a market situation would exist, *quod non*, it is well known that the normal value of Feger and La Doria must be established on the basis of the data relating to the investigation period only, and therefore NOT on the basis of the information relating to the year 2015;
- third, even assuming that - as SPCA (wrongly) claims - the "*market situation analysis is not limited to a 12 month period*", *quod non*, our clients fail to understand how the re-introduction of coupled payments after the end of the investigation period (i.e. in 2015) could possibly produce effects before that re-introduction took place (i.e. during the investigation period).

In light of the foregoing, it goes without saying that SPCA's claims are simply unreasonable and should be rejected.

4. The assessment of price distortion in SPC's submission of 24 September 2015 supports a finding of market situation (SPCA's submission, paragraphs 14-18)

According to paragraphs 14-18 of SPCA's submission, the LECA report would be unreliable because, in substance, it "*did not even assess the national ceiling corresponding to tomatoes and hence inappropriately relied on data from the Solazzo paper*".

In this respect suffice it to note that, as repeatedly pointed out, in the investigation period there was no national ceiling and there were no coupled payments for tomatoes in Italy. It follows that all SPCA's calculations are groundless and, as such, should be disregarded.

5. The interpretation of Regulation 43 has been clearly outlined in the Dalian Federal court judgement (SPCA's submission, paragraphs 19-22)

With regard to the arguments at paragraphs 19-22 of SPCA's submission regarding the correct interpretation of Regulation 43, our client would like to draw the ADC's attention to the following simple considerations.

Notwithstanding SPCA's claim that "*competitive market costs*" should be used to establish the cost for raw tomatoes in Italy, it appears that SPCA is unable to suggest the benchmark that should be used to establish an "undistorted" (or "competitive") price for raw tomatoes.

The reason for this is very easy to understand: as a matter of fact, the price for raw tomatoes in Italy is the highest in the world, and this has never been contested by SPCA. Therefore, the use of a benchmark other than the actual price paid by Feger and La Doria for raw tomatoes would result in a decrease, and not in an increase, of our clients' cost of production.

This is sufficient to demonstrate that SPCA's claim are completely groundless and should be rejected.

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