



Dr. Ross S. Becroft B.A., LL.B., M.Comm.Law, PhD

Louis H. Gross B. Juris., LL.B. Special Counsel

Level 17
390 St Kilda Road
Melbourne, Victoria, 3004
Australia
Telephone: (61 3) 9866 5666
Facsimile: (61 3) 9866 5644
Our Ref: RB:3202

Your Ref:

10 December 2013

The Director, Operations 1
Anti-Dumping Commission
5th Floor, Customs House
5 Constitution Avenue
CANBERRA ACT 2601

PUBLIC FILE VERSION

Dear Sir/Madam

**Re: Dumping Investigation ADC 217 – Tomato Products, Prepared or Preserved
Exported from Italy**

We act for an importer of diced and peeled canned tomatoes from Italy, Leo's Imports & Distributors Pty Ltd ('Leo's Imports') and its supplier, Lodato Gennaro & C Spa ('Lodato') which exports the Annalisa brand and various private label brands to Australia.

The purpose of this submission is to object to the recent imposition of provisional measures and as well as to object to the prospect of final dumping measures being imposed.

Importer Profile

Leo's Imports is a family owned business in Melbourne which has been importing staple produce from Italy since the late 1970s. It imports and distributes significant quantities of products such as canned tomatoes, seeded beans, pasta sauces and purees throughout Australia. It supplies large supermarket chains as well as smaller food outlets. Leo's Imports has had a strong relationship with Lodato since the establishment of its business in the late 1970s. Lodato is also a family business and has grown together with Leo's Imports offering premium quality produce. They have been operating in the industry since 1950s and they achieved a very big brand recognition worldwide. Their tomato range has always been highly awarded and praised by many consumers and chefs also due to the high bric content.

*Our office will be closed from 1pm on Monday 23 December 2013
and reopening on Tuesday 7 January 2014*

Visit our Website at www.grossbecroft.com.au

Treatment as a Non-Cooperating Exporter

Leo's Imports and Lodato were very surprised that Lodato is to be treated as a non-cooperating exporter and as of 1 November 2013 provisional measures of 9.11 percent will be imposed on future imports.

Lodato believes it has made reasonable efforts to cooperate with the Commission. On 29 July 2013, Lodato explained to the Commission that it could not complete the Exporter Questionnaire within the prescribed timeframe due to harvesting and processing operations and the European vacation period in July and August. The Commission did grant an initial extension. Subsequently, on 1 October an email was sent by Mr John Bracic to Lodato in which he requested confirmation that Lodato would be available for a site visit in the week commencing 14 October 2013.

On 2 October 2013, Mr Bracic wrote to Lodato and advised that the Commission considered Lodato to be a non-cooperating exporter. Lodato replied on 2 October 2013 that it was available for a site visit, but the Commission did not change its position. Lodato had also by this time completed Part B of the Exporter Questionnaire, for which it had an extension until 4 October 2013.

Our clients are of the view that it was reasonable for the Commission to have taken further positive steps to treat Lodato as a cooperating exporter, particular in circumstances where the time period for publishing the Statement of Essential Facts was subsequently extended.

[DELETED TEXT – CONSEQUENCES OF CURRENT MEASURES]

As the subject products are very price sensitive, our clients would like to ensure proper equal treatment between industry participants, and they are firmly of the view that this has not occurred to date.

Italian Imports are not causing Material Injury to SPCA

The Productivity Commission in its Accelerated Report (No. 63 18 September 2013) regarding the Safeguards Inquiry into the Import of Processed Tomato Products provides a rigorous and incisive analysis of the market in Australia. Finding 2.6 (on page 41) provides as follows:

"The available evidence at this preliminary point suggests that the injury to the domestic industry producing tomato products in packs not exceeding 1.14 litres was caused by a combination of factors including:

- *ongoing competition from imports*
- *retailer private label strategies*
- *extreme weather events*
- *decreased exports*

The recent increase in imports relative to domestic production appears to be more of a symptom of the injury than the cause."

This finding, we would suggest, accurately summarises the situation. Taking each of these points, we note:

Ongoing Competition from Imports – The Productivity Commission confirms that there has been long-term competition from Italian imports that has eroded SPCA's market position. Further, the approximately 40 percent appreciation of the Australian Dollar in the 5 years to 30 June 2013 has accelerated the increase in market share of Italian imports. Critically, the Productivity Commission figures (page 32 Fig 2.8) demonstrate that the FOB import unit value in Euros for

these products has been extremely stable and has remained relatively unchanged since December 2008.

Retailer Private Label Strategies – In recent years both Coles and Woolworths have developed a strategy of promoting their own private labels. This involves seeking the cheapest goods from reliable sources to guarantee supply. Further the major supermarkets seek arrangements with multiple suppliers to promote both price competition and ensure continuity of supply. This strategy has been a major factor in the increase of Italian imports. This factor also ties in heavily with the next factor concerning weather events.

Extreme Weather Events – In 2011 flooding severely reduced Australian tomato production. In the circumstances, SPCA was unable to supply the proprietary and private label needs of the major supermarkets. Instead, SPCA understandably focused on maintaining supply of its proprietary brands at the expense of the private label tomatoes. This led to an increase in imports between mid-June 2011 to the end of 2012 (see fig 2.12 page 38 PC Report).

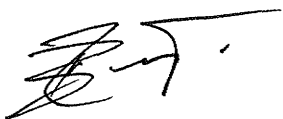
Decreased Exports – Australian exports of processed tomato products has decreased by 45 percent between 2008-9 and 2010-11. Whilst this may have been largely due to the floods and currency appreciation, the lack of export markets means that SPCA has to rely on boosting domestic sales in order to remain financially viable in this product category.

In comparing PAD Report No. 217 to the Productivity Commission Report (even noting the different purposes), we point out that there is virtually no discussion of the causes of material injury that SPCA may be suffering (refer section 5.6). The Commission principally refers to price effects and volume effect of imports from Italy. The fact that SPCA may not be able to readily increase prices and the fact that there is a close relationship between price and volume are hallmarks of robust competition.

The analysis is superficial at best, and is particularly concerning when the two largest Italian suppliers, La Doria Spa and Conserve Italia, have been found to have negligible dumping margins. **[DELETED TEXT – STATEMENT ABOUT PRICE COMPARISON]**. Accordingly, in our clients' view, the imposition of provisional or final measures is not warranted in this case.

We would be pleased to discuss these matters further with the Commission.

Yours faithfully
GROSS & BECROFT



Dr. Ross Becroft
Principal