

APPLICATION FOR EXEMPTION FROM DUMPING DUTIES

LEO'S IMPORT AND DISTRIBUTORS

1. Description of the goods to which the notice relates.

The Anti-Dumping Commission's (the Commission) Report No. 217 describes the goods as follows:

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.

The goods excluded from this definition are pastes, purees, sauces, pasta sauces, juices and sundried tomatoes.

2. Grounds for review

Section 8(7)(a) of the Customs Tariff (Anti-Dumping) Act 1975 provides that the Minister may exempt goods from interim dumping duty and dumping duty if satisfied:

that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.

3. Canned cherry tomatoes

Leo's Imports understands that there is no Australian producer of canned cherry tomatoes. This is confirmed by publicly available information from the sole local producer of canned tomatoes, SPC Ardmona Operations Ltd's (SPCA). The product information below is found on SPCA's website and provides an overview of the types and sizes of canned tomatoes sold.

None of the canned tomato products identified on SPCA's website¹ and listed in the table below refer to cherry tomatoes. Therefore it is reasonable to conclude that there are no directly competitive goods produced in Australia to canned cherry tomatoes exported from Italy.

¹ <http://spcardmona.com.au/healthy-brands/ardmona/Products> and <http://spcardmona.com.au/healthy-brands/spc/products>

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‘Ardmona’ Standard Tomatoes	
	Tomatoes Crushed Blend
	Tomatoes Chopped (No Added Salt)
	Tomatoes Whole Peeled (No Added Salt)
‘Ardmona Duo’	
	Finely Chopped Tomato
	Tomato Chopped Garlic & Basil
	Tomato Chopped Roast Capsicum
	Tomato Chopped Herbs
	Tomato Chopped Onion & Garlic
	Tomato Chopped Bolognese
‘SPC’	
	Tomatoes Diced
	Tomatoes Crushed
	Tomatoes Whole Peeled
	Tomatoes Diced Onion/Garlic/Basil
	Tomatoes Crushed Basil/Oregano
	Tomatoes Crushed Mix

In assessing whether the products produced and sold by SPCA on the Australian market are ‘like’ to the canned cherry tomatoes imported from Italy, the like goods framework adopted by the Commission has been used.

a) Physical likeness

The first obvious physical difference between the cherry tomato and the roma-type or round tomatoes used in SPCA’s products is the size. Cherry tomatoes are significantly smaller than the roma or round tomatoes and this directly impacts the way in which they are commonly used by consumers as outlined below.

In addition to the size differences, cherry tomatoes are also much sweeter than roma or round tomatoes due to their higher sugar content levels.

b) Commercial likeness

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In examining the commercial likeness between canned cherry tomatoes and locally produced canned tomatoes, Leo’s Imports has addressed the questions posed in the Commission’s Dumping and Subsidy Manual.

1. Are the goods directly competitive in the market? e.g. do the goods compete in the same market sector? Within a market sector, are the goods similarly positioned?

No. Whilst all canned tomato products a part of the retail canned vegetables sector, canned cherry tomatoes and canned tomatoes produced by SPC are not positioned by the retailers to compete with one another. This is confirmed the Commission’s verification report of SPCA during the original investigation which states:

SPCA indicated that the market segment is to be considered by either product type, whole, diced, crushed and value added, and or by the label being, private, or proprietary.

Fresh cherry tomatoes are more directly competitive to the imported canned tomatoes due to their substitutability.

2. To what extent are participants in the supply chain willing to switch between sources of the goods and like goods? e.g. willingness of participants to switch between sources may suggest commercial interchangeability.

Given that there is not locally produced canned cherry tomatoes, this is no switching to or from canned cherry tomatoes products. In terms of switching between imported canned cherry tomatoes and SPCA’s canned tomatoes, this is non-existent due to the mainstream nature of the products sold by SPCA and the niche premium nature of canned cherry tomatoes.

3. How does price competition influence consumption? e.g. close price competition may indicate product differentiation is not recognised by the market.

There is no price competition between the imported canned cherry tomatoes and SPCA’s canned tomatoes. A comparison of retail shelf prices on Woolworths’ website shows that canned cherry tomatoes are approximately 53% and 22% higher priced when compared to SPCA’s whole tomato products and valued-added tomato products respectively.

	Retail shelf price \$/kg	% difference
Annalisa Cherry Tomatoes	\$5.35	
Ardmona Tomatoes whole peeled	\$3.50	53%
Ardmona Duo Tomatoes & Paste with Chopped Herbs	\$4.39	22%

4. Are the distribution channels the same?

Distribution channels are similar although a greater proportion of canned cherry tomatoes would be entering the Australian market through smaller retail stores.

c) Functional likeness

Canned cherry tomatoes and canned tomatoes sold by SPCA differ in their end-use application. Canned cherry tomatoes are more commonly used as direct ingredients in salads and other meals, whereas the canned tomato products sold by SPCA are predominantly purchased for making sauces.

For this reason, fresh cherry tomatoes are more functionally alike to the imported canned cherry tomatoes than the canned tomato products sold by SPCA.

4. Canned organic tomatoes

Once again, Leo's Imports understands that there is no Australian producer of canned organic tomatoes. This is again confirmed by SPCA's website. Therefore it is reasonable to conclude that there are no directly competitive goods produced in Australia to canned organic tomatoes exported from Italy.

In assessing whether the goods produced and sold by SPCA on the Australian market are 'like' to the canned organic tomatoes imported from Italy, the like goods framework adopted by the Commission has been used.

a) Physical likeness

To describe the physical differences between the imported canned organic tomatoes and locally produced canned tomatoes, the Woolworths Limited submission² to the original investigation provides a meaningful overview:

Organic foods are produced without the use of artificial fertilisers or synthetic chemicals (including pesticides, herbicides and insecticides) and have not been subject to genetic modification. At Woolworths, foods marketed to consumers as organic must be certified as such by an appropriate certification authority accredited by the Australian Government's Department of Agriculture.

b) Commercial likeness

Once again, the Woolworths submission provides a useful insight into the commercial likeness of the imported canned organic tomatoes and the locally produced goods:

Australians buy organic foods for a range of health and environmental attributes and these attributes can be perceived as highly valuable by some consumers.

Woolworths also adds that:

Woolworths does not believe that the importation of prepared or preserved organic tomatoes is having an adverse effect on Australian producers of prepared or preserved non-organic tomatoes as these are different products with

² <http://www.adcommission.gov.au/cases/documents/070-Submission-Importer-Woolworths.pdf>

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different characteristics. The two categories of tomatoes are quite distinctly differentiated in the minds of consumers. This is evidenced by the fact that canned organic tomatoes sell at a significant premium to canned non-organic tomatoes and yet they are preferred by certain consumers for their organic characteristics.

Further evidence of the price premium paid by consumers for canned organic tomatoes is shown in the table below which compares retail prices for imported canned organic tomatoes with SPCA’s standard canned diced tomatoes.

	Retail shelf price (\$/kg)	Difference (%)
Macro Organic Diced Tomatoes	\$4.55	30%
Val Verde Organic Diced Tomatoes	\$5.08	45%
Adrmona Chopped Tomatoes	\$3.50	

c) Functional likeness

Canned organic tomatoes and canned tomatoes sold by SPCA do not differ greatly in their end-use application. That is, they are both predominantly used by consumers as ingredients in the making of pasta sauces and sauces generally.

However, in terms of their essential characteristics, Leo’s Imports considers that the imported products are defined by their ‘health and environmental attributes’ and the clear distinction in the minds of the consumer.

5. Canned San Marzano tomatoes

Leo’s Imports understands that there is no Australian producer of canned San Marzano tomatoes. This is again confirmed by SPCA’s website. For the reasons outlined below, there are no directly competitive goods produced in Australia to canned San Marzano tomatoes exported from Italy.

In assessing whether the goods produced and sold by SPCA on the Australian market are ‘like’ to the canned San Marzano tomatoes imported from Italy, the like goods framework adopted by the Commission has been used.

a) Physical likeness

Canned San Marzano tomatoes differ from all other canned tomato products sold in the Australian market in that they are a particular tomato variety with a stronger and sweeter taste to the normal Roma tomato. Accordingly, the goods are protected by Italian law and by the EU’s Protected Designation of Origin classification.

Further, a notification body (Consortium San Marzano) and Product Specification Document exists that defines the geographic area of production of the San Marzano

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tomato, the area of transformation and the required chemical and physical characteristics.

b) Commercial likeness

1. Are the goods directly competitive in the market? e.g. do the goods compete in the same market sector? Within a market sector, are the goods similarly positioned?

No. Canned San Marzano tomatoes are not sold into the large retail chains and therefore do not compete with SPCA's locally produced goods. They are more typically distributed through delis, smaller retail corner stores stocking premium or boutique foods, and wholesalers catering to discerning customers such as the premium restaurant and/or gourmet caterers.

2. To what extent are participants in the supply chain willing to switch between sources of the goods and like goods? e.g. willingness of participants to switch between sources may suggest commercial interchangeability.

There is no switching of products between the imported goods and the locally produced products. As explained above, the canned San Marzano tomatoes are a premium product sought after by very particular individual consumers from their local deli or high-end restaurants/catering businesses requiring foods sourced from particular regions.

3. How does price competition influence consumption? e.g. close price competition may indicate product differentiation is not recognised by the market.

There is no price competition between the imported canned San Marzano tomatoes and SPCA's canned tomatoes. Given their DOP classification and premium quality attributes, the imported products are sold into the market at a significant premium to the locally produced goods when compared on a per kilo basis.

4. Are the distribution channels the same?

As explained above, the imported canned San Marzano tomatoes are almost exclusively sold through the smaller retail outlets/delis and wholesalers selling to the premium food service sector. As a result, the imported goods are not sold through the same distribution channels as the locally manufactured goods.

c) Functional likeness

Canned San Marzano tomatoes and canned tomatoes sold by SPCA do not differ greatly in their end-use application. That is, they are both predominantly used by consumers as ingredients in the making of sauces.

However, for the reasons outlined above, the ultimately user, whether it be an individual or restaurant, purchases the goods having regard to their essential characteristics, being the specific variety of tomato and the quality attributes associated with it.

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