



**Australian Government**  
**Anti-Dumping Commission**

**INVESTIGATION 217**

**ALLEGED DUMPING OF PREPARED OR PRESERVED  
TOMATOES**

**EXPORTED FROM ITALY**

**VISIT REPORT - EXPORTER**

**DE CLEMENTE CONSERVE S.P.A.**

**THIS REPORT AND THE VIEWS OR RECOMMENDATIONS CONTAINED  
THEREIN WILL BE REVIEWED BY THE CASE MANAGEMENT TEAM AND  
MAY NOT REFLECT THE FINAL POSITION OF THE ANTI-DUMPING  
COMMISSION**

October 2013

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## **2 BACKGROUND**

### **2.1 Previous investigations**

In April 1992, the then Minister for Customs accepted the recommendations of the Anti-Dumping Authority (ADA) in its report (No. 68 of April 1992) and imposed countervailing duties on canned tomatoes from Italy, Spain and Thailand and dumping duties on the same goods from Italy and China.

Following a Federal Court challenge by an Italian exporter, the countervailing and dumping duties on canned tomatoes from Italy were removed in June 1993. Pursuant to a subsequent appeal to the Full Bench of that Court by the ADA, the Minister reinstated the duties. In February 1994, as a result of the Court decision, importers were advised that dumping and countervailing duties would be payable on future imports but that the amount of duty was to be reassessed. This was addressed in ADA report No. 124 of May 1994.

In 1997 the ADA (Report No. 169) concluded a continuation inquiry whereby countervailing and dumping duties on canned tomatoes from Italy were continued for a further five years.

In 2001, an application to continue the countervailing duty measures was submitted with the Trade Measures Branch of the Australian Customs and Border Protection Service concluding that the measures should continue for a further five years (Trade Measures Report No. 52 refers). The Minister took steps to continue those measures for a further five years. The measures lapsed on 27 April 2007.

### **2.2 Current measures**

There are currently no anti-dumping or countervailing measures on the goods exported to Australia.

### **2.3 Current investigation**

On 17 June 2013, an application was lodged by SPC Ardmona Operations Limited (SPCA) requesting that the Minister for Home Affairs (the Minister) publish a dumping duty notice in respect of prepared or preserved tomatoes exported to Australia from Italy.

SPCA alleges the Australian industry has suffered material injury caused by prepared or preserved tomatoes exported to Australia from Italy at dumped prices.

The applicant claims that the industry has been injured through:

- loss of sales volume;

- reduced market share;
- reduced revenues;
- price depression;
- price suppression;
- reduced profits;
- reduced profitability;
- reduced cash flow
- reduced attractiveness for reinvestment in the tomato processing business.

## 2.4 Purpose of meeting

The purpose of the visit was to verify information contained in questionnaire responses submitted to the Anti-Dumping Commission (hereafter the Commission) by De Clemente Conserve S.P.A (hereafter De Clemente)and, where appropriate, obtain and verify additional information relevant to determining normal values and export prices in respect of preserved or prepared tomato products produced and exported to Australia by De Clemente.

A non-confidential version of the exporter questionnaire responses was placed on the public record.

The Commission will use the verified information gathered at the visit to produce preliminary assessment of:

- like goods;
- who is the exporter and who is the importer;
- export prices;
- normal values; and
- dumping margins.

## 2.5 Meeting details

Verification meetings were held at the offices of De Clemente which are located in Fisciano in the province of Salerno, Italy.

|                |  |
|----------------|--|
| Company        | De Clemente Conserve S.p.A.                                    |
| Dates of visit | Monday 21, Tuesday 22, Wednesday 23 and Friday 25 October 2013 |

The following were present at various stages of the meetings.

|                         |  |
|-------------------------|--|
| De Clemente             | Mariarosaria De Clemente – Head of office management<br>Valeria Varlese–Export sales manager<br>Roberto Franzesi – External Accountant<br>Raffaele De Clemente – Owner, Production manager |
| European Commission     | Carlo Pinto – Trade Defence  |
| Anti-Dumping Commission | Lydia Cooke – Manager – Operations 1<br>Edward Macgregor – Supervisor – Operations 1   |

## 2.6 Investigation process and timeframes

We confirmed that De Clemente was aware of the following details:

- The investigation period is 1 July 2012 to 30 June 2013.
- The injury analysis period is from 1 January 2009 for the purpose of analysing the condition of the Australian industry.
- A preliminary affirmative determination (PAD) may be made no earlier than day 60 of the investigation (8 September 2013) and provisional measures may be imposed at the time of the PAD or at any time after the PAD has been made.

The Commission will not make a PAD until (and if) it becomes satisfied that there appears to be, or that it appears there will be, sufficient grounds for the publication of a dumping duty notice and/or a countervailing duty notice.

For completeness, we advised De Clemente that, as at the date of commencement of the visit no PAD had been made by the Commission with respect to this investigation.

- The Statement of Essential Facts (SEF) for the investigation is due to be placed on the public record by 28 October 2013, or such later date as the Minister for Home Affairs (the Minister) allows under s.269ZHI of the *Customs Act 1901* (the Act)<sup>1</sup>

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<sup>1</sup>During the course of the visit the team was advised by the case management team that an extension of time with respect to the publication of the SEF had been approved by the Minister. De Clemente was advised that the extended date of publication was 16 December 2013.

The SEF will set out the material findings of fact on which the Commission intends to base its recommendations to the Minister, and will invite interested parties to respond, within 20 days, to the issues raised therein.

- Following receipt and consideration of submissions made in response to the SEF, the Commission will provide its final report and recommendations to the Minister.

This final report is due no later than 30 January 2014, unless an extension to the SEF is approved by the Minister.

## **2.7 Visit report**

We advised De Clemente that we would prepare a confidential report on the visit, a copy of which would be provided to them to provide them opportunity to review the report for accuracy.

De Clemente was also advised that a non-confidential version of this visit report would be prepared in consultation with the company and placed on the public record.

### 3 COMPANY INFORMATION

#### 3.1 Company background

##### 3.1.1 Corporate Structure

We confirmed that De Clemente is a manufacturer and distributor of canned food established in Fisciano, Salerno in 1998.

The company was established, and continues to operate, as a family owned and operated business controlled by Antonio and Vincenzo De Clemente – who control shareholding interests of [REDACTED] **[shareholding information]**.

#### 3.2 Commercial operations

##### 3.2.1 General

De Clemente's head office is in Fisciano, Salerno, Italy

De Clemente advised that, during the period of investigation, it operated two production facilities in the Salerno region– one located in Anгри and one located in Fisciano.

De Clemente advised that, notwithstanding the division of total production across the two locations, production capacities, levels of achieved production and all associated production costs, expenses and revenues are accounted for by the company as the composite total of both sites.

*De Clemente advised that production facilities at the Anгри site was de-commissioned in 2013, and the site was henceforth used as a storage warehouse.*

##### 3.2.2 Operations

We have confirmed that the core business of De Clemente is;

- the manufacture and sale preserved (including, but not limited to, the GUC) – internally categorised as 'red line' products; and
- The sale of canned 'pulses' (legumes and other vegetables) – internally categorised as 'green line' products.

De Clemente advised that during the period of investigation all 'green line' products sold by the company were procured as fully finished products by De Clemente from other manufacturers in Italy.

The team verified that the procurement of green line products (accounted for as the acquisition of legumes) was identified as a separate line item in the company's financial statements.

De Clemente confirmed that all production at both Fisciano and Angri facilities were dedicated specifically to the production of red line products for sale within the domestic market in Italy and export markets.

De Clemente advised that the sale of red line products accounts for over 80% of the company's revenue. For completeness, the team confirmed that the company plans to extend its Fisciano facility in 2014 to incorporate further production facilities dedicated to the manufacture of green line products.

For completeness we note that company turnover is equally divided between the national and the international market.

### 3.2.3 *Product range*

De Clemente confirmed that the red-line product category covers a variety of canned tomato products including chopped tomatoes, peeled tomatoes, cherry tomatoes tomato pastes and passata (puree).

De Clemente confirmed that it produces product in the following volume configurations:

- *Passata – 680g bottle*
- *Cherry tomatoes – 400g cans*
- *Chopped tomatoes – 400g, 800g and 2500g cans;*
- *Peeled tomatoes – 400g, 800g and 2500g cans;*
- *Value add product (tomatoes with other ingredients) – 400,800 and 200g cans*

### 3.2.2 *Production of the GUC*

Prior to the visit, De Clemente provided the Commission with an extensive summary diagram(in Italian) of the production process with respect to prepared or preserved tomato products produced at its factory. An English translation was subsequently provided at the visit.

These are included as **confidential attachment GEN 2**.



We requested that De Clemente provide a summary of the production process, and conducted a sight visit of the manufacturing facility to gain an understanding of the process.

### 3.2.2.1 Summary

For the purposes of this report, we confirmed with De Clemente that the production process can be summarised into four general categories of production as follows:

- 1) *Fresh tomato delivery and sorting;*
- 2) *Tomato processing;*
- 2) *Canning*
- 3) *Labelling, storage and delivery*

In summary, we confirmed that the production processes of its product range are standardised and largely automated. De Clemente advised that the final product is the result of specific manipulations at each stage of the process.

### 3.2.2.2 Production process

#### *Raw material sorting and grading*

De Clemente advised that all raw material is sourced from farms and farming cooperatives in [REDACTED] and is either –

- [REDACTED]
- [REDACTED] or
- [REDACTED]

#### **[product details]**

De Clemente advised that long roma tomato has a better texture and aesthetic shape in comparison to round tomato and is typically used to produce whole peeled products, whereas round tomato is used to produce chopped products.

Once received at the factory, tomatoes are stored in bins for a maximum period of 48 hours before being processed.

When raw material is required by the production facility, tomato is washed to remove external foreign bodies – dirt, stems etc – and sorted in two stages

- a) Manual sorting – [REDACTED];
- b) optical sorting – [REDACTED].  
[production process details]

Tomato that [REDACTED] is moved to either the peeling line (for [REDACTED] tomatoes) or the chopping line (for [REDACTED] tomatoes)

[REDACTED]  
[confidential production details]

### *Processing*

De Clemente advised that it operates [REDACTED] [details of production facility]

Tomato moved to the peeling line is removed of its skin by a steam-peeling process. Skins and other matter removed by the peeling process is [REDACTED]

Tomato moved for chopped product is cubed using [REDACTED]  
[REDACTED]  
[details of production]

### *Canning*

Cans are procured by De Clemente from [REDACTED]. Cans are [REDACTED] prior to being moved to the production line.

Each can, irrespective of net size, is filled with processed tomato material and concentrated juice moved in from the juice line, applying [REDACTED]. De Clemente sets minimum factory requirements, in accordance with European regulations regarding the minimum net weight of each can.

Cans are then moved to be pasteurised. Once fully pasteurised and cooled, cans are marked with [REDACTED] [codification details]

Can weights are checked during the production every hour. If the quality control detects [REDACTED]  
[REDACTED]  
[production details]

*Storage*

Pasteurised and batch-marked cans are moved from the production line to storage [REDACTED]

De Clemente stored product [REDACTED]  
[commercial practices]

*Labelling*

Before labelling, each filled can is [REDACTED]  
[REDACTED]  
[REDACTED] [productio  
n details]

Labelling is applied on-site to [REDACTED] cans moved from [REDACTED].

Product is labelled with [REDACTED]  
[REDACTED] [product labelling]

*Juice production*

The visit team sought to clarify the method by which waste materials generated by the processing lines were collected and transformed to juice for can filling.

De Clemente advised that [REDACTED]  
[REDACTED] is collected and  
[REDACTED] [juice production process]

De Clemente confirmed that juice is regarded by the company to be [REDACTED]  
[REDACTED] [commercial practices]

De Clemente advised that juice is an important aspect of production. De Clemente advised that [REDACTED]  
[REDACTED] [details of juice production]

*Scrap*

De Clemente advised that there are [REDACTED] categories of scrap produced by the production process:

[redacted]  
[[identification of categories of scrap]

De Clemente advised that all scrap products are [redacted]  
[redacted] [commercial  
practices]

#### 3.2.4 *Production capacities and actual rates of production*

De Clemente have advised that, during the review period, the [redacted] facilities achieved a combined actual production of [redacted] metric tons (MT) of all canned product, including the GUC— equating to roughly [redacted]% of total production capacity.

We have further extrapolated that, of the total turnover of the GUC during the period, De Clemente;

- sold [redacted] MT into the Italian domestic market;
- exported [redacted] MT to Australia; and
- exported [redacted] MT to third country export markets.

### 3.3 **Accounting**

De Clemente's accounting period is 1 January to 31 December. Its financial records are held at its head office.

De Clemente's financial management information system is based on the [redacted] platform.

De Clemente's accounting methods are described at section A-4 to its submission. De Clemente advised that, in accordance with Italian corporations law, as a privately owned Italian company, it is not required to have its accounts independently audited. However, by law De Clemente must lodge an operating balance sheet in accordance with Italian reporting requirements for each financial year.

De Clemente provided the Commission with copies of its un-audited financial statements for the previous completed accounting periods (FY 11 and 12) with its submission.

During the course of the visit De Clemente also provided the visit team with:

- A copy of its operating balance sheet lodged for FY 12 (confidential attachment FIN 1;

- Evidence of the reporting requirements of its operating balance sheet to enable the reconciliation of the company's financial statement for the period upwards to the reclassifications of line items reflected in the balance sheet (confidential attachment FIN 2); and
- Copies of financial statements for FY 2012 (**confidential attachment FIN 3**) and for the 6-monthly periods ending 31 December 2012 and 30 June 2013 (covering the period of investigation)(**confidential attachment FIN 4**).

The Commission notes that the documents are original versions of the reports, presented in Italian. During the course of the visit the team sought clarification of line items and Italian commercial terms to assist the reconciliation of financial documents at various stages of the verification.

## 4 GOODS UNDER CONSIDERATION AND LIKE GOODS

### 4.1 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.*

The goods are classified to the following tariff subheading 2002.10.00 to Schedule 3 of the *Customs Tariff Act 1995* with statistical code 60.

The general rate of duty is currently 5 per cent for goods imported from Italy.

### 4.1 Excluded goods

We confirmed De Clemente's understanding that the following products are specifically excluded from the scope of the investigation;

*Pastes, purees, sauces, pasta sauces, juices, and sundried tomatoes.*

### 4.2 Like goods

#### 4.2.1 General discussion regarding GUC

The team confirmed that De Clemente produced tinned preserved tomato products as outlined in section 3.2.3. We confirmed that De Clemente does not preserve or prepare product using vinegar or acetic acid.

The visit team confirmed with De Clemente that the definition of 'the goods' for the purposes of the investigation includes prepared or preserved tomato products:

- In any cut profile;
- With or without additional ingredients;
- In containers up to, but not in excess of 1.14 litres;

For the sake of completeness, we confirmed with De Clemente that passatas and tomato products produced and sold in containers exceeding 1.14 litres are specifically outside the scope of the GUC.

#### 4.2.2 Product specifications

As noted in section 3.2.3, De Clemente’s products that fall within the goods description are 400gr and 800gr cans of cherry tomatoes, chopped tomatoes (generally made from round tomatoes) or peeled tomatoes (generally made from roma tomatoes).

De Clemente advised that customers are provided a choice of three different can types:

- *Standard can* – tin can, not lacquered inside with straight ends (requires a can-opener to open the can). De Clemente also offered ‘stackable cans’ that it advised were the same as standard cans;
- *Second tier can* – tin can, white lacquered inside, with straight ends;
- *Premium can* – tin can, white lacquered inside, with ring-pull (easy-open) top

De Clemente advised that each can type attracts a relative price premium absorbed in the selling price of the finished good, which is directly correlative to the material cost incurred with procuring each type of can.

De Clemente advised it labelled its product according to customer specifications. De Clemente advised that it produces products under two general label categories:

- a) *Proprietary label* – being product labelled with ‘De Clemente’ branding the proprietary rights and associated intellectual property of which is owned by the company itself;
- b) *Private label* – product produced and labelled according to particular product branding and quality specifications required by specific customers. De Clemente advised that the proprietary rights for private label stock is owned by the customer and there is no commercial connection in the consumer market between the product and De Clemente; and

- c) [REDACTED] – [REDACTED] [confidential product category]

#### 4.2.3 Product quality

We asked De Clemente to confirm whether, and to what degree, tinned tomato products it produces differ with respect to the quality specifications of the finished good.

#### General

De Clemente advised that quality of tinned tomato is typically categorised under two fields:

- a) Technical features; and
- b) Organoleptic features

De Clemente advised that the technical features of a product generally are reflected in terms of minimum or maximum levels related to:

- 'Brix' content of the product by can (a measure of the sugar content of the fruit);
- Acidity (PH levels)
- Net weight and drained weight of the can;
- Trace elements of mould, seeds, peels, waste matter

The organoleptic features of the product relate to the processed material itself and relate to:

- The aesthetic appearance of the tomato (colour)
- The aroma of the product;
- Texture of the product; and
- Flavour

De Clemente advised that, additionally, in the case of chopped product, technical specifications will also include standardised cube size of the chopped product. It noted that its cut size was [REDACTED]. With respect to whole peeled tomatoes, the product specifications will typically dictate the 'wholeness' of the tomatoes – measured in terms of the proportion of whole tomatoes relative to the drained weight of the product.

#### *Specification differentiation*

De Clemente advised that, typically, customers will provide technical specification requirements for each product they require – these specifications will list:

- Physical product requirements – chop profile, can size and type, labelling and packing; and
- The technical and organoleptic specifications (as represented above)



De Clemente advised however that, notwithstanding the above, it maintains factory standards associated with the technical and organoleptic specifications of all tinned tomato products it produces.

De Clemente advised that its production processes are specifically managed and manipulated at specific stages to ensure minimum product standards are maintained. We confirmed, inter alia, that De Clemente applies internal standards to ensure that all product is produced;

- With a °brix content of [REDACTED]<sup>2</sup>;
- PH levels of [REDACTED];
- Cube size of [REDACTED] and
- Tomato wholeness of [REDACTED]

Additionally, De Clemente advised that the organoleptic standards of its product are also standardised by specific stages of the production process to ensure consistent minimum product standards irrespective of product profile, labelling or can type.

The team sighted examples of the technical specification sheets relating to product sold in the Italian domestic market and the specification requirements required by [REDACTED] [customer] for the corresponding product profile. These documents confirmed that technical specifications for product variants sold into the domestic market and produced for sale under the [REDACTED] [customer] labelling:

- Are delineated by physical, technical and organoleptic parameters; and
- That the specifications for each technical parameter are identical.

#### 4.2.4 *Product nomenclature*

De Clemente advised that each product it manufactures is assigned with a unique alpha numeric product code. De Clemente clarified that the product codifiers applied to each product correspond to the physical parameters of the product concerned. During the visit we confirmed that an alpha numeric code is applied internally, the components of which are identifiers for the following product variables:

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<sup>2</sup> The Commission understands that Brix is measured on the scale of degrees, with one degree Brix equating reflecting 1 gram of sucrose per 100 grams of matter. This ratio is used to determine the total of soluble substance present in the product.



packaging costs. Therefore, for the purpose of our dumping calculations, we identified that three models were exported to Australia:

- [REDACTED];
  - [REDACTED]; and
  - [REDACTED].
- [REDACTED]

#### 4.2.6 Preliminary view regarding like goods

The above breakdown of product characteristics in relation to the goods exported to Australia during the period of investigation had been used as the reference point by which domestic product data was analysed by the team to identify products with identical characteristics.

Using the product methodology explained by De Clemente, the team was able to identify and delineate domestic product codes with the same characteristics on the domestic market.

The team also identified [REDACTED] can sales with the same characteristics in terms of cut profile and can type. However, as they products attracted a lower price as a result of [REDACTED], we did not consider them to be most like to the goods exported to Australia.

In summary, on the basis of discussions with De Clemente regarding

- a) Its product range with respect to the GUC;
- b) Its production processes; and
- c) The essential characteristics of the GUC it produces and sells into the domestic and Australian market

We consider that the products identified by De Clemente sold domestically during the investigation period have characteristics identical to those of the goods with exported to Australia during the investigation period.

## 5 SALES

### 5.1 General

The team confirmed that De Clemente produces and sells the GUC directly to customers in the following markets:

- Italian domestic market (domestic sales); and
- Export markets (direct export sales)

De Clemente confirmed that all direct export sales were arranged directly between De Clemente and customers under commercial terms pursuant to which De Clemente retained direct responsibility for arranging the exportation of the goods to specified receiving entities in third country export markets.

Accordingly, these sales are uniquely identifiable within De Clemente's systems and have been summarised separately for the commission for the purposes of discussion regarding third country exports (see section 7).

As part of its narrative responses provided to the Commission, De Clemente advised that all exports of the GUC to Australia are made via a trader, registered and operating in Italy [redacted] **[domestic trader name]**

De Clemente advised that [redacted] **[trader name]** acts in capacity as [redacted] **[commercial activities related to exportation]**

On the basis of the above circumstances, De Clemente regard all sales to [redacted] **[trader]** as 'domestic' sales for the purposes of internal accounting, as opposed to sales to international markets which comprise all sales to entities registered outside Italy.

The team confirmed that, in addition to 'domestic sales' to [redacted] **[trader]** which are sold for export to Australia, De Clemente also sells the GUC to Italian customers operating in the Italian market for the goods who procure the goods for export to third country markets.

On this basis the team was satisfied that the 'domestic sales' listing provided in the first instance by De Clemente could be delineated into three sub-categories:

- 1) *Australian export sales* – representing sales to [redacted] **[trader]** which, whilst regarded by De Clemente as domestic sales, were ultimately exported to Australia;

- 2) *Domestic sales* – representing sales to Italian customers in the Italian market which, to the best of De Clemente’s knowledge, were sold for home consumption in the Italian market; and
- 3) *Third country export sales* – representing sales to Italian customers in the Italian market where intended for exportation to, and home consumption in, third countries.

## 5.2 Completeness of data

As referred to above, De Clemente regard all sales to [redacted] [trader] and Italian customers in the Italian domestic market to be ‘domestic sales’.

As part of its response to the exporter questionnaire, De Clemente provided a spread sheet reflecting, inter alia, the total turnover of the GUC, by volume and by value, into the domestic market and other export markets during the POI.

The team sought to reconcile, by reference to management reports and the financial statements, that the turnover spread sheet and, by association, the sales listing was complete and accurate.

### 5.2.1 Verification of sales listing

Given the different categories of sales contained with the ‘domestic’ sales listing provided to the Commission by De Clemente addressed above at 5.1, the team sought to verify the process by which De Clemente delineated domestic sales from export sales.

The team requested and was provided with, a complete sales listing, prepared directly from the Company’s [redacted] accounting system which filtered company sales during the period of investigation by country code to reflect all product codes produced and sold by De Clemente into the domestic market.

The team was satisfied of the process by which domestic sales were identified by De Clemente from its system. The team then sought to reconcile the complete domestic listing (reflecting sales of all products sold by De Clemente) upwards to the company’s financial statements.

### 5.2.2 Verification of financial statements

As referred to above, De Clemente is not required to have its financial statements independently audited.

We sought to first assure ourselves that the financial statements of the company were;

- a complete and accurate reflection of the company's financial position; and
- an appropriate basis upon which to verify the completeness of sales data

We verified that the financial statements presented by De Clemente for the period of investigation were a complete and accurate representation of the company's sales revenue during the period by reconciling the Company's financial statements for the 2012 financial year(**confidential attachment FIN 3**) upwards to its operating balance sheet lodged for the period(**confidential attachment FIN 1**).

The team was able to reconcile the total value of finished goods represented in the financial statement for 2012 ( [amount] ) to the corresponding line item in the company's balance sheet ( [amount] ), with a very minor variation.<sup>3</sup>

On the basis of the above, the team was satisfied that the financial statements provided by De Clemente could be relied upon for the purposes of verifying the accuracy and completeness of sales data provided.

### *5.2.3 Reconciliation of sales listing to the financial statements*

We sought to reconcile the volume and value reflected in the total sales listing provided by De Clemente to the composite financial statements for the 12 month period covered by the period of investigation(**Confidential attachment FIN 4**).

Using the [redacted] accounting system, the team verified the process by which De Clemente manipulated search variables to select sales of all product codes during the period of investigation. The total sales value of all goods in to all countries ( [redacted] euro) reconciled with the value identified in the turnover spreadsheet and financial statement

The team then used the [redacted] system to drill down by country code to reflect all sales of all codes in Italy during the investigation period. The total sales value ( [redacted] million) reconciled with the total sales value listed in the turnover spreadsheet.

To further reconcile the [redacted] sales reports for coded product upwards to the Financial statements, De Clemente created a third sales report, for the same

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<sup>3</sup>De Clemente confirmed that the variance between the financial statement and the operating balance sheet was explained by returns of sales that were not accounted for in the statement but were captured in the end of year balance reporting process

period, focusing on sales of non-coded product (sales of labels, cans, legumes and pallets).

De Clemente identified the composite line items related to these sales in the financial statement. The composite value of non-coded product reflected in the [REDACTED] listing reconciled with the value of sales of each

These [REDACTED] reports are provided as **confidential attachment SALES 1**

On the basis of the above, we were satisfied that we possess complete and accurate record relating to domestic sales made by De Clemente during the period of investigation.

### **5.3 Accuracy of data**

Being satisfied that the domestic sales listing provided by De Clemente was a complete record of all sales during the period of investigation, the team sought to analyse the sales listing to assure that:

- Export sales to Australia (sales to [REDACTED] [trader]) can be successfully delineated and separated for the purposes of analysis of export prices;
- The domestic sales listing can be successfully analysed and filtered to reflect sales of all product codes of like goods for the purposes of domestic sales analysis and normal value determinations; and
- The domestic sales listing did not include any sales of irrelevant product codes

#### *5.3.1 Delineation of export sales*

De Clemente advised that all goods exported to Australia were sold under contractual terms of supply between [REDACTED] [Australian customer] in Australia and De Clemente, via [REDACTED] [trader].

The team found no evidence to contradict this assertion and, on this basis, has delineated all sales made to [REDACTED] [trader] as Australian sales, presented on a separate electronic sales listing at **confidential appendix (SALES) 1**.

#### *5.3.2 Domestic product code analysis*

As described in section 4, we worked through the product code nomenclature applied by De Clemente for the purposes of clarifying:

- The suite of different products sold by De Clemente into the Italian domestic market; and

- The essential characteristics of products and how product codes could be linked to these characteristics

#### 5.3.2.1 Products

De Clemente confirmed that, in contrast to the [redacted] product varieties exported to Australia, it sells a wider variety of product variants in the Italian domestic market including;

[redacted] **[domestic product mix]**

Using the complete domestic sales listing, the team developed a summary report of all unique product codes sold during the period of investigation and confirmed the unique codifiers which De Clemente used to identify each product variant.

Following this methodology, the team was satisfied that the essential characteristics of the following products sold on the domestic market were significantly different from those products exported to Australia and should appropriately be excluded from the domestic sales listing:

[redacted] **[excluded domestic product types]**

#### 5.3.2.2 Product comparisons

As discussed in section 3, the team analysed the code nomenclature used by De Clemente and identified the essential product characteristics reflected by different codifiers.

The team analysed domestic product codes of the remaining product variants sold by De Clemente against the matrix of characteristics for each product code exported to Australia.

Following this methodology, the team confirmed the product codes into the Italian domestic market that have characteristics identical to one of the product models exported to Australia.

#### 5.3.2.3 identification and exclusion of irrelevant products

##### *Third country exports*

The team confirmed that, within the codes identified as identical to product exported to Australia, certain codes related to product labels procured by 'Traders' and 'Distributors' for supply into the downstream market in Italy and for export to third countries.



De Clemente advised that, whilst it often has actual knowledge of the final market for which the goods are procured (due to labelling specifications provided by the customer), it cannot definitely confirm whether all sales of goods to these customers are sold for home consumption in the Italian market.

To identify which goods included in the domestic sales listing were export sales the team selected the top trading companies that accounted for the vast majority of sales to traders – [REDACTED] [customer names]– for verification.

De Clemente provided copies of commercial contracts executed with each customer for the 2011 and 2012 production season which reflected, inter alia, the products to be supplied, labelling information and, in some instances home country market for final consumption. **(These documents are attached as confidential attachment Sales 2).**

For each customer the team was able to satisfactorily verify the product labels which were clearly procured for export to third country markets. These sales were removed from the domestic sales listing.

*Goods with* [REDACTED] **[product category]**

The team confirmed that De Clemente [REDACTED] [commercial activities regarding certain product categories]

The team verified [REDACTED]

**[verification of product category]**

Sales of [REDACTED] [product category]

De Clemente advised that these products are moved to, and subsequently drawn from, inventory of own production and sold as [REDACTED]

De Clemente advised that it did not have the capacity to identify goods sold into the domestic market which were [REDACTED] [category of goods}

Given;

[REDACTED] [analysis of confidential commercial information]

The team is of the view that it is reasonable to adjust the costs associated with the production of [REDACTED] product sold into the domestic market to account for [REDACTED] [product category]

Discussion regarding the teams approach to the construction of cost in this regard is provided under section 7.

#### 5.4 Summary

On the basis of the above processes of verification of data provided by De Clemente, the visit team was satisfied that it possessed complete and accurate transactional data relating to all sales of all product codes exported to Australia and all sales of relevant domestic product codes identified to be directly comparable to such codes exported to Australia.

**6 Export sales – Australia**

**6.1 General**

During the investigation period De Clemente directly sold a total quantity of [redacted] cans of the GUC ([redacted] [product types]) with a calculated volume of [redacted] Kilograms (KG) of the GUC to [redacted] [trader].

The table below summarises the total volume of GUC by product code sold to [redacted] [trader] by De Clemente during the period of investigation

| Customer   | Product code | Product profile | Total quantity (cans/KG) |
|------------|--------------|-----------------|--------------------------|
| [redacted] | [redacted]   | [redacted]      | [redacted]               |
| [redacted] | [redacted]   | [redacted]      | [redacted]               |
| [redacted] | [redacted]   | [redacted]      | [redacted]               |

The following table reflects the ratio of sales to [redacted] [trader] by product code in relation to the total volume of GUC sold to [redacted] [trader] during the POI.

| Customer     | Product code | % of total sales volume (by can) | % of total sales volume (by KG) |
|--------------|--------------|----------------------------------|---------------------------------|
| XXXXXXXXXXXX | [redacted]   | [redacted]                       | [redacted]                      |
| [redacted]   | [redacted]   | [redacted]                       | [redacted]                      |
| [redacted]   | [redacted]   | [redacted]                       | [redacted]                      |

The above tables reflect that product [redacted] [product type] represents the greatest volume of sales to [redacted] [trader] by De Clemente and, accordingly, accounts for a significantly higher percentage of total sales volume when quantity is expressed by total cans sold.

**6.2 Overview of Australian export market**

De Clemente advised that it has an on going indent supply relationship under contract, directly negotiated and executed by [redacted] [Australian

**customer]** for the supply of certain products following formal tender process put to market by **[trader]**.

De Clemente advised that this contract is in force for a period of 12 months, and is negotiated annually by **[Australian customer]**. De Clemente advised that **[trader]** is responsible for arranging all aspects of the tender process, contractual negotiation, and periodic supply of the goods under contract throughout the year. De Clemente state that, it deals directly with **[trader]** in relation to all aspects of supply and executes each transaction for supply directly with **[trader]** (see 5.2.2 below).

De Clemente advise that it has no knowledge of the Australian export market for the GUC, aside from its internal corporate knowledge regarding patterns of negotiation and product demand related to its ongoing commercial relationship with **[trader]** and **[Australian customer]**.

### 6.3 Export sales process

#### 6.3.1 Indent supply negotiation

De Clemente advised that tomato processing business in Italy is seasonal and occurs between July and late September each year. Tomato processing season occurs following completion of the annual crop of tomatoes grown in Italy – which is typically harvested and ready for supply in July.

De Clemente advised that **[Australian Customer]**, via **[trader]**, typically approaches the market in Italy for long-term supply of certain product requirements in June each year by formal request for tender processes. De Clemente advised that **[trader]** will provide it with **[Australian customer]** product requirements (technical specifications) and supply requirements for the prospective 12 months of supply.

De Clemente advised it typically has 2-3 weeks to prepare a formal tender response to **[trader]** regarding its ability to meet technical and volume requirements and provides a quote for supply by unit (per can or per case).

**[Trader]** engages De Clemente in numerous informal rounds of negotiation regarding product pricing. De Clemente advise that **[trader]** will typically clearly articulate the base price that **[Australian customer]** is willing to pay for the product.

At the end of the negotiation, **[Australian customer]** and De Clemente agree on a price per can and an estimated sales volume. Once mutually agreed, the unit price for each product code remains static for the life of the supply contract. The new contract then comes into effect in October.

#### 6.3.2 Price, Negotiation and contract execution

*Product price variables*

De Clemente advised that product pricing for the GUC in all markets is impacted by a number of key variables:

- Crop yield (volume and quality);
- Operational costs; and
- Inventory levels

*Crop variables*

The yield of tomato crop is determined by climatic variables in Italy related to the cultivation of tomato plants. Extreme weather conditions (drought or over hydration) will directly effect the total volume yield and/or quality of the crop due to crop loss and early harvesting.

De Clemente advised that crop yield will directly impact the price at which fresh tomato is sold to processors for the production season.

De Clemente attempts to forecast crop conditions as early as possible in the cultivation season on the basis of [REDACTED]

**[commercial practices]**

As noted above, De Clemente advised that [REDACTED] **[Australian customer]** (via [REDACTED] **[trader]**) approach the Italian market for the supply of goods pursuant to tender, around June each year.

At this time, projections of the crop yield are still uncertain, and the customer benefits from [REDACTED]

[REDACTED] **[crop variables]**. Supply negotiations prior to the processing season enable De Clemente to [REDACTED]

**[commercial strategies]**

De Clemente advised that, additionally, an early approach to the market for long term supply places the customer in a position of relative bargaining power given [REDACTED]

**[commercial bargaining strategies]***Operational cost variables*

Operational costs relate to both the price of the tomato crop for the year (expressed [REDACTED]) and the costs of production.

Product pricing will typically attempt to [REDACTED]  
[REDACTED] [product pricing]

This is more achievable following  
[REDACTED] [commercial information]

#### *Inventory holding variables*

Price of goods sold will be influenced by the current inventory levels of stock held in storage by De Clemente. [REDACTED]  
[REDACTED] [confidential pricing strategies]

#### *Contracts*

We requested, and De Clemente provided a copy of the most recent indent supply contract executed with [REDACTED] [Australian customer] for years 2011 and 2012.

These documents reflect, inter alia, the final negotiated terms associated with the supply of specific product models between De Clemente and [REDACTED] [Australian customer] including;

- terms of supply,
- term of the contract; and
- product pricing applicable to goods supplied during the contractual lifecycle.

These documents are attached as **confidential attachments EXP 1**.

#### *6.3.3 Summary of sales process (sales to [REDACTED] [trader])*

De Clemente summarised the sales process to [REDACTED] [trader], on a transactional basis, pursuant to overarching supply negotiations (see 5.2.1) as follows:

- Sales terms between De Clemente and [REDACTED] [trader] – including volume, product requirements, price and terms of supply – are crystallised for the processing season pursuant to formal supply contract in place with [REDACTED] [Australian customer]
- [REDACTED] [trader] submits purchase orders directly to De Clemente specifying, inter alia, the products required, the relative number of

units required (expressed in terms of total cartons), the agreed price per carton and the total price for the order.

- All purchase orders specify supply on an FOB basis ex Naples port
- De Clemente produces the product to order or draws the order from existing inventory. The supply lead time is typically 5 days from receipt of order until the product is labelled and fully ready for delivery.
- De Clemente arranges all aspects of, and incurs all costs associated with, packing and transport of the goods from the Fisciano facility to the point of FOB clearance at Naples port for export to Australia, except for [REDACTED] service charges which are incurred by [REDACTED] [trader] in the first instance who then invoices De Clemente for the charge incurred;
- De Clemente invoices [REDACTED] [trader] directly for the goods once FOB clearance is achieved, specifying payment (via EFT) on the basis of 30 to 60 day credit terms, payable from the date of the invoice.
- [REDACTED] [trader] provides payment for the full invoiced value of the goods to De Clemente pursuant to the terms of the invoice.
- Beneficial legal ownership of the product passes from De Clemente to [REDACTED] [trader] once the goods cross the guardrail of the vessel of export at the Naples port.

#### 6.3.4 *Level of trade issue*

As discussed previously, De Clemente was of the belief that sales to [REDACTED] [trader], as the buying agent of [REDACTED] [Australian customer], are appropriately characterised as sales to the 'trading company' level of trade.

The team considered the circumstances surrounding the negotiation and execution of contractual supply agreements executed between De Clemente and [REDACTED] [Australian customer] and the associated commercial terms governing the periodic supply of the goods from De Clemente arranged by [REDACTED] [trader].

Noting that [REDACTED] [Australian customer] operates with the retail segment of the Australian market and that De Clemente signed a contract directly with [REDACTED] [Australian customer], the team considers that these sales were made at a retail level of trade.

### 6.3.5 *Discounts, rebates and allowances*

De Clemente stated that it does not provide [redacted] [Australian customer] (or its designated purchasing agent [redacted][trader]) with any form of discount, rebates or allowances and that the price on the invoice is the price paid by XXX[trader].

We found no evidence to indicate that this was not the case.

## 6.4 **Downwards verification to source documents**

### 6.4.1 *Selected transactions*

We sought to verify the export sales listing downwards to source documents to check for accuracy. Prior to the visit, we selected 11 invoice numbers relating to sales of the GUC made to [redacted] [trader] from the Australian Sales spread sheet and requested the following supporting commercial documents for these sales:

- Formal purchase order from [redacted] [trader] to De Clemente
- Commercial invoice from De Clemente to [redacted] [trader];
- Complete bill of lading with respect to shipments;
- Evidence of bank charges, inland transport, export charges, other incidental charges up to point of sale;
- Evidence of proof of payment from [redacted] [trader] to De Clemente in relation to selected invoices;

De Clemente provided us with these documents and for each selected invoice we were able to trace sales volumes (in terms of total invoiced cartons and total net weight) and values using the commercial invoices and packing lists provided to the listings in export sales spreadsheet. We were therefore satisfied that the volumes and values listed were accurate.

Documents obtained and verified relating to export sales are at **Confidential Attachment EXP 2**.

### 6.4.2 *Payment terms*

De Clemente sells the goods to [redacted] [trader] on an FOB basis pursuant to the terms of the indent supply contract executed between De Clemente and [redacted] [Australian customer].

All sales are invoiced to [redacted] [trader] in EURO. De Clemente requires payment from [redacted] [trader] via EFT within 45 days of the date of commercial invoice.



De Clemente advised that commonly [redacted] [trader] will provide composite payment of a number of invoices. To provide proof of payment, for each transaction De Clemente provided EFT confirmations of the total amount of payment from the customer to De Clemente’s receiving bank.

We verified that payment for all selected sales marginally breached the specified terms of credit, with an average of 8 days of overdue payment.

On this basis we are satisfied that the invoice price shown in the Australian Sales spreadsheet is the price paid by [redacted] [trader].

*6.4.3 Inland freight and export charges*

We sought to confirm the inland and port and terminal handling charges.

*Inland freight*

De Clemente confirmed that all sales to [redacted] [trader], for indent supply to [redacted] [Australian customer], were made on an FOB basis ex-Naples port.

De Clemente advised that, in accordance with negotiated terms of supply with [redacted] [trader];

- De Clemente directly incurs all costs associated with packing and delivering the goods from the warehouse to Naples port; and
- [redacted] [trader] incurs all costs associated with handling and port-clearance to the point of FOB, and invoices De Clemente for these charges.

De Clemente advised that the inland freight charges allocated in the listing with respect to sales to [redacted] [trader] comprised all expenses incurred by the company associated with the movement of the goods from the warehouse to the point of FOB clearance.

De Clemente calculated, and allocated, inland freight costs (from Fisciano to Naples port) on a transactional basis as an average cost for [redacted] and [redacted] cans, represented below

| Can size   | Unit transport cost (EURO) |
|------------|----------------------------|
| [redacted] | [redacted]                 |
| [redacted] | [redacted]                 |

De Clemente advised that these averages were calculated on the basis of [redacted] [calculation methodology]

| Can size   | Cans per case (a) | Cases per container (b) | Total cans per container (a x b) |
|------------|-------------------|-------------------------|----------------------------------|
| [redacted] | [redacted]        | [redacted]              | [redacted]                       |
| [redacted] | [redacted]        | [redacted]              | [redacted]                       |

De Clemente used the above notional average total cans per exported container relative to the total actual transport expenses incurred to calculate the unit transport cost on a line by line basis.

De Clemente provided source documentation reflecting the inland freight and clearance charges incurred in relation to each selected sample sale.

The team verified that there were slight discrepancies between [redacted] [identified discrepancies].

Notwithstanding the above, the team was satisfied that the discrepancies were not significant to merit re-calculation.

6.4.4Packing

De Clements packs the GUC using the same materials irrespective of customer or market. De Clemente stated, however, that there were cost differences associated with different packaging types, ie whether the cans were packaged as a pack of 6, 12, 20 or 24. It stated that sales to Australia were all made as [redacted] can packs.

The weighted average unit packing for cost allocated to sales to [redacted] [trader] on a per can basis were as follows:

| Cut profile/Can size | Carton configuration | Unit packing cost (EURO) |
|----------------------|----------------------|--------------------------|
| [redacted]           | [redacted]           | [redacted]               |
| [redacted]           | [redacted]           | [redacted]               |

|            |            |            |
|------------|------------|------------|
| ██████████ | ██████████ | ██████████ |
|------------|------------|------------|

De Clemente advised that these averages had been allocated on the basis of ██████████  
██████████ [allocation methodology]

The team requested, and was provided with a worksheet identifying the methodology by which unit packing costs had been calculated by De Clemente.

The team requested, and De Clemente provided, source documentation to support the allocation of unit label and carton costs that were reflected as cost line items in the packing calculation worksheet. These documents are attached as **confidential attachment EXP 3**.

We confirmed that the applicable unit averages represented in the packing cost calculation sheet had been allocated correctly in the sales listing with respect to sales to ██████ [trader].

## 6.5 The exporter

As discussed above contractual supply arrangements are in place between De Clemente and ██████ [Australian customer] pursuant to which the GUC is sold by De Clemente to ██████ [trader], acting in capacity as the representative buying agent of ██████ [Australian customer], prior to exportation of the goods from Naples port to the designated port in Australia.

We confirmed that beneficial legal ownership of the goods is relinquished by De Clemente to ██████ [trader] upon payment of consideration for the invoiced value of the goods on the basis of sale at the FOB clearance point in Italy.

Notwithstanding this fact for all goods supplied to ██████ [Australian customer] via the FOB-indent supply arrangement facilitated by ██████ [trader], we consider De Clemente to be the exporter because it:

- is the manufacturer of the goods;
- negotiates with ██████ [Australian customer] in Australia, via its nominated buying agent, for the establishment of long-term supply contracts executed between De Clemente and ██████ [Australian customer];
- owned the goods at all times time prior to export;
- arranges for the packing, transport and clearance of the goods to the FOB point at Naples port with actual knowledge of the goods intended

destination and the identity of the receiving Australian entity responsible for the goods upon arrival in Australia;

- issues invoices, and receives payment, for commercial transactions with the legal representative of [REDACTED] **[Australian customer]** involved in the exportation of the goods from Italy to Australia.

We are satisfied that De Clemente retains all responsibility for the administration of the export of the goods to Australia up to the FOB point.

On the basis of the available evidence, we are satisfied that [REDACTED] **[trader]** acts as the intermediary legal agent representing [REDACTED] **[Australian customer]** in the administration of transactions executed pursuant to contractual supply agreements executed between De Clemente and [REDACTED] **[Australian customer]**.

## 6.6 The importer

We noted that [REDACTED] **[Australian customer]**:

- negotiates with De Clemente for the long term supply of goods under formal contractual commercial relationships via its appointed overseas buying agent in Italy, [REDACTED] **[trader]**;
- Submits purchase orders to De Clemente, via its official overseas buying agent, [REDACTED] **[trader]**, pursuant to contractual indent-supply arrangements arranged between De Clemente and [REDACTED] **[Australian customer]**;
- are identified as the consignee on the bill of lading;
- take control of the goods on arrival to Australia and become the beneficial owner of the goods.

We consider that [REDACTED] **[Australian customer]** are the beneficial owners of the goods at the time of importation and are therefore the importer of the GUC exported by De Clemente during the period of investigation.

## 6.7 Arms' length

Section 269TAA the Customs Act outlines the circumstances in which the price paid or payable shall not be treated as arms' length. These are where:

- there is any consideration payable for in respect of the goods other than price;

- the price is influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or
- in the opinion of the Minister, the buyer, or an associate of the buyer, will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

De Clemente state that it is not affiliated or otherwise related to its sole Australian customer, [REDACTED] **[Australian customer]**, or its Italian buying representative, [REDACTED] **[trader]**. We found no evidence to contradict this assertion.

Further, with respect to the commercial relationship between the exporter and importer (and the agents thereof), we found no evidence that:

- there is any consideration paid or payable for or in respect of the goods other than their price; or
- the price is influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or
- the buyer, will, subsequent to the purchase or sale, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

Based on the above, we consider that sales of the GUC from De Clemente to [REDACTED] **[Australian customer]** (via its buying agent) are sales that are arm's length transactions pursuant to the terms of subsection 269TAA.

## 6.8 Export price preliminary assessment

### 6.8.1 Basis for calculation

In the case of export sales to Australia by De Clemente, we consider:

- that the goods have been exported to Australia otherwise than by the importer;
- that the goods have not been purchased by the importer from the exporter as De Clemente sells the goods to [REDACTED] **[trader]** who in turn sells the goods to [REDACTED] **[Australian customer]**; and
- the purchases of the goods were arms' length transactions

Therefore, we consider that export price for export sales from De Clemente can be established under section 269TAB(1)(c) of the Customs Act being the price that the Minister determines having regard to all circumstance of the exportation.

We consider that we can use De Clemente's FOB price to [redacted] [trader] to determine the export price.

Export price calculations are included at confidential appendix 1.

## 7 COST TO MAKE & SELL

### 7.1 Introduction

De Clemente provided CTMS spread sheets delineated as follows:

- domestic CTMS – for products [REDACTED];  
and
- Australian CTMS – for products [REDACTED]

The CTMS spread sheet provided data relating to the major costs to make each product on a unit (can) basis. Given the seasonal nature of tomato processing, CTMS information was provided by product type as a single CTMS for the period of investigation.

At the visit, De Clemente provided us with an expanded CTMS worksheet (**confidential attachment CTMS1**) which reconciled with the CTMS provided in the exporter questionnaire response as well as providing additional detail regarding the allocation of costs. The CTMS worksheet listed the total costs and then their allocation to different product lines and individual can.

De Clemente explained that the CTMS worksheet captured all relevant manufacturing costs from its financial statements for the investigation period. This covered the production costs over the processing season of July to September as well as the overhead costs for the remainder of the year.

We found that approximately 70% of costs were for raw material, 10% for processing and overheads, and 20% of costs were selling, general and administrative costs (SG&A). Within raw materials, the costs associated with fresh tomatoes (tomatoes and transport costs) accounted for approximately 25% of the total CTMS, while cans accounted for 40%.

### 7.2 Upwards reconciliation to financial statements

We asked De Clemente to demonstrate how the costs reported in the CTMS spread sheets reconciled to the financial statements and, in turn upward to the operating balance sheet of the company.

In its CTMS, De Clemente had listed production costs for:

- fresh tomatoes;
- tomato transport;
- cans and can ends;
- Packaging;

- factory labour;
- general overheads (energy, water and gas); and
- other costs (overheads for purifier, boiler, sterilizer etc).

It then listed selling, general and administrative (SG&A) costs for:

- selling costs (commissions, agents fees, advertising etc);
- wages for administration staff;
- administration costs;
- delivery costs;
- finance costs; and
- depreciation and other costs.

De Clemente advised that the totals of each item (prior to allocation to particular product lines) reflected the summary of the relevant cost items from the company's financial statements, with the exception of can costs, which were based on the actual cost of the specific cans.

To demonstrate this allocation De Clemente provided:

- A) A summary listing of all cost items represented in the company's financial statements representing composite costs of each item as reported in the financial statements for the period 1 July to 31 Dec 2012 and 1 January to 30 June 2013.

This document was colour coded to reflect which cost items formed parts of production cost and SGA categories and allocated the CTMS of the goods; and

- B) Copies of the source financial statements for the 6 month periods ending 31 Dec 2012 and 30 June 2013 from which the summary of company costs was generated

These documents are attached as (**confidential attachment CTMS 2**).

We were able to reconcile these costs, prior to their allocation to specific products, to the relevant costs listing in the company's financial statements for the investigation period.

We also examined the financial statements to ensure that no relevant items had been excluded from the CTMS. We were satisfied excluded items were not relevant to the manufacture of canned tomatoes, being items such as the purchase cost of other finished products.



We then sought to reconcile the financial statements to the audited operating balance sheet. De Clemente advised that, under Italian law, financial statements prepared by privately owned companies must be reclassified for the purposes of preparing and lodging company operating balance sheets at the end of the financial year.

To assist verification of the financial statement of the company upwards to the operating balance sheet, De Clemente provided a document outlining the method by which individual line items in the financial statement are reclassified under composite categories for the purposes of preparing the balance sheet (**confidential attachment CTMS3**).

The team selected various items in the financial statement for 2012 and traced the composite values of these items as reclassified in accordance with the form requirements of the balance sheet, to the 2012 operating balance sheet of the company.

On this basis, the team was satisfied that the cost items reflected in the financial statements could be accurately traced to the operating balance sheet and that the financial statements could be relied upon as a complete representation of the operating costs of De Clemente for the period of investigation, and were an appropriate basis upon which to allocate costs for the purposes of developing the CTMS.

We were therefore satisfied that the total costs listed in the CTMS were complete and relevant.

### 7.3 Cost allocation methodology

The cost items listed above, with the exception of can costs, were then allocated to individual product lines on the basis of the proportion of the total volume of tomatoes processed by De Clemente that went into that particular product line. For example, if the company processed in total 100MT of tomatoes and 10MT was used in a particular product line, 10% of all overhead and production costs would be allocated to that line.

The allocation according to the volume of tomato processed for the relevant models was as follows:

| Model      | Tomato processed (kg) | Proportion of costs allocation to production line |
|------------|-----------------------|---|
| ██████████ | ██████████            |   |
| ██████████ | ██████████            | ███%  |

|            |            |              |
|------------|------------|--------------|
| [REDACTED] | [REDACTED] | [REDACTED] % |
| [REDACTED] | [REDACTED] | [REDACTED] % |

After establishing the costs allocation to a particular production line, the company then allocation the costs on a per unit basis according to [REDACTED] **[cost allocation methodology]**

De Clemente advised that this methodology for the preparation of CTMS data was consistent with the ordinary cost accounting practices adopted by the company in its ordinary course of business.

We therefore sought to verify the tomato and production costs, as outlined below, as well as other cost items to source documents to check for accuracy.

**7.4 Verification to source documents**

7.4.1 Tomatoes

As explained above, De Clemente calculates its costs on the basis of the total volume of fresh tomato procured and total fresh tomato processed during the production season of July to September.

De Clemente advised that raw tomato is purchased once per year and it uses [REDACTED] **[number]** suppliers. It explained that it purchased tomatoes from the south of Italy and that [REDACTED] **[commercial supply variables]**

The stated total volume of tomato procured by De Clemente, total value and value per KG for the period of investigation is presented below.

| Volume of raw tomato processed | Value of raw material (total) | Value of raw material per KG |
|--------------------------------|-------------------------------|------------------------------|
| [REDACTED]                     | [REDACTED]                    | [REDACTED]                   |

We were able to successfully reconcile the total cost of tomatoes used in production [REDACTED] **[number]** with a specific line item in the company's financial statement *'acquisto pomodoro fresco'* (purchase of fresh tomato)

We then asked the company to provide a purchase ledger for all tomato purchases during the investigation period. We were able to reconcile the total

of this listing to the amount listed in the CTMS spreadsheet and the financial statements.

We selected two transactions from two suppliers from the purchase ledger provided by De Clemente - [REDACTED] [supplier names] in the September period for verification to source documents.

De Clemente provided invoices relating to the transactions selected and were able to reconcile the total invoiced value for each transaction to the [REDACTED] listing (the purchase ledger and invoice are at **confidential attachment CTMS4**).

De Clemente advised that tomatoes are typically procured under the terms of [REDACTED]  
[REDACTED] [commercial terms of supply]

To evidence payment for selected transactions, De Clemente provided copies of contracts entered into with the two suppliers and remittance advices reflecting part payments from De Clemente to the suppliers (**confidential attachment CTMS4**). We noted that the contract price for roma tomatoes was [REDACTED]/MT [number] and for round tomatoes [REDACTED]/MT [number], with cost variances for [REDACTED].

On the basis of the above, we are satisfied that the tomato costs used by De Clemente for the purposes of cost allocation are supported by verifiable source documentation and reflect the actual costs of tomato procured for the 2012 production season.

We then sought to verify the volume of tomatoes used, as this was an important factor in the cost calculations. De Clemente explained that it recorded each delivery of fresh tomatoes it received by weight and supplier using weight stations at its processing plants. We sighted the complete transactional delivery ledger (over 300 pages) and the summary page which listed the total volumes of deliveries received over the season (**confidential attachment CTMS5**). The total volume of tomatoes delivered ([REDACTED] kg) reconciled with what was listed in the CTMS spreadsheet.

De Clemente advised that the Fisciano (and Angri) facilities operate distinct dedicated production lines for different product profiles on any given day of production. De Clemente's production management system captures production data by line for each day of production.

The production daily ledger reflects:

- Product type produced;

- Total material moved for production to each line (kgs); and
- Total output per line (cans)

De Clemente provided a copy of the movement ledger from the final day of production for the 2012 season which reflects the total of all products over the 2012 season (**confidential attachment CTMS6**)

We compared the total volume of tomato used by each line and we reconciled it with the values used to allocate costs to the different product types in the CTMS spread sheet. However, the total volume of tomatoes input into all production lines was marginally lower than the total value of tomatoes delivered. We considered that the allocation of tomato costs should be based on the actual volume of tomatoes processed, rather than delivered, to ensure no costs were allocated to unused product. We changed the denominator in the CTMS calculations accordingly. The production report is at **confidential attachment CTMS6**.

*7.4.2 Production volumes, scrap and yield*

Having satisfied ourselves of the completeness and accuracy of the total volume and value of fresh tomato reflected in the CTMS worksheet, we sought to verify the accuracy of production volumes.

As noted above, De Clemente movement ledger for the final day of its production for the season which showed the total volume of tomatoes input into each production line and the total output for cans from these lines (**confidential attachment CTMS6**).

We were able to reconcile the volumes of cans produced for the different product lines to the volumes of cans used to allocate costs in the CTMS spread sheet.

Based on this production record, we found De Clemente’s yield for different product lines to be as follows:

| Product    | No of cans/bottles produced | Net quantity finished product | Nominal amount of fresh product | Yield ratio |
|------------|-----------------------------|-------------------------------|---------------------------------|-------------|
| [REDACTED] | [REDACTED]                  | [REDACTED]                    | [REDACTED]                      | [REDACTED]  |
| [REDACTED] | [REDACTED]                  | [REDACTED]                    | [REDACTED]                      | [REDACTED]  |
| [REDACTED] | [REDACTED]                  | [REDACTED]                    | [REDACTED]                      | [REDACTED]  |
| [REDACTED] | [REDACTED]                  | [REDACTED]                    | [REDACTED]                      | [REDACTED]  |

|            |            |            |            |            |
|------------|------------|------------|------------|------------|
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| Total      | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |

De Clemente explained that did not record the volume of juice produce separately but rather [REDACTED] **[confidential commercial practices]**

During our tour of De Clemente’s production facilities, we observed a number of dented cans. We asked the company what happened to these cans and it advised that they were discarded and destroyed. De Clemente advised these damaged cans are costed in the same manner as finished goods (that is, proportionately relative to the total volume of tomato purchased and processed). De Clemente considers that losses due to damaged cans should not be included in the CTMS as this is just a cost that the company carries and is captured in the inventory movement costs in the financial statements.

However, the team considers that it is appropriate that an adjustment be made to costs to account for the costs associated with scrap cans and that the scrap cans be deducted from the production volume. To enable this adjustment to be made, the team requested, and was provided with a report generated from the [REDACTED] system for the period of investigation reflecting the total volume of scrap [REDACTED] and [REDACTED] cans in each half of the investigation period (**confidential attachment CTMS7**).

This report reflected composite volumes for each cut and can profile as represented below:

|                 |  |
|-----------------|--|
| Cut/Can profile | Volume of scrap (total cans disposed of) |
|-----------------|--|

|  |  |  |
|--|--|--|
|  |  |  |
|  |  |  |
|  |  |  |

The team used the total volume of scrap cans reflected above to amend the total of cans processed reflected in the CTMS calculations. This resulted in the following adjustments to total can production volumes:

| Cut/Can profile | Original production volume in CTMS | Adjusted volume |
|-----------------|------------------------------------|-----------------|
|                 |                                    |                 |
|                 |                                    |                 |
|                 |                                    |                 |

7.4.3 Cans

De Clemente advised that, unlike other material costs, it accounts for the cost of cans in production as actual average costs per item, based upon the purchase price of empty cans from its [REDACTED] system.

To evidence the basis upon which these averages had been generated, De Clemente generated a purchase ledgers for all can purchases made during the period of investigation directly from the [REDACTED] accounting system filtered for [REDACTED] and [REDACTED] cans. The ledger represented all purchases reflecting supplier, quantity and price.

The reports contained a summary line at the bottom of the listing reflecting, inter alia, the average cost per can for each [REDACTED] and [REDACTED] cans. De Clemente uses the last in, first out method to value inventory. We found that there was a slight difference between the averages as recorded in the system and the number input into the CTMS worksheet. We therefore, used the value as shown in the [REDACTED] system and amended the CTMS worksheet.

To verify purchases on a transactional level in [REDACTED], the team requested, and De Clemente provided, an expanded purchase listing reflecting purchases by supplier, by invoice number.

From the second ledger relating to purchases of [REDACTED] cans, the team selected 2 transactions for verification to source documents. De Clemente provided commercial invoices (and proof of payment) for the selected transactions from which the team reconciled invoice value to the system and confirmed that the invoiced price reflected in the system was the price paid by De Clemente.

For completeness, the team requested, and De Clemente provided a third ledger which enabled the summary purchase ledger to be reconciled with the detailed transactional purchase ledger by corresponding document number. The team selected a document number (EF507) from the purchase ledger and expanded this code in the [REDACTED] system. The details of the expanded ledger reconciled, by invoice number, to the supplier purchase listing. Documents relating to can costs are at **confidential attachment CTMS8**.

#### *7.4.4 Labour*

Following raw material costs, the most significant production cost represented by the CTMS calculations provided by De Clemente was direct labour.

De Clemente advised that labour costs associated with the costs of production are accounted for by the company under two cost categories;

- direct labour costs (operational labour of the 'workers' directly associated with production); and
- administrative labour costs (indirect labour of 'employees' of the company).

For the purposes of allocating labour costs in the CTMS data De Clemente has calculated the total composite costs for each labour cost category over the period of investigation by dividing the total labour cost reflected in its financial statements covering the period of investigation by the total number of 'workers' and 'employees' engaged by the company during the production period.

Direct labour costs were allocated as a composite element of the cost to make, whilst administrative labour costs were allocated under administrative costs reflected in the cost to sell.

We sought to verify the source labour costs reflected in De Clemente's financial statements (cost code [REDACTED]) which formed the basis for these allocations in the CTMS worksheets through the [REDACTED] system.

De Clemente ran search parameters in the system focusing on cost code [REDACTED] for the 6 month period ending 30 June 2013, and provided a copy of the report generated (**confidential attachment CTMS9**).

From this report we selected composite cost item 'gross wages' ([REDACTED]) and were able to precisely reconcile the total cost reflected in the system cost report to the corresponding line item in the financial statement.

#### *7.4.5 Overheads*

We also sought to verify overhead costs. De Clemente explained that in its overhead costs it recorded the costs associated with gas, electricity and water. We selected gas and De Clemente provided us with the a gas invoice and proof of payment for both its Angri and Fisciano plants. The total of these two invoices reconciled with the cost for gas (with a very minor discrepancy) to the gas cost recorded in De Clemente's financial statement for the period of July – December 2012. We were therefore satisfied that the gas costs and overhead costs were accurate. The gas invoices are at **confidential attachment CTMS10**.

## 7.5 Selling General and Administration

De Clemente categorised total SG&A expenses as follows:

- selling costs;
- administration costs;
- financial costs;
- delivery expenses; and
- other costs.

As noted above, each cost category represented the composite sum of various cost items, the costs of which were taken from 6 monthly periodic financial statements covering the 12 month period beginning July 2012 and ending June 2013.

We confirmed that all SG&A expenses reflected in the company's financial statement were allocated to prepared or preserved tomatoes on the basis that sales of these goods represent the significant majority of the company's commercial activities, and given that De Clemente could not delineate proportionate SGA expenses for tinned tomato products and sales of pulses and other items separately. We note that this results in a marginal overstatement of SG&A costs to the goods under consideration.

Except for selling costs, all SG&A expenses were allocated equally to domestic and export sales using the cost allocation methodology of total cost over total tomato purchase volume multiplied by total tomato processed over total number of cans produced.

### 7.5.1 Selling expenses

As referred to above, De Clemente allocated SGA costs equally for domestic and export sales of corresponding product profiles, except for selling expenses.



De Clemente advised that certain expense line items reflected in the financial statement related to selling activities specific to sales of goods in the domestic market and were not incurred in relation to sales to [REDACTED] [trader].

We confirmed that the line items that were allocated to domestic sales only included:

- agency fees
- discounts
- rebates

Based upon our verification of the commercial terms of sale to [REDACTED] [trader], and of the dynamics of supply in the Italian domestic market we believe that the allocation of certain expense items for domestic sales only was reasonable and accurate.

#### *7.5.2 Delivery expenses*

During the course of analysis of the allocation of SGA expenses, the team sought clarification regarding the composite items allocated as 'delivery expenses' in the CTMS, which had been allocated equally to domestic and export sales.

De Clemente advised that this cost category included expenses related to domestic delivery of goods to Italian customers and expenses associated with delivery of goods to [REDACTED] [trader] which, under the commercial terms of supply, included FOB clearance charges and costs. The team did not consider that FOB related expenses and marine costs should be allocated to domestic sales, as these were export expenses.

#### *7.5.3 SG&A conclusion*

The team considers that De Clemente's allocation methodology for SG&A was reasonable. However, the team notes that delivery costs and certain selling costs, such as rebates and commissions are only applicable to certain sales. Therefore, the team considers that these costs should be deducted from the CTMS and that selling prices should also be assessed at an ex-works (EXW) level, net of discounts and commissions.

## **7.6 [REDACTED] cans[product category]**

As explained in section 4, De Clemente [REDACTED] [REDACTED] [confidential information regarding product category]. We requested that De Clemente provide us with [REDACTED]

[redacted]  
 [redacted] [verification of product category costs]

To verify the [redacted] listing provided, we requested and were provided invoices [redacted] [commercial activities] as listed on the ledger. We were able to reconcile these invoices to the [redacted] ledger. The [redacted] ledger and invoices are at **confidential attachment CTMS11**.

As De Clemente is unable to identify [redacted] [redacted] [confidential information related to product category] we have determined a weighted average cost for [redacted] [product type] that takes into account De Clemente’s relevant [redacted] [costs].

The team as constructed the total cost of [redacted] [product category] as follows:

[redacted]  
 [redacted]  
 [redacted]  
 [redacted]  
 [redacted]  
 [redacted]

**[Construction methodology]**

The team then [redacted] [redacted] [cost allocation for product category] This resulted in a slightly increased CTMS for this product type.

**7.7 Cost to make and sell – summary**

We have verified De Clemente’s CTMS for canned tomatoes to its audited balance sheet and to source documents. As a result, we are satisfied that the information provided is accurate, relevant and complete.

However, we have made the following changes to the cost data as listed below:

- the volume of tomato used is the volume processed rather than purchased;

- production volumes have been adjusted to account for the loss of damaged cans;
- certain selling costs and all delivery costs have been excluded from the SG&A costs to calculate an EXW cost, net of rebates, discounts and commissions; and
- costs for [REDACTED] **[product type]** have been adjusted to include [REDACTED] **[cost adjustments]**

The final CTMS worksheets are at **confidential appendix 2**.

We consider the CTMS for canned tomatoes from De Clemente are suitable for

- determining a constructed normal value under section 269TAC(2)(c) of the Act; and
- assessing ordinary course of trade under section 269TAAD of the Act.

## **8 Domestic Sales**

### **8.1 Market**

#### *8.1.1 General*

De Clemente explained that, irrespective of the market within which the goods are consumed, the end use of prepared or preserved tomato product is for consumption as an ingredient or additive in cooking or preparation of food.

De Clemente advised that patterns of end-use consumption of preserved tomatoes, including the GUC, in the Italian market is historically stable and does not fluctuate significantly from year to year.

De Clemente explained that the Italian market for the GUC specifically comprises a variety of different entities who procure product for direct sale to end-users or for sale to other entities in the downstream market or for export to third country markets.

De Clemente confirmed that, similar to the downstream market, the upstream production market for the GUC in Italy comprises a large number of manufacturers, toll-producers and cannery operations.

De Clemente confirmed that there are individual market leaders in both the upstream and downstream market for the GUC in Italy, identifiable by production power and purchasing power respectively.

De Clemente advised that the prevailing market price for particular variants of the GUC will be affected (amongst other things) by:

- the commercial behaviours of market leaders in the upstream market including terms of trade and pricing strategy; and
- the procurement trends of the major downstream market leaders including patterns of stock consumption and price strategies.

In summation, De Clemente advised that market prices are directly correlated to the availability of free-stock in the market and, accordingly, market price will fluctuate both positively and negatively (as outlined in section X) depending on:

- Crop yield of tomato for the growing season;
- Production yield of finished product; and
- Inventory uptake by the downstream market

#### *8.1.2 Summary– market comparison*

De Clemente advised that the Italian domestic market for prepared or preserved tomatoes differs significantly in comparison to export markets (both within and outside Europe) in relation to:

- The mix of customers to whom the goods are sold
- Product preferences and patterns of demand; and
- The dynamics of trade relationships and the way in which commercial terms of supply are negotiated and executed.

#### *8.1.3 Product differentiation*

As discussed previously, De Clemente (via indent sales arrangements executed by [redacted] [trader]) exported 'private label' products to [redacted] [Australian customer] in Australia during the period of investigation. In summary these were

- [redacted];
- [redacted]; and
- [redacted]

#### **[Exported products]**

In comparison, De Clemente produces and sells both private label and its own proprietary label ('De Clemente' labelled product) of the GUC to other customers in the Italian domestic market in a variety of can sizes and cut profiles.

#### *8.1.4 Level of trade*

##### *8.1.4.1 General*

De Clemente sells the GUC, to a variety of domestic customers summarily categorised as either:

- Discounters;
- Distributors;
- Manufacturers;
- Retailers; or
- Trading companies;

From the domestic sales data provided by De Clemente, we extrapolated the relative proportion (by quantity) of the De Clemente's sales into the domestic market by each level of trade. This is presented in the below table:

| Level of trade    | Quantity (cans) | Net invoice value (EURO) | % of total value | %of total quantity |
|-------------------|-----------------|--------------------------|------------------|--------------------|
| Discounter        | ██████          | ██████                   | ██               | ██                 |
| Distributors      | ██████          | ██████                   | ██               | ██                 |
| Manufacturers     | ██████          | ██████                   | ██               | ██                 |
| 'Other'           | ██████          | ██████                   | ██               | ██                 |
| Retailers         | ██████          | ██████                   | ██               | ██                 |
| Trading companies | ██████          | ██████                   | ██               | ██                 |

8.1.4.2 Supply dynamics

De Clemente advised that there are material differences between each level of trade with respect to:

- The dynamics of market engagement and commercial negotiation between De Clemente and the domestic customer; and
- The typical dynamics of trade between De Clemente and its customers and the negotiated terms of trade pursuant to which the goods are sold.

The effect of these differing dynamics is reflected in the award of varying levels of discounts and differing supply strategies and pricing positions adopted by De Clemente.

8.1.4.3 Discounts

De Clemente advised that, unlike export sales to ██████[Australian customer] (via ██████[trader]) where a contractual unit price is set for the duration of the contractual life-cycle, the dynamics of the Italian market for tinned tomatoes require the company to offer various price discounting mechanisms as part of the negotiation process for the supply of the goods.

From the data we have calculated the following summary of the composite discounts that are accrued in relation to each level of trade, and the ratio of total discount value relative to the total gross invoice value of goods sold.

| Level of trade  | Gross invoice value<br>(a) | Total rebates<br>(b) | Total Discounts on invoice<br>(c) | Total commission<br>(d) | % of invoice value<br>(a+b+c+d)/(a) |
|-----------------|----------------------------|----------------------|-----------------------------------|-------------------------|-------------------------------------|
| Discounter      | ██████████                 | ██████████           | ██████████                        | ██████████              | ██████████                          |
| Distributor     | ██████████                 | ██████████           | ██████████                        | ██████████              | ██████████                          |
| Manufacturer    | ██████████                 | ██████████           | ██████████                        | ██████████              | ██████████                          |
| Retailer        | ██████████                 | ██████████           | ██████████                        | ██████████              | ██████████                          |
| Trading company | ██████████                 | ██████████           | ██████████                        | ██████████              | ██████████                          |

De Clemente confirmed, as reflected above, that ██████████ – receive the most significant discounts, rebates and commissions.

De Clemente claim that it is commercially accepted that the award of significant discounts to ██████ customers is necessary in order to be commercially competitive for supply to the Italian ██████ segment of the market.

*8.1.4.4 Supply negotiation*

As discussed previously with respect to export sales to ██████ [trader], De Clemente assert that the dynamics of negotiation with its domestic customers for the supply of the GUC, including the price at which the goods are sold, is effected by the period of the year during which the customer engages the market for the supply of the goods.

De Clemente state that in contrast to sales to ██████ [trader], the majority of its Italian customers engage De Clemente for supply once production has finished and a large proportion of inventory has already been assigned for supply to export customers pursuant to contracts executed pre-production. It noted that retail customers in particular sought to negotiate contracts in October while traders would often approach the market early.

De Clemente assert that the prices offered to domestic customers who seek supply post production are higher than would be offered had the same customer engaged the market pre-production.

*8.1.4.5 Terms of supply*

De Clemente state that, in addition to demanding, and receiving, significant annual rebates and invoice discounts, the terms of supply negotiated with domestic customers differ significantly from the terms pursuant to which the goods are sold to [redacted] [trader].

Specifically, De Clemente claim that Italian retail-level customers demand intermittent supply of varying quantity consignments throughout the year; requiring De Clemente to arrange small volume production lines relating to the labelling, packing and delivery of the goods.

- De Clemente claim that significant additional costs associated with efficiency losses are incurred in relation to domestic retail level sales which are not similarly incurred in relation to sales to [redacted] [trader] associated with.
- Additional storage expenses associated with stock holding for intermittent supply;
- Efficiency losses associated with movement of small volumes of stock, labelling and packing; and
- Additional handling and freight expenses associated with intermittent delivery of small volume consignments and associated opportunity loss in failing to utilise maximum freight capacities.

De Clemente assert that customers who request supply in patterns similar to [redacted] [trader] (in terms of order frequency and volume per consignment) are traders or distributors.

#### 8.1.4.6 Summary

De Clemente submitted that the dynamics of supply to different levels of trade in the Italian domestic market do not exist in relation to its sales to [redacted] [Australian customer] (via [redacted] [trader]) given that:

- [redacted]
- [redacted]; and
- [redacted]

**[terms of negotiation and supply].**

De Clemente claims that export sales of the goods should be compared with domestic sales of comparable products made entities classified as 'traders'



and 'distributors' which it regards to operate at the same level of trade as [redacted] [trader] and are awarded negligible discounts and incentives.

#### 8.1.4.7 The Commission's Assessment

The team was satisfied, on the basis of the available evidence, that there are differences in the dynamics of supply in relation to different levels of trade in the Italian domestic market, most notably with respect to the award of varying discount and rebate mechanisms;

The Commission considers that any tangible discounts, rebates and other supply incentives offered by De Clemente with respect to domestic sales can be addressed through the application of price adjustments in relation to domestic sales (discussed below).

The team notes De Clemente's claims regarding the relative impact of market engagement and the time at which supply is negotiated by its domestic customers in comparison to the negotiation of supply with [redacted] [trader]. However, in the absence of sufficiently supported basis to quantify the impact of market engagement on price, the team has no way to make any adjustment for these timing differences.

On this basis:

- There does not appear to be a reasonable basis upon which to assert that the Commission should rely upon De Clemente's sales to traders and distributors in the Italian domestic market for the purposes of comparison with sales to [redacted] [trader] for export; and
- There does not appear to be reasonable grounds to exclude domestic sales to customers identified within other levels of trade in the Italian market for the purposes of determination of normal values.

## 8.2 Ordering

De Clemente described its domestic sales process as follows.

- Domestic customers contact De Clemente directly to negotiate the supply of the goods
- De Clemente provides the customer with an indicative price listing, specifying unit price per product profile (on a can or carton basis).
- De Clemente negotiates with the domestic customer to crystallise terms of supply related to – product specifications, product pricing and discounts claimed by the customer.

- De Clemente enters into supply agreements with the domestic customer, specifying product variant for supply, indicative supply price and agreed discounts and incentives but not volume of supply;
- Purchase orders are submitted by the customer to De Clemente intermittently depending on demand;
- Price is negotiated on a per order basis between De Clemente and the customer;
- The goods are picked from inventory as bright cans, labelled packed and delivered by De Clemente, or collected ex-works by the customer.
- Freight from the warehouse at to the customer is provided by unrelated third party providers.
- De Clemente invoices the customer following delivering - payment from the customer is required within 60 days from the date of invoice.

As above, De Clemente provides price lists to its customers in the domestic market for each production season as part of the negotiation of supply.

Domestic market prices are influenced by the same factors as described in section 6.

De Clemente advised however that price lists are purely indicative and are subject to significant re-negotiation in the process of supply agreements. Additionally, prices established under non-binding agreements are subject to negotiation on a per order basis.

De Clemente advised that, unlike export sales supply negotiation, domestic supply agreements do not specify prospective volumes of supply. Prices are subject to renegotiation on the basis of De Clemente's inventory levels throughout the year following production and market prices for the goods (which also are significantly influenced by levels of stock available in the market).

### **8.3 Verification to source documents**

#### *8.3.1 Summary of data set*

De Clemente supplied a complete listing of its domestic sales which reflected line by line information relating to sales made between De Clemente and its customers in Italy. The spreadsheet includes information relating, inter alia, to:

- customer;
- product code
- invoice number, date of invoice and date of sale;

- payment terms and delivery terms;
- sales quantity (in units – designated in cans);
- gross and net invoice values (expressed in EURO);and
- various domestic charges, costs and discounts (EURO)

The sales listing reflects line-by-line data relating to over [REDACTED] [number] transactions, which comprise sales of a total cohort of over [REDACTED] product codes representing a total volume of [REDACTED] cans ([REDACTED],MT).

Prior to the visit, we requested that De Clemente provide supporting documents relating to 11 selected domestic sales transactions.

We requested, and De Clemente provided, the following documents for each of the selected transactions:

- sales agreement/product order between De Clemente and the relevant customer;
- commercial invoice from De Clemente to the domestic customer;
- source details of associated domestic costs and charges; and
- proof of payment made by domestic customer to De Clemente.

These documents are at **confidential attachment DOM 1**.

From the selected sales transactions we verified details from the domestic sales spreadsheet to the commercial documents provided. We were able to confirm that the sales volume and value entered into the spreadsheet for all selected sales reflected the volume and value in the source documents and were accurate.

One selected invoice related to the sale of product code verified by the team to relate to the sale of [REDACTED] [product category] These product codes have subsequently been removed from the domestic sales listing for the purposes of normal value analysis.

As part of the sales documentation De Clemente provided copies of the commercial invoice supplied to the customer. Transaction statements from the internal sales database on the [REDACTED] platform were also provided from which we were able to identify payment received by De Clemente from the Customer by invoice number.

We are satisfied that the invoice price shown in the domestic sales spreadsheet was the accurately reflected composite price paid by domestic customers.

## 8.4 Domestic costs and charges

### 8.4.1 Inland transport

De Clemente advised that, in the case of goods sold on a delivered basis, domestic delivery is facilitated through unrelated third party freight providers from the warehouse to the customer.

De Clemente advised that it is provided with price lists from its freight providers which set the price per full truck to various locations within Italy.

Unit transport unit costs had been allocated in the domestic sales listing as average unit costs by customer on the basis of

- the applicable transport cost for the delivery of a full truck to the final destination reflected in the domestic freight price list; divided by
- the average number of total cans comprising a full truck delivery

De Clemente advised that it had derived a notional total number of cans per truck on the basis of assumptions, based on commercial knowledge, that

- each truck comprises;30 or 32 pallets of72 cases each representing a total 2,304 cases
- Each case typically contains 24 cans representing a total of 55.296 cans

To verify the accuracy of the allocated transport costs we selected a customer, [REDACTED] [customer name]. De Clemente provided a copy of the price list provided by the inland freight provider it uses for deliveries to the Sicily region (attached as **confidential attachment DOM 2**).

De Clemente advised that, notwithstanding the fact that in actuality a significant proportion of domestic consignments are delivered as split deliveries on a half truck basis, they have applied the freight charge of full trucks for all inland transport – resulting in an understatement of domestic inland transport.

We verified that that the unit cost reflected in the sales listing reconciled with the unit transport cost calculated using the actual full truck delivery cost divided by the national average total number of cans per truck.

### 8.4.2 Domestic packing

De Clemente advised that goods sold domestically are packed using identical processes and materials applied for packing goods sold to [REDACTED] [trader] for export to Australia.

Packing costs were allocated to the domestic sales listing on a line by line basis as unit averages depending on can size and case configuration (see discussion above at 6 and **confidential attachment EXP 3**). While exports to Australia were made in 12 can packs, sales on the domestic market were made in a range of packs.

Whilst the team was satisfied of the reasonableness of the methodology by which packing unit averages had been calculated it noted that averages presented in the calculations provided by De Clemente had not been applied consistently throughout the domestic sales listing.

The team amended the domestic sales listing to allocate correlative average packing costs for each can size and pack configuration as presented in the calculations provided by De Clemente.

#### *8.4.3 Discounts*

De Clemente allocated two types of discounts in the domestic sales listing provided to the commission – ‘discounts on the invoice’ and ‘other discounts’.

De Clemente advised these discounts were claimed by the customer as a reduction on the invoiced value of sales on a transaction by transaction basis, and generally were not conditional on any supply targets or criteria being met by the customer.

Using the sample source documents provided by De Clemente, we verified that the total quantum of discounts represented on the commercial invoice reconciled with the total amount allocated in the domestic sales listing.

For completeness, we selected another invoice from the domestic sales listing (Invoice [REDACTED]) (attached as **confidential attachment DOM 3**). We confirmed that the total ‘on-invoice’ discount reflected in the source documentation reconciled with the discount amount allocated in the domestic sales listing.

We also confirmed that all discounts reflected in commercial documentation, and allocated in the sales listing related to the supply of the GUC and did not include any discounts allocated to the sale of other products.

De Clemente advised that ‘other discounts’ were allocated in the domestic sales listing in relation to sales to one domestic customer [REDACTED] **[customer name]**. De Clemente advised that payments to [REDACTED] **[customer name]** relate to financial management services and payment warranties provided to De Clemente under contract in relation to the management of payments to De Clemente from certain domestic customers.

De Clemente provided a copy of the contract executed with [REDACTED] **[customer name]** for the provision of services, which covered the period of investigation. We confirmed that the contractual rate of payment

[REDACTED]  
[REDACTED] **[confidential commercial terms]** was correctly allocated in the domestic sales listing.

The team clarified that pursuant to the contractual terms agreed to between [REDACTED] **[customer name]** and De Clemente, De Clemente is invoiced separately by [REDACTED] **[customer name]** for costs allocated in relation to selected transactions applying the contractual management rate. De Clemente provided evidence of the periodic invoice provided to De Clemente by [REDACTED] **[customer name]**. (Commercial documentation relating to the agreement executed with [REDACTED] **[customer name]** and payments provided under these terms are attached as **confidential attachment DOM 4**)

On this basis, whilst allocated in the sales listing as a 'discount', the team was of the view that these amounts are better defined as sales adjustments.

#### *8.4.4 Off-invoice rebates*

De Clemente advised that it provides off-invoice discounts to a large number of its domestic customers – most significantly domestic retailers – in the form of rebates on the gross sales value of supply.

De Clemente advised that rebates are claimed by the customer as part of the process of negotiating and finalising terms of supply, and are reflected as a percentage rebate of total value of goods purchased during the agreed period of supply.

De Clemente advised that rebates are claimed by the customer intermittently throughout the period of supply, or at the completion of the supply period applying the agreed rebate percentage to the total turnover of goods to the recipient customer. The total rebate value owed at the date of claim is deducted by De Clemente from outstanding invoices yet to be paid by the customer.

We selected two customers from the domestic sales listing – [REDACTED] and [REDACTED] [customer names] – to whom significant rebate percentages were allocated in the domestic sales listing – [REDACTED] and [REDACTED] respectively.

De Clemente provided copies of the supply agreement executed with these customers (attached as **confidential attachment DOM 5**) which reflected, inter alia, the agreed rebate percentages applicable during periods of supply.

We reconciled that the rebate percentage allocated in the domestic sales listing in relation to sales to these customers reconciled with the rebate amount reflected in the formal agreements.

The team verified that, in instances in which rebate ratios had been negotiated upwards by the customer during the period of investigation, De Clemente had elected to allocate the rebate ratio using the lower ratio. This has resulted in an understatement of rebates actually paid.

#### *8.4.5 Refunds*

Whilst refunds and warranty claims were not separately recorded in the domestic sales listing, De Clemente confirmed that it accepts return of unsatisfactory goods from its customers and will issue refunds in circumstances where it believes the goods are not fit for purpose.

De Clemente advised that, where refund claims are accepted, a credit note is issued to the customer for the invoiced value of the goods.

We confirmed that credit notes were reflected in the domestic sales listing as negative values and reconciled the value of selected negative-value transactions to source documents (**confidential attachment DOM 6**).

#### *8.4.6 Domestic commissions*

De Clemente explained that it operates a commission system related to third party agents in the domestic market that arrange for supply to certain domestic customers.

Agents invoice De Clemente separately (typically on a quarterly basis) for the total commission accrued on the basis of the agreed rate of commission relative to the total value of sales during the invoiced period.

Domestic commission was allocated by De Clemente in the sales listing, where applicable, on the basis of the percentage of commission claimed by the relevant agent in relation to transactions facilitated between De Clemente and the customer.

De With reference to the domestic sales packages provided by De Clemente, the team confirmed that, where applicable, commercial invoices provided to domestic customers identified the domestic customer, the applicable sales agent, and the rate of commission charged by against the invoiced value of the transaction. We confirmed that this rate had been consistently applied to the applicable sales in the sales data and was accurate

*8.4.7 Credit terms*

De Clemente advised that, pursuant to an Italian law operative from October 2012 , payment related to the supply of food products is required within 60 days after the date of issue of the commercial invoice to its domestic customers.

De Clemente advised that prior to 2013, whilst 60 day credit terms were also specified in relation to all sales, there were no legally enforceable credit provisions operative in Italy.

De Clemente estimated that during the period of investigation the actual days of credit extended to domestic customers as a result of uniform delayed payments was between 90 days (on a conservative average) and 120 days.

To support this assertion De Clemente generated a summary report from its accounting system which represented the rolling accounts for each domestic customer. The team selected the following 5 Italian customers – which comprise over 75% of total sales volume reflected in the domestic sales listing:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]; and
- [REDACTED]

**[customer names]**

For each customer De Clemente provided a summary listing of the outstanding invoices awaiting payment as at the date of the visit (**confidential attachment DOM 7**). The listing reflected:

- Customer name
- Date of invoice



- Expiry date; and
- Days outstanding

Using these listings, the team verified that, on average domestic invoices to its major domestic customers were outstanding by at least 90 days from the date of invoice. The team amended the domestic sales listing to reflect credit terms of 90 days for all customers.

## 8.5 Arms' length

De Clemente submitted as part of its response to the exporter questionnaire that it directly sells the goods to a variety of customers in Italy, operating at a number of levels of trade in the market.

It advised however that it is not related in any way to any of its customers.

Notwithstanding relative differences in the quantum of discounts and rebates provided to domestic customers in the Italian market, we found no evidence that would suggest that;

- there is any consideration payable for or in respect of the goods other than their price; or
- the price is influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or
- the buyer, or an associate of the buyer, will, subsequent to the purchase or sale, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

We consider De Clemente's domestic sales of the goods to be made in arms' length transactions.

## 8.6 Ordinary course of trade

The Commission will exclude domestic sales of products in circumstances in which the total volume of unprofitable sales is found to be in excess of 20%, and deemed to be unrecoverable within a reasonable period of time<sup>4</sup>.

As discussed in relation to the analysis of cost to make and sell, given the seasonal nature of production, De Clemente allocates cost to make and sell

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<sup>4</sup>The Commission's view is that a reasonable period of time for the purposes of testing recoverability of unprofitable sales is twelve months.

by product grade— cut profile and can size – as a composite total unit cost per grade, for the entire production season.

From the domestic sales data provided, we compared the total invoice price paid for each domestic sale of the product codes identified to be equivalent to either each of the [redacted][number] product variants exported to Australia during the period of investigation with the fully absorbed domestic cost to make and sell for the product variant for the 2012 production season.

This enabled a proportion of profit (or lack thereof) to be derived on a transaction by transaction basis and determined the total quantity of unprofitable sales by product code.

Given that cost to make and sell is accounted for the total production season, unprofitable sales were deemed to be unrecoverable.

For domestic sales of [redacted][product] more than 20% were unprofitable. All unprofitable sales have been excluded in establishing normal values.

## **8.7 Volume and suitability of sales**

Domestic sales cannot be used to establish normal values if the volume of domestic sales of like goods in ordinary course of trade is less than 5% of the volume of comparable like goods exported to Australia.

We confirmed that of the sales volume of product codes identified to be comparable to the product variants exported to Australia passed the volume of sales test.

Final OCOT and suitability of sales summary calculations are attached as **confidential appendix 3**

## **8.8 Domestic sales – summary**

We found a sufficient volume of sales of comparable grades in the domestic market for tinned tomatoes that were arm's length transactions and sold at prices that were in the ordinary course of trade.

The price paid for the goods in those domestic sales was established satisfactorily.

Based on the information provided by De Clemente, and the verification processes conducted on site, we consider that prices paid in respect of domestic sales are suitable for assessing normal value under s. 269TAC(1). A summary of domestic sales suitable for establishing normal values is at **confidential appendix 4**.



**9 THIRD COUNTRY SALES**

In its exporter questionnaire response, De Clemente provided summary sales information relating to its exports sales of the GUC to other third country export markets.

De Clemente have submitted that the characteristics of its exports to third country markets are generally similar its exports to Australia, aside from the involvement of [redacted] [trader]. De Clemente advise that export markets generally are closely similar in relation to different products exported, dynamics of market engagement, negotiation of supply and the on-going commercial relationships with customers including the typical trends of volume of export and the terms of sale.

Notwithstanding the above we consider that there is insufficient information about each of these other export markets to establish whether the nature of trade of like goods in Italy would be similar to the nature of trade in these third countries. De Clemente advised, in general terms, that like sales to Australia, there are significant differences between the commercial dynamics associated with supply of the goods to third country export markets.

Therefore, we considered that third country export sales were not an appropriate basis for establishing a normal value to be compared with export sales to Australia

## 10 ADJUSTMENTS

### 10.1 General

Under s.269TAC(8)

- where the normal value of goods exported to Australia is the price paid or payable for like goods (in accordance with s269 TAC(1)); and
- that price, and the export price of the goods exported, are modified in different ways by taxes or the terms or circumstances of the sales to which they relate

That price paid or payable for like goods is to be taken to be such a price adjusted in accordance with directions by the Minister so that those differences would not affect its comparison with that export price.

Pursuant to s.269TAC(8), in order to adjust the ascertained normal value to a level comparable with export sales at FOB, and should due allowance be required by the method used to establish the normal values, then the adjustments to the unadjusted normal values set out below at 10.2 are recommended.

### 10.2 Adjustments

#### 10.2.1 *Inland transport, handling and FOB costs*

Delivery expenses De Clemente incurred on its export sales to Australia comprise all freight, handling and clearance charges associated with the movement of the goods to the FOB clearance point at Napoli port.

They are allocated by product variant and pack configuration using the calculation methodology discussed above.

Conversely, Domestic transport in relation to sales to domestic customers in the Italian market relates to freight and handling expenses from De Clemente's warehouses in Salerno to various regions in Italy.

We consider that an upward adjustment to the normal value for inland transport is warranted to account for handling and other FOB charges

#### 10.2.2 *Credit*

De Clemente specifies payment from █████ [trader] and Italian customers on the basis of 60 day credit terms.

Whilst payment from [redacted] [trader] in relation to export transactions typically is provided within these timeframes, domestic sales into typically incur additional unintended credit expenses associated with average days of credit of 90 days.

We consider that the following adjustments in relation to domestic credit terms are warranted;

- an downward adjustment to the normal value to reflect the actual credit terms incurred by De Clemente; and
- a subsequent upward adjustment of normal value to reflect notional export credit terms as offered to, and maintained by, [redacted] [trader].

#### *10.2.3 Domestic discounts, rebates and commissions and other factors*

De Clemente offers significant on-invoice discounts, rebate to its domestic customers in the Italian market, and incurs additional expenses associated with the payment of third-party agents for the facilitation of sales and management of payments which are not similarly extended or incurred in relation to its sales to [redacted] [trader].

We consider that downward adjustments to normal value to capture and remove each domestic sales incentive and charge mechanism is warranted.

#### *10.2.3 Packing*

De Clemente incurs different costs for different packing arrangements to different customers. While sales to Australia are made as 12 can packs, sales on the domestic market are sold in a number of different pack configurations.

We consider that a downwards adjustment to normal value should be made to reflect the domestic packing costs, and then an upwards adjustment should be made to account for the export packing costs.

**11 NORMAL VALUE**

As previously explained all variants of prepared and preserved tomato produced by De Clemente and exported to Australia (via FOB sales to [redacted] [trader]) were capable of direct correlation to product variants sold in the domestic market that are relevantly identical and directly comparable.

On the basis of the above we consider that information gathered and detailed in this report and its attachments can be relied upon to establish normal values, and be compared to product exported to Australia during the investigation period, under s. 269TAC(1) in relation to [redacted], [redacted] and [redacted] [product variants]. We consider those domestic selling prices require adjustment in terms of s. 269TAC(8), to ensure fair comparison to the export prices, for the following:

- Inland freight and FOB costs;
- Credit terms;
- Discounts and rebates;
- Packing costs;
- [redacted] [customer name] costs where relevant; and
- Other costs.

A summary of normal value calculations is attached as **confidential appendix 4**

## **12 Market Situation**

### **12.1 General**

It is generally the case that the normal value of the goods is the price paid for like goods sold for home consumption in the country of export. One of the exceptions to using domestic selling prices for this purpose provides that the domestic selling prices are not an appropriate basis for normal value if the Minister is satisfied that a situation in the market has rendered domestic selling prices unsuitable for establishing normal values (i.e. a 'particular market situation' exists).

One of these situations may be where the domestic selling prices in the country of export have been materially affected by government influence rendering those prices unsuitable for use in establishing normal values. The existence of such distortion or a 'market situation' could affect the Commission's approach to calculating normal value within its dumping assessment.

### **12.2 The Commission's enquiry**

The Commission is investigating whether the operation and administration of the European Union's Common Agricultural Policy and related programmes have distorted domestic prices of prepared or preserved tomatoes and the major raw material input (fresh tomatoes) used in the manufacture of the goods.

To assist our examination as to whether a 'particular market exists' within the domestic market in Italy in relation to the goods, the Commission asked De Clemente to identify any benefits, payments or forms of support that the company had received from the Italian government, the European Committee or any other affiliated agency or group, during calendar year 2011, 2012 and year-to-date (YTD) 2013 which are directly or indirectly associated with the sale or production of prepared or preserved tomatoes.

### **12.3 De Clemente's response**

In the formal response to the Commission's enquiries in relation to these issues, De Clemente submitted that the Commission's enquiries were 'not applicable' with respect to the operations of De Clemente.

During the visit De Clemente advised that prior to 2001 De Clemente, and other tomato processors, received direct financial support from the Italian government under the auspices of the Common Agricultural Policy.

De Clemente advised that between 2000 and 2001 the support policies applied under the Common Agricultural Policy were amended and direct



payments were provided to the growers of tomatoes rather than the processors.

De Clemente advised that it was aware that support payments under the Common Agricultural Policy had undergone further amendments after 2001 to the effect that payments were no longer paid in relation to the cultivation of tomato crops specifically.<sup>5</sup>

De Clemente advised that the company does not own or operate any agricultural land associated with the cultivation of tomatoes or other crops, which may be eligible for payments under the Common Agricultural Policy nor is it related to or affiliated with any of its suppliers of fresh tomatoes. During the course of verification, the team found no evidence to contradict this assertion.

We confirmed that support payments under the Common Agricultural Policy received by De Clemente prior to 2001, were paid via an Italian Government entity known as 'AIMA', and accounted for by De Clemente as 'other' income items in the Company's financial statement and operating balance sheets as 'Contributi AIMA'.

To verify De Clemente's claims that no payments had been received during the period of investigation we requested, and De Clemente provided, copies of the company's financial statements from their archives for FY 2000 and 2001(**confidential attachment MARKET 1**)

We verified the line item in the financial statement for 2000 related to the receipt of government payments, and the total value for the year (approximately EURO [REDACTED]).

Additionally, the Commission identified certain payments received by De Clemente and accounted for with the financial statements as [REDACTED] for each financial year which the company advised were related to Government grants for the improvement of technology and employment.

We then confirmed that both other income items were not reflected in the financial statement for the following year (FY 2011) and were not identifiable in the financial statements for FY 2011, 2012 and YTD 2013.

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<sup>5</sup>Whilst not specifically articulated, we assume the amendments referred to are the 'De-Coupling' reforms and introduction of the Single Payment Scheme implemented pursuant to Council Regulation (EC) no. 1782/2003 et al

#### **12.4 The Commission's assessment**

On the basis of the above the Commission is satisfied, on the basis of available evidence, that De Clemente has not received financial support directly or indirectly associated with the sale or production of prepared or preserved tomatoes since 2001 following the amendment of the Common Agricultural Policy.

The Commission found no evidence during the course of verification to suggest that the company was in receipt of any other form of direct or indirect financial support during FY 2011, 2012 and YTD 2013

**13 DUMPING MARGIN – PRELIMINARY ASSESSMENT**

In calculating the dumping margin we compared each export transaction with the corresponding quarterly normal value for the corresponding variant of tomato product.

The weighted average product dumping margin is 3.25%. A summary of dumping margin calculations is at **confidential appendix 4**.

**14 LIST OF APPENDICES AND ATTACHMENTS**

|                                 |              |
|---------------------------------|--------------|
| Confidential appendix (SALES) 1 | XXXXXXXXXXXX |
| Confidential appendix 1         |              |
| Confidential appendix 2         |              |
| Confidential appendix 3         |              |
| Confidential appendix 4         |              |
| Confidential appendix 5         |              |
| Confidential attachment GEN 1   |              |
| Confidential attachment GEN 2   |              |
| Confidential attachment FIN 1   |              |
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| Confidential attachment CTMS10  |              |
| Confidential attachment CTMS11  |              |
| Confidential attachment DOM 1   |              |
| Confidential attachment DOM 2   |              |

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|----------------------------------|------------|
| Confidential attachment DOM 3    | [REDACTED] |
| Confidential attachment DOM 4    | [REDACTED] |
| Confidential attachment DOM 5    | [REDACTED] |
| Confidential attachment DOM 6    | [REDACTED] |
| Confidential attachment DOM 7    | [REDACTED] |
| Confidential attachment MARKET 1 | [REDACTED] |