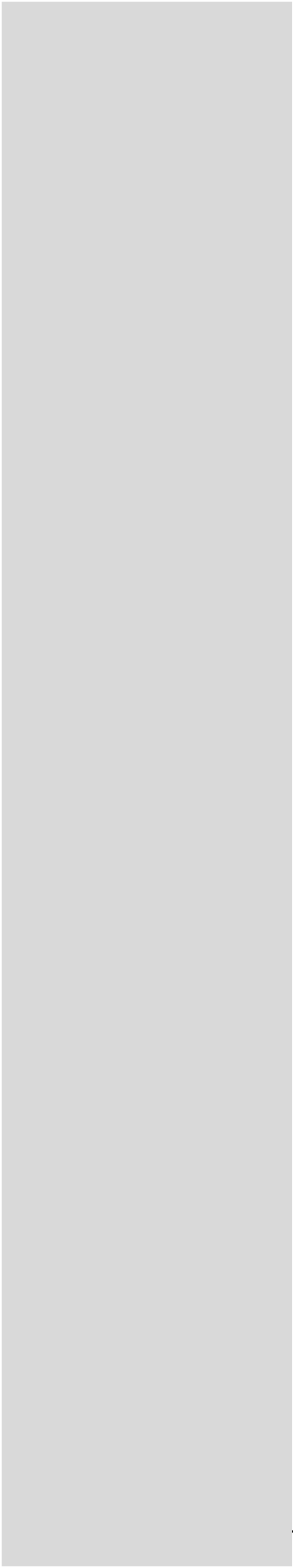




**Australian Government**  
**Department of Industry,  
Innovation and Science**

**Anti-Dumping  
Commission**

Application for a  
review of  
anti-dumping measures



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## APPLICATION UNDER SECTION 269ZA OF THE *CUSTOMS ACT 1901* FOR A REVIEW OF ANTI-DUMPING MEASURES

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In accordance with section 269ZA of the *Customs Act 1901*(the Act), I request that the Anti-Dumping Commissioner initiate a review of anti-dumping measures in respect of the goods the subject of this application to:

1.  **revise the level of the measures** because one or more of the variable factors relevant to the taking of measures have changed (a variable factors review)

In this case the factors that I consider have changed are:

- normal value  
 export price  
 non injurious price  
 subsidy

The variable factors review is in relation to:

- a particular exporter (*if so provide name and country details*)  
 exporters generally

**or**

2.  **revoke the measures** because the anti-dumping measures are no longer warranted (a revocation review)

In this case the measure I consider should be revoked is:

- the dumping duty notice  
 the countervailing duty notice  
 the undertaking

The revocation review is in relation to:

- a particular exporter (*if so provide name and country details*)  
 exporters generally

### NOTE

Where seeking variable factors review as well as a revocation review, indicate this in *both* 1 and 2 above.

## DECLARATION

I believe that the information contained in this application:

- provides reasonable grounds for review of the anti-dumping measure; and
- is complete and correct to the best of my knowledge and belief.

Signature:



Name: Reg Weine

Position: Managing Director

Company: SPC Ardmona Operations Ltd

ABN: 60 004 077 105

Date: 4<sup>th</sup> May 2016

**Provide details of the name, street and postal address, of the applicant seeking the review**

SPC Ardmona Operations Limited

50 Camberwell Road

Hawthorn East VIC 3123

P O Box 3078

Auburn, VIC 3123

Australia

**Provide details of the name of a contact person, including their position, telephone number and facsimile number, and e-mail address.**

Reg Weine

SPC Ardmona

50 Camberwell Road, Hawthorn East, Vic 3123 Australia

Tel: 03 9861 8900

Fax: 03 9861 8911

ABN: 60 004 077 105

**Name other parties supporting this application**

Not applicable

**Describe your interest as an affected party (eg are you concerned with the exportation of the goods, the importation of the goods, or part of the Australian industry, or acting on behalf of the Government of an exporting country).**

SPC is the Australian industry producing like goods.<sup>1</sup>

**Provide details of the current anti-dumping measure(s) the subject of this review application, including:**

- tariff classification

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<sup>1</sup> Final Report 276 p 20

- **the countries or companies**
- **specified date of publication of the measure**

The goods are classified in subheading 2002.10.00 (statistical code 60 ) in Schedule 3 to the Customs Tariff Act 1995.

The goods are exported from Italy and the attached Anti-Dumping Notices refer to known exporters.<sup>2</sup> ADN No.2014/32 was dated 16 April 2014.

**Provide the names, addresses, telephone numbers and facsimile numbers of other parties likely to have an interest in this matter e.g. Australian manufacturers, importers, exporters and/or users.**

The Dumping Commodity Register (DCR) provides details of parties that may be interested in this matter.<sup>3</sup> Contact details will be available from the Commission's data base.

**If you are applying for a variable factors review (in box 1 above) provide a detailed statement setting out your reasons. Include information about:**

- the factor(s) you wish to have reviewed;**
- the amount by which that factor is likely to have changed since anti-dumping measures were last imposed, and evidence in support; and**
- **in your opinion the causes of the change and whether these causes are likely to persist.**

SPC is requesting that both normal values and export prices be reviewed for all the exporters (except La Doria and Feger), including those exporters who have had a specific rate established following an accelerated review. SPC notes that since interim duties were imposed in Case 217, only one exporter has requested a review of variable factors.

**Normal Values:**

Case 217, which was initiated in 2013, established dumping margins based on the investigation period 1 July 2012-30 June 2013. Since 2013, there have been significant cost increases along with the changes in ADC's views regarding the impact of direct income support payments made to the growers of raw tomatoes.

Some of the factors that will lead to changes in the normal values are:

- A cost adjustment reflecting the direct income support payments to tomato growers

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<sup>2</sup> ADN No. 2014/32.

<sup>3</sup> <http://www.adcommission.gov.au/measures>

based on the findings in Case 276. That investigation established that when the raw tomato prices were adjusted to reflect the income support, it had an impact on establishing qualifying sales in the OCOT test. The OCOT test (as applied in Case 276) resulted in a higher proportion of unprofitable transactions.

- The introduction of a new coupled subsidy for processed tomatoes (€ 160 per ha) from January 2015, which increases the total direct income support payments to tomato growers.<sup>4</sup> Again, as above, when the raw tomato prices are adjusted to reflect this income support, it is likely to have an impact on the qualifying sales in the OCOT test.
- Increases in the cost of production from July 2013 (e.g. raw tomato prices)

1) In Case 276 the ADC found that the income support payments made to growers of tomatoes have affected the prevailing market price for tomatoes. The Commission noted:

*Consistent with its usual policy and practice, the Commission is therefore satisfied that the costs recorded by Feger and La Doria for raw tomatoes in their records do not reasonably reflect competitive market costs for the purposes of section 43(2)(sic) of the Regulation.<sup>5</sup>*

The Commission then calculated the effect of the payments made to tomato growers: and the Final Report noted:

*Having considered all available relevant evidence, the Commission has calculated an amount reflecting the direct income support payments made to growers of raw tomatoes under the SPS in EUR per kg of raw tomatoes produced during the investigation period. This amount has been worked out by dividing the total identified amount of SPS payments available for tomato production in Italy under the national ceiling in 2014 by the total volume of raw tomatoes produced in Italy in 2014.<sup>6</sup>*

This resulted in Feger and La Doria's recorded cost of raw tomatoes increasing by €0.037 per kg. The consequences of this cost adjustment was to uncover unprofitable sales in the OCOT test as noted in the Final Report:

*Having adjusted the cost for raw tomatoes in Feger and La Doria's respective costs of production, the Commission has determined that there is a consequential impact on the OCOT test. The additional cost of raw tomatoes results in a higher cost of production, which results in a higher proportion of unprofitable transactions.<sup>7</sup>*

In Case 217, the cost adjustment approach using Regulation 43(2) of the Regulations was not applied. However, using the cost adjustment approach of Case 276, it is evident that the normal values established in Case 217 are likely to increase in a review as there is a reasonable expectation that there would also be an increase in unprofitable transactions.

2) In addition to the income support payments identified in the dumping investigation

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<sup>4</sup> Il Sistema Degli Aiuti Accoppiati Della Pac page 285 June 2014 [The System of Coupled Aid in the CAP], see also EPR 276/068 SPC submission Fn 9

<sup>5</sup> Final Report 276 p 30. Customs (International Obligations) Regulations 2015.

<sup>6</sup> Ibid p 31

<sup>7</sup> Final Report 276 p 32

period used in Case 276 (1 January 2014- 31 December 2014), an additional payment of €11.2 million has been allocated to tomato growers from January 2015.<sup>8</sup> This payment of € 160 per hectare is coupled to production of processed tomatoes. This increase in income support has the effect of increasing the Euro per tonne subsidy in 2014 by X % to Euro X/T in 2015 (up from €X/T). [Refer confidential attachment 1 for calculations]<sup>9</sup>

The income support to tomato growers is likely to continue.

3) Increase in the variable cost of production:

- Raw tomato price increased from EuroXX in 2012/June 2013 (investigation period for Case 217) to Euro XX set in February 2015 for the processing season in August-October in 2015 (Refer confidential attachment 2, 2.1, 2.2). Therefore, the price of raw tomatoes has increased by XX between 2012/June 2013 and 2015.
- It is understood that raw prices are negotiated before the processing season begins. The prices are based on the brix level of the raw tomatoes and there may be minor differences between the growing regions in the north and south of Italy<sup>10</sup>.
- Raw prices make up to XX of the total canned tomato cost depending on the recipe. Therefore, this increase in the cost of raw tomatoes is likely to have an impact on the qualifying sales for the OCOT test.
- ADC is also requested to review other key production costs such as labour and electricity costs to assess if they may have increased since July 2013.

Based on the adjustments and evidence highlighted above, the OCOT test will need to be reassessed to eliminate sales at a loss. SPC estimates that the normal value will increase due to the effect of substituting the costs for raw tomatoes recorded by exporters of preserved and prepared tomatoes (PPT) to reflect competitive market costs for the purpose of Regulation 43(2) of the Regulations. For the purpose of initiating the review it is considered that the findings in Case 276 are prima facie applicable to other exporters of PPT to Australia from Italy<sup>11</sup>

To find a reasonable normal value, it is important to ensure that the review closely examines domestic models with similar profit margins. In the previous investigations SPC understands that some export models were more profitable because of the recipe element. Therefore, when constructing a normal value for these recipe models, it is important to ensure that if a domestic recipe model is available that the profit of that model be used. SPC does not have access to the data showing the different profitability on domestic sales in Italy but this will be available to the ADC from the confidential exporter visits.

### Export Price:

SPC requests the ADC to review the export prices with a particular focus on marketing arrangements between exporters and importers as well as assessing non arms- length transactions.

As is evident from the attached ADN, Anti-Dumping Duty percentages range from 3.25% to 26.35% and are based on the combination duty methodology. It was estimated that 35% of

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<sup>8</sup> EPR 276/040 LECA Assessment of Market Situation p 18. EPR 276/ 048- the exporters confirmed this payment was available from January 2015 p 7. See also EPR 276/056, SPC's submission fn 6.

<sup>9</sup> See the confidential spreadsheet for attachments 1 ,3 ,calculations for attachment 4 and 5

<sup>10</sup> Both demand and supply substitution effects will thus lead southern and northern prices to converge, on a uniform Italian price, having adjusted for costs of transport, product type etc.(LECA EPR 276/040 p.9)

<sup>11</sup> In a review of Aluminium Extrusions (REP 248 July 2015) the Commission accepted there was a market situation based on the findings in REP 181 (Aluminium Road Wheels, June 2012)



the import volume are subjected to duty rates based on non-cooperation (26.35%).<sup>12</sup> However, analysis of unit retail prices during the period 2013- 2015 show that there has not been a noticeable uplift in retail prices.<sup>13</sup>

[Refer confidential attachment 3 for retail prices.]

Based on publically available information, it can be established that XX is the supplier of the XX brand of canned tomatoes. The DCR indicates that XX has been charged with dumping duties of 26.35%. However, retail price analysis indicates that XX retail prices have declined. (Refer confidential attachment 4)

If the dumping duties of 26.35% are being absorbed by the exporter or importer, it is highly likely that the products are being sold at a loss by either the exporter or the importer<sup>14</sup>.

Confidential attachment 4 illustrates that sales at a loss (measured by the importer's margin loss) for one supplier are substantial.

Since the end of the dumping POI the AUD/EUR exchange rate has weakened by around 17 % (Reserve Bank of Australia average monthly exchange rates year ending June 2013 compared to average monthly July-April 2016). This depreciation of the AUD has also not been reflected in Australian domestic retail prices.<sup>15</sup>

**In assessing the export price for an exporter, the Commission is requested to consider marketing and other arrangements between importers and exporters and to carefully examine whether the transactions are indeed at arms- length.**

An analysis of the DCR published by the ADC indicates that the importer and exporter relationships have changed and this may be indicative of a relationship or arrangement that may make the sales non-arm's length.

### **De Clemente (Duty 3.25 per cent) and Conserve Italia (4.54 per cent)**

The Aztec data available to SPC does not allow an accurate brand/SKU analysis which would assist in analysing export price behaviour. These two co-operating exporters accounted for 10.4 per cent of total export volume in the 12 month dumping investigation period ending June 2013.<sup>16</sup>

### **Residual Exporters (4.24 per cent)**

These exporters accounted for 10.6 per cent of the volume exported during the investigation period in Case 217<sup>17</sup>. For the reasons set out above, SPC is unable to extract accurate information from the AZTEC data for the residual exporters.

For the above individual and residual exporters the review may identify changed arrangements between parties which could result in changes to the ascertained export price.

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<sup>12</sup> Reinvestigation Report No. 269 to the ADRP records that 35 per cent of the volume of exported goods are subject to the 26.35 per cent rate.(p 9)

<sup>13</sup> The dumping investigation period in Case 217 was 1 July 2012 – 30 June 2013.

<sup>14</sup> It is possible though unlikely that the exporter and importer could jointly have absorbed the duties by reducing margins

<sup>15</sup> REP 217 noted that the majority of PPT imports were sold in Euros,p.64

<sup>16</sup> fn 12. In REP 217 un-dumped exports were approximately 44% of the total export volume from Italy, para 8.8.1. Subtracting from 54.4 % in Report 269 gives the balance for the co-operating exporters found to be dumping.

<sup>17</sup> fn 12.

### Impact on Dumping margin due to changes in Normal Values

Assuming, for the purpose of this application, that cost increases will be passed on then the resultant changes in the normal value will significantly impact dumping margins.

The impact on the normal value due to the factors highlighted is given below:

#### [ COMMERCIAL IN CONFIDENCE – TABLE- NORMAL VALUE IMPACT ]

The impact of the above adjustment on dumping margins is shown in confidential attachment 5. It should be noted that the calculation does not capture any changes due to the OCOT test or export price changes. The following table summarises the possible effect on dumping margins.

### Impact on Dumping Margins

Manufacturer/Exporter	217 DM %	This Review DM%	Percentage Point Change
De Clemente	3.25	XX	XX
Conserve Italia	4.54	XX	XX
Residual	4.24	XX	XX
Uncooperative	26.35	XX	XX

[Refer confidential attachment 5 for calculations]

SPC has analysed the best information available to it and concludes that there are grounds to review the normal values and export prices of canned tomatoes exported from Italy to Australia.