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Review of tomatoes prepared or preserved exported from Italy

Dear Ms Fitzhenry,

I represent Leo's Imports & Distributors Pty Ltd (Leo's Imports) in the current review of prepared or preserved tomatoes exported from Italy.

Thank you for your letter of 12 August 2014 inviting interested parties to make representations to you on whether further submissions should be allowed in response to the Anti-Dumping Commission's (the Commission) reinvestigation report.

To date the submissions made by Leo's Imports to the review have been solely focused on the determination of export price, normal value and dumping margins for non-cooperating exporters, and in particular, Lodato Gennaro & C. SpA. Leo's Imports has not made any submissions on the issue of material injury as it felt that little could be added to the points already raised by the numerous applicants.

Nevertheless, Leo's Imports would very much appreciate the opportunity to comment on the reinvestigation report. This is especially so where the Commissioner makes new findings of fact and/or attributes greater weight to relevant information that was not adequately addressed or reflected in the Statement of Essential Facts or the Final Report.

In your letter you ask that interested parties address the relevant provisions of the Act that deal with the Review Panel's ability to have regard to further submission.

Section 269ZZK(4) of the Act provides explicit parameters on the nature of information that the Panel can have regard to in making their recommendations.

That is, the Review Panel:

- (a) must not have regard to any information other than the relevant information;
and
- (b) must only have regard to the relevant information and any conclusions based on the relevant information that contained in the application for the review or

in any submissions received under section 269ZZJ within the period of 30 days referred to in that section.

However, that provision is subject to ss.269ZZK (4A) and (5) of the Act. The relevant provision in this circumstance is subsection (4A) which deals with information that the Review Panel must have regard to in making its recommendations, following its decision to require the Commissioner to reinvestigate certain findings in accordance with ss.269ZZL. Subsection 269ZZK(4A) provides that the Review Panel 'must have regard to the report the Commission gives the Panel under subsection 269ZZL(2).'

So whilst ss.269ZZK(4) outlines clearly restrictions on the type of information that the Review Panel can have regard to in a review where no reinvestigation was required, ss.269ZZK(4A) outlines clearly instructions on the type of information that the Review Panel must have regard to where a reinvestigation was required.

Therefore, in our view it is appropriate to read ss.269ZZK(4A) as providing the Review Panel with the discretion to have regard to additional submissions following the Commissioner's reinvestigation report, subject to ss.269ZZK(5).

Yours Sincerely

John Bracic

15 August 2014