



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

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XV B

STATEMENT OF ESSENTIAL FACTS
NOs. 349 and 354

**REVIEW OF MEASURES RELATING TO
PREPARED OR PRESERVED TOMATOES**

EXPORTED FROM ITALY

**BY AR INDUSTRIE ALIMENTARI S.p.A
AND BY ALL EXPORTERS OTHER THAN
BY FEGER DI GERARDO FERRAIOLI S.p.A
AND LA DORIA S.p.A.**

20 February 2017

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ABBREVIATIONS

\$	Australian dollars
the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
the applicants	together, AR Industrie Alimentari S.p.A. and SPC Ardmona Operations Ltd
ARIA	AR Industrie Alimentari S.p.A.
CAP	<i>Common Agricultural Policy</i>
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTMS	cost to make & sell
EU	European Union
Feger	Feger di Gerardo Ferraioli S.p.A
FOB	Free On Board
GAAP	generally accepted accounting principles
Italy	the Republic of Italy
La Doria	La Doria S.p.A
LSI	Le Specialità Italiane SRL
NIP	non-injurious price
PAD	Preliminary Affirmative Determination
the Parliamentary Secretary	the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
the then Parliamentary Secretary	the Parliamentary Secretary to the Minister for Industry
PPT, or the goods	certain prepared or preserved tomatoes, the goods the subject of the applications
REP 217	<i>Anti-Dumping Commission Report 217</i>
REP 276	<i>Anti-Dumping Commission Report 276</i>
REP 351	<i>Anti-Dumping Commission Report 351</i>
REP 360	<i>Anti-Dumping Commission Report 360</i>
SEF	Statement of Essential Facts
SPC	SPC Ardmona Operations Ltd
SPS	<i>Single Payment Scheme</i>
USP	unsuppressed selling price

1 SUMMARY AND RECOMMENDATIONS

1.1 Introduction

This statement of essential facts (SEF) sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) proposes to base his recommendations to the Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary) in relation to a review of the anti-dumping measures applying to certain prepared or preserved tomatoes (PPT, also referred to as the goods) exported to Australia from the Republic of Italy (Italy).^{1, 2}

This SEF has been prepared in response to two applications for a review of the anti-dumping measures (in the form of a dumping duty notice) applying to PPT. These applications were received from AR Industrie Alimentari S.p.A. (ARIA) and SPC Ardmoma Operations Ltd (SPCA) (together, the applicants); ARIA requested a review of the measures applying to its own exports, whereas SPCA requested a review of the measures applying to all other exporters subject to measures except Feger di Gerardo Ferraioli S.p.A (Feger) and La Doria S.p.A (La Doria).³

The relevant measures were imposed by notice published in the Gazette and *The Australian* newspaper on 16 April 2014 by the then Parliamentary Secretary to the Minister for Industry (the then Parliamentary Secretary), following the original investigation reported in *Anti-Dumping Commission Report 217* (REP 217). The Commissioner also published Anti-Dumping Notice (ADN) 2014/32 to advise interested parties of the decision.

The applications by ARIA and SPCA claim that the normal value and export price of the goods relevant to the taking of the anti-dumping measures as they affect ARIA and as they affect exporters generally, respectively, have changed from those ascertained as part of the original investigation.

1.2 Legislative background

Division 5 of Part XVB of the *Customs Act 1901* (the Act)⁴ sets out, among other things, the procedures to be followed by the Commissioner in dealing with an application for review of anti-dumping measures.

¹ On 19 July 2016, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Industry, Innovation and Science. For the purposes of this review of measures the Minister is the Parliamentary Secretary to the Minister for Industry, Innovation and Science.

² Refer to section 3.3 of this report for a full description of the goods.

³ Refer to section 2.1.1 of this report for an explanation of why Feger and La Doria are excluded from the review of measures.

⁴ A reference to a division, section or subsection in this report is a reference to a provision of the *Customs Act 1901*, unless otherwise specified.

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Division 5 empowers the Commissioner to reject or not reject an application for review of anti-dumping measures. If the Commissioner does not reject the application, he is required to publish a notice indicating that it is proposed to review the measures covered by the application.⁵

The Commissioner must, within 110 days after the publication of the notice or such longer period as the Parliamentary Secretary allows, place on the public record a statement of the essential facts on which the Commissioner proposes to base his recommendation to the Parliamentary Secretary in relation to the review of measures.⁶

1.3 Findings

1.3.1 Review 349

The Commissioner finds that, in relation to PPT exported to Australia from Italy by ARIA during the review period (1 April 2015 to 31 March 2016):

- the ascertained export price has changed;
- the ascertained normal value has changed; and
- the non-injurious price (NIP) has changed.

1.3.2 Review 354

The Commissioner finds that, in relation to PPT exported to Australia from Italy by the exporters subject to measures (that is, all exporters other than ARIA, Feger and La Doria) during the review period (1 April 2015 to 31 March 2016):

- the ascertained export price has changed;
- the ascertained normal value has changed; and
- the NIP has changed.

1.4 Proposed recommendations

The Commissioner proposes to recommend to the Parliamentary Secretary that the dumping duty notice have effect as if different variable factors had been ascertained for all exporters covered by reviews 349 and 354.

⁵ Subsection 269ZC(4)(a).

⁶ Subsection 269ZD(1).

2 BACKGROUND

2.1 The current measures

On 16 April 2014, the then Parliamentary Secretary published a notice advising their decision to impose anti-dumping measures on all PPT exported to Australia from Italy, except by Feger and La Doria. As was noted in REP 217, the investigation was terminated with respect to Feger and La Doria as the goods exported to Australia by Feger and La Doria were found to be dumped, but the dumping margin was less than 2 per cent.

As a result of the original investigation and a number of subsequent accelerated reviews, the following exporters of PPT are currently subject to the measures set out in Table 1, below.

Manufacturer/Exporter	Case No.	Effective Rate of Duty	Form of Measures
Attianese S.p.A	217	4.24%	Combination of fixed and variable duty method
Calispa S.p.A	250	0%	
Conserve Italia Soc. Coop Agr	217	4.54%	
Davia S.p.A	278	0%	
De Clemente Conserve S.p.A	217	3.25%	
Fiamma Vesuviana Srl	217	4.24%	
Greci Industria Alimentare S.p.A	217	4.24%	
I.M.C.A. S.p.A	217	26.35%	
Le Specialità Italiane S.r.L	351	0%	
Lodato Gennaro & C. S.p.A	217	26.35%	
Menu Srl	217	4.24%	
Mutti S.p.A	217	4.24%	
Nolana Conserve Srl	217	4.24%	
Princes Industrie Alimentari SrL	217	4.24%	
Rispoli Luigi & C Srl	217	4.24%	
Steriltom Srl	217	4.24%	
Uncooperative and all others	217	26.35%	

Table 1 – Current anti-dumping measures applying to PPT from Italy (other than Feger and La Doria)

The measures are due to expire on 16 April 2019.

2.1.1 Other relevant cases

Anti-Dumping Commission Final Report No. 276

An investigation concerning PPT exported by Feger and La Doria was initiated on 19 January 2015. SPCA, the applicant, alleged that there were significant distortions in the market for PPT in Italy that would make Italian domestic prices unsuitable as a point of comparison with the price of the same goods exported to Australia. As evidence, SPCA pointed to income support payments paid to tomato growers under the European Union's (EU's) *Common Agricultural Policy* (CAP).

The Commissioner found that the maximum value of support payments available under the CAP for tomatoes (approximately €183 million during the relevant period) would have affected the raw material costs of tomatoes used by Feger and La Doria. The Commissioner therefore considered that the costs of raw tomatoes recorded by these companies did not reasonably reflect competitive market costs.

The usual practice of the Anti-Dumping Commission (the Commission) in these circumstances is to identify a suitable benchmark for the replacement of the costs of raw tomatoes, but was unable to do so in this instance. Accordingly, the Commission *uplifted* Feger and La Doria's raw tomato costs (by adding an amount of €0.037 per kg to the verified recorded costs of the exporters to offset the direct income support payments) when calculating the normal value. This had the effect of increasing the number of unprofitable transactions, and therefore increasing the normal value.

The then Assistant Minister for Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science accepted the Commissioner's recommendations and imposed anti-dumping measures on Feger and La Doria on 11 February 2016.

Anti-Dumping Commission Reinvestigation Report No. 360

Following applications from Feger, La Doria, the EU and the Government of Italy, the (Anti-Dumping Review Panel (ADRP) initiated a review of the then Parliamentary Secretary's decision and the findings in REP 276 on which it relied.

The ADRP subsequently requested that the Commissioner reinvestigate certain findings, which required him to:

- examine whether the cost for raw tomatoes recorded in the accounts of Feger and La Doria should be considered to be "competitive market costs", and if not, whether he may adjust those costs in accordance with the Act;
- assess the magnitude of that cost adjustment (that is, whether €0.037 / kg is the right amount to use in any uplift);
- update the dumping margins calculated for Feger and La Doria by reference to the outcome of the reinvestigation of the first two points;
- give further consideration to claims made by Feger that other adjustments should be made to its dumping margin; and
- reassess whether the Australian industry (that is, SPCA) has suffered material injury caused by the dumping of prepared or preserved tomatoes exported by Feger and La Doria.

PUBLIC RECORD

The Commissioner's report (*Anti-Dumping Commission Reinvestigation Report No. 360*, or REP 360) made a range of new findings, but for the purposes of this SEF the most relevant finding is that the CAP payments received by growers of raw tomatoes did not appear to influence the prices paid by Feger and La Doria. In the absence of any further evidence to the contrary, the Commissioner found that the raw material cost of tomatoes reported in the accounting records of Feger and La Doria reasonably reflected a competitive market cost, and therefore recommended that no uplift be applied in the dumping margin calculation.

The ADRP largely accepted the Commissioner's findings in REP 360, including the finding with regard to the uplift, and recommended to the Parliamentary Secretary that he make a new decision in those terms. The Parliamentary Secretary accepted the ADRP's recommendations, with the effect that from 5 January 2017 the measures applying to La Doria were revoked (as La Doria was found to be not dumping) and the measures applying to Feger were reduced.

Further discussion concerning the impact of these findings on these reviews of measures can be found in chapter 3 of this report.

2.2 Initiation and conduct of the reviews

On 1 April 2016, ARIA lodged an application requesting a review of the anti-dumping measures as they apply to its exports of PPT to Australia from Italy. ARIA claims that certain variable factors relevant to the taking of the anti-dumping measures have changed. The application relates to the measures imposed following the investigation set out in REP 217. The Commissioner initiated the review of measures regarding the goods exported by ARIA on 21 April 2016 (ADN No. 2016/41 refers).

On 5 May 2016, SPCA lodged an application requesting a review of the anti-dumping measures as they apply to all exports of prepared or preserved tomatoes to Australia from Italy except by Feger and La Doria. SPCA claims that certain variable factors established in REP 217 have changed and should be reviewed. The Commissioner initiated the review of measures regarding the goods exported by all exporters other than Feger, La Doria and ARIA on 25 May 2016 (ADN No. 2016/55 refers). Due to the reviews examining the same goods exported to Australia during the same time periods, the Commission has established a single electronic public record for both reviews.⁷

SPCA claimed in their application for review that the uplift applied in REP 276, along with an additional uplift for a further payment they had identified, should be applied when calculating the normal value.⁸ As a result, the Commission elected to delay the completion of the SEF until the outcomes of the ADRP review of the decision arising from REP 276 were known and the approach taken in the reviews would be consistent. On this basis the Commissioner sought, and the Parliamentary Secretary granted, an extension of time for the publication of the SEF.

⁷ [EPR 354](#) refers.

⁸ See Document 001 on [EPR 354](#)

PUBLIC RECORD

The extension, granted on 8 August 2016, required this SEF to be published by no later than 45 days after the Parliamentary Secretary's decision following the ADRP's review (ADN No. 2016/76 refers). The Parliamentary Secretary's decision following the ADRP's review was made on 5 January 2017, with effect that this SEF is due to be placed on the public record by no later than 18 February 2017.⁹

2.2.1 Selection of exporters – Review 354

Prior to initiation of Review 354, a preliminary search of the Department of Immigration and Border Protection's database identified approximately 182 suppliers of prepared or preserved tomatoes to Australia from Italy as possible exporters during the period 1 July 2012 to 31 March 2016.

On or shortly after the date of initiation, the Commission contacted the 55 largest exporters of the goods by volume for whom contact details could be found, which collectively represented approximately 70 per cent of all exports of the goods subject to measures. The Commission invited these 55 exporters to complete an exporter questionnaire which requested necessary information to determine whether goods were exported at dumped prices. It also contacted three new exporters that, at the time, had applied for accelerated reviews that had not yet been completed. Additionally, public notice of the initiation of Review 354 (see ADN No. 2016/55) was published on the Commission's website on 25 May 2016, and the exporter questionnaire was made publically available for download for any exporter to complete.

On 30 August 2016, the Commission released its Sampling Report. In this report, it noted that subsection 269TACAA(1) states that where the number of exporters from a particular country of export in relation to a review is so large that it is not practicable to examine the exports of all of those exporters, then the review may be carried out, and findings may be made, on the basis of information obtained from an examination of a selected number of those exporters:

- (c) who constitute a statistically valid sample of those exporters; or
- (d) who are responsible for the largest volume of exports to Australia that can reasonably be examined.

Having regard to relevant import data and preliminary information submitted by importers and exporters, the Commission has verified the submissions of five exporters of the goods. These exporters (the selected exporters) represent approximately 93 per cent of the total export volume of prepared or preserved tomatoes exported to Australia from Italy during the review period (being from 1 April 2015 to 31 March 2016) from exporters who fully completed the exporter questionnaire. These exporters were:

- Calispa S.p.A. (Calispa)
- Conserve Italia Soc. Coop. Agricola (Conserve Italia)
- De Clement S.p.A. (De Clemente)
- Mutti S.p.A. (Mutti)
- Princes S.p.A. (Princes)

⁹ As this is a Saturday, the effective due date for this SEF is the following business day, 20 February 2017.

PUBLIC RECORD

In addition, ARIA is a selected exporter in Review 349 due to its application for a single exporter review. Accordingly, the expression “selected exporters” in this SEF refers to the selected exporters for both reviews.

In accordance with the definition of “residual exporter” in subsection 269T(1), the Commission considered that those exporters that provided a complete exporter questionnaire and were not selected exporters were residual exporters.¹⁰ These entities were:

- Alfonso Sellitto SPA
- Attianse SPA
- Conserve Manfuso SRL
- Davia SPA
- Felice Conserve SRL
- FPD SRL
- Giaguaro SPA
- ICAB SPA La Fiammante
- IMCA SPA
- La Regina del Pomodoro SRL
- Le Specialità Italiane SRL (LSI)
- Nolana Conserve SRL
- Pancrazio SPA
- Rispoli Luigi & C. SRL

A number of residual exporters applied to have the review extended to them under subsection 269TACAA(2). The Commissioner declined each request, except for the request of LSI, as to do so would have required verification of the provided information that would have prevented the timely completion of this review. The Commission did not decline LSI’s request because the Commission had already verified LSI’s data for the purposes of preparing *Anti-Dumping Commission Final Report No. 351* (REP 351), which covered the same goods under consideration for the same period of time.

2.2.2 Uncooperative and other exporters

Subsection 269T(1) provides that, in relation to a dumping investigation, an exporter is an “uncooperative exporter” where the Commissioner is satisfied that an exporter did not give the Commissioner information that the Commissioner considered to be relevant to the investigation within a period the Commissioner considered to be reasonable, or where the Commissioner is satisfied that an exporter significantly impeded the investigation.

¹⁰ Subsection 269T(1) provides that a “residual exporter”, in relation a review, means an exporter of the goods the subject of the review where the exporter’s exports were not examined as part of the review and the exporter was not an uncooperative exporter in relation to the review.

PUBLIC RECORD

The Commission considers those exporters that did not provide a complete response to the exporter questionnaire to be uncooperative in that they did not give the Commissioner information considered to be relevant to the investigation. For uncooperative and all other exporters, given that these exporters have not provided relevant information via a response to the exporter questionnaire, the Commissioner will use section 269TAB(3) and section 269TAC(6) to calculate dumping margins for those exporters, having regard to all relevant information and as required by subsection 269TACAB(1).

2.2.3 Submissions received

The Commissioner has had regard to all of the submissions received up to and including 2 February 2017 in the preparation of this SEF.

Interested Party	Date of submission
European Commission	30 June 2016
IMCA S.p.A.	20 September 2016
Le Specialità Italiane S.r.L.	30 November 2016
SPCA	2 February 2017

Table 2 – submissions received by the Commission

2.3 The goods and like goods

The goods subject to the anti-dumping measures (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 excluded from this definition are pastes, purees, sauces, pasta sauces, juices and sundried tomatoes.

2.3.1 Tariff classification

The goods are currently classified to subheading 2002.10.00 (statistical code 60) to Schedule 3 of the *Customs Tariff Act 1995*. The general rate of Customs duty is currently 5 per cent for the goods imported from Italy.

2.3.2 Like goods

Subsection 269T(1) defines like goods as:

“...goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration”.

The definition of like goods is relevant in the context of this review, among other things, in determining the normal value of goods exported to Australia, the goods subject to the dumping duty notice and in determining the NIP.

2.4 Responding to this SEF

This SEF sets out the essential facts on which the Commissioner proposes to base his final recommendations to the Parliamentary Secretary. This SEF represents an important stage in the investigation. It informs interested parties of the facts established and allows them to make submissions in response to the SEF.

It is important to note that the SEF may not represent the final views of the Commissioner.

The Commissioner must consider submissions made in response to this SEF that are received by the Commissioner within 20 days after this SEF is placed on the public record in making his final report to the Parliamentary Secretary. The report will recommend whether or not the dumping duty notice should be varied, and the extent of any interim duties that are, or should be, payable.

Responses to this SEF should be received by the Commissioner no later than **13 March 2017**. The Commissioner is not obliged to have regard to any submission made in response to the SEF received after this date if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Parliamentary Secretary.

The Commissioner must report to the Parliamentary Secretary by 5 April 2017.

Submissions should preferably be emailed to operations1@adcommission.gov.au.

Alternatively, they may be sent to fax number +61 3 8539 2467, or posted to:

Director Operations 1
Anti-Dumping Commission
Level 35
55 Collins Street
MELBOURNE VIC 3000
AUSTRALIA

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the electronic public record.

A guide for making submissions is available at the Anti-Dumping Commission's web site www.adcommission.gov.au.

The public record contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's visit reports and other publicly available documents. It is available by request in hard copy in Melbourne (phone (03) 8539 2467 to make an appointment), or online at www.adcommission.gov.au.

Documents on the public record should be read in conjunction with this SEF.

3 CLAIMS MADE BY AUSTRALIAN INDUSTRY

3.1 Introduction

In its application, SPCA stated that the following adjustments should be made to the cost of raw tomatoes purchased by exporters when calculating the cost to make and sell (CTMS) for the purpose of determining normal value:

- a cost adjustment reflecting the direct income support payments made to tomato growers under the CAP, based on the findings in REP 276;¹¹ and
- a cost adjustment to reflect the introduction of a new coupled subsidy for processed tomatoes (€160 per hectare), paid as direct income support payments to tomato growers from January 2015.

Subsequently, SPCA lodged a further submission after the ADRP had recommended (and the Parliamentary Secretary had accepted) the Commissioner's findings in REP 360 regarding the value of income support payments under the CAP made to growers supplying tomatoes to Feger and La Doria.

SPCA further submits that:

- the Commissioner's reinvestigation wrongly considered new information (rather than the evidence that was already before him in REP 276), and those conclusions ought not to be relied upon for these reviews of measures;
- there is a range of evidence available (cited in the submission) which sets out the apparent basis for and value of income support payments being made to growers of raw tomatoes in Italy;
- these payments continue to be paid and have impacted the economics of the raw tomatoes industry to the extent that, in the absence of the CAP payments, raw tomatoes would have been sold at a loss and therefore the market is not competitive; and
- the Commissioner's findings in REP 360 concerning the value of the CAP payments received by Feger and La Doria does not bear any correlation to the total value of payments allegedly made (€183 million, or equivalent to €0.037 per kilogram of raw tomatoes) and therefore must be in error.¹²

3.2 Commission's assessment

3.2.1 Consideration of new information

As noted in section 2.1.1, the ADRP required the Commissioner to carry out a reinvestigation with regard to certain findings in REP 276 under subsection 269ZZL(1). The Commissioner notified parties of the reinvestigation in ADN No. 2016/63, which is available on the Commission's website.

¹¹ Refer to Chapter 2.1.1 for further information

¹² Document 051 on the public record for case 354 refers, available on www.adcommission.gov.au.

PUBLIC RECORD

The Commission notes that section 269ZZL does not prevent the Commissioner from taking into account new information in a reinvestigation. Subsection 269ZZL(3) provides that the reinvestigation report must set out any new finding or findings made as a result of the reinvestigation. Subsection 269ZZK(4) indicates that the ADRP must not have regard to any information other than “the relevant information” (as defined in subsection 269ZZK(6)), but this is expressly subject to subsection 269ZZK(4A) which indicates that the ADRP must also have regard to the reinvestigation report. It is the Commission’s view that it may take into account new information and the Commissioner may make new findings in a reinvestigation.

3.2.2 Evidence of CAP payments received by growers

In REP 360, the value of CAP payments received by growers was investigated. As noted in Chapter 4.4.1 of that report, the information provided by both Feger and La Doria was:

[A] spreadsheet which records the value of [CAP *Single Payment Scheme*, or SPS] payments actually received by their suppliers, the volume and value of tomatoes purchased from each supplier, and the area of land (in hectares) held by each supplier in respect of which the SPS entitlements were paid. Feger and La Doria have also provided the Commission with the SPS payment certificates relevant to a sample of their growers. The certificates are issued by the Agenzia per le Erogazioni in Agricoltura (Agency for Agricultural Payments, AGEA); each certificate shows the grower’s name, the year in respect of which the payment has been received, the number of titles held and the quantum of land to which they relate, and the amount received in respect of each title held and the regulatory basis for that payment.¹³

The certificates provided to the Commission accounted for those growers supplying 85 per cent and 37 per cent of the volume of raw tomatoes purchased by Feger and La Doria, respectively. This information was then cross-referenced to the AGEA website through a secure login for all entries. The Commission was satisfied that the evidence provided was accurate, complete and reliable.

3.2.3 Distortional effect of CAP payments

In Chapter 5 of REP 360, the Commission mapped (see Chart 1, below) each grower at the intersection of the price received per kilogram of tomatoes (left axis) and the per kilogram value of SPS payment received (bottom axis). If there was a strong correlation between the SPS payment received and the unit price of raw tomatoes, the sales would strongly trend from the upper left hand corner of the chart to the lower right. The Commission has incorporated a linear regression, indicated by the red line, with the shaded area representing the 95 per cent confidence interval.

¹³ For example, Regulation 73 / 2009. See also Article 37(1) of 1782/03.

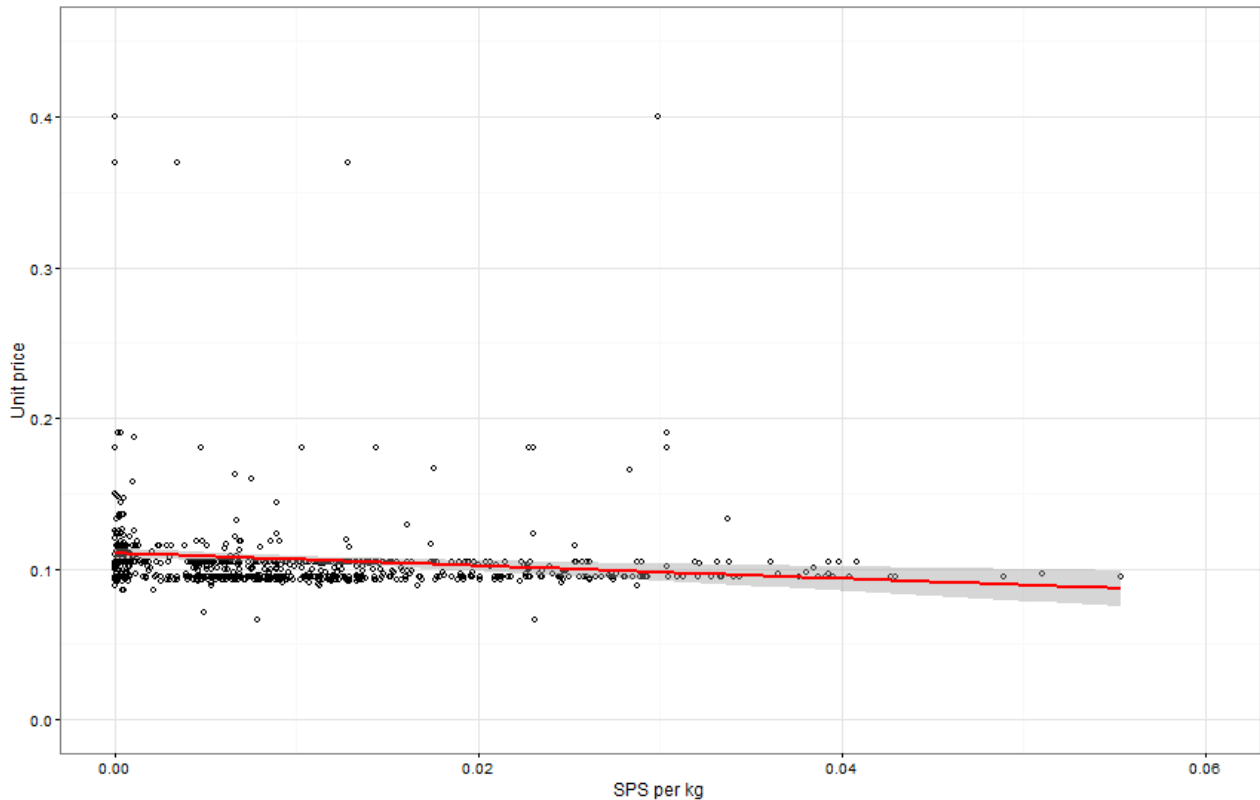


Chart 1 – Correlation analysis (SPS payments received per kg, unit prices paid)

The linear regression plots an expected line for the data to follow if one factor is dependent on the other, in this case if the unit price is dependent on the amount of SPS assistance received. The coefficient of determination (r^2)¹⁴ value explains how much the movement in one factor can be used to explain movement in the other, and is expressed as a fraction of 1 (i.e. a perfect explanation will be 1, and no correlation at all will be 0).

In Chart 1, the r^2 is 0.0127. Being so close to zero indicates that there is little - if any - correlation between the value of SPS payments received and the prices being obtained by growers. On this basis, the Commissioner considered that the CAP payments had no distortionary impact on the price of raw tomatoes.

3.2.4 Requirement for a contract to receive CAP payments

The Commission notes that the example contract provided by SPCA and referred to in its submission is between the PPT manufacturer and a producer's organisation.¹⁵ This was used to make the point that PPT manufacturers are aware of the area of land that is eligible for SPS payments, and would use this to their advantage when negotiating raw tomato prices.

¹⁴ In each instance, the coefficient of determination is the adjusted r^2 calculated using a simple regression. This is referred to as the r^2 for clarity.

¹⁵ Document 051 on the public record refers.

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Each producer organisation represents a number of growers who will receive the same contracted price for their tomatoes, subject to the adjustments for quality (e.g. inclusions, unripe/rotten content, brix level). Producer organisations may represent a collective of growers, or a group of smaller collectives, meaning that growers who receive payments are often at least one step removed from the party negotiating prices on their behalf.

It has been demonstrated, based on the information outlined above, that growers from within the same producer organisation frequently have highly varied SPS payments per hectare while selling to the same PPT manufacturers at the same price, and inversely that growers receiving very similar SPS payments may sell their tomatoes for different prices. As outlined in REP 360, and again in ADRP Report No. 35, the correlation between the payment received and the final price agreed in the contract between the producer organisation and the PPT manufacturer is close to zero. Relevantly, the ADRP noted that the Commissioner had found that the SPS “had no discernible impact on the prices actually paid by Feger and La Doria for raw tomatoes.”¹⁶

The Commission considers that the findings in REP 360 (and as supported by the ADRP Report No. 35) are relevant to apply to this review of measures. Notwithstanding that the review period is different to the investigation period examined in REP 360, the key question is whether the market for raw tomatoes in Italy is such that the costs recorded by exporters of PPT are not competitive market costs. As was noted in REP 360:

The Commission is not aware of any evidence of other influence over the market for raw tomatoes being exerted by the Government of the Italian Republic or the European Union that would artificially depress prices for raw tomatoes.

The Commission observes that prices are negotiated with the tomato processors via producer organisations in most cases. There are a large number of these organisations in Italy, and their market power appears to be relatively diluted given the varying prices which have been paid by Feger and La Doria. As a result, the Commission has no evidence which suggests that the producer organisations are influencing the market in such a way that would artificially depress prices for raw tomatoes.

Based on the further information that has become available to it during this re-investigation, the Commissioner has concluded that the market for raw tomatoes operates on a competitive basis. Accordingly, the Commissioner finds that the cost of raw tomatoes as accounted for in the records of Feger and La Doria are competitive market costs.¹⁷

As the ADRP considered these findings in ADRP Report No. 35, and agreed that the correct and preferable approach to determining Feger’s and La Doria’s normal values should proceed in this way, and that the cost of raw tomatoes should not be uplifted.

Finally, SPCA has based its claims for an adjustment on the evidence of SPS payments made which were also relied upon in REP 276. These findings have been superseded by the findings made in REP 360, and the Commission does not have any further evidence that would result in a change to those findings or those in ADRP Report No. 35. The Commission considers that no uplift should be applied to the additional payments claimed by SPCA on the same basis.

¹⁶ ADRP Report No. 35, at page 11.

¹⁷ REP 360, section 5.4.4 refers.

3.2.5 Below cost sales of inputs

The Commission has not investigated the contention in SPCA's submission that growers may be selling raw tomatoes at below-cost prices, or would be if the CAP payments were not received. The reason for this is outlined on page 44 of the *Dumping and Subsidy Manual*¹⁸, which states:

The concept of a competitive market price is not taken to prevent an exporter buying inputs from arms length suppliers at the prevailing price even if that input had been sold at below cost or dumped. This is because a company should not be penalised for making commercial decisions to buy inputs at the best price; and a dumping authority would not be able to verify input costs from uncooperative and unrelated companies.

As such, even if the sales had been below cost in the absence of the CAP payments, the Commission would not automatically conclude that those costs were not "competitive".

The Commission has investigated whether any raw tomato purchases made by the selected exporters may not have been at arms length. During the six verifications undertaken in these reviews, no evidence was obtained which would suggest that these purchases were otherwise than in arms length transactions.

3.3 Conclusion

Due to the above, the Commission is satisfied that the exporters' records reasonably reflected competitive market costs for the purchase or raw tomatoes, which were purchased at arms length. The Commissioner intends to recommend to the Parliamentary Secretary that no uplift is applied to the cost of raw tomatoes when assessing the CTMS.

¹⁸ Available on the Commission's website at www.adcommission.gov.au

4 VARIABLE FACTORS – EXPORT PRICE AND NORMAL VALUE

4.1 Finding

The Commissioner finds that the variable factors relevant to the taking of anti-dumping measures in relation to PPT exported to Australia from Italy have changed.

4.2 Review 349 – ARIA

An in-country verification of ARIA was conducted as part of this review.¹⁹ Normal value for ARIA was unable to be established under subsection 269TAC(1) as the Commission was unable to be assured of the completeness and relevance of domestic sales, nor was it able to verify production volumes. Due to this, normal values for ARIA's sales of PPTs have been established under subsection 269(2)(c).

As ARIA did not export PPT to Australia during the review period, the ascertained export price for ARIA has been calculated under subsection 269TAB(3) by having regard to all relevant information because sufficient information is not available to enable the export price to be determined under the preceding subsections. Specifically, ARIA's export price was calculated using the weighted average export price of the exporters verified in Review 354.

4.3 Review 354 – all other exporters

4.3.1 Selected exporters

The five largest exporters by volume to submit responses to the Commission (the selected exporters discussed in Chapter 2) were subject to verification. These exporters accounted for 93 per cent of imports by volume amongst the 19 exporters that submitted a response to the Commission.

Each of the selected exporters subject to verification have had a normal value determined under subsection 269TAC(1), with adjustments to the normal value made under subsection 269TAC(8) to ensure fair comparison with the export price.

Export price has been determined under subsection 269TAB(1).

For further detail, the verification report for each of these exporters is available on the public record.²⁰

4.3.2 Le Specialità Italiane

The variable factors applicable to LSI were recently assessed in REP 351, however as LSI did not export during the assessment period it was not initially selected under subsection 269TACAA(1). Subsequent to this, LSI wrote to the Commission citing subsection 269TACAA(2) and claimed that, as the Commission had recently undertaken the

¹⁹ For further detail please refer to the ARIA verification report, document 050 on the [public record](#).

²⁰ These exporters are [Calispa](#), [Conserve Italia](#), [De Clemente](#), [Mutti](#) and [Princes](#).

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accelerated review, the impost of calculating an ascertained normal value and ascertained export price unique to its exports would not prevent the timely completion of the review.

For the reasons provided by LSI, the Commission is of the view that extending its examination of the data submitted in this review to LSI would not prevent its timely completion. As such, subsection 269TAACA(2) requires the Commission to extend Review 354 to LSI, and the Commission has done so.

In calculating the ascertained normal value and ascertained export price, it is important to note that the period for REP 351 and the period considered in this review are the same. It should also be noted that, in this period, LSI did not have any export sales, and only sold unlabelled (or "bright") cans of PPT in its domestic market. The calculation of a normal value in REP 351 relied instead on the sale price of bright cans, with adjustments for labelling and packaging added to the bright cans, plus adjustments necessary to calculate the value of the goods at the Free on Board (FOB) level. All of these adjustments were based on quotes obtained by LSI. The approach taken in REP 351 was therefore based on the best information available at the time.

The Commission now considers that LSI's domestic sales of bright cans are not suitable for use in calculating a domestic sale price as it is uncertain whether these will be entered into home consumption. This is because the unlabelled goods can be either exported or sold domestically, and the manufacturer does not have control over (or potentially awareness of) the end destination for the goods. This approach is consistent with the approach taken for all other exporters verified in this review.

Due to the above, the Commission is unable to derive an ascertained normal value by reference to LSI's domestic sales of bright cans. The Commission has chosen instead to determine the ascertained normal value under subsection 269TAC(1) with reference to the price paid for like goods in the ordinary course of trade for home consumption in Italy by other exporters. The price will be determined using the weighted average of the ascertained normal value from the five verified exporters of the goods whose normal value was determined under subsection 269TAC(1).

As stated above, LSI did not have any export sales during the review period. On this basis, the Commission will calculate the ascertained export price under subsection 269TAB(3) by having regard to all relevant information because sufficient information is not available to enable the export price to be determined under the preceding subsections. The Commission will do this by calculating the weighted average of the ascertained export price from the five verified exporters of the goods whose export price was determined under subsection 269TAB(1).

4.3.3 Residual exporters

The Commission established export prices for residual exporters pursuant to subsection 269TAB(3), having regard to all relevant information. The Commission has used the weighted average export prices of cooperative exporters from Review 354 whose dumping margin was equal to or greater than 2 per cent, which complies with subsections 269TACAB(2)(c) and (3).

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Normal values for residual exporters were established pursuant to subsection 269TAC(6), having regard to all relevant information. The Commission used the weighted average normal values from cooperative exporters from Review 354 found to have a dumping margin equal to or greater than 2 per cent. This complies with subsections 269TACAB(2)(d) and (3).

The dumping margin for all residual exporters is 7.1 per cent. The basis of this calculation is in **Confidential Attachment 1**.

4.3.4 Uncooperative and other exporters

Subsection 269TACAB(1) sets out the provisions for calculating export prices and normal values for uncooperative exporters. This provision specifies that for uncooperative exporters, export prices are to be calculated under subsection 269TAB(3) and normal values are to be calculated under subsection 269TAC(6).

The Commission has therefore determined an export price pursuant to subsection 269TAB(3) after having regard to all relevant information. Specifically, the Commission has followed its ordinary practice and used the lowest of the weighted average export prices of those that were established for cooperating exporters in the investigation period.

The Commission has determined normal value for the uncooperative exporters pursuant to subsection 269TAC(6) after having regard to all relevant information. Specifically, the Commission has followed its ordinary practice and used the highest of the weighted average normal values of those that were established for the cooperating exporters in the investigation period.

The dumping margin for uncooperative exporters is 118.7 per cent. The basis of this calculation is in **Confidential Attachment 1**.

4.4 Dumping Margins

Based on the above, the dumping margins are:

Name	Basis of export price	Basis of normal value	Dumping margin
ARIA	269TAB(3)	269TAC(2)(c)	30.0%
Calispa	269TAB(1)	269TAC(1)	negative
Conserve Italia	269TAB(1)	269TAC(1)	5.4%
De Clemente	269TAB(1)	269TAC(1)	negative
LSI	269TAB(3)	269TAC(1)	negative
Mutti	269TAB(1)	269TAC(1)	3.5%
Princes	269TAB(1)	269TAC(1)	0.8%
Residual exporters (listed in 2.2.1)	269TAB(3)	269TAC(6)	4.4%
All other / uncooperative exporters	269TAB(3)	269TAC(6)	118.7%

Table 3 – Basis of dumping margin calculations and outcomes

5 NON-INJURIOUS PRICE

5.1 Assessment of NIP

Neither the Australian industry nor the applicants have made submissions on the method of calculating the NIP during the course of the current reviews. The Commissioner considers that the approach to determining the NIP for the original inquiry (REP 217) remains valid for the purpose of these reviews.

5.2 General

Dumping duties may be applied where it is established that dumped imports have caused, or threaten to cause, material injury to an Australian industry producing like goods. The level of dumping duty imposed cannot exceed the margin of dumping, but a lesser duty may be applied if it is sufficient to remove the injury.

Under subsection 8(5B) of the *Customs Tariff (Anti-Dumping) Act 1975*, if the NIP is less than the normal value, the Parliamentary Secretary must have regard to the desirability of specifying a method such that the sum of the export price and the interim dumping duty payable does not exceed the NIP (the “lesser duty rule”). Subsection 269TACA(a) identifies the NIP of the goods exported to Australia as the minimum price necessary to remove the injury caused by the dumping.

The Commission generally derives the NIP by first establishing a price at which the Australian industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the unsuppressed selling price (USP). Deductions from this figure are made for post-exportation costs to derive a NIP that is expressed in similar delivery terms to the export price and normal value (e.g. FOB).

Where the NIP is lower than the normal value, the duty is calculated with respect to the difference between the export price and the NIP, thereby giving effect to the lesser duty rule.

5.3 Commission’s assessment

As dumping was found during the review period by some exporters of PPT to Australia, the Commission is unable to use contemporaneous Australian industry selling prices at a time unaffected by dumping to establish an USP. Therefore, the Commission recommends calculating an USP by constructing an Australian industry price based on its CTMS, plus an amount for profit.

The Commission has therefore had regard to the Australian industry CTMS and importers’ profit information from the review period. Post-exportation cost data gathered from importers formed the basis of deductions from the USP to calculate the NIP.

The Commission has found that the NIP is higher than the normal value for all exporters in Review 349 and Review 354, and therefore higher than the uncooperative and residual normal values. In such a case, the lesser duty rule does not apply. Accordingly, the Commissioner proposes to recommend that dumping duty be based on the full margin of dumping. The Commission’s NIP calculations are at **Confidential Attachment 2**.

6 PROPOSED MEASURES

The Commissioner finds that, in relation to exports of PPT to Australia from Italy during the review period by all exporters (other than Feger and La Doria):

- the ascertained export price has changed;
- the ascertained normal value has changed; and
- the ascertained NIP has changed.

6.1 Proposed recommendations

The Commissioner proposes to recommend to the Parliamentary Secretary that the dumping duty notice have effect in relation to ARIA and to all exporters the subject of Review 354 as if different variable factors had been ascertained.²¹

A summary of the variable factors as they apply to the exporters is at **Confidential Appendix 3**.

6.2 Form of measures

The current form of measures applicable to PPT from Italy is an amount which will be worked out in accordance with the combination method pursuant to subsection 5(2) of the *Customs Tariff (Anti-Dumping) Regulation 2013*. The combination method applicable to the dumping duty notice for PPT applies duty as a fixed percentage of the actual export price or the ascertained export price of the goods (whichever is the greater), with a variable component if the price is below the ascertained export price for the exporter.

There is no change to the form of measures recommended as a result of this review.

6.3 Effect of the review

The effect of the Commissioner's recommendation is that each exporter's exports of PPT will attract an amount of interim duty which is equal to the dumping margin (i.e. the difference between the export price and the normal value of the goods), expressed as a proportion of the actual export price or ascertained export price (whichever is greatest), plus a variable amount of duty if the export price is below the ascertained export price. Note that, for exporters found to have a negative margin, the fixed component of dumping duty will be zero. As such, the measures will act like a floor price set at the ascertained export price.

²¹ Subsection 269ZDA(1)(a)(iii).

7 APPENDICES AND ATTACHMENTS

Confidential Attachment 1	Calculations of LSI, residual and uncooperative exporters
Confidential Attachment 2	Calculation of non-injurious price
Confidential Attachment 3	Summary of variable factors for each exporter