



Leo's Imports and Distributors Pty. Ltd.

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Director of Operations 1

20.2.2014

Anti – Dumping Commission

Customs House

5 Constitution Avenue

Canberra Act 2601

Operations1@adcommission.gov.au

I Andrew Madafferi , Director of Leos' imports and Distributors, Importer of Processed Tomato products exclusively from Lodato Gennaro & C./ Annalisa, wish to make the following submission and comments:.

We note that Leo's imports were declared in SEF No 217, (page 25)

“Leo's Imports declined to provide requested information and did not cooperate with the investigation. “ Verification was undertaken with the remaining importers which accounted for approximately 60% to 70% of prepared or preserved tomato volume exported from Italy during the investigation period “

That statement that we did not cooperate is utterly false and misleading, which has now dramatically impacted on our business, at no time have we not cooperated with Mr Edward Macgregor of your office, the below correspondence evidences our total commitment and cooperation between ourselves and Mr Macgregor of the Commission.

- 25/7/13 – Leos Imports Leo's is invited to participate in the investigation:
- Email 25/7/13 to Mr Macgregor with attachment of 8 separate files for each shipment as requested for Melbourne, Adelaide and Perth shipments. Copies of documents included : Lodato Gennaro / Annalisa Commercial invoices, Customs Entries, copies of Customs Brokers Australian costs : copies of Ocean Bills of Lading per shipment:, Bill of lading, and one copy of Leos Sales invoice [REDACTED]

All above documents emailed were taken from the requested “highlighted list “received from the Anti – Dumping Commission:

- Email 1/8/13 – Attached please find the “Import Questionnaire” and Part A- suppliers sheet duly filled, the documents covering the eight (8) shipments you highlighted in your attachment will be ready for your observation in our premises during our meeting on the 20th August.

- 1/8/13 from Macgregor, Back to you soon to confirm officers of the ADC will be present at the meeting of the 20/8/13.
- Email 20/8/13 – in response to your todays email please find enclosed Part B.2 of the importer questionnaire filled with the 8 shipments which are under investigation.
- 21/8/13 from Macgregor – Following our conversation, I spoke to the case director, about the issues you have raised regarding your ability to provide comprehensive responses with respect to purchases and sales of the GUC during the investigation period.

We appreciate your position regarding the resource required to prepare this information, and appreciate your willingness to cooperate with the investigation.

However for the sake of accuracy and in complete and fairness to all other parties, we will not be able to deem the response to the importer questionnaire sufficiently complete in the absence of complete listings.

For this reason, whilst I appreciate your offer for the Commission to visit your company for the purpose of verifying source documents, a verification visit will not be required:

- 22/8/2013 – from Macgregor, I appreciate your offer for the provision of material and would be happy to receive them.
- 22/8/13 FROM Leos to Macgregor, Enclosed please find the following documents
 - Our sample invoices'
 - Our Price list
 - Our competitor's catalogue which indicates that there are a few brands which are actually selling canned tomatoes at a much lower price than us.
 - Products sales trend [REDACTED].

There is nothing in the above statement from the Commission or Mr McGregor that Leo's Imports has been determined to be "Un – Cooperative" Leo's had to learn that fact when it was publically published in in SEF No 217.

Leos Imports did at all times endeavour to cooperated as the above evidences, that we did not have the resources (we only employ in the office [REDACTED]) staff members and [REDACTED] staff member is involved in the shipping area, due to this lack of resource not our endeavours to cooperate, has been held against us for not having the capacity of other importers and thus making us less equal to the other importers who have the manpower, in-house accounts and other professional capable of responding to the Commission in a timely manner.

Allow me to compare our compare Mr Macgregor statement to us " However for the sake of accuracy and in complete and fairness to all other parties " with the Treatment of the Commission towards [REDACTED], who by the Commission public Verification report [REDACTED] in part states:

PAGE 14 [REDACTED] Verification Report: - 10 shipments

5.5 Verification of imports

[REDACTED] did not complete the sales route spread sheet prior to the visit but provided it Following the visit at our request.

████ provided electronic copies of documents that it said pertained to each of the ten selected shipments. The initial data provided contained **only seven** of the selected shipments.

████ provided the documents for the remaining shipments following the visit.

We attempted to verify the documents to the sales route spread sheet prepared by █████ But found it difficult to match the invoiced quantities and values to the Customs entries. During the checking of the documents it became apparent that the goods were generally shipped from Italy to a █████

████ had not volunteered this information at the visit so we enquired about the process of importation. █████ confirmed that the goods are generally sent █████, unpacked, sorted into deliveries by port of discharge in Australia and re-packed with other █████ retail goods that are destined for the same location

In response to the above circumstance █████ provided the following statement:

"This information on the route taken to ship tomatoes from Italy to Australia was not deemed to be relevant to the inquiry, as it was only utilised for some shipments during the 12 months of the investigation period plus any additional shipping costs utilising this route were not passed on to the final landed cost of the products."

For the selected shipments the invoice from the supplier/manufacturer shows the total quantity of goods sold for all Australian locations and occasionally provided a table showing the number of cartons destined for each port.

We were able to verify the quantity and value shipped to an individual port that formed one of the Customs entries included in the selected shipments; however we are unable to verify that the total quantity of goods invoices was ultimately shipped to Australia.

For the above reason it was similarly difficult to calculate the importation costs associated with the selected shipments because the container numbers on the supplier invoices did not match the container numbers on the bills of lading and freight invoices to Australia.

In addition the tomatoes were generally shipped with a large volume of other goods destined for █████ retail stores so a high degree of apportionment is required to establish importation costs pertaining only to tomatoes.

████ **initially did not supply the freight costs** associated with shipping the goods from █████

Due to the complexities in establishing importation costs pertaining to tomatoes we have estimated these costs based on invoices from █████ logistics providers that contained details of charges per container. We estimated that a typical 20-foot container of tomatoes would contain approximately 17,760kg of tomatoes and calculated a total importation cost per kilogram.

This can be considered a rough estimate only as we observed that there are significantly different ocean freight costs depending on the port of discharge in Australia and due to the fact some containers were sent directly from Italy to Australia while others were █████

5.6 Selling, general and administrative (SG&A) costs

████ was unable to provide an income statement or any information to enable us to

reliably establish the selling, general and administrative costs associated with the sale of tomatoes. It provided the income statement and other reports relating to its parent company – [REDACTED] – but these did not provide a sufficient level of detail relating to [REDACTED] operations as distinct from other [REDACTED]

5.7 Profitability

Due to the difficulties discussed above in establishing importation costs and the lack of information about SG&A costs we are unable to establish with any certainty the profitability of [REDACTED] sales of tomatoes.

[REDACTED] at the initial stage did not provide Prior to the Verification Meeting or subsequent to the meeting:

- [REDACTED] did not complete the sales route spread sheet prior to the visit:
- [REDACTED] did not provided data for 10 shipments, but only seven of the selected shipments.
- The Commission was not aware prior to the visit of [REDACTED]
- We were able to verify the quantity and value shipped to an individual port that **formed one of the Customs entries** included in the selected shipments.
- [REDACTED] initially did not supply the freight costs.
- [REDACTED] was unable to provide an income statement.
- Due to the difficulties discussed above in establishing importation costs and the lack of information about SG&A costs we are unable to establish with any certainty the profitability of [REDACTED] sales of tomatoes

Why was not Leo's imports not given the same courtesy as amply given to [REDACTED] none of the above [REDACTED] deficiencies would have been found at a Verification visit at Leos Imports: After all the verification is over eight (8) shipments, with most of the data already emailed to the commission and in the Commission hands.

Leo's Imports has been disfranchised by the Commission for no apparent reasons other than not having the financial might or political connections of [REDACTED]

The powers of Anti – Dumping Commission allows it to access all import declarations from the Australian Customs Service, which is where the Commission obtained all the primary source of import data of Leos Imports.

This same primary source information was also obtained by the Commission for all the other exporters and Importers – the primary data from Customs was in the Commission hands.

The Commission has in its hand also specifically all the export data – for Leos Imports as a Supplier of GUC goods (Annalisa Brand) to Woolworths, it has also all the data of imports supplied by [REDACTED] / [REDACTED] directly to Leos Imports and Woolworths.

Leos Imports supplied Woolworths on Ocean Primary Freight -Indent (OPF) from goods produced by Lodato Gennaro/Annalisa,

Lodato Gennaro / Annalisa supplied [REDACTED]

The primary data from Customs is the prime evidence of all Imports, The Commission verification visit to each importer can only verify the accuracy of the Customs declaration, which of course is goods, suppliers selling price, Freight and associated costs, Selling price in Australian, Bank records evidencing payments to Italian suppliers and of course profit made.

That Data could have and should have been verified at the meeting at Leos of the 20th August 2013 as the primary source/ declaration was and had been in the hands of the Commission –it was the Commission who cancelled the meeting, it was not at our choice or request as such we were disfranchised. Folio 452

Irrespective that the Commission did not attend a Verification visit at Leos Imports, it is our firm view that a Verification of Leos Imports as an Importer and as a seller (OPF) of peeled tomatoes during the GUC period occurred indirectly with the Woolworths Verification visit.

As previously stated Leo's imports emailed on the 27/7/13 to Mr Macgregor, Lodato Gennaro / Annalisa invoices, Bill of lading, Customs Entries and other associated costs: All those documents are readily identifiable with the primary source material.

Lodato Gennaro / Annalisa [REDACTED]:

The Commission carried out a Woolworth Verification:

Page 15 of the Woolworths Verification _ (shipments – Unknown)

At the visit Woolworths provided copies of the commercial documents for the various Consignments. See Confidential Attachment IMP 1 Included with the commercial Documents were;

- Customs entry
- Evidence of payment
- Commercial invoice
- Bill of lading
- Packing list; and a quarantine statement

We compared the information in these documents to the Customs and Border Protection Commercial database and found the information in the **database agreed with the source Documents**. We also noted the goods net weight has been used in the customs Declaration.

We reviewed the documents provided in respect of the selected shipments. We note that Woolworths purchased the goods from the importers listed below on an indent basis. We reviewed the commercial documents and noted the goods were sold to Woolworths by the above on an FOB basis and Woolworths entered the goods at the time of arrival. The bill of lading had the shipper listed as either

the consignee being Woolworths. Woolworths paid the relevant importers for the goods. For these entries we consider Woolworths to be the beneficial owner of the goods at the time of importation, and therefore the importer.

For importations from the other suppliers listed below we examined the commercial documents and found that Woolworths was invoiced from the supplier, paid the invoice amount directly to the supplier, was noted on the bill of lading as the consignee and entered the goods on their arrival into Australia. We also consider Woolworths to be the beneficial owner of the goods at the time of their arrival

In stating the above, the Commission did attend Verification Visit to both Woolworths and Coles which ultimately The commission would have not only seen Leos direct sales to Both [REDACTED]

Leos sells on a [REDACTED] (Italy) basis directly to Woolworths and invoices [REDACTED] basis. [REDACTED]

In the Case of Leo's Imports sales to Woolworths on OPF basis, the Bill of lading as the Commission would have sighted – states the shipper as [REDACTED] and the importer as Woolworths – the commercial invoice being issued in [REDACTED], The actual producer was Lodato Gennaro/ Annalisa.

The Commission would have also seen Commercial invoices [REDACTED]

We are advised by Woolworths that the Commission sighted these invoices and verified them, as such verified both Leo's [REDACTED] of [REDACTED]

This verification would have also included not only the Selling Price [REDACTED]

[REDACTED] Leo's Imports [REDACTED] sales of Annalisa Brand to Woolworths, with [REDACTED].

Further Leo's sell directly to Coles "Annalisa" brand tomatoes from their Victorian And NSW Premises, presumably the Commission also sighted these invoices which also evidence that neither Leos nor Lodato Gennaro / Annalisa products are dumped.

We note that [REDACTED] who import from [REDACTED] [REDACTED] who was amongst the nominated importers who were requested information with the view To undertake a verification visit, was not verified.

Again a rule for one and not the other.

I note that all the other Importers, Conga Foods, Metcash trading, Orange and Green were all visited, were all asked to provide evidence on eight (8) shipments, the verification report for each including Woolworths were found to be correct and above all profitable ventures.

The same could have been done at Leos Imports:

Let us get to the Heart of the Matter " Annalisa " brand GUC, Annalisa Brand Tomato products, whether peeled, Crushed or diced are [REDACTED] " in that product Range wether in Woolworths, Coles or the local Delicatessen, that is because of its superior quality and taste.

Annalisa as a brand has never been sold cheaply, the cheapest it can be found in Woolworths is [REDACTED] per tin, generally it price range is [REDACTED]

We cannot understand how we can be penalized by a 26.35% dumping security margin [REDACTED]

The Commission has pronounced Lodato Gennaro / Annalisa – Uncooperative
The fact of the matter is that Lodato Gennaro / Annalisa has also a small office staff,
There is a major language barrier and the understanding on what was being asked from them, which was further exacerbated that The Dumping Investigation conveniently or incoventniently commenced at the start of the Italian Annual Summer Holidays

Starting at the end of July and ending on the 22nd July 2013, immediately thereafter
Began the new tomato season production.

A very inconvenient time.

The Commission on Page 36, SEF 217 - states for La Doria

The Commission has established normal values pursuant to s.269TAC (2) (c) of the Act by using La Doria's cost of production of the exported goods plus appropriate amounts for selling, general and administration expenses¹² as if the goods were sold on the domestic market and an amount for profit based on all sales of like goods sold in the ordinary course of trade.

To ensure the comparability of normal values to export prices, the Commission considered adjustments were required pursuant to s.269TAC (9) for:

- domestic inland freight (negative adjustment);
- domestic credit (negative adjustment);
- domestic commissions (negative adjustment); and
- handling and loading charges (negative adjustment for domestic charges and positive adjustment for export charges).

The dumping margin was established in accordance with s.269TACB (2) (a) of the Act, by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period.

The Commission considers Lodato to be an uncooperative exporter and established export prices pursuant to s.269TAB(3) of the Act having regard to all relevant information by reference to export prices determined with verified information of cooperating exporters over the investigation period.

The Commission used the lowest export price from exporters found to have a dumping margin greater than 2%. Normal values were established pursuant to s.269TAC (6) of the Act having regard to all relevant information.

The Commission used the highest normal value from exporters found to have a dumping margin greater than 2%.

The dumping margin for Lodato is 26.35%.

There is a Question as to what is deemed to be "highest Normal "Value It that value, the value of either Organic Peeled Tomatoes or peeled Hillock Tomatoes – as both types are classified in 2002.10.00, both are and can be described as "Peeled Tomatoes ".

Organic peeled tomatoes are sold by all even in 2012 – 2013 in excess of ■ Euro per pack of 12, whilst Hillock tomatoes sell for over ■ Euros per pack of 12 / 400g.

The above cannot be discerned from the primary source – The Customs entry Nor would they be discerned during a Verification Visit, After all the determination for goods subject to the application states:

3.3 The goods

The goods the subject of the application (the goods) are: Tomatoes, whether peeled or unpeeled, prepared or preserved otherwise than by vinegar or acetic acid, either whole or in pieces (including diced, chopped or crushed) with or without other ingredients (including vegetables, herbs or spices) in packs not exceeding 1.14 litres in volume.

There is nothing in the description to define the two products and neither can be said to be valued added goods.

As such were "highest Normal values" values used – for products which are outside the parameters of normal cans of "Tinned Tomatoes" to reach the excessive and abnormal dumping value of 26.35% between lowest and Highest selling prices it would appear that it is the cases considering La Doria – has been determined that they are not Dumping their products in Australia.

But its selling price is definitely not 26.35% higher than the average selling price in Italy for canned tomatoes, in fact [REDACTED], Annalisa, [REDACTED]) The difference is what is almost zero.

So what evidence can the commission provide of a 26.35% difference Between La Doria and Lodato Gennaro / Annalisa.

It beggars belief [REDACTED]

One would presume that since the Commission did verify as they did not only Leos import [REDACTED] Woolworths, but also [REDACTED] Invoices to Woolworths, arm's length Commercial transaction, this is an indirect verification of Both [REDACTED] and Leos Imports.

As the Commission as Physically verified in Italy Both La Doria and Feger with no dumping margins for both, The Commission also Verified La Doria sales to both Woolworths and [REDACTED] The Commission by all appearance had difficulty in verifying anything at [REDACTED]

But taking into consideration that all were verified, How does the Commission adjudicate Dumping margins of Zero for 44% of Imports, an average of...03% for another 20% of imports, 5.06% for what another 20% of the market and then determine 26.35% for the balance of 16%.

My [REDACTED] investigation period 1st July 2012 to 30th June 2013, La Doria (nil % dumping), Conserve Italia (4.54 % dumping), Lodato Gennaro /Annalisa (26.35% dumping).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In July 2012, Lodato Gennaro on an Ex works Basis and payment on sight sold to Leo's a pack of 12 tins of peeled tomatoes [REDACTED]

How can one consider a dumping margin of 26.35% which would take the Leos Ex works price to?

[REDACTED]

Again it would appear that two products with less than 2% of the total market that is Organic peeled tomatoes and Hillock tomatoes values have been used to reach that hypothetical 26.35%.

The Commission has in its determination achieved nothing in trying to assist SPC, the major player Coles and Woolworths both jointly totally control the Australian market, both are in large part importers of the two zero rated dumping suppliers. The other two suppliers with 3.25 % and 4.10% dumping margins – only adds to \$ 0.01 cent per tin, 64% of tomato imports in actual fact have no dumping to speak of at all.

In my case with my [REDACTED] Annalisa, [REDACTED], which will add another 10 – 15% to the total imports which now will total approx. 74-79% of total tomato imports.

Coles and Woolworths will still maintain SPC products in unfavourable locations on their shelves, whilst still keep the prime shelf locations for the 'un-dumped' imports. As such SPC will still suffer more.

The exchange rate which the Commission has easily cast aside as a reason for the reduced price of imports and not dumping – is totally contrary to Ford, Holden and Toyota who all in part blame the high dollar in part for their closure, But the commission of course does not accept this.

The Productivity commission inquiry report on Processed Tomatoes – states;

SPC Ardmona submitted that the commission implied in its accelerated report that the supermarket strategies did not cause injury because the price of imports did not vary when expressed in Euros:

This was not the Commission finding, rather the FOB unit value of imports expressed in Australian Dollars decreased over the period of 2009-2013, almost entirely due to the appreciation of the Australian Dollar.

As such we hereby request that the Dumping enquiry on Imported tomatoes be terminated
Or alternatively revise the dumping margins for Lodato Gennaro / Annalisa products
To Zero as per La Doria and Feger.

Yours sincerely

Andrew Madafferi



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A handwritten signature in blue ink, appearing to read 'Andrew Madafferi', is written over the company's contact information. The signature is highly stylized and somewhat illegible.