VAN BAEL & BELLIS

JEAN-FRANÇOIS BELLIS *1
PHILIPPE DE BAERE *1
ANDRZEJ W.J. KMIECIK 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
MARTIN FAVART *1
TIMOTHY M. KASTEN *6
YURIY RUDYUK *7
PABLO MUÑIZ *8
MICHEL BONNE *1
JOHAN VAN ACKER *1
DAVID W. HULL 2 5
GENEVA OFFICE :
CLOTILDE DU PARC 1

GLAVERBEL BUILDING
CHAUSSEE DE LA HULPE 166 TERHULPSESTEENWEG
B-1170 BRUSSELS, BELGIUM

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

RESHAD FORBES *2
RICHARD BURTON *2
STEPHANIE REINART *4
CHARLOTTE NASSOGNE *1
MICHAEL CLANCY *9
ANDREAS REINDL **9
ETSUKO KAMEOKA *9
AMAURY DE BORCHGRAVE D'ALTENA *1
GABOR BATHORY **1
KATHARINA BONGS *4
KOEN T'SYEN *1
ISABELLE VAN DAMME *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
[9] MEMBER OF THE NEW YORK BAR
* S.P.R.L./B.V.B.A.** SCS/COMM.V

The Director
Operations 1
GPO Box 1632
Melbourne VIC 3001
Australia

22 January 2019

By e-mail

Dear Sir,

Subject: Continuation Review 488 – Prepared or preserved tomatoes exported to Australia from Italy by all exporters other than Feger di Gerardo Ferraioli S.p.A. and La Doria S.p.A. – Princes Industrie Alimentari SpA – Verification Report

On 16 July 2018, the Anti-Dumping Commission ('ADC') initiated a continuation review of the antidumping measures applicable to certain prepared or preserved tomatoes ('PPTs') exported to Australia from Italy by all exporters other than Feger di Gerardo Ferraioli S.p.A. and La Doria S.p.A.

Due to the very large number of Italian producers, for the purpose of the investigation the ADC decided to select a sample of five exporters, namely Attianese SpA, Calispa SpA, De Clemente Conserve SpA, Mutti SpA and Princes Industrie Alimentari SpA ('Princes'). These exporting producers were sampled because they exported the higher volumes of PPTs during the review period.

The questionnaire responses of the sampled exporters were verified by the ADC. Based on the Verification Reports published in December 2018, it appears that four out of the five sampled exporters of PPTs have a negative dumping margin. Only PIA has a positive dumping margin of 10.2%.

1. OBSERVATIONS REGARDING PIA'S DUMPING CALCULATION

[CONFIDENTIAL] PIA would like to point out the following regarding the ADC's calculation of PIA's dumping margin.

1.1 Calculation of the average domestic direct selling expenses

PIA notes that the average domestic direct selling expenses [CONFIDENTIAL] which were used for the purpose of constructing the normal value [CONFIDENTIAL] were determined on the basis of all domestic sales, i.e. sales of prime and non-prime products. However, given that the ADC excluded non-prime products from the dumping calculation, PIA submits that the sales of non-prime products should also be excluded from the calculation of the average domestic direct selling expenses.

By excluding the domestic sales of non-prime products, the average domestic direct selling expenses would result to be the following: [CONFIDENTIAL]

By using the above average domestic direct selling expenses in the normal value construction, PIA's dumping margin would result to be [CONFIDENTIAL].

1.2 Amendment of the models

As already pointed out, PIA firmly disagrees with the ADC's decision to amend the PPTs models used for the purpose of the dumping comparison by including one additional characteristic (i.e. bright/labelled).

At the outset, it should be noted that the ADC's decision to amend the models was taken unilaterally and was not discussed with PIA, which therefore did not have the opportunity to present its views on this matter. It follows that the ADC's behaviour seriously undermined PIA's procedural rights.

This clarified, it should be noted that the ADC's decision to distinguish between bright and labelled cans for the purpose of the dumping comparison is in stark contradiction with the findings of the Anti-Dumping Review Panel ('ADRP') in report No. 56 *'Certain Prepared or Preserved Tomatoes Exported From Italy by AR Industrie Alimentari S.p.A and by all Exporters other than by Feger di Gerado Ferraioli S.p.A and La Doria S.p.A.'*. In this report, the ADRP made clear that the bright cans sold domestically are suitable to be taken into account for the purpose of the dumping comparison, i.e. the ADRP determined that bright cans sold domestically can be compared with labelled cans exported to Australia for the purpose of calculating the dumping margin.

The ADC's approach to separate labelled and bright cans for the purpose of the model matching is nothing else that a way to circumvent the ADRP's decision, because by doing so the ADC excludes the domestic sales of bright cans from the dumping comparison. As the ADRP already pointed out, there is no reason to distinguish between bright cans and labelled cans for the purpose of the dumping calculation. The existing difference in terms of price and/or cost between labelled and bright cans can be properly addressed by way of an adjustment (packing adjustment).

Had the ADC correctly applied the conclusions reached by the ADRP in Report No. 56, PIA's dumping margin would have been significantly lower [CONFIDENTIAL].

2. OBSERVATIONS ON THE TERMINATION OF THE MEASURES

Based on the Verification Reports made available on the EPR, it appears that four out of the five exporters of PPTs which were sampled by the ADC (on the basis of the volumes exported during the investigation period) had a negative dumping margin. This means that <u>the vast majority of the exports under investigation were not dumped during the review period</u>.

Moreover, it should be noted that the dumping margin of 10.2% calculated for PIA is only due to the ill-founded methodological approach taken by the ADC as regards the model matching (see above). By adopting a correct approach, PIA's dumping margin would result to be [CONFIDENTIAL].

The above findings are in line with the conclusions of the ADC in the last interim review concluded in 2016 (Review 354), when the majority (four out of six) of the cooperating exporters (namely Calispa SpA, De Clemente Conserve SpA, Le Specialita Italiane SpA, Princes Industrie Alimentari SpA) were found to be *de minimis*, while the other two cooperating exporters (Mutti SpA and Conserve Italia Soc. Coop.) were found to have very modest dumping margins (3.2% and 5.4% respectively).

All the above clearly demonstrates that the PPTs exported from Italy are generally not dumped and therefore the expiration of the measures would not likely lead to a continuation of recurrence of dumping. For this reason **<u>the ADC is respectfully requested not to recommend the Minister to take steps to secure the continuation of the antidumping measures applicable to PPTs exported from Italy</u>**.

Kind regards,

Gabriele Coppo