



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

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

REPORT
NOs. 349 and 354

**REVIEW OF ANTI-DUMPING 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.**

5 April 2017

CONTENTS

CONTENTS..... 2

ABBREVIATIONS..... 3

1 SUMMARY AND RECOMMENDATIONS..... 5

1.1 SUMMARY5

1.2 APPLICABLE LAW5

1.3 FINDINGS AND CONCLUSIONS6

1.4 RECOMMENDATION6

2 BACKGROUND..... 7

2.1 THE CURRENT MEASURES.....7

2.2 INITIATION AND CONDUCT OF THE REVIEWS8

2.3 THE GOODS AND LIKE GOODS12

2.4 STATEMENT OF ESSENTIAL FACTS12

2.5 SUBMISSIONS IN RESPONSE TO THE SEF.....12

3 VARIABLE FACTORS – EXPORT PRICE AND NORMAL VALUE22

3.1 FINDING.....22

3.2 REVIEW 349 – ARIA.....22

3.3 REVIEW 354.....23

3.4 DUMPING MARGINS.....31

4 NON-INJURIOUS PRICE32

4.1 ASSESSMENT OF NIP32

4.2 GENERAL.....32

4.3 COMMISSION’S ASSESSMENT.....32

5 RECOMMENDATIONS34

5.1 RECOMMENDATIONS34

5.2 FORM OF MEASURES.....34

5.3 EFFECT OF THESE REVIEWS35

6 APPENDICES AND ATTACHMENTS.....36

PUBLIC RECORD

ABBREVIATIONS

\$	Australian dollars
the Act	<i>Customs Act 1901</i>
ADA	Anti-Dumping Agreement
ADN	Anti-Dumping Notice
AEP	ascertained export price
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.
Attianese	Attianese S.p.A.
Calispa	Calispa S.p.A.
CAP	<i>Common Agricultural Policy</i>
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
Conserve Italia	Conserve Italia Soc. Coop. Agricola
CTMS	cost to make and sell
De Clemente	De Clemente S.p.A.
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
EC	European Commission
EPR	Electronic Public Record
EU	European Union
EXW	ex-works
Feger	Feger di Gerardo Ferraioli S.p.A
FOB	Free On Board
Guidelines	<i>Guidelines on the Application of Forms of Dumping Duty</i>
Italy	the Republic of Italy
La Doria	La Doria S.p.A
LSI	Le Specialità Italiane SRL
Mutti	Mutti S.p.A.
NIP	non-injurious price
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 then Assistant Minister for Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science
PPT, or the goods	certain prepared or preserved tomatoes, the goods the subject of the applications
Princes	Princes Industrie Alimentari S.r.L.

PUBLIC RECORD

REP 217	<i>Anti-Dumping Commission Report 217</i>
REP 276	<i>Anti-Dumping Commission Final Report No. 276</i>
REP 351	<i>Anti-Dumping Commission Final Report No. 351</i>
REP 360	<i>Anti-Dumping Commission Reinvestigation Report No. 360</i>
SEF	Statement of Essential Facts
SPCA	SPC Ardmona Operations Ltd
SPS	<i>Single Payment Scheme</i>
WTO	World Trade Organization

1 SUMMARY AND RECOMMENDATIONS

1.1 Summary

This report 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 certain prepared or preserved tomatoes (PPT, also referred to as the goods) exported to Australia from the Republic of Italy (Italy), except by Feger di Gerardo Ferraioli S.p.A (Feger) and La Doria S.p.A (La Doria).¹

These applications were received from AR Industrie Alimentari S.p.A. (ARIA) and SPC Ardmona 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 exporters subject to measures.

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, following the original investigation reported in *Anti-Dumping Commission Report 217* (REP 217). The Commissioner of the Anti-Dumping Commission (the Commissioner) also published Anti-Dumping Notice (ADN) No. 2014/32 to advise interested parties of the decision.

The applications submitted 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 Applicable law

Division 5 of Part XVB of the *Customs Act 1901* (the Act)² enables affected parties to apply for a review of anti-dumping measures. The division, among other matters:

- sets out the circumstances in which applications for the review of anti-dumping measures can be brought;
- sets out the procedure to be followed by the Commissioner in dealing with such applications or requests and preparing reports for the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary);³ and
- empowers the Parliamentary Secretary, after consideration of such reports, to leave the measures unaltered, or to modify them as appropriate.

¹ Refer to section 2.1 of this report for an explanation of why Feger and La Doria are not subject to the same anti-dumping measures and therefore were excluded from the review of measures.

² 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.

³ 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 decision, the Minister is the Parliamentary Secretary to the Minister for Industry, Innovation and Science.

PUBLIC RECORD

After conducting a review of anti-dumping measures, the Commissioner must give the Parliamentary Secretary a report containing recommendations.

1.3 Findings and conclusions

The Commissioner has conducted a review of anti-dumping measures in respect of exports of the goods from Italy to Australia, in so far as they affect ARIA, and is satisfied that the variable factors relevant to the taking of those measures (being the normal value, export price, and the non-injurious price (NIP)) in relation to that exporter have changed.

The Commissioner has conducted a review of anti-dumping measures in respect of exports of the goods from Italy to Australia, in so far as they affect all other exporters except for ARIA, Feger and La Doria, and is satisfied that the variable factors relevant to the taking of those measures (being the normal value, export price, and the NIP) in relation to those exporters have changed.

1.4 Recommendation

The Commissioner recommends to the Parliamentary Secretary that the dumping duty notice have effect in relation to ARIA as if different variable factors (being the normal value, export price, and the NIP) had been ascertained. The Commissioner recommends that the form of measures, being the combination of fixed and variable duty, not be changed.

The Commissioner recommends to the Parliamentary Secretary that the dumping duty notice have effect in relation to all exporters, except for ARIA, Feger and La Doria, as if different variable factors (being the normal value, export price, and the NIP) had been ascertained. The Commissioner recommends that the form of measures, being the combination of fixed and variable duty, not be changed.

2 BACKGROUND

2.1 The current measures

On 16 April 2014, the then Parliamentary Secretary published a notice advising of their decision to impose anti-dumping measures on all PPT exported to Australia from Italy, except by Feger and La Doria. As 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.

2.2 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 Anti-Dumping Commission (the Commission) has established a single electronic public record (EPR) for both reviews.⁴

2.2.1 Other cases

Anti-Dumping Commission Final Report No. 276

An investigation concerning PPT exported to Australia 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 Commission in these circumstances is to identify a suitable benchmark for the replacement of the costs of raw tomatoes, but it 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 (the then Parliamentary Secretary) accepted the Commissioner's recommendations and imposed anti-dumping measures on Feger and La Doria on 11 February 2016.

⁴ [EPR 354](#) refers.

Anti-Dumping Commission Reinvestigation Report No. 360

Following applications from Feger, La Doria, the European Commission (EC) 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 *Anti-Dumping Commission Final Report No. 276* (REP 276) on which it relied.

The ADRP subsequently requested that the Commissioner reinvestigate certain findings. To the extent that the reinvestigation relates to the matters contended for in these reviews, the Commissioner was required 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; and
- assess the magnitude of that cost adjustment (that is, whether €0.037 / kg is the right amount to use in any uplift).

The Commissioner's report (*Anti-Dumping Commission Reinvestigation Report No. 360*, or REP 360) found 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 accepted this particular finding 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.

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

2.2.2 Relevance of other cases and extension of time

SPCA claimed in its application for review that the uplift to exporters' cost to make and sell (CTMS) that was applied in REP 276, along with an additional uplift for a further payment SPCA had identified, should be applied when calculating all other exporters' normal values.⁵ The Commissioner therefore sought an extension to publication of the SEF pending the outcome of the ADRP review of REP 276. This was so the approach taken in these reviews would be consistent with the Parliamentary Secretary's decision following the ADRP review. The Parliamentary Secretary granted such an extension.

The extension, granted on 8 August 2016, required the 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, which means that the SEF was placed on the public

⁵ See Document 001 on [EPR 354](#).

PUBLIC RECORD

record on 20 February 2017,⁶ and that the final report is due to be provided to the Parliamentary Secretary by 5 April 2017.

2.2.3 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 182 apparent suppliers of PPT 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 under ADN No. 2014/32. The Commission invited these 55 exporters to complete an exporter questionnaire, which requested necessary information to determine whether goods were exported at dumped prices. The Commission 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 selected five exporters of the goods. The Commission carried out in-country verification of the data provided by three of these exporters, and desktop verification of the other two.

These five 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 1 April 2015 to 31 March 2016) by exporters that completed the exporter questionnaire. These exporters were:

- Calispa S.p.A. (Calispa)
- Conserve Italia Soc. Coop. Agricola (Conserve Italia)
- De Clemente S.p.A. (De Clemente)
- Mutti S.p.A. (Mutti)
- Princes Industrie Alimentari S.r.L. (Princes)

⁶ As 19 February 2017 was a Sunday, the effective due date for the SEF was 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 report 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 response to the exporter questionnaire (and therefore were not uncooperative exporters), and were not selected exporters, were residual exporters.⁷ These entities were:

- Alfonso Sellitto S.p.A.
- Attianese S.p.A. (Attianese)
- Conserve Manfuso SRL
- Davia S.p.A.
- Felice Conserve SRL
- FPD SRL
- Giaguaro S.p.A.
- ICAB S.p.A. La Fiammante
- IMCA S.p.A.
- La Regina del Pomodoro SRL
- Nolana Conserve SRL
- Pancrazio S.p.A.
- 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 Le Specialità Italiane SRL (LSI), as to do so would have required verification of the information provided that would have prevented the timely completion of these reviews.

As noted in SEF 349 and 354, LSI was a cooperative exporter as per the definition in subsection 269T(1). Although LSI was not initially selected in the Sampling Report under subsection 269TACAA(1), as it submitted information to the review, the review was extended to LSI under subsection 269TACAA(2). 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. REP 351 was published on 22 August 2016.

Accordingly, LSI’s exports were examined as part of Review 354, and it was not an uncooperative or residual exporter.

2.2.4 Uncooperative and other exporters

Subsection 269T(1) provides that, in relation to a review, 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 review

⁷ Subsection 269T(1) provides that a “residual exporter”, in relation to 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

within a period the Commissioner considered to be reasonable, or where the Commissioner is satisfied that an exporter significantly impeded the review.

The Commission considers those exporters that did not provide a complete response to the exporter questionnaire to be uncooperative in that these exporters did not give the Commissioner information considered to be relevant to the review within a period the Commissioner considered to be reasonable. For uncooperative exporters, the Commissioner relied on subsection 269TAB(3) and subsection 269TAC(6) to calculate export prices and normal values, having regard to all relevant information and as required by subsection 269TACAB(1).

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 these reviews, 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 Statement of Essential Facts

The SEF for cases 349 and 354 was published on 20 February 2017.

2.5 Submissions in response to the SEF

Submissions were received within 20 days of publication of the SEF from the following interested parties:

- Attianese
- SPCA (two submissions)
- Mutti

PUBLIC RECORD

- Princes
- Conserve Italia
- Calispa
- the EC

In addition to the above, late submissions (being those submitted more than 20 days after the publication of the SEF) were received from:

- SPCA
- Mutti⁸
- Conserve Italia

The Commissioner is of the view that considering these submissions did not impact the timely preparation of the report and as such has had regard to them.

A further late submission was received from LSI on 4 April 2017. The Commissioner is of the view that having regard to this submission would impact the timely preparation of the report, and as such has not had regard to it.

All submissions are on the EPR.⁹

2.5.1 EC as an interested party

SPCA submitted that whether or not the EC should be qualified as an “interested party” has been “queried in separate investigations by the ADRP” but has not been addressed by the Commission.¹⁰

Commission response

The Commission notes that the ADRP’s consideration of SPCA’s submissions to an ADRP review, including on this point, is a matter for the ADRP and its report to the Parliamentary Secretary.

2.5.2 Errors in data analysis in REP 360

SPCA claims that the Commission incorrectly interpreted the data obtained in REP 360. SPCA states that, as the tomato specific payment at €2802 per hectare cannot be isolated from the total *Single Payment Scheme* (SPS) payment under the CAP, the distortionary effect on tomatoes was incorrectly assessed.¹¹

⁸ The confidential version was received prior to the deadline, however no non-confidential version was attached. The non-confidential version was received after the deadline.

⁹ The EPRs for cases 349 and 354 is available at www.adcommission.gov.au. Submissions that relate to both cases have been uploaded to EPR 354.

¹⁰ Submission 14 March 2017.

¹¹ Submission 14 March 2017.

SPCA further claims that the data is not suitable for linear regression, and that multi-variate analysis should have been applied.¹²

Commission response

The Commission notes that the analysis of the data in REP 360 has been accepted by the ADRP and the Parliamentary Secretary. The Commission does not consider it appropriate to revisit the interpretation of data from REP 360 in these reviews.

2.5.3 Application of findings in REP 360 to these reviews

SPCA claims that all reviews conducted by the ADRP are done so as a limited merits review, under which the Commission should not have accepted additional information, nor should the ADRP have had regard to that information when making its decision. As this was not adhered to, the Commission must not have regard to the ADRP's recommendation to the Parliamentary Secretary.¹³

Alternatively, SPCA claims that the additional information obtained, being the certificates provided by Feger and La Doria to show the payments received by their supplying growers, were self-selected and provided incomplete coverage of the tomato purchases made by La Doria and Feger. SPCA claims that this information is therefore unreliable. SPCA further claims that there is a particular market situation for PPTs, and that this should have been applied in REP 276. SPCA submits that the same uplift to the cost to make for PPTs applied in REP 276 should be applied to all exporters in these reviews.¹⁴

In response, Calispa submits that, regardless of the status of the new information in REP 360, there is no limitation on using this information in a review of measures. Calispa states that the analysis and findings in REP 360 are directly relevant to the current reviews.

The EC also considers that the findings in REP 360 were correct, and that SPCA's claims should be dismissed.

Commission response

The Commission's interpretation of the scope of the Commissioner's reinvestigation and section 269ZZL was explained in section 3.2.1 of SEF 349 and 354, and is reiterated in this final report. The Commission does not consider that this position is inconsistent with the section of the *Dumping and Subsidy Manual* that is extracted in the submission,¹⁵ because the ADRP is required to have regard to the Commissioner's reinvestigation report.

It is worth noting that the Commission received the SPS certificates for 85 per cent and 37 per cent of growers for Feger and La Doria respectively, but received the data for 100 per cent of the growers of each. This is due in part to the inability of Feger and La Doria

¹² Submission 14 March 2017.

¹³ Submission 8 March 2017.

¹⁴ Submission 14 March 2017.

¹⁵ Submission 8 March 2017.

PUBLIC RECORD

to provide certificates for growers that did not receive payments, and partly as there is no requirement for growers to provide this information.

The evidence provided by SPCA relates entirely to the theoretical value of SPS payments being made, whereas the evidence submitted by Feger and La Doria was with regard to the actual payments received by tomato growers.

The Commission notes that in SPCA's submission, with regard to the contracts for pricing of tomatoes between growers and producers of PPTs, it states that:

[t]he negotiated price is established according to conditions in the market (brix, supply, good or bad growing conditions). A price is set for the Northern region and the Southern region, usually around May for the processing season commencing in August/September.

As demonstrated by the Commission in REP 360, the vast majority of sales of tomatoes to both Feger and La Doria are within a small price bandwidth, which agrees with this proposition. The Commission has concluded that any conditions which apply to the growers for Feger and La Doria are highly likely to be found throughout the entire industry, as the agreements span all growers and canners rather than being negotiated between each grower organisation and tomato canner.

Given the prices are fixed for all growers, with only variations for quality or type (e.g. round, long etc.), and that these are industry-wide, it follows that any distortions will equally affect all growers and purchasers. In REP 360 the Commission reviewed the distortionary effect of the payments by comparing the total SPS payment received by each grower with the price of raw tomatoes. The Commission found that there was little, if any, link between the amount of SPS received and the price tomatoes were sold at. This further reinforces the statement from SPCA that the prices are fixed and that individual growers cannot influence their selling price, regardless of whether they have any historical entitlements.

In REP 360 it was established that there is no distortionary effect of the SPS for growers that sold to Feger and La Doria. SPCA has provided information which confirms that prices are set at a level which cannot be influenced by individual growers or canners. The Commission is of the view that this means there is no distortion for participants in the market, and that the findings of REP 360 should be applied to all exporters. On this basis, no uplift will be made to the price of raw tomatoes when applying the ordinary course of trade (OCOT) test.

SPC has stated that “*tomato growers are price takers and would not survive if not for the historical tomato payment*”. The evidence provided in REP 360 demonstrated that there were growers who received little or no payments under the SPS for any crop. As such, this allegation cannot be substantiated.

The Commissioner has considered SPCA's market situation claim, as well as other information considered relevant pursuant to subsection 269ZDA(3)(b). The Commissioner has considered the submissions and other evidence relating to market situation claims in Investigation 276 in these reviews of measures, given that both cases concern the same market, the same country, and the same goods. The time periods considered in both cases are similar to one another. After considering the available evidence, the Commissioner is of the view that there is not a market situation in Italy such that sales in that market are not suitable for determining a price under subsection 269TAC(1).

2.5.4 Review 354 should be terminated

The EC has submitted that, as one ground of the application by SPCA has not been accepted (being the above), the review of measures should be terminated without changing the level of measures established in REP 217.

Commission response

Under Australian law, the Commissioner cannot terminate a review of measures, unlike other case types (such as an investigation) where there is power to terminate the case in specified circumstances (see section 269TDA).

2.5.5 Interaction between a review of measures and an accelerated review

The EC submits that, based on World Trade Organization (WTO) jurisprudence regarding Mexican anti-dumping measures on rice, when an investigation determines that there is no dumping margin (or a *de minimis* dumping margin) for an exporter, the investigation insofar as it applies to that exporter should be terminated.

SPCA submitted that the Commission is not able to change the measures as they apply to LSI, as LSI has been subject to an accelerated review in the last 12 months.¹⁶

Commission response

The Commission understands that the WTO reference in the EC's submission relates to the decision of the WTO Appellate Body, *Mexico – Definitive Anti-Dumping Measures on Beef and Rice – Complaint with Respect to Rice* (WT/DS295/AB/R dated 29 November 2005).¹⁷ In this decision, the Appellate Body noted that Article 5.8 of the Anti-Dumping Agreement (ADA) requires that exporters who were found during an investigation not to have engaged in dumping be excluded from the anti-dumping measure. The ADA would require the investigation to be terminated in respect of those exporters. Those same exporters must be excluded from administrative and changed circumstances reviews.

However, this aspect of DS295 does not appear to be relevant to these reviews of measures because the Commission is not considering any exporters who, during the original investigation (INV 217), were found to be not dumping or that had *de minimis* dumping margins. INV 217 was terminated insofar as it related to two exporters, Feger and La Doria, and the Commissioner has not included Feger and La Doria in these reviews of measures. Accordingly, these reviews of measures can be distinguished from DS295.

The EC claims that the Commissioner has “unlawfully re-assessed the dumping margin for the Italian producers whose dumping had been found to be zero in their respective accelerated reviews”. DS295 and the findings of an investigation are distinct from those of an accelerated review. Where an accelerated review resulted in a zero dumping margin, those exporters were included in these reviews of measures, for the reasons discussed below.

¹⁶ Submission 14 March 2017.

¹⁷ https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds295_e.htm

Australian law does not prevent an exporter that has sought an accelerated review from being examined in a subsequent review of measures that is initiated following an application by another party. Subsection 269ZA(4)(b) provides that the making of a declaration under subsection 269ZG(3) (which is made following an accelerated review) is not treated as a review of the dumping duty notice for the purpose of determining whether subsection 269ZA(2) permits any person other than the applicant for the accelerated review to apply for a review of the notice.

2.5.6 Imposition of measures below the *de minimis* threshold

The EC submit that, under Article 5.8 of the WTO ADA, any exporters found to have a negative or *de minimis* margin should have the investigation terminated against them, and be excluded from any subsequent review. Princes has made a similar argument, with additional reference to Article 11(2) of the ADA, which relates to when an interim review has found “that the antidumping (sic) duty is no longer warranted”.

Conserve Italia has made a similar submission.

Commission response

The Commission notes that a dumping duty notice may be revoked in certain circumstances, including in its application to a particular exporter. However, subsection 269ZDA(1A) prevents the Commissioner from making a revocation recommendation to the Parliamentary Secretary unless, among other matters, a revocation review notice has been published in relation to the review of measures. No revocation review notice was published in relation to these reviews of measures because the Commissioner did not receive an application under section 269ZCA to extend the review of measures to include revocation. As no application was made to extend the review of measures to include revocation, the Commissioner is not obliged to consider whether the anti-dumping measures are no longer warranted. Accordingly, subsection 269ZDA(1A) prevents the Commissioner from recommending to the Parliamentary Secretary that the measures be revoked as a result of these reviews of measures.

2.5.7 Form of measures

Mutti has submitted that the form of measures should be changed from the current form, being the combination form, to an *ad valorem* rate. This argument is based on the Commission’s *Guidelines on the Application of Forms of Dumping Duty* (Guidelines).¹⁸ The basis of this is twofold:

- the price of a major input (raw tomatoes) is subject to significant fluctuations, which affects the price of the finished product, which would render the ascertained export price (AEP) rapidly out of date; and
- the selling prices of the various models differ significantly based on the characteristics of the product (e.g. tomato type, preparation method, organic certification).

¹⁸ Available on the EPR at <http://adcommission.gov.au/accessadsystem/Documents/Forms%20and%20Guidelines/Guidelineformsofdumpingduty-November2013.pdf>.

PUBLIC RECORD

Calispa submits that, as it is not currently dumping and has not been found to be dumping previously, the form of measures applicable to its own exports should be an *ad valorem* duty.

Princes and Conserve Italia submit, for similar reasons to Mutti, that the form of measures should be *ad valorem*.

SPCA has submitted that there should not be a change in the form of measures, as there has been no demonstrated need to change the form of measures.¹⁹

Commission response

The Commission sets the form of measures with regard to the Guidelines. The Commissioner has considered the two factors outlined above, along with the other relevant considerations, in section 5.2 of this report.

2.5.8 Calculation of measures

The EC claims that the basis of calculation of measures for uncooperative exporters has changed in SEF 354 from REP 217.

Commission response

The Commission notes that the method for calculating the uncooperative rate has not changed. Rather, the dumping margin increased in SEF 354, compared to REP 217, due to a higher variance between the highest weighted average normal value of selected exporters and the lowest weighted average export price of selected exporters calculated for the review period.

2.5.9 Individual rate of measures for Attianese

Attianese submitted that the Commission should provide its company with an individual dumping rate. Furthermore, it stated that it could not understand why LSI was granted an individual rate but it has not.

Commission response

The Commissioner's approach to sampling in Review 354 was set out in the Sampling Report and in section 2.2.1 of this report. Attianese was not initially selected under subsection 269TACAA(1) to be examined, but did submit information to the review. The Commissioner did not extend the review of measures to Attianese because to do so would have prevented its timely completion (per subsection 269TACAA(2)). Similarly to Attianese, LSI was not initially selected under subsection 269TACAA(1) to be examined, but after LSI submitted information to the review, it was extended to LSI. The Commissioner determined that extending the review of measures to LSI would not prevent its timely completion because the Commissioner had already considered and verified LSI's data for the purpose of preparing REP 351, a report following an accelerated review for LSI, which considered the same goods over the same period of time as these reviews.

¹⁹ Submission 17 March 2017.

2.5.10 Surrogate models for Conserve Italia

During the verification of Conserve Italia, nearly all models of PPTs were sold both domestically and for export, and the normal values for those models were calculated in accordance with subsection 269TAC(1). The remaining two models of PPTs that were exported to Australia were not sold in Italy, and as such the domestic sales of those models could not be used to determine a normal value under subsection 269TAC(1).

In the absence of a formal model matching framework, the Commission proposed two methods of determining surrogate models for the two models that did not have domestic sales. The first proposed method was an adjustment based on the actual price difference where the size and processing method (e.g. chopped, diced, peeled) were identical, but there was a difference in the brand. The second proposed method was to use the normal value of the model with the closest CTMS, where size and branding were the same. Conserve Italia has rejected these proposed approaches.

Conserve Italia contends that the peeled tomatoes sold domestically under the CIRIO brand cannot be used for a direct comparison with export sales, as the drained weight printed on the label is 250g (compared to 240g on the Australian tin). As such, Conserve Italia believes that the export sales of CIRIO peeled tomatoes should not be included in the calculation of a dumping margin as the models are not identical. Additionally, Conserve Italia has claimed that some domestic sales should be excluded, due to being a “richer” recipe than that sold on the Australian market, or due to having a higher brix level.

The EC alluded to this issue in its submission; however, provided no arguments specifically addressing this matter. SPCA noted that the move to using substitute models under subsection 269TAC(1) varied from the approach taken in REP 217 and REP 276.

Commission response

Like goods are defined in section 269T 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 Commission will have regard to all sales of goods which are “like” to the goods subject to anti-dumping duties, both domestically and for export. The Commission will then calculate a dumping margin under subsection 269TACB(1) for all models that have been exported, where an export price and normal value can be determined.

The Commission has found all domestic and export sales in the sales listing provided by Conserve Italia in its exporter questionnaire response to be like goods. This is on the basis of the physical, functional, production and commercial likeness to the goods under consideration. This means that all models sold for export will have an AEP calculated, and will require a normal value to be derived.

The claim made by Conserve Italia regarding the inability to compare the CIRIO branded peeled tomatoes for domestic and export sales is based on a claimed difference in the products. During the verification, Conserve Italia demonstrated that the cost to make for both models was identical, as they were from the same components. This means that the

PUBLIC RECORD

verified information demonstrated that the contents of the tins are identical, and thus cannot be different. The Commission does not accept the argument that the products require adjustment as this cannot be reconciled with the information provided during verification.

Further, the Commission considers that to resolve these differences between the data already verified and Conserve Italia's new claims will prevent the timely completion of this report.

In the absence of a more appropriate method of calculating the normal value for those models being proposed, the Commission's approach has been that the surrogate model be determined with reference to a model with identical size and brand and the most comparable processing method (i.e. the second method proposed by the Commission above).

2.5.11 Marketing and commercial expenses adjustment for Mutti S.p.A

Mutti have argued for a series of adjustments broadly falling under "marketing and commercial expenses", which were not accepted in the verification report. Specifically, these are for:

- Management of website and social media
- In-store promotions and discounts
- In-store advertising
- Unloading expenses
- Agency expenses
- Extra discounts

Commission response

The Commission has considered the claims made above.

The first three claims relate to expenses incurred in relation to advertising and sales promotion. While the evidence suggests that these expenses concern advertising and sales promotion particular to domestic sales, it is clear these expenses relate to "all retail products" sold in Italy. There is no evidence that shows what part of these expenses, if any, was incurred exclusively in relation to domestic sales of PPTs.

The evidence also shows that the sales value of PPTs represents a minor proportion of the domestic sales value of "all retail products" and it is entirely possible the sale and promotion effort and expenses was directed at products other than PPTs.

In these circumstances, the Commission is not satisfied that Mutti's domestic prices of PPTs were affected by such advertising and sales promotion expenses. Accordingly the Commission considers that an adjustment to the normal value is not warranted.

The evidence shows that "Unloading expenses", were incurred in making domestic sales. The Commission considers that, like inland freight expenses, it is reasonable to expect the cost of such logistics is reflected in prices. The basis of calculation outlined in the submission has been accepted as reasonable. Accordingly, an adjustment is warranted.

PUBLIC RECORD

The evidence shows that “Agency expenses” were incurred in making domestic sales. The Commission considers it is reasonable to expect that the cost of such expenses, which are akin to sales commissions, is reflected in prices. As the calculation method is in line with other adjustments for sales commissions, this has been accepted. Accordingly, an adjustment is warranted.

The evidence shows that discounts and rebates applied to certain domestic sales. The Commission considers that it is reasonable to expect the cost of such expenses are reflected in invoiced prices, but only for the relevant domestic sales. The adjustments have only been applied to those sales, and not allocated across all domestic sales. The basis for calculation for each sale is satisfactory. Accordingly, an adjustment is warranted.

2.5.12 Claims of sales at a loss

In its application, SPCA made certain confidential claims regarding a particular brand of imported tomatoes. These claims asserted that it is likely the products are either being sold at a loss by the exporter or the importer, which SPCA based on a deductive export price using the retail price and application of the dumping margin applying to the exporter. SPCA’s submission queried whether these claims have been addressed.

Commission response

The claims made by SPCA were investigated by the Commission. The sales by the importer were found to be profitable, and no evidence was found to support a theory that the exporter was reimbursing dumping duties. As such, the Commission regards the sales in question as arms length and will not treat the sales as being at a loss.

3 VARIABLE FACTORS – EXPORT PRICE AND NORMAL VALUE

3.1 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.

3.2 Review 349 – ARIA

Normal value

An in-country verification of ARIA was conducted as part of this review.²⁰ As outlined in the verification report, while the verification team was satisfied that the domestic sales listing provided by ARIA was accurate, the team was not satisfied that it was complete or relevant (see Chapter 4 of the verification report). The information contained in the domestic sales listing has therefore been considered unreliable and has been disregarded under subsection 269TAC(7). As such, there is an absence of sales of like goods made by the exporter in its domestic market that is relevant for the purpose of determining a price under subsection 269TAC(1).

Given ARIA did not provide the verification team with any information from its accounting system to verify domestic sales volumes during the review period, the company's product mix cannot be determined for comparison with other verified exporters. As a result, the Commission is unable to use the verified domestic sales of other sellers of like goods to determine normal value under subsection 269TAC(1).

Where normal value cannot be established on the basis of domestic sales, it may be determined on the basis of a cost construction under subsection 269TAC(2)(c), or third country sales under subsection 269TAC(2)(d).

In this case it is not considered preferable to use third country sales as ARIA did not export PPTs to Australia during the review period, and so the Commission cannot identify a country where similar volumes of PPTs were being exported during the period.

Further, while the verification team was satisfied that the CTMS spreadsheet provided by ARIA was complete and relevant, the team was not satisfied that it was accurate. As a result, ARIA's cost data is considered unreliable and has been disregarded under subsection 269TAC(7). As a result, normal value cannot be determined under subsection 269TAC(2)(c).

On this basis, the Commissioner has determined a normal value under subsection 269TAC(6) with regard to all relevant information. Specifically, the Commission has used the cost of production and selling, general and administrative expenses shown in the company's audited financial statements for all products, and allocated this to the goods based on the proportion those goods comprised, by revenue, of all tomato products.

²⁰ For further detail please refer to the ARIA verification report, document 050 on the [public record](#).

Export price

As ARIA did not export PPT to Australia during the review period, the AEP 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 whose AEP was calculated using subsection 269TAB(1). Given the export price for Princes was calculated on an ex-works (EXW) basis, and not Free on Board (FOB), the Commission has applied an upwards adjustment to these prices, based on an appropriate surrogate, for the purpose of establishing ARIA’s export price under subsection 269TAB(3).

Dumping margin

The dumping margin has been assessed by comparing the weighted average Australian export price to the corresponding weighted average normal value for the review period, in accordance with subsection 269TACB(2)(a), and has been calculated at FOB terms.

The basis of this calculation is in **Confidential Attachment 1**.

3.3 Review 354

3.3.1 Calispa

Normal value

The Commission is satisfied that it found sufficient volume of domestic sales of PPTs (for comparison with all models exported to Australia) that were arms length transactions and at prices that were within the OCOT. The Commission is therefore satisfied that the prices paid in respect of domestic sales of PPTs are suitable for assessing normal value under subsection 269TAC(1).

In using domestic sales as a basis for normal value, the Commission considers that the following adjustments to the normal value under subsection 269TAC(8) are necessary to ensure fair comparison with the FOB export price.

Adjustment Type	Deduction/addition
Domestic credit	Deduct the cost of domestic credit.
Domestic freight	Deduct the cost of domestic freight.
Domestic packing	Deduct the cost of domestic packing.
Domestic commissions	Deduct the cost of domestic commissions.
Domestic rebates	Deduct the cost of domestic rebates.
Export inland freight and handling	Add the cost of export inland freight and handling.
Export packing	Add the cost of export packing.
Export credit	Add the cost of export credit.

Table 2 – adjustments to domestic sales price for Calispa

PUBLIC RECORD

Export price

In respect of Calispa's Australian export sales during the review period, the Commission considers that:

- the goods have been exported to Australia otherwise than by the importer;
- the purchases of the goods by the importer were arms length transactions; and
- the goods have been purchased by the importer from the exporter.

Therefore export price has been determined under subsection 269TAB(1)(a), as the price paid by the importer less transport and other costs arising after exportation.

Dumping margin

The dumping margin has been assessed by comparing weighted average Australian export prices to the corresponding weighted average normal value for the review period, in accordance with subsection 269TACB(2)(a), and has been calculated at FOB terms.

The basis of this calculation is in **Confidential Attachment 1**.

3.3.2 Conserve Italia

Normal value

For those models where sales were in the OCOT, and were sold in sufficient volumes, normal values were established in accordance with subsection 269TAC(1), using Conserve Italia's weighted average domestic invoice prices for like goods. For the remaining models that did not have a sufficient volume of domestic sales during the review period, the Commission has used a surrogate model (as discussed in section 2.5.10).

The Commission is therefore satisfied that the prices paid in respect of domestic sales of PPTs are suitable for assessing normal value under subsection 269TAC(1).

In using domestic sales as a basis for normal value, the Commission considers that the following adjustments to the normal value made under subsection 269TAC(8) are necessary to ensure fair comparison with the FOB export price.

Adjustment Type	Deduction/addition
Domestic off-invoice discounts	Deduct the cost of domestic off-invoice discounts.
Domestic inland transport	Deduct the cost of domestic inland transport.
Domestic commissions	Deduct the cost of domestic commissions.
Domestic CONAI contributions	Deduct the cost of contributions to CONAI
Domestic credit	Deduct the cost of domestic credit.
Export inland transport & port charges	Add the cost of export inland transport & port charges.
Export off-invoice discounts	Add the cost of export off-invoice discounts.

Table 3 – adjustments to domestic sales price for Conserve Italia

Export price

In respect of Conserve Italia's Australian export sales during the review period, the Commission considers that:

- the goods have been exported to Australia otherwise than by the importer;
- the purchases of the goods by the importer were arms length transactions; and
- the goods have been purchased by the importer from the exporter.

Therefore export price has been determined under subsection 269TAB(1)(a), as the price paid by the importer less transport and other costs arising after exportation.

Dumping margin

The dumping margin has been assessed by comparing weighted average Australian export prices to the corresponding weighted average normal value for the review period, in accordance with subsection 269TACB(2)(a), and has been calculated at FOB terms.

The basis of this calculation is in **Confidential Attachment 1**.

3.3.3 De Clemente

Normal value

The Commission is satisfied that it found sufficient volumes of domestic sales of PPTs (for comparison with all models exported to Australia) that were arms length transactions and at prices that were within the OCOT. The Commission is therefore satisfied that the prices paid in respect of domestic sales of PPTs are suitable for assessing normal value under subsection 269TAC(1).

In using domestic sales as a basis for normal value, the Commission considers that the following adjustments to the normal value are necessary under subsection 269TAC(8) to ensure fair comparison with the FOB export price.

PUBLIC RECORD

Adjustment Type	Deduction/addition
Domestic other discounts	Deduct the cost of domestic other discounts.
Domestic packaging	Deduct the cost of domestic packaging.
Domestic inland transport	Deduct the cost of domestic inland transport.
Domestic warranty	Deduct the cost of domestic warranties.
Domestic technical support	Deduct the cost of domestic technical support.
Domestic commissions	Deduct the cost of domestic commissions.
Other domestic costs	Deduct the cost of other domestic costs.
Domestic credit	Deduct the cost of domestic credit.
Export packaging	Add the cost of export packaging.
Export inland transport & port charges	Add the cost of export inland transport & port charges.
Export bank charges	Add the cost of export bank charges.
Export credit	Add the cost of export credit.

Table 4 – adjustments to domestic sales price for De Clemente

Export price

In respect of De Clemente's Australian export sales during the review period, the Commission considers that:

- the goods have been exported to Australia otherwise than by the importer;
- the purchases of the goods by the importer were arms length transactions; and
- the goods have been purchased by the importer from the exporter.

Therefore export price has been determined under subsection 269TAB(1)(a), as the price paid by the importer less transport and other costs arising after exportation.

Dumping margin

The dumping margin has been assessed by comparing weighted average Australian export prices to the corresponding weighted average normal value for the review period, in accordance with calculated under subsection 269TACB(2)(a), and has been calculated at FOB terms.

The basis of this calculation is in **Confidential Attachment 1**.

3.3.4 Mutti

Normal value

The Commission is satisfied that it found sufficient volumes of domestic sales of PPTs (for all models exported to Australia) that were arms length transactions and at prices that were within the OCOT. The Commission is therefore satisfied that the prices paid in respect of domestic sales of PPTs are suitable for assessing normal value under subsection 269TAC(1).

PUBLIC RECORD

In using domestic sales as a basis for normal value, the Commission considers that the following adjustments to the normal value are necessary under subsection 269TAC(8) to ensure fair comparison with the FOB export price.

Adjustment Type	Deduction/addition
Domestic other discounts	Deduct the cost of domestic other discounts.
Domestic packaging	Deduct the cost of domestic packaging.
Domestic inland transport	Deduct the cost of domestic inland transport.
Domestic advertising	Deduct the cost of domestic advertising.
Domestic commissions	Deduct the cost of domestic commissions.
Domestic credit	Deduct the cost of domestic credit.
Unloading expenses	Deduct the cost of unloading expenses.
Agency expenses	Deduct the cost of agency expenses.
Extra discounts granted	Deduct the cost of extra discounts.
Export packaging	Add the cost of export packaging.
Export inland transport & port charges	Add the cost of export inland transport & port charges.
Export other discounts	Add the cost of export discounts.
Export credit	Add the cost of export credit.

Table 5 – adjustments to domestic sales price for Mutti

Export price

In respect of Mutti's Australian export sales during the review period, the Commission considers that:

- the goods have been exported to Australia otherwise than by the importer;
- the purchases of the goods by the importer were arms length transactions; and
- the goods have been purchased by the importer from the exporter.

Therefore export price has been determined under subsection 269TAB(1)(a), as the price paid by the importer less transport and other costs arising after exportation.

Dumping margin

The dumping margin has been assessed by comparing weighted average Australian export prices to the corresponding weighted average normal value for the review period, in accordance with subsection 269TACB(2)(a), and has been calculated at FOB terms.

The basis of this calculation is in **Confidential Attachment 1**.

3.3.5 Princes

Normal value

The Commission is satisfied that it found sufficient volumes of domestic sales of PPTs (for all models exported to Australia) that were arms length transactions and at prices that were within the OCOT. The Commission is therefore satisfied that the prices paid in respect of domestic sales of PPTs are suitable for assessing normal value under subsection 269TAC(1).

In using domestic sales as a basis for normal value, the Commission considers that the following adjustments to the normal value are necessary under subsection 269TAC(8) to ensure fair comparison with the EXW export price.

Adjustment Type	Deduction/addition
Domestic credit	Deduct the cost of domestic credit.
Domestic freight	Deduct the cost of domestic freight.
Domestic packing	Deduct the cost of domestic packing.
Domestic rebates	Deduct the cost of domestic rebates.
Domestic commissions	Deduct the cost of domestic commissions.
Export packing	Add the cost of export packing.
Export credit	Add the cost of export credit.

Table 6 – adjustments to domestic sales price for Princes

Export price

In respect of Princes' Australian export sales during the review period, the Commission considers that:

- the goods have been exported to Australia otherwise than by the importer; and
- the purchases of the goods by the importer were arms length transactions.

In those instances where the goods have been purchased by the importer from the exporter, export price has been calculated using subsection 269TAB(1)(a), as the price paid by the importer less transport and other costs arising after exportation.

In those instances where the goods have not been purchased by the importer from the exporter, export price has been calculated using subsection 269TAB(1)(c), having regard to all the circumstances of the exportation.

Dumping margin

The dumping margin has been assessed by comparing weighted average Australian export prices to the corresponding weighted average normal value for the review period, in accordance with under subsection 269TACB(2)(a), and has been calculated at EXW terms.

PUBLIC RECORD

The basis of this calculation is in **Confidential Attachment 1**. Note that, in the SEF, the Commission incorrectly stated Princes as having a dumping margin of 0.8 per cent, the correct margin is 0.1 per cent.

3.3.6 Le Specialità Italiane

Normal Value

In calculating the ascertained normal value and ascertained export price for LSI, it is important to note that the period for REP 351 and the period considered in these reviews are the same.

The Commission notes that LSI did not export PPT to Australia during the review period, and only sold unlabelled (or “bright”) cans of PPT in its domestic market. As a result, the calculation of normal value in REP 351 relied on the domestic sale price of bright cans, with adjustments made for labelling and packaging using quotes obtained by LSI. This approach taken in REP 351 was therefore based on the best information available at the time.

For the purpose of this report, the Commission notes that subsection 269TAC(1) provides that the normal value of any goods exported to Australia is the price paid or payable for like goods sold in the OCOT for home consumption in the country of export in sales that are arms length transactions.

The Commission now considers that LSI’s domestic sales of bright cans are not suitable for use in calculating a domestic sale price under subsection 269TAC(1), as it is uncertain whether these goods will be entered into home consumption in the country of export. 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 these reviews.

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 instead determined the ascertained normal value under subsection 269TAC(1) with reference to the price paid or payable for like goods in the OCOT for home consumption in Italy in sales that are arms length transactions by other sellers of like goods. The price will be determined using the weighted average of the ascertained normal value for the five verified exporters of the goods whose normal values were determined under subsection 269TAC(1).

Export price

As stated above, LSI did not export PPT to Australia during the review period. On this basis, the Commission has calculated the AEP 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 AEP from the five verified exporters of the goods whose export prices were determined under subsection 269TAB(1). As outlined at section 3.2, given the export price for Princes was calculated on an EXW basis, the Commission has applied an upwards adjustment to these prices, based on an appropriate surrogate, for the purpose of establishing LSI’s export price under subsection 269TAB(3).

Dumping margin

The dumping margin has been assessed by comparing weighted average Australian export prices to the corresponding weighted average normal value for the review period, in accordance with under subsection 269TACB(2)(a), and has been calculated at FOB terms.

The basis of this calculation is in **Confidential Attachment 1**.

3.3.7 Residual exporters

The Commission did not establish an export price for residual exporters under subsection 269TAB(1), as sufficient information is not available to enable the export price of goods to be ascertained under the preceding subsections of section 269TAB. On this basis, the Commissioner has 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, which complies with subsection 269TACAB(2)(c).

The Commission did not establish a normal value for residual exporters under subsections 269TAC(1) or 269TAC(2)(c), as sufficient information is not available to enable the export price of goods to be ascertained under the preceding subsections of section 269TAC. As a result, the normal value for residual exporters was established pursuant to subsection 269TAC(6), having regard to all relevant information. To do this, the Commission has used the weighted average normal values for cooperative exporters from Review 354. This complies with subsection 269TACAB(2)(d).

In the SEF, the Commission incorrectly calculated the weighted average for residual exporters' normal value and export price with regard only to those selected exporters with a dumping margin of 2 per cent or more, by applying subsection 269TACAB(3). The Commission has subsequently reviewed the calculation, as this provision only applies in relation to investigations, and not to reviews of measures. Accordingly, normal values and export prices for the selected exporters from REP 354 that were not dumping, or had a dumping margin of less than 2 per cent, have been reinstated in the weighted average normal value and export price calculation for residual exporters. As outlined in section 3.2, the normal value and export price for Princes has been adjusted for this purpose to be at FOB terms.

The dumping margin for all residual exporters has been assessed by comparing weighted average Australian export prices to the corresponding weighted average normal value for the review period, in accordance with subsection 269TACB(2)(a). This margin is less than 0 per cent.

The basis of this calculation is in **Confidential Attachment 1**.

3.3.8 Uncooperative and other exporters

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

PUBLIC RECORD

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 selected exporters in the reviews.

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 value of those that were established for the selected exporters in the reviews.

The dumping margin for uncooperative exporters has been assessed by comparing weighted average Australian export prices to the corresponding weighted average normal value for the review period, in accordance with subsection 269TACB(2)(a). This margin is 118.0 per cent.

The basis of this calculation is in **Confidential Attachment 1**.

3.4 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(6)	17.8%
Calispa	269TAB(1)(a)	269TAC(1)	negative
Conserve Italia	269TAB(1)(a)	269TAC(1)	5.4%
De Clemente	269TAB(1)(a)	269TAC(1)	negative
LSI	269TAB(3)	269TAC(1)	negative
Mutti	269TAB(1)(a)	269TAC(1)	3.2%
Princes	269TAB(1)(a) & 269TAB(1)(c)	269TAC(1)	0.1%
Residual exporters (listed in 2.2.1)	269TAB(3)	269TAC(6)	negative
All other / uncooperative exporters	269TAB(3)	269TAC(6)	118.0%

Table 7 – Basis of dumping margin calculations and outcomes

4 NON-INJURIOUS PRICE

4.1 Assessment of NIP

The Commissioner considers that the approach to determining the NIP for the original investigation (REP 217) should be used when working out a NIP for the purpose of these reviews because the conditions that applied then, being that domestic selling prices are unreliable due to the influence of dumped goods, are still present. During the course of these reviews, the Commissioner received more recent data from the Australian industry and importers, which was used to calculate the amount of the NIP and resulted in a change to the NIP compared to the NIP ascertained in REP 217.

4.2 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* (the Dumping Duty Act), 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.

4.3 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 has calculated a USP by constructing an Australian industry price based on its CTMS.

The Commission has therefore had regard to the Australian industry CTMS 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

PUBLIC RECORD

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**.

5 RECOMMENDATIONS

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.

5.1 Recommendations

Recommendations

The Commissioner recommends that the Parliamentary Secretary **declare**:

- in accordance with subsection 269ZDB(a)(iii), with effect from the date that notice is published and for the purposes of the Act and the Dumping Duty Act, the dumping notice:
 - is taken to have effect in relation to ARIA as if different variable factors, as set out in **Confidential Attachment 3**, had been fixed relevant to the determination of duty.
- in accordance with subsection 269ZDB(a)(iii), with effect from the date that notice is published and for the purposes of the Act and the Dumping Duty Act, the dumping notice:
 - is taken to have effect in relation to all exporters except for ARIA, Feger and La Doria, as if different variable factors, as set out in **Confidential Attachment 3**, had been fixed relevant to the determination of duty.

5.2 Form of measures

The current form of measures applicable to PPTs exported to Australia 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.

The available forms of measures are combination duty, fixed duty, floor price duty, and *ad valorem*. When setting the form of measures, the Commissioner must consider how effectively each available form of duty will remove the injurious effects of dumping. The Commissioner has considered the statements made by exporters and SPCA in section 2.5.7 when making this recommendation.

The submissions requesting an *ad valorem* form of measures have been considered. In REP 276, and again in REP 360 it was demonstrated that there had been undercutting of

PUBLIC RECORD

the Australian industry. In REP 360, SPCA demonstrated the high degree of price sensitivity in the market (see section 7.8.1). On this basis, the Commissioner views an *ad valorem* rate as ineffective in removing the injury caused by dumping.

The Guidelines note that a combination duty uses an AEP as a fixed duty component (similar to a floor price), which can become out of date. The combination duty may not suit those situations where there are many models or types of the good with significantly different prices.

In the present case, most exporters have a product mix which is heavily weighted towards a small number of similarly priced goods for both domestic and export consumption. Therefore, an appropriate floor price can be ascertained. Similarly, for those exporters that the Commission has found not to have a negative dumping margin in the review period (being four of the six exporters, plus residual exporters), there will be no imposition of duty below the AEP. The combination duty is considered to be effective in removing the injurious effect of dumping, as it will ensure that tomatoes are not sold for less than the AEP, without being punitive.

The Commissioner recommends that there is no change to the form of measures as a result of review 349. The Commissioner also recommends that there is no change to the form of measures as a result of review 354.

5.3 Effect of these reviews

The effect of the Commissioner's recommendations 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.

Name	Fixed component	Variable component
ARIA	17.8%	Amount that export price is less than the AEP
Calispa	0%	
Conserve Italia	5.4%	
De Clemente	0%	
LSI	0%	
Mutti	3.2%	
Princes	0.1%	
Residual exporters (listed in 2.2.1)	0%	
All other / uncooperative exporters	118.0%	

Table 8 – summary of applicable measures for all exporters in Reviews 349 and 354

6 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