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Non-Confidential

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Anti-Dumping Review Panel  
C/o ADRP Secretariat  
Legal, Audit & Assurance Branch  
Department of Industry, Innovation & Science  
GPO Box 9839  
ACT 2600  
AUSTRALIA

Email: [ADRP@industry.gov.au](mailto:ADRP@industry.gov.au)

Dear Sir / Madam

REVIEW OF A DECISION TO PUBLISH A DUMPING DUTY NOTICE IN RESPECT  
OF PREPARED OR PRESERVED TOMATOES EXPORTED FROM ITALY BY  
FEGER di GERARDO FERRAIOLI S.p.A (FEGER) AND LA DORIA S.p.A (LA DORIA)

1. SPC Ardmona (SPC) wishes to comment on the grounds raised by the applications as set out in the Notice. This submission has been written with the assistance of our trade consultants Blackburn Croft & Co.
2. The three applications essentially mirror each other with the exception of the specific issues addressed in Feger's submission. For convenience the Feger application (the application) has been used as the basis for comment in this submission.
3. SPC has not addressed, at this stage, all of the grounds in the ADRP's Notice or all of the arguments in the applications for review. It is noted that some of those grounds (if not

all) have been specifically addressed by the Anti-dumping Commission (ADC) in the Final Report<sup>1</sup>.

4. The application states:

‘the Final Report acknowledged that, since 2011, the Italian market for raw tomatoes was characterised by a *‘decline in tomato production and high price’*. The Final Report further acknowledged that prices for raw tomatoes in Italy are *comparatively high*’. As a matter of fact, the information submitted by the two exporters – and never contradicted by SPCA or by the ADC – shows that the prices for raw tomatoes in Italy are amongst the highest in the world (also higher than the prices in other EU countries, where growers equally benefit from the SPS).’ (pg. 12)

5. The Final Report, in considering the high prices for raw tomatoes in Italy, observed:

‘This suggests that the relatively high prices referred to by the exporters, would have been higher without the influence of the direct income support to growers of raw tomatoes.’ (pg. 30)

SPC comment:

6. The application argues that the Italian raw tomato prices are competitive because the prices in Italy are higher than raw tomato prices in other countries. SPC addressed this argument during the investigation.<sup>2</sup> Simply put, comparing the relatively high price of raw tomatoes in Italy with other countries is not a reason to say that Italian raw tomatoes are “competitive”. The average raw tomato price used for comparison already has benefited from the subsidy component. There could be various factors that lead to higher raw prices. If the subsidy payments were not paid, it is likely that the raw prices required to be paid by the processors would have been even higher. In addition, the comparison with other countries does not take into account differences in growing conditions, scale, crop health, operating conditions/costs and government programmes in other countries. Therefore, the comparison to other countries’ raw tomato prices is not meaningful.

7. The application queries the calculation of the total grower payments for tomatoes in 2014 based on the volume of tomatoes produced:

In this respect, the Final Report further explained that *“a national ceiling was fixed by the Italian government under the SPS for 2014, and within that national ceiling was an allocation of € 183,970,000 for direct income support payments to be made to growers of raw tomatoes”*. However, this is not correct. As clearly explained by the European Commission in its submission dated 21 December 2015 – which was completely overlooked by the ADC – the decree of the Italian Minister of Agriculture of October 2013 relied upon by the ADC refers to a completely different issue (i.e. the valuation method of the entitlements from the National Reserve and not yet assigned to any hectare). It follows that, as repeatedly explained throughout the investigation, in 2014 the national ceiling for tomatoes relied upon by the ADC (i.e. € 183,970,000) did no longer exist, since it was abolished and replaced by the SPS. It is therefore impossible to

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<sup>1</sup> Final Report No. 276

<sup>2</sup> EPR 070 and EPR 068

calculate an amount of subsidy per kg of raw tomatoes produced in the investigation period (i.e. the cost of adjustment). (pg. 13)

8. The Final Report noted:

The Commission has obtained a publicly available Italian Ministerial Decree dated 17 October 2013 that contains a table updating the components of Italy's national ceiling contained in Annex VIII of EC Regulation 73/2009. SPCA has also provided the Commission with a copy of the Decree as part of its submission in response to the SEF. The table states that, of Italy's national ceiling of € 3,634,620,000 dedicated to the SPS in 2014, € 183,970,000 is the component relating to income support payments to growers of raw tomatoes.( pg. 29)

SPC Comment:

9. The Decree is verifiable evidence that confirms the continued existence of the amount available to tomato growers with historical payment reference payments.<sup>3</sup> The application contends that the Decree was related to a different issue viz the valuation of entitlements. But the Decree's reference to specific sectors strongly indicates that the entitlements exist.

10. The Decree was published to update the National Reserve in Italy further to EU Regulation 287/2013 increasing the national ceilings for member states in Annex IV and VIII of Regulation 73/2009. (The national ceiling for Italy in Annex VIII went from € 4,370,024,000 to € 4,379,985,000.) It also noted the regional averages or sector specific components of the national ceiling for Italy.

11. The updating of the National Reserve for Italy is explained not only in the Decree but also in the Agreement of the Standing Conference of 26 September 2013 which is noted in the Decree. That 26 September 2013 Agreement refers to Article 41 of Regulation 73/2009 (as does the Decree) which provides for the calculation of a National Reserve after deducting from the national ceiling sector specific allocated payment entitlements<sup>4</sup> such as those for tomatoes.<sup>5</sup> Therefore, the tomato sector specific payments still do exist and along with other sector specific payments must be known in order to calculate the National Reserve for Italy.

12. Further evidence to this is shown in the *agrireioni* and *Translateagri* attachments to SPC's 24 August submission<sup>6</sup>:

*As from January 2011 will be paid on 100 % of the amount accrued up to a maximum of 183,967,000 euro. From 2011 on they will be awarded 100 % of national ceiling in the form of entitlements (sic)*<sup>7</sup>

This means that from the date that the historical tomato payment was absorbed into the SPS, growers with historical entitlements would be no worse off and would be eligible to continue to receive the historical payments.

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<sup>3</sup> EPR 040. The LECA Report at pg. 21 explains the historical payments.

<sup>4</sup> The sector specific payments were attached to EPR 068 (in the Decree) and an updated translation was provided with the submission EPR 073 though that attachment is not on the EPR.

<sup>5</sup> EPR 073, (See European Court of Auditors Report No. 08, 2014 paragraph 10 confirming sector specific payment)

<sup>6</sup> EPR 056, extract from EPR 068

<sup>7</sup> EPR 068

13. Further evidence to this can be found in a document – “The Single Payment Scheme Procedural Manual for the 2014 Campaign” issued by ARPEA (an agency authorised by AGEA). This document demonstrates that there is a continuing link to the national ceiling corresponding to tomatoes which was transferred to the SPS and also suggests that growers still require evidence of contracts for processed tomatoes to activate the historical entitlements.<sup>8</sup>

14. The application queries the calculation of the subsidy per kg of raw tomatoes:

The amount of subsidy per kg of raw tomatoes calculated in the Final Report with regard to the year 2014 (€ 0.037/kg) is higher than the amount of subsidy per kg of raw tomatoes calculated by Rickard and Sumner (*sic*). With regard to the year 2001, when the payment to tomato growers was still coupled (€ 0.0345/kg), despite the fact that the ADC itself expressly acknowledged that “*the CAP payments have been reduced since 2011*”. This means that the ADC’s conclusions are contradictory, and that the subsidy calculation is ill-founded.(pg..15)

15. The Final Report reported:

In their article regarding CAP reform, Rickard and Sumner indicate that during the transition period growers of tomatoes received only € 17.25 per tonne, which is half the amount received by growers of tomatoes prior to the transition period. Some submissions have represented that this assertion meant that the growers of tomatoes have had their payment entitlements under the CAP reduced by half under the SPS. However, as Rickard and Sumner correctly point out, during the transition period, growers of tomatoes were also entitled to an additional single farm payment (SFP) at 50 percent of the full base rate on support they received in 2000 and 2002. It is apparent from this evidence that while a per tonne subsidy is removed from the CAP beyond 2011, indicating that decoupling has occurred, growers of raw tomatoes still have access to direct income support payments, as part of the SPS.(pg. 74)

SPC comment:

17. The small difference in the subsidy per kilogram is possibly due to the change in how the tomato subsidy has been distributed over the years.<sup>9</sup> The subsidy per kg for 2014 can only be arrived at by considering the total payment amount (as shown by the sector specific payments available for disbursement) and the total production volume in the year. The ADC has correctly taken this approach in its Final Report. While the ADC refers to a reduction in the total CAP payments since 2011, the relevant information to consider for the purpose of assessing the subsidy impact is the sector specific payment for tomatoes (Euro 183,970,000) and that has not reduced. In the above paragraph 12, the tomato sector specific payment transferred to the SPS in 2011 is shown to be the same (rounding the amount) as the amount available in 2014 and used in the Final Report.

18. The application alleges that the ADC over-estimated the SPS:

In the Final Report, the ADC has calculated an alleged subsidy amounting to € 0.037/kg of raw tomatoes, i.e. about € 2700/ha, despite the fact that, in the course of the investigation, the ADC was provided with sample official certificates issued by the Government Agency in

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<sup>8</sup> EPR 068. This document was supplied in an email to the Commission on 24 November 2015.

<sup>9</sup> LECA at pg. 14, EPR 040

charge of paying the SPS (“AGEA”), which clearly show that the amounts of the decoupled payments actually received by Feger’s suppliers in 2014 were significantly lower.(pg. 15)

19. The Final Report observed:

The Commission notes the evidence was based on a very small sample of tomato growers in Italy, and it is not clear how the sample was selected. Specifically, the exporter provided a copy of five select “declarations” issued by AGEA (Italian agency managing the SPS) which holds information on CAP payments received by farmers. Without further information regarding these select CAP payments, the Commission was unable to form a view on the representativeness of these sample payments (pg. 76).

SPC comment:

20. The usefulness of the five “declarations” was commented on by the ADC in the Final Report. For example, the ADC referred to the low volume of tomatoes supplied by the growers in the sample and issues around verification. The ADC has also noted in its Final Report that it is *‘not clear how the sample was selected’*<sup>10</sup>.

As stated above to accurately assess the impact of the subsidy amount on the raw price, the total subsidy amount available (which is obtained from the sector specific tomato payment) per tonne needs to be established along with tonnes produced.

21. The application takes issue with the flow on analysis:

**In the context of the ‘market situation’ analysis the ADC itself concluded that ‘in a realistic scenario’ only 73% of the alleged subsidy granted to tomato growers would flow on the market price for raw tomatoes paid by the PPTs producers** (see Appendix to the Final Report). It follows that the ADC’s conclusion that all the SPS had flown on the final price for raw tomatoes is ill-founded (pg. 15)

22. The Final Report considered this issue as follows:

A flow on analysis for the purposes of an assessment of market situation and the adjustment of the cost of production while conducting the OCOT test are separate and distinct processes. As discussed at 6.4.2, a significant component of the OCOT test is to establish competitive market costs. This process is in direct contrast with an attempt via economic modelling to establish the potential flow on to downstream purchasers from a payment made to upstream producers.

The Commission believes that Feger and La Doria have misunderstood the context in which these calculations have been carried out. (pg. 31)

23. SPC comment:

The ADC has explained in the Final report why 73% is not applicable when adjusting for competitive market costs before undertaking the OCOT test.

SPC drew the ADC’s attention to the unreasonableness of using a flow on analysis to determine the price impact for a market situation assessment, noting that this approach had

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<sup>10</sup> Final Report pg. 29

not been used in previous market situation investigations. It is arguably not the ADC's role to speculate how the market might react to a theoretical cost/price increase. Besides, the prevalence of vertically integrated firms and co-operative operations in the Italian tomato industry further creates problems for undertaking a flow on analysis. SPC also highlighted that the elasticities that were used in the LECA report for the flow on assessment were dated.<sup>11</sup>

24. SPC also argued that the distortionary impact on the price of PPT was understated for the purposes of assisting in the evaluation of a market situation.<sup>12</sup>

### **Conclusion**

SPC is able to respond to any queries that the Review Panel may have on these comments

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<sup>11</sup> EPR 054 and EPR 060

<sup>12</sup> EPR 060. The confidential attachment to EPR 060 showed the subsidy impact to be higher than the ADC's analysis.