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### Non Confidential

#### COMMENTARY ON APPLICATIONS AND SUBMISSIONS TO THE ANTI-DUMPING COMMISSION FOR REQUEST OF EXEMPTION CASE – EX 0023

1. SPC Ardmona (SPC) wishes to comment on submissions on the public record in response to SPC's submission of 18<sup>th</sup> December 2014. This submission has been written with assistance of our trade consultants Blackburn Croft and Co.
2. Before addressing the relevant grounds, SPC notes that the consultant for Leo's Imports and Distributors Pty Ltd was the Director with the Commission leading the Anti-Dumping Commission's investigation into Prepared and Preserved Tomatoes from Italy. The applicant's consultant has chosen to criticize the investigation for which, as far as SPC knows, the consultant was ultimately responsible for while employed by the Commission.
3. Some of the applications share common grounds and arguments. For reasons of conciseness, specific arguments in each of the applications have not been addressed.
4. **Some of the applicants have commented that '*consumers do not differentiate between organic and non-organic tomatoes and therefore these are not 'like goods'*'.**

In determining whether the goods are like or directly competitive, the Commission is required to consider whether the goods have characteristics closely resembling each other and are substitutable.

Characteristics that need to be taken into consideration are:

- i. Whether physical characteristics of the goods are similar
- ii. Whether the goods are commercially alike
- iii. whether the goods are suitable with regard to end use, this may include an assessment
- iv. Production likeness

5. SPC has presented facts along with our submission of 18<sup>th</sup> December 2014 that highlight that the products requested for exemption have similar physical, commercial, functional characteristics (Refer confidential attachments D1.1 to D1.6) and therefore need to be considered as 'like goods'. SPC notes that the applicants are presenting opinions on like goods argument rather than facts and evidence.
6. Products requested for exemption are substitutable to other products in the canned tomato category. Please find attached further evidence in SPC's confidential attachment A. [XXXXXXXXX Comments commercial in confidence XXXX]

7. ***Some applicants have commented that the 'organic products are sold at a premium to the other canned tomatoes in the category.'***

Please find attached 'Confidential Attachment BXXX ' and 'Confidential Attachment B XXX ' highlighting the retail pricing of the canned tomatoes in the supermarkets. As is evident from the data, pricing of organic tomatoes competes with the other non-organic tomatoes in the category. Therefore the assertion by the applicants that organic products are sold premium is not factual.

As stated in the submission of 18<sup>th</sup> December 2014 if these products are exempted from duty, it is likely that the price differential caused due to these will result in SPC's loss of volume and value share as the consumers shift to lower price products, thereby the impact of the dumping duties applied will be negated. This could lead to possible circumvention through goods with minor modifications.

8. ***Some applicants have commented that the 'organic tomatoes are not available in Australia or cannot be manufactured.'***

As presented by the facts, organic canned tomatoes and non-organic tomatoes are substitutable and their characteristics closely resemble each other. This is sufficient to conclude that they are 'like goods' for the purpose of this investigation.

In addition as is evident from the Confidential Attachment D1.5 submitted on the 18<sup>th</sup> December 2014, XXXX [Comments commercial in confidence].

Also as was evident during the factory tour of the 13<sup>th</sup> February 2015 SPC has the manufacturing capability of the processing these goods at its operating plants.

### **Conclusion**

SPC reiterates that organic products should not be granted exemption as they are 'like goods' and compete with the goods under consideration. If the exemption is granted, it could lead to circumvention through goods with minor modifications.

We look forward to your findings and response.