



Anti-Dumping Review Panel - Conference Summary

2017/56 – Certain Prepared or Preserved Tomatoes Exported from the Republic of Italy by all exporters except Feger di Gerardo Ferraioli, La Doria and AR Industrie Alimentari and Certain Prepared or Preserved Tomatoes Exported from the Republic of Italy by AR Industrie Alimentari

Panel Member	Leora Blumberg
Date	5 September 2017
Participants	Leora Blumberg (Chair, ADRP Reviewing Member), Rhys Piper (ADC) and Patrick Quiggin (ADC)
Time opened	1:00pm AEST
Time closed	3:18 pm AEST

Purpose

The purpose of this conference was to obtain further information in relation to the review before the ADRP, in relation to Certain Prepared or Preserved Tomatoes Exported from the Republic of Italy by all exporters except Feger di Gerardo Ferraioli, La Doria and AR Industrie Alimentari and Certain Prepared or Preserved Tomatoes Exported from the Republic of Italy by AR Industrie Alimentari.

In the course of this conference, I may have asked parties to clarify an argument, claim or specific detail contained in the party's application or submission. The conference was not a formal hearing of the review, and was not an opportunity for parties to argue their case before me.

I have only had regard to information provided at this conference that relates to relevant information (within the meaning of section 269ZZK(6) of the *Customs Act 1901*). Any conclusions reached at this conference are based on that relevant information.

Discussion

The Reviewing Member opened the conference call and participants introduced themselves.

The Reviewing Member advised that the conference is being held pursuant to section 269ZZHA of the *Customs Act 1901* and that a non-confidential summary will be published on the ADRP website.

The Reviewing Member noted that the conference call was being recorded and that the transcript would be used to prepare the summary of the meeting.



The Reviewing Member advised that the conference related to parties' confidential information.

1. SPC Ardmona's Grounds of Review ("SPCA")

- a. The Reviewing Member requested clarification of the Anti-Dumping Commission's ("ADC") response to certain SPCA contentions such as 2014 being the base year for the new BPS.

The ADC Representative stated that in REP 349/354 the ADC didn't analyse BPS versus SPS. There was strong disagreement between SPCA and the EC, and the ADC has never been in a position to decide between either particular view. The ADC instead preferred to rely on actual verified data, obtained in Reinvestigation 360.

The ADC Representative confirmed that the ADC is not disputing SPCA's claim about 2014 being the base year for the BPS, but rather considers that it does not impact the ADC's decision because the ADC decided to use the actual data relating to the growers that supplied Feger and La Doria in Reinvestigation 360. The ADC confirmed that there is no explicit analysis of SPCA's claims relating to this in REP 349/354.

- b. The Reviewing Member sought clarification on certain statements in REP 349/354 relating to the verification of the data in REP 360, in response to SPCA's contentions that the information relied upon in REP 360 was self-selected and unreliable.

The ADC Representative explained in detail its three-pronged verification process, being:

- (i) the spreadsheets submitted by Feger and La Doria, relating to 100% of the data of the growers;
- (ii) certificates covering a certain percentage of what was in the spreadsheets; and
- (iii) full access to the AGEA database with respect to the relevant growers, all of which aligned and provided cross verification.

The ADC Representative stated that the ADC recognised that the certificates only covered a proportion of the data in the spreadsheets, but stated that if the ADC had undertaken a usual verification of that original information, it would have selected perhaps 6 to 12 growers, which would have been a much narrower selection. The ADC Representative also stated that the ADC had considered the possibility that it had been given the most favourable documentary evidence,



however, it was explained how the ADC testing of the data showed that this was highly unlikely.

The ADC Representative also explained the process of verification on the AGEA website, which was extensive. It was clarified that it was not possible to identify payments for specific products, and that it was clear from the way in which the data is organised that payments are attached to particular parcels of land, not a particular product. The point was also made that any land which is fallow but is entitled to a payment will also appear in this register, so there is no evidence to support SPCA's claim that payments are tied to actually growing tomatoes.

- c. The Reviewing Member requested clarification of SPCA's contention that the ADC had not considered the issue of fallow land, noting that it was referred to and explained in the ADC submission to the ADRP, but not referred to in REP 349/354.

The ADC Representative stated that the fallow land claim was taken into account in REP 360, by virtue of the calculation (also referred to in the ADC submission), although not explicitly referred to in REP 349/354. It was stated that SPCA's claims broadly fall under the 'Application of findings in REP 360 to these reviews' (Section 2.5.3 of REP 349/354) where essentially it is stated that the findings in REP 360 were correct regardless of SPCA's views on the amount of the subsidy.

- d. The Reviewing Member requested clarification on the ADC's approach to SPCA's argument relating to the ADC using the average subsidy value, which resulted in an "underestimation" of the tomato subsidy amount.

The ADC Representative stated that it was only relevant if SPCA's claim of a specific "coupled" tomato payment was correct, but the ADC had accepted the EC's evidence that the payment amount was based on the land holding, not a product.

- e. The Reviewing Member requested clarification on whether the ADC had regard to SPCA's claim relating to the new coupled payment of €160/hectare in REP 349/354.

The ADC Representative stated that having concluded that SPS payments in REP 360 weren't making any difference to price, the ADC could not see how an additional €160 per hectare (which it considered to be negligible) for certain growers would have any bearing on price. The ADC Representative could not, however, point to anything in SEF



or REP 349/354 that indicated that it had regard to SPCA's submissions relating to this new 'coupled' payment.

- f. The Reviewing Member requested clarification as to whether the ADC took into consideration SPCA's critical comments on the regression analysis used in REP 360.

The ADC Representative stated that the ADC was convinced of the correctness of its analysis in REP 360 and its application to the Reviews, particularly in the light of the fact that the ADC found little, if any, link between the amount of SPS received and the price of tomatoes. The ADC Representative, however, agreed that the critique of the data and statistical analysis is limited in REP 349/354 and that there's nothing in the report that specifically deals with SPCA's criticisms regarding that analysis.

2. Conserve Italia Soc. Coop. Agr. ("Conserve Italia") Grounds of Review

- a. The Reviewing Member sought clarification on the ADC's approach with regard to the first component of Conserve Italia's first ground of review.

The ADC Representative confirmed the content of the email referred to in Confidential Attachment 1 to the ADC's submission to the ADRP, in which Conserve Italia clearly stated with regard to the relevant sales that [REDACTED]. Further the ADC confirmed that this issue was not raised subsequently by Conserve Italia. Since the ADC had no information which would allow it to determine whether the cost to make the particular brand was different to private label or premium brand (CIRIO) products, [REDACTED]

- b. The Reviewing Member sought clarification on the ADC's approach with regard to the second component of Conserve Italia's first ground of review.

The ADC Representative confirmed that the product was clearly a like product and that there was no basis for it to be excluded from the normal value. On the question of an adjustment for the richer content of the brix, the ADC confirmed that at the verification no evidence was provided to show that there was an actual difference in the cost of producing the richer product. This issue was only raised very late in the investigation, after the verification report had been completed. To make the adjustments claimed would have required the ADC to go back and completely re-verify the data, because it meant that the data verified was incorrect, and the ADC simply didn't have time to do a re-



verification of the costs. The only 'evidence' provided were [REDACTED]

[REDACTED] There was therefore no evidence to convince the ADC that the verification was incorrect, and that there was a difference in cost.

- c. The Reviewing Member sought clarification on the ADC's approach relating to Conserve Italia's second ground of review.

The ADC Representative confirmed that Conserve Italia did not produce evidence to demonstrate that there was a difference in cost. The only difference was in respect of the amount in the minimum drained weight printed on the product label, which could not be substantiated by evidence of a difference in raw material input, based on the verification. The ADC referred the Reviewing Member to the relevant work sheets which showed [REDACTED]

- d. The Reviewing Member sought clarification on the ADC's approach with regard to Conserve Italia's third ground of review, and in particular Conserve Italia's contention that the ADC failed to address this claim in REP 349/354.

The ADC Representative stated that it had never been provided with the calculations quantifying the claim that were in Conserve Italia's submissions to the ADRP. It stated that while the market research provided to the ADC demonstrated the value of the CIRIO-brand in the Italian market, there was no similar evidence indicating the alleged lesser value of the CIRIO-brand in the Australian market. The ADC Representative stated that the methodology used to calculate the adjustment was not presented to the ADC in the investigation. The ADC Representative referred to a previous case (Washing Machines) where a claim was granted for difference in brand value, however, in that case the claim had been quantified.

The Reviewing Member referred to the claim of Conserve Italia that it "*timely raised*" the claim [REDACTED], with reference to Confidential Annex IV to its submission and enquired if the ADC had responded to this claim. The ADC was unable to refer to any documentation on the record or in SEF or REP349/354 which indicated that the claim had been considered and the reasons for its rejection.



3. Mutti S.p.A (“Mutti”) Grounds of Review

- a. The Reviewing Member sought clarification from the ADC’s with regard to Mutti’s ground of review.

The ADC Representative stated that a claim by an exporter for the reduction of the AEP was most unusual, as it would result in an increased dumping margin, in the absence of any consequential normal value adjustment. It was pointed out that the ADC can’t just lower the AEP without considering what happens to the dumping margin.

The ADC reiterated what it stated in its submission, that Mutti made claims relating to adjustments to the dumping margin in response to the SEF, but not regarding the AEP. Further, the adjustments were taken into account in the verification report, which Mutti had reviewed, as well as in the dumping margin calculations, which Mutti had reviewed and had not raised any further issues. The ADC Representative confirmed that the dumping margin calculation has already taken into account the various discounts and deferred rebates referred to.

4. Le Specialità Italiane Srl (“LSI”) Grounds of Review

- a. The Reviewing Member sought clarification of the ADC’s change in approach in methodology from REP 351.

The ADC confirmed that in Investigation 351, the best information available for normal value was LSI’s domestic sales of unlabelled cans, despite limitations relating to this data. However, in Investigation 354 the ADC had access to verified information of other exporters’ sales, which was better information. In Investigation 354, the ADC was of the view that sales of unlabelled tins are not readily comparable and it is not easily determinable as to whether they will be entered into home consumption. For all exporters in Investigation 354, the ADC removed sales of unlabelled cans from their domestic sales, because it was not satisfied that they were like goods entered for home consumption.

The Reviewing Member sought clarification on the extent of ‘knowledge’ of whether the cans would be exported. The ADC Representative stated that the burden is essentially on the exporter to satisfy the Commissioner, which is difficult when selling unlabelled tins, as the destination is unclear and will depend on what label is attached by the purchaser. The ADC could not be satisfied that the tins entered the domestic market.



The Reviewing Member requested clarification as to whether the ADC decided to use the other exporters' information because it was not satisfied that the sales were destined for the domestic market, or because the information relating to cost of manufacture of the unlabelled tins was limited in the particular circumstances. The ADC stated that the primary reason was probably because the ADC could not be satisfied that the tins were to be entered into the domestic market but there was also doubt as to whether the costs were being accurately captured, because of the specific circumstances relating to the manufacture of the tins.

There was a discussion as to whether a piece of evidence submitted by LSI in its ADRP submission was "relevant information". The ADC confirmed that the evidence had not been provided to the ADC during the investigation. The Reviewing Member also requested clarification on LSI's reference to the Dumping Manual which stated that if it is not known whether the exporter has made any domestic sales, other sellers' information is not applicable for the purpose of s.269 TAC(1). The ADC Representative stated that it seemed like a very narrow reading of the policy and that the legislation clearly states that the ADC can use other sellers' data.

The Reviewing Member requested clarification on cases that LSI referred to where the authority used constructed normal value where sales were not considered to be true domestic sales. The ADC Representative stated that in order to use cost of manufacture (s.269TAC(2)) there had to be a reason why s.269TAC(1) was not applicable. The ADC took the view that LSI's normal value could be determined under s.269TAC(1), with respect to domestic sales of other exporters.

The ADC Representative stated that since there were no exports to Australia during the review period (as is the case with many accelerated reviews where there is no relevant information available) the AEP was simply fixed at the normal value in REP 351. However, in Investigation 354, there was better information available, being the verified data of the other cooperating exporters.

Conference call ended at 15h18.