



INVESTIGATION 217

ALLEGED DUMPING OF PREPARED OR PRESERVED TOMATOES

EXPORTED FROM ITALY

VISIT REPORT - IMPORTER

CONGA FOODS PTY LTD

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THE FINAL POSITION OF THE ANTI-DUMPING COMMISSION

August 2013

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ABBREVIATIONS

ADN	Anti-Dumping Notice
Commission	Anti-Dumping Commission
FOB	Free On Board
NIP	Non-injurious Price
PAD	Preliminary Affirmative Determination
SEF	Statement of Essential Facts
The Act	<i>Customs Act 1901</i>
The Commissioner	The Commissioner of the Anti-Dumping Commission
Conga Foods	Conga Foods Pty Ltd
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
the Minister	the Minister for Home Affairs
USP	Unsuppressed Selling Price
SPCA	SPC Ardmona Operations Limited

1 BACKGROUND AND PURPOSE

1.1 Background to the current investigation

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

Public notification of initiation of the investigation was made on 9 July 2013 (refer to Anti-Dumping Notice No. 2013/59).

Following initiation of the investigation, a search of Customs and Border Protection's import database indicated that an entity declared as 'the Trustee for the Conga Trust' had imported prepared or preserved tomato products from Italy during the investigation period (1 July 2012 to 30 June 2013). Pursuant to subsequent external research, The Anti-Dumping Commission (the Commission)¹ ascertained that the Trustee of the Conga Trust trades commercially within Australia under the name 'Conga Foods Pty Ltd' (Conga Foods).

The Commission wrote to Conga Foods advising the company of the initiation of the investigation, requesting co-operation with the investigation and provided the company with a preliminary request for provision of supplier details and a copy of the importer questionnaire and associated spreadsheets to complete.

Conga Foods completed the importer questionnaire, providing details regarding the company, overseas supplier information, importations, purchases² and sales.

1.2 Purpose of meeting

The purpose of this visit was to:

- confirm that Conga Foods was an importer of prepared or preserved tomato products and obtain information to assist in establishing the identity of the exporter;
- verify information on imports of prepared or preserved tomato products to assist in the determination of export prices from Italy;
- establish whether the purchases were arms length transactions;
- establish post exportation costs incurred in importing;
- recommend how export price may be determined under s. 269TAB;
- verify Australian sales data to assist in assessment of the Australian market for the goods; and
- provide the company with an opportunity to discuss any issues it believed relevant to the investigation.

¹ Formerly International Trade Remedies Branch of Australian Customs and Border Protection Service.

² The distinction between importations and purchases is dealt with in greater detail later in this report.

The agenda for the meeting is included as **confidential attachment GEN 1**

1.3 Meeting

We advised Conga Foods of the investigation process and timeframes.

- The investigation period is 1 July 2012 to 30 June 2013.
- The Commission will examine details of the Australian market from 1 January 2009 for injury analysis purposes
- A preliminary affirmative determination (PAD) may be made no earlier than 9 September 2013. Provisional measures may be imposed at the time of the PAD or at any time after the PAD has been made.
- The Commission will only make such a determination where it was satisfied that there appears to be, or that it appears there will be, sufficient grounds for the publication of a dumping duty notice.
- In accordance with section 269TD of the Act, provisional measures, in the form of securities in respect of interim dumping duty that may become payable on the goods may be imposed where a preliminary affirmative determination has been made.
- A statement of essential facts will be placed on the public record by 28 October 2013 or such later date as the Minister allows. The statement of essential facts will set out the material findings of fact on which the Commissioner intends to base his recommendations to the Minister. The statement of essential facts will invite interested parties to respond, within 20 days, to the issues raised. Submissions received in response to the statement of essential facts will be considered when compiling the report and recommendations to the Minister.
- The Commission's report to the Minister is due no later than 12 December 2013, unless an extension to the statement of essential facts is approved by the Minister.

1.4 Meeting details

Company	Conga Foods Pty Ltd 150 Newlands Road Coburg North VIC 3058
Dates of visit	14 August 2013

The following were present at various stages of the meetings.

Conga Foods	David Valmorbida	CEO, Corval Group Pty Ltd; Director Conga Foods
	Mark Lightfoot	CEO Conga Foods
	Brent Campbell	National Retail Manager
	Alfred Desa	National Purchasing Manager
	Brendan Madex	Asst. Purchasing Manager

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	Nunzy Corso Chief Financial Officer Samrat Acharya Business Analyst Claudia Boniburini Product Manager
the Commission	Geoff Gleeson Director Edward Macgregor Supervisor

Visit report

We explained to the company that we would prepare a report of our visit (this report) and provide it to Conga Foods to review its factual accuracy, and to identify those parts of the report it considers to be confidential.

We explained that, in consultation with the company, we would prepare a non-confidential version of the report, and place this on the investigation's Public Record.

2 THE GOODS

Description

The goods the subject of the application (the goods) are:

Tomatoes, whether peeled or unpeeled, prepared or preserved otherwise than by vinegar or acetic acid, either whole or in pieces (including diced, chopped or crushed) with or without other ingredients (including vegetables, herbs or spices) in packs not exceeding 1.14 litres in volume

The applicant indicated the goods excluded from this application are;

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

Tariff classification

The goods are currently classified to subheading 2002.10.00 (statistical code 60) to Schedule 3 of the *Customs Tariff Act 1995*. For Italian prepared or preserved tomatoes a customs duty rate of 5% applies.

3 Preliminary matters

3.1 Weight conversions

As a prelude to the report that follows, the Commission notes that all data provided by Conga Foods relating to its purchases and sales of the GUC consistently detailed transactions with reference to two units of measurement specific to the GUC:

- Quantity – Expressed by carton; and
- Unit value – expressed as a value per can

For the purposes of the verification and analysis of data as annotated and discussed in this report, the Commission has confirmed that the commercially acceptable capacity of a carton of the GUC is 12 cans.

The commission has used this information to determine total quantities procured or sold on a kilogram basis) by:

- determining applicable gross weight per carton by multiplying the unit weight (for instance 400g or 800g) by the total units per carton (12);
- determining transactional weight in relevant data sets by multiplying the applicable carton weight by the number of cartons procured or sold; and
- determining the total volume of procurement or sale as a sum of the weight of each consignment listed in the purchasing data provided.

For completeness the Commission notes that all weighted average purchase prices, and sales prices, expressed in this report have been determined by dividing the applicable net invoice value (either on a transaction by transaction basis or as total composite values) by the calculated quantity to present values in either EURO or AUD on a per kilogram basis.

4 COMPANY DETAILS

General

4.1.1 Company history

Conga Foods Pty Ltd (Conga Foods) is a privately owned proprietary company registered in Australia with a history of over 50 years of operation in Australia.

Conga Foods confirmed that the business was originally established by members of the Valmorbida family and other individuals trading under the name 'Consolidated Grocery Association' – later changed to Conga Foods in 1977.

The business has undergone a process of [REDACTED] [internal governance matters] during its period of operation including, but not limited to, [REDACTED] [ownership matters].

Conga Foods confirmed that currently, the business is [REDACTED] [ownership matters] [REDACTED] [ownership matters] Conga Foods occupies the role of Chief Executive Officer responsible for the oversight of all commercial operations.

4.1.2 Corporate structure

For completeness, we confirmed Conga Foods [REDACTED] [REDACTED] [subsidiary corporate structure]

Conga Foods confirmed that [REDACTED] [parent company] is wholly owned and operated by the [REDACTED] [ownership structure] and comprises a number of commercial ventures relating to the sale and distribution of food stuffs and cooking utensils, including Conga Foods.

4.1.3 Commercial operations

Conga Foods operates as wholesaler of a variety of imported food products, with a specific focus on Mediterranean produce.

Conga Foods publicly markets its catalogue of imported product sold into the Australian market under the following categories:

- Beverages;
- Cheese;
- Coffee and Coffee Makers
- Oil and Vinegars
- Olives and Vegetables;

- Pasta and Rice
- Pasta sauces and tomato products; and
- Sweet and savoury products

Conga Foods confirmed it operates a network of offices located in principal locations in Victoria, South Australia, NSW and Queensland. All operations are overseen by corporate management which operates from the Melbourne head office in Coburg, where the meeting was held.

Via its state-based satellite offices, Conga Foods operates its own distribution and delivery network through which goods are distributed into three main segments of food trade in Australia:

- Independent grocery stores and traditional delicatessens;
- Food service and catering operators; and
- Major grocery chains and supermarkets

Conga Foods advised that the segments of the Australian market that it services can typically be delineated by product category and sale volume (both in terms of total volume and specific unit pack sizes). Specifically, Conga Foods confirmed that the FSI market is typically identified by greater volumes of product being sold with significantly larger pack sizes relative to sales of similar product into other market segments.

Conga Foods confirmed that it does not distribute the GUC into the FSI market and imports and markets only small can sizes (400g and 800g) of tomato products which are typically sold into the independent store segment or major grocery segment.

Conga Foods estimate that in terms of total annual trade in the above product categories, a small proportion is comprised of the importation and sale of Tomato Products within which a smaller proportion is comprised of sales of the GUC.

Whilst Conga Foods declined to divulge figures related to the total revenue of the company from which to determine the relevant importance of the sale of the GUC, Conga Foods advised that over █% of all sales are comprised of the sale of imported XXXXX [non-GUC] products.

4.1.4 Products

4.1.4.1 General

Conga Foods advised that all forms of the prepared or preserved tomato products it sells into the Australian market (GUC and non-GUC) are imported from Italy.

Conga Foods confirmed that it has pre-existing, and well established, supply relationships with three suppliers of the GUC in Italy:

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- [REDACTED]
- [REDACTED] and
- [REDACTED]³

[Italian suppliers]

These three suppliers are all identified as manufacturers of the goods, from whom various forms of the GUC were procured by Conga Foods, branded under one of 3 specific product labels:

- 'ValVerde' (supplied by [REDACTED])
- 'SoleNatura' (Supplied by [REDACTED]); and
- 'Cirio' (supplied by [REDACTED])

3.1.4.2 Product differentiation

As referred to previously Conga Foods confirmed that tomato product it imports and sells can be summarily identified by four key variables:

- a) Product label:**
- b) Product profile and**
- c) Can size**

A) Product Label:

Conga Foods confirmed that tomato products produced by its Italian suppliers are processed, packaged and marketed as private label product or proprietary label product

Conga Foods advised that it owns the proprietary rights to the SoleNatura and Valverde labels, which are manufactured by its Italian suppliers according to its specifications.

Conga Foods confirmed that the Cirio product label is a proprietary label owned by [REDACTED] **[supplier name]**.

B) Product profile

Conga Foods advised that, in addition to labelling, the GUC is capable of specific differentiation by product specification, which refers to the specific physical qualities of the goods and/or any relevant additives; such as

³ The Commission understands that [REDACTED] **[entity name]** recently acquired a significant proportion of the assets of [REDACTED] **[exporter entity]** and is in the process of establishing itself as a major supplier of Italian processed tomato products.

- Tomatoes;
- Cherry Tomatoes;
- Tomatoes plus value add ingredients (herbs, spices, vegetables etc) or
- Organic or similar 'niche' branded tomatoes;

The above product specifications are then further delineated by cut-profiles, which refer to the physical qualities of the processed tomato product such as:

- Diced
- Crushed
- Peeled (whole)

d) Can Size

Conga Foods confirmed that all products, irrespective of label, product profile and cut profile are typically specified by can size.

Product codification summary

Using the above variables, we confirmed the accuracy of the summary table in relation to Conga Foods product extracted below:

Product brand	Label: Private /Proprietary	Product profile	Cut profile	Can size
ValVerde	Private	Tomatoes	Diced	400g,800g
		Tomatoes	Peeled	400g
		Gourmet Tomatoes	Crushed	400g
		Organic Tomatoes	Diced	400g
		Tomatoes + Value add	Diced	400g
		Cherry Tomatoes	Whole	400g
SoleNatura	Private	Tomatoes	Diced	400g

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		Tomatoes	Peeled	400g
		Tomatoes	Crushed	400g
Cirio	Proprietary	Tomatoes	Diced	400g
		Tomatoes	Peeled	400g

Accounting structure and details of accounting systems

Conga Foods operates on a 1 July to 30 June financial year.

Conga Foods confirmed that they use the [REDACTED] **[application name]** accounting system with respect to all sales, cost and inventory data management. Examples of the operation of this system were sighted during the process of sales verification, discussed later in this report.

[REDACTED]
[REDACTED] **[accounting structure]**

Relationship with suppliers and customers

Conga Foods advised that it does not own, control nor has any formal affiliation with any of its suppliers or Australian customers.

The Commission did not identify any evidence during the course of verification of purchase and sales data provided by Conga Foods that would contradict this assertion.

Like goods

4.4.1 General

Conga Foods submit that Australian product and imported product are similar in terms of:

- Primary raw material (tomatoes); and
- can sizes (800g and 400g cans typically sold in cases of 12 units per case).

However, Conga Foods considers that there is a fundamental difference in the physical characteristics and ingredients of the imported and locally produced product, such that in some cases the Australian produced product does not have characteristics that are identical or closely resembling the imported goods under consideration. Conga Foods advised that it will separately make a submission specifically on the definition of the “like goods”

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4.4.2 Quality considerations

Conga Foods advised that Italian processors typically use two distinct varieties of tomato to produce different product profiles which are grown in different regions of Italy. Specifically:

- Long Roma Tomatoes – produced in the South of Italy; and
- Round Tomatoes – Produced in the North

Conga Foods advised that the Long Roma genus of tomato is used for the processing of peeled whole tomatoes due to its aesthetics of shape and colour. The rounder tomato from farms in the Northern regions are typically processed to produce 'cut' varieties of product such as diced and crushed.

Conga Foods confirmed that, due to the significant geographical and climatic differences between Australia and Italy, the varieties of tomato typically procured for processing in Italy cannot be commercially cultivated in Australia.

Conga Foods suggest that processed long Roma and round tomatoes cultivated in Italy differ to Australian varieties in terms of:

- Flavour (sweetness);
- Aesthetics– colour and texture; and
- Composition - relative soluble solids content (referred to as brix)

Conga Foods explained that these variables specific to the fresh tomato used in production will have a direct impact on the respective characteristics of the canned product. In summation, Conga Foods contend that, generally speaking, Italian processed tomato products will be sweeter in flavour, brighter in colour and have a higher soluble solids content in comparison with Australian product.

Conga Foods advise that, typically, Australian tomato products therefore tend to contain thickeners or other additives (in order to compensate for the difference in quality and improve the consistency of the canned tomato product).

As a result, Conga Foods allege that Italian Tomatoes are generally of higher quality in terms of their utility in desired end use which is typically as an ingredient in cooking and food preparation.

3.4.3 Caveat regarding quality comparison

3.4.3.1 Product tiering

Conga Foods advised that tomato product exported to Australia by Italian suppliers can be categorised into product tiers, which, are reflected by the 'labels' under which product is marketed and sold. These 'label' tiers were expressed as:

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- Proprietary label goods – product produced by manufacturers in Italy and labelled under product branding owned by the manufacturer;
- Private label goods – product produced by manufacturers in Italy and labelled under product branding owned by the Australian customer.

3.4.3.2 Quality tiering

Conga Foods clarified that Italian tomato product is typically produced in accordance with tiered categories of quality. Conga Foods summarised that these could be generalised to be:

- Super premium
- Mass premium; and
- Lower premium

Conga Foods advised that super premium quality product is produced using fresh tomatoes cultivated when at their peak of ripeness, and, typically is reserved for use in proprietary label product.

Mass premium product is produced from the main crop of optimal ripened tomatoes.. Lower premium product is produced using tomatoes harvested at the opening of the harvesting period (not yet fully ripened) and the tail end of harvesting (overly ripe)

Mass premium and lower premium are typically used to produce private label products of similarly tiered quality:

- Higher quality private label stock – Produced using mass premium quality tomatoes and typically marketed and sold (by the Australian customer) as ‘mid-tier’ quality canned tomato product; and
- Lower quality private label stock – produced using lower premium quality tomatoes and typically marketed and sold by the Australian customer as lower quality or ‘savings’ canned tomato product.

Conga Foods advised that the tiering of product in terms of quality has a direct correlation to relative price points, and to the associated strategic marketing and promotion of the goods by the supplier in export and domestic markets.

3.4.3.3 Production materials

Conga Foods also alleged that that Italian product is typically processed using different qualities of can depending on the tier of product quality – higher quality product will have higher quality cans used (internal lacquer, ring pull mechanisms) as opposed to product processed to lower quality parameters which is typically canned using lower quality materials.

Conga Foods suggest that proprietary label product and mid-tier private label products will typically be canned using higher quality materials. Conversely, lower quality private label product will usually use lower quality (and hence cheaper) canning materials.

3.4.3 Summary regarding product quality considerations

In summary, Conga Foods stated that the Commission should give regard to the tiered structures applied by Italian producers in relation to product labelling, product quality and canning materials and the correlation between the tiers of product and costs, associated expenses and price point for the purposes of reasonable and accurate comparison with product produced by the Australian industry.

3.4.5 Product substitutability

We asked Conga Foods for their views regarding the elasticity of product demand in the market and the most significant commercial substitutes to the GUC available in the Australian market.

Conga Foods stated that they regard the GUC to relevantly encompass tomato products which are sold to end-users in the downstream retail market who specifically procure the goods as an ingredient in food preparation.

Conga Foods asserts that the end-use utility of the GUC is distinct from other tomato products such as tomato based sauces and purees which are regarded as produced and marketed for sale to consumers as complete food-stuffs, rather than ingredients.

Conga Foods contend that the typical retail (and wholesale) price points of GUC relative to other prepared tomato products are typically lower and, effectively, reflect the distinction in utility of each category of the goods.

Conga Foods conceded that, if the difference in price between the GUC and other prepared tomato products was to decrease, there may be a certain degree of shift in consumer demand from the GUC to other products like complete sauces and passatas however, they believe that the significant volume of demand for the GUC as a primary ingredient would remain stable.

5 AUSTRALIAN MARKET

General

5.1.1 Market Segmentation

Conga Foods confirmed that the Australian market for the GUC is capable of delineation into specific segments:

- Minor retail (small independent stores, delicatessens etc);
- Major retail (major grocery chains and affiliated supermarket entities such as Coles, Woolworths and relatively new entrants such as Aldi and Costco); and
- Food Service Industry (FSI) – catering, restaurants and food manufacturing operations

Conga Foods confirmed that each market segment can be specifically differentiated by specific product demands;

- Minor retail – demands of smaller volume orders of small smaller can sizes (400-800g cans) typically proprietary label product for retail to Australian consumers for home consumption
- Major retail – significant volume demand for small can sizes (400g-800g) of private and proprietary label product for retail sale to Australian consumers for home consumption;
- FSI – relatively significant volume demands for large cans, pouches and other packs (exceeding 1.14litres) as raw material inputs for use in the restaurant/catering sectors and industrial preparation of food-stuffs.

5.1.2 Australian customers

Conga Foods confirmed that it was possible to differentiate its customers within the relevant segments of the market, by key identifiers of sales volume, product profiles and product pack size.

Major retail

Conga Foods advised that it supplies the GUC to two principal customers in the major retail segment – [REDACTED] [customer] – to whom it supplies ValVerde product via [REDACTED] [contractual matter] supply arrangements and XXXX [customer] to whom it supplies the Sole Natura brand imported into Australia by Conga Foods

Minor Retail

Conga Foods advised that all product it imports into Australia is procured for supply to a wide variety of independent stores and traditional delicatessens throughout Australia.

Market Trends

5.2.1 Consumer demands

Conga Foods clarified that canned tomatoes are generally purchased for use as an ingredient in cooking. Conga Foods advised that demand within the retail market both major and minor is, logically, linked to the appetites and demands of Australian consumers.

Conga Foods advised that consumer demand for canned tomato product remains relatively steady throughout the year.

5.2.2 Wholesale demand

Conga Foods advised that given that the major retail segment account for the significant majority of total demand for the goods in Australia. Accordingly, security of supply into these segments is vital for the profitability of wholesalers of the GUC in Australia and, particularly, manufacturers of the goods for whom stability of seasonal production volume is an essential pre-condition to the stability of production costs.

Conga Foods stated that, contrary to the assertions made by the applicant, it believes that the relative balance of retail demand for proprietary label and private label product has not fluctuated to any significant degree over the POI, or during the injury analysis period.

Specifically, Conga Foods does not consider that the focus of demand within the retail segment of the market has shifted in any discernable way towards a preference for private label product over proprietary label product.

Further, Conga Foods believe that demand for Australian made proprietary label product within the major retail segment of the market is at a historical high.

5.2.3 Demand variables

We asked Conga Foods to identify the main variables influencing demand for the GUC in the retail market.

Conga Foods stated that they believe that demand for the goods is principally driven by concerns with respect to product price and product quality.

5.2.3.1 Price

Conga Foods advised that competition, is generally categorised by the tiers of label profile. For example:

- **Premium Tier** – Premium Proprietary label products typically have a higher average unit price and price competition largely exists between proprietary label products;

- **Mid tier** - General proprietary label product and general private label products are typically viewed as the mid-tier of retail product and will be compared with product within this tier – for example [REDACTED] [proprietary label] and ValVerde Product;
- **Lower tier** generic labelled products – lower tier products typically are priced at a price point which is below the mid tier and significantly below the premium tier.

the Commission confirmed that within these tiers of label, price considerations could be differentiated by sub categories of product:

- **value added product** – e.g. tomatoes with added ingredients;
- **niche product** – e.g. cherry and organic; and
- **general product** – e.g. diced, peeled, chopped, crushed tomatoes

In summation, Conga Foods state that, price competition within the market typically occurs within general label tiers and with reference to product profile.

5.2.3.2 Quality

Conga Foods advised that, consumer demand for the goods is significantly influenced by quality concerns in terms of:

- taste;
- aesthetic appearance; and
- composition

Conga Foods claimed that consumers will switch from product to alternatives where quality parameters are not met.

However, Conga Foods advised that the significance of quality concerns decreases according the product labelling tier as follows:

- **Premium tier** – demand for premium proprietary label product significantly influenced by quality concerns. Premium quality of product allows relatively higher price point to be achieved above other tiers.
- **Mid tier** – quality of proprietary label product and private label product a significant consideration, however greater balance between price and quality concerns;
- **Lower tier** – quality concerns significantly less important, with price point within this category remaining the principal determinant of demand.

4.1.1.3 Summary

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In summation, Conga Foods advised that:

- price and quality considerations applied as coupled considerations to differing degrees depending on the tier of the market within which particular product was marketed;
- price and quality parameters were typically compared with products within the relevant product tier;

Supply commitments

5.3.1 Major retail

5.3.1.1 Supply commitments

Conga Foods explained that the supply of ValVerde products to [REDACTED] [customer] is [REDACTED] [contractual arrangements].

Conga Foods advised that supply of all products to [REDACTED] [customer] (including, but not limited to, tomato products) is covered by [REDACTED] [contractual arrangements] pursuant to which goods are supplied by Conga Foods and procured by [REDACTED] [customer].

Conga Foods advised, however, that these terms relate more directly to goods supplied to [REDACTED] [customer] within Australia and do not cover supply of the GUC under the current [REDACTED] supply arrangement. For completeness, Conga Foods provided a confidential copy of the [REDACTED] trading terms negotiated with [REDACTED] [customer] which covered the investigation period. This document is attached as **confidential attachment SALES 1**.

[REDACTED] commitments regarding the current suite of products supplied to [REDACTED] [customer] are modulated at the discretion of [REDACTED] [customer] following [REDACTED] [contractual matters] in relation to the suite of products supplied to [REDACTED] [customer] by Conga Foods.

To provide context, Conga Foods advised that [REDACTED] [customer] [REDACTED]

[REDACTED] [contractual negotiations]

Conga Foods advised that [REDACTED] [customer] also maintain [REDACTED] [REDACTED]. Which form the basis of [REDACTED] regarding the trends in consumer uptake of particular product lines. [background to contractual negotiations]. These reviews influence [REDACTED] [customer] procurement strategy in terms of product mix, buy price, selling prices and product promotion and positioning.

We requested, and were provided, an example of the material developed by Conga Foods in relation to [REDACTED] [relevant to contractual negotiations] in relation to ValVerde product supplied to [REDACTED] [customer]. This is included as **confidential attachment SALES 2**.

5.3.1.2 Ordering and sales process

During the periods of supply [REDACTED] [contractual negotiations], [REDACTED] [customer] submits [REDACTED] orders to Conga Foods on the basis of inventory requirements throughout its network of retail outlets.

The typical sales process was summarised by Conga Foods as follows:

- Purchase orders are submitted to Conga Foods by [REDACTED] [customer]
[REDACTED]
[REDACTED] [purchasing process]
- Upon receipt of a supply order, Conga Food submits a corresponding purchase order to its Italian suppliers specifying volumes and product variants required, [REDACTED]
[REDACTED] [price negotiation process];
- Product is produced by the supplier [REDACTED]
[REDACTED] [supply process]
- The supplier arranges for all [REDACTED]
[REDACTED] [supply process]
- Conga Foods invoices [REDACTED] [customer] on an [REDACTED] [Incoterm] basis [REDACTED] immediately upon receipt of the invoice from its supplier, [REDACTED] [supply terms];
- Conga Foods pays [REDACTED]
[payment terms] and
- [REDACTED] [customer] pay Conga Foods in [REDACTED]
[REDACTED] [payment terms]

5.3.2 Minor retail

Conga Foods advised that it [REDACTED]
[REDACTED] customers within
Australia [contractual negotiations]. [REDACTED]
[REDACTED] [contractual negotiations]

The typical ordering and sales process was summarised as follows:

- Conga Foods maintains [REDACTED]
[REDACTED] [sales negotiations]
- Orders are submitted [REDACTED]
[REDACTED] [ordering system]
- Once received, orders are [REDACTED]
[REDACTED] [despatch/delivery process]
- Orders are sold on a [REDACTED] [trading terms] basis, with Conga Foods arranging for delivery to the designated store or warehousing facility of the customer via [REDACTED] [despatch/delivery process]
- Conga Foods invoices the customer in [REDACTED] [currency] upon delivery of the goods pursuant to payment terms of [REDACTED] [credit terms].
- Payment is provided to Conga Foods from the Customer via [REDACTED] [payment terms]

Terms of sale

5.4.1 Credit terms

Conga Foods offers [REDACTED] of credit terms to its Australian customers. We confirmed that the [REDACTED] terms offered to the [REDACTED] customers are [REDACTED] of credit [REDACTED] [sales terms]

5.4.2 Delivery terms

Conga Foods advised that its sales to Australian customers are delivered

[REDACTED]
[REDACTED] [despatch/delivery process]

Conga Foods advised that, currently, [REDACTED]
[REDACTED] [terms].

Sales

Prior to the visit Conga Foods provided a copy of all their domestic sales. We were informed these sales were extracted from its [REDACTED] system.

Conga Foods advised that the sales data provided to the Commission by way of response to the importer questionnaire was the result of search parameters being run directly within the [REDACTED] accounting system to delineate:

- a) Sales of individual tomato product lines ([REDACTED]) falling within the definition of the GUC; from
- b) Sales of non-GUC [REDACTED] product lines and other goods

Conga Foods advised that the sales data for each GUC product line had then been re-filtered to extract all sales to [REDACTED] [customer] to separately summarise [REDACTED] [sales classification] sales from other sales to Australian customers (referred to as Australian sales).

On this basis Conga Foods provided summary sales listings for [REDACTED] [number] unique product codes identified as products which fell within the GUC.

The visit team verified that the sales data provided by Conga Foods was complete and accurate via a three stage process as summarised below

5.5.1 Reconciliation of sales data sets to electronic records

The Commission sought to reconcile the composite volume and value of Australian sales and XXXXXXXX [sales classification] sales to the [REDACTED] software by applying the search parameters used by Conga Foods to produce the original data.

The Commission selected product codes [REDACTED] for verification. The Commission sighted the process by which search functions were used within the [REDACTED] interface to filter the data to create separate reports of sales of each product code.

The Commission identified that the volume and net invoice reflected in the [REDACTED] system for each product was marginally lower than the values reflected in the datasets provided to the Commission due to duplications of data being inadvertently included in the data during the process of preparing sales summaries from the [REDACTED] system.

The Commission asked, and was provided with, amended reports for all GUC product codes following the visit. On the basis that the team had sighted the preparation of the amended data sets directly from the [REDACTED] system, we were satisfied that the amended data correctly reflected all sales of each identified product line for the POI.

5.5.2 Confirmation of product codes

Being satisfied that we possessed accurate data with respect to sales of identified GUC product lines we sought to verify that the data included all relevant product lines.

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Using the [REDACTED] interface in a live environment at the meeting, the team filtered the electronic sales by selecting the product label 'ValVerde' and the sales month July 2012 to produce a summary sales report of all ValVerde labelled product.

Using the sales report the team confirmed that all lines of tomato products were delineated by the unique codifier [REDACTED] [coding details] and cross checked the product information for selection of the [REDACTED] [number] product codes reflected in the provided sales data to [REDACTED] summary listing. We were satisfied that the product codes identified were the GUC.

For completeness, we verified that all [REDACTED] product lines captured in the [REDACTED] listing for the selected sales month, but not identified in the GUC sales data provided to the Commission were goods specifically excluded from the GUC definition.

5.5.3 Upwards verification of [REDACTED] system

Finally, we sought to verify that the [REDACTED] system used to populate the sales summaries referred to above, completely and accurately accounted for all sales of the GUC for the POI by reconciling the sales revenue of GUC product codes, upwards through the revenue of tomato products generally and to the sales revenue reflected in financial statements for the period.

Conga Foods advised that the [REDACTED] [application details] to create category reports required for upwards verification of the goods specifically.

As an alternative, the team asked that Conga Foods run a summary report of the sales revenue of all products sold during financial year 2012/13, which demonstrably included revenue of sales of the GUC, and demonstrate how this figure reconciled to the total company sales revenue reflected in its financial statements.

Whilst Conga Foods appreciated the Commission's reasons for this request, it declined to provide material related to company revenue, [REDACTED] [commercial confidentiality]

5.5.4 Sales discounts and rebates

Conga Foods confirmed that [REDACTED] [contractual matters]

Conga Foods advised that [REDACTED] :

- [REDACTED]; or
- [REDACTED] [Contractual matters]

[REDACTED]
[REDACTED] [contractual matters].

For completeness [REDACTED]
[REDACTED]

[contractual matters].

We sighted that the value of [REDACTED] [contractual matters] by customer had been reconciled in [REDACTED] [software application] as explained, and was reflected in the sales data provided to the Commission, where relevant (see section 5.6 below).

Conga Foods advised that similar [REDACTED]

[REDACTED] [contractual matters] other than the GUC to [REDACTED] [customer] in which supply occurs on an [REDACTED] [trading term] basis within Australia.

However, pursuant to the agreed terms of the [REDACTED] [trading term] sales arrangement in relation to the GUC [REDACTED] [contractual matter] by [REDACTED] [customer]

Conga Foods advised that, as the goods are sold to [REDACTED] [customer] on an [REDACTED] [trading term] basis, this enables [REDACTED] [customer] latitude to independently determine the strategic marketing and price positioning of the ValVerde product and, accordingly [REDACTED] [contractual matter]

Verification of sales

4.5.1 [REDACTED] [sales classification]

Whilst the Commission was satisfied that Conga Foods was not appropriately identifiable as the importer of the goods with respect to XXXXX sales, a sample of such sales was selected for verification, to satisfy the team of the accuracy of the methodology by which Conga Foods had delineated the two tiers of sales data provided.

The Commission selected [REDACTED] [number] sales from the [REDACTED] purchasing data upon Conga Foods and was provided with sufficient source documentation relating to the [REDACTED] (trading term) purchase of the goods from the supplier and the associated [REDACTED] sale of the same to [REDACTED] [customer] to enable the Commission to :

- a) Reconcile the relevant line [REDACTED] purchasing data (volume and value) with the commercial invoice from the Italian supplier to Conga Foods; and
- b) Reconcile the details of the purchase data (by product and by quantity) to the purchase order provided to the supplier by Conga Foods;
- c) Reconcile the [REDACTED] sales data (volume and value) with the correlative values reflected on the purchase order and commercial invoice provided to [REDACTED] [customer] by Conga Foods; and

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For each sales package, Conga Foods provided [REDACTED] [payment terms] remittance advices which provided proof of payment by Conga Foods to the Supplier of the invoiced amount of the goods via and proof of payment of the [REDACTED] [trading term] value of the goods by [REDACTED] [customer] as invoiced to [REDACTED] [customer] by Conga Foods.

These documents are at **confidential attachment SALES 3**

4.5.2 Australian sales

Conga Foods provided source documents relating to Australian sales for [REDACTED] selected Australian sales identified by unique [REDACTED] [system application] order number. These documents are at **confidential attachment SALES 4**.

For each sales package we were able to trace the line details of the GUC (value, quantity, invoice date) reflected in the commercial invoice to the sale listing for the relevant product code, as reflected in the [REDACTED] summary provided.

Conga Foods provided a print out from [REDACTED] for each sales package as proof of payment for the composite value of the relevant order as reflected on the commercial invoice.

5.7 Sales summary

4.6.1 General

On the basis of the verification of sales data provided to the Commission by Conga Foods, as outlined under sections 5.5 and 5.6, the Commission was satisfied that the data before it was complete, relevant and accurate for the purposes of analysis the net sales value of the GUC sold by Conga Foods during the period.

4.6.2 Sales differentiation by product

From the data, the Commission has extrapolated that during the investigation period Conga Foods sold approximately [REDACTED] KG of the GUC of the goods to its Australian customers via direct Australian sales to minor retail customers and [REDACTED] [sales classification] supply to [REDACTED] [customer]. Of this total sales volume, [REDACTED] sales of ValVerde product to [REDACTED] [customer] amounted to [REDACTED] %.

Of the total volume of the GUC which Conga Foods directly imported and sold to independent Australian customers ([REDACTED] KG) approximately comprised SoleNatura labelled product.

From the data the consumer preference was for the smaller can size (400g) with approximately [REDACTED] % by volume being purchased, although on a per kilogram basis the unit price was slightly higher.

The diced profile is most preferred by [REDACTED] [customer] and independent customers representing approximately [REDACTED] % by volume. This excludes the value added products.

Below is an extract of the sales volumes and values by label for the investigation period. All values reflect the net invoice value following retrospective allocation of [REDACTED] [sale terms] (see 4.5.1).

[REDACTED] [sales classification] sales to [REDACTED] [customer]

Labels	Sum of Invoice Amount	Sum of Total QTY Sold (KG)	Sum of WA unit price
V V DICETOM OREG BAS 12X400G	[REDACTED]	[REDACTED]	[REDACTED]
V/VERDE DICETOM CAPSIC 12X400G	[REDACTED]	[REDACTED]	[REDACTED]
VAL VERDE GOURMET TOMS 12X400G	[REDACTED]	[REDACTED]	[REDACTED]
VALVERDE DICE TOM 12X400G	[REDACTED]	[REDACTED]	[REDACTED]
VALVERDE DICE TOM 12X800G	[REDACTED]	[REDACTED]	[REDACTED]
VALVERDE PEEL TOM 12X400G	[REDACTED]	[REDACTED]	[REDACTED]
Grand Total	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED] [trading term] sales to independent Australian customers

Labels	Sum of Invoice Amount	Sum of Total weight (KG)	Sum of WA unit price
V/VERDE DICETOM CAPSIC 12X400G	[REDACTED]	[REDACTED]	[REDACTED]
V V DICETOM OREG BAS 12X400G	[REDACTED]	[REDACTED]	[REDACTED]
CIRIO CHERRY TOMATOES 12X400G	[REDACTED]	[REDACTED]	[REDACTED]
V/VERDE DICETOM OLIVES 12X400G	[REDACTED]	[REDACTED]	[REDACTED]
CIRIO PEELED TOMATOES	[REDACTED]	[REDACTED]	[REDACTED]

12X400G			
CIRIO DICED TOMATO 12X400G			
VALVERDE DICE TOM 12X800G			
VALVERDE DICE TOM 12X400G			
VALVERDE DI/CHILLI TOM 12X400G			
VALVERDE PEEL TOM 12X400G			
VAL VERDE GOURMET TOMS 12X400G			
VALVERDE DICED TOM ORG 12X400G			
VALVERDE CHERRY TOMATO 12X400G			
VALVERDE POM/DICOLL 12X400G			
SOLENAT ITAL CRUSH TOM 12X400G			
SOLENAT PEEL TOM 12X400G			
SOLENAT DICE TOM 12X400G			
Grand Total			

6 IMPORTS

6.1 Volume of trade

Prior to the visit the Commission identified that Customs and Border Protection's import database indicated that Conga Foods imported [REDACTED] kilograms of preserved or prepared tomato products from Italy during the investigation period.

[REDACTED]
[not relevant to GUC]

- [REDACTED]; or

[REDACTED]
[not relevant to GUC]

These documents are attached as **confidential attachment IMP 1**.

[REDACTED]
[commercial verification not relevant to the investigation]

Following the selective filtration of the import data [REDACTED]
[REDACTED] we confirmed that the total volume of importations of the GUC, as declared in the importation data was [REDACTED] KG.

Conga Foods indicated that the goods were sourced from various suppliers and provided the table below.

NAME OF SUPPLIER	NAME OF MANUFACTURER	LABEL CATEGORY	LABEL BRAND
[REDACTED] [name]	[REDACTED] [name]	Private	Val Verde, Sole Natura
[REDACTED] [name]	[REDACTED] [name]	Private	Val Verde
[REDACTED] [name]	[REDACTED] [name]	Private & Proprietary	Val Verde, Sole Natura, Cirio

6.2 Preliminary Issue – confirmation of procurement channels

Prior to the visit the Commission noted that Conga Foods was also declared to be a supplier of the goods in relation to importations by another entity identified as an importer of the goods during the period of investigation.

Conga Foods confirmed that this was the result of a two-tiered supply strategy which comprises:

- a) Direct importation of the goods by Conga Foods from its suppliers for subsequent sale to Australian customers; and
- b) Purchase of the goods from Italian suppliers on a [redacted] [trading term], which is subsequently sold, in entirety to [redacted] [customer] at the [redacted] level. So called [redacted] [sales classification] purchases.

Conga Foods confirmed that in the case of the former supply tier, the goods are directly imported by Conga Foods who retain beneficial ownership of the goods from the negotiated point of sale ([redacted]) [trading term] and [redacted] [redacted] [purchasing process]

Conversely, in the case of [redacted] purchases, Conga Foods confirmed that it purchases the goods at the negotiated [redacted] price and sells the goods to its Australian customer [redacted] [redacted] [contractual matter]

6.2.1 Procurement volumes and values

As part of the response to the importer questionnaire Conga Foods provided comprehensive purchasing information relating to all direct importations of the goods and all [redacted] [sales classification] purchases.

From this data, the Commission had confirmed that Conga Foods

- purchased a total quantity of [redacted] cartons of the GUC that was directly imported to Australia with a total [redacted] [value] and
- purchased a total quantity of [redacted] cartons of the GUC that was subsequently sold to [redacted] [customer] a total [redacted] [value].

The Commission has extrapolated that:

- direct import purchases reflect a total volume of [redacted] [KGS] and
- [redacted] purchases a total volume of [redacted] [KGS]

[REDACTED]
[market sensitive].

6.3 Ordering Process

6.3.1 Supply commitments

Tomato cultivation is seasonal. Harvesting occurs in Italy in August, which in turn sets the time-frames within which processors must procure and process raw tomato to produce the GUC.

Accordingly, Italian suppliers require Conga Foods to provide indicative estimations of total volumes required in the early stages of the tomato growing season (typically around mid-July).

Suppliers will negotiate with Conga Foods with respect to capacity to fulfil supply requirements and the applicable price for particular product lines on the basis of early indications of tomato crop yield.

Conga Foods submitted that its demands for supply of the GUC from its Italian suppliers via both supply channels discussed above, is directly correlative to patterns of demand from Australian retail customers [REDACTED]
[customer market sensitive]

It estimates annual supply requirements on the basis of commercial intelligence regarding the historical demands of its customers and its strategies for expansion of particular product lines and/or volume of supply with respect to particular customers.

[REDACTED]
[contractual negotiations].

[REDACTED]
[contractual matter].

Conga Foods summarises the relevant details of its informal commitments in internal supply summaries for each of its suppliers. Conga Foods provided an example of an internal supply summary for [REDACTED] [Italian supplier] as documentary evidence of the terms of a supply commitment. This document is attached as **confidential attachment IMP 1**

6.3.2 Ordering process

Conga Foods advised that the process of ordering the GUC from its Italian suppliers is relevantly identical irrespective of the intended supply channel through which the goods are to be sold into the Australian market.

[redacted] [purchasing process]

Orders will be fulfilled by its suppliers according to the terms specified by the relevant commitments entered into in relation to the production season.

6.3.3 Price

Price is negotiated under supply commitment between Conga Foods and its suppliers

[redacted] [contractual matter]

Conga Foods advised that, given that supply commitments are negotiated on the basis of crop yield forecasts, when climatic conditions are favourable for cultivation, and a higher yield is expected, sales prices will typically be lower. However, prices may fluctuate upwards, however, when tomato crop yield is uncertain or in extreme cases, may be amended where unforeseen variables effect the yield of tomatoes and, in turn, the through put of raw material in processing.

[redacted] [contractual matter].

6.3.4 Shipment

Conga Foods advised that the significant majority of the GUC procured from its Italian suppliers (both direct importations and [redacted] purchases) specify production in 400g can sizes (see above). We confirmed, with reference to source purchase data, that procurement of 800g can sizes comprise roughly [redacted] of direct importations and around [redacted] procurement during the period.

Once produced, cans (irrespective of can size or product variant) are packed into cartons comprising cardboard and plastic wrapping. Each carton contains 12 cans of the GUC.

[redacted] [contractual matter].

[redacted] [contractual matter]. The goods are shipped in containers to Australia.

6.3.5 Supply lead-times

Conga Foods informed us that the average timeframe, from the date an order is submitted to its suppliers in Italy to the date the GUC is delivered into store at Conga Foods designated warehouse, is roughly [redacted] weeks.

All purchases are negotiated in [REDACTED] [order terms]. Payment terms are noted on the commercial invoice or purchase order [REDACTED] [Payment terms]

6.3.6 Forward orders

Conga Foods Importer Questionnaire response indicated that there were [REDACTED] applicable forward orders. We examined the orders and noted nothing of significance by way of source of supply, volume or price.

6.3.7 Verification of imports

6.3.7.1 Reconciliation with import database

To provide prima facie assurance that the purchasing data provided by Conga Foods was complete, the commission compared the total purchase volume reflected in the purchase information (excluding [REDACTED] purchases) - reconciled satisfactorily with import data reflected in CRE (excluding consignments identified to contain goods excluded from the scope of the GUC).

The Commission confirmed that total purchased volume reflected in the purchase listing - [REDACTED] KG - reconciled satisfactorily with the importation database - [REDACTED] KG with marginal disparity.

6.3.7.2 Reconciliation to source documents

Prior to the visit, we selected [REDACTED] shipments so that Conga Foods could provide Customs and Border Protection the following source documents, where applicable:

- commercial invoices (and corresponding heads of agreement/supply contracts where applicable);
- packing lists;
- purchase orders;
- bills of lading; and
- Customs broker and domestic freight invoices.

In relation to the selected shipments Conga Foods also provided:

- proof of payment to supplier; and
- evidence of payment of importation costs (ocean freight and marine insurance)

The source documents are at **confidential attachment IMP 2.**

Prior to the visit we also requested that Conga Foods use the source documentation collated in relation to each selected consignment to complete a sales route spreadsheet which allowed for the allocation of relevant costs to import and sell the goods. This document is at **confidential attachment IMP 3.**

6.4 Identification of irrelevant shipments

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Conga Foods advised that it has identified that ■ of the shipments selected for verification related to consignments of passata and tomato products in pack sizes exceeding 1.14 litres in volume, and hence, are not the GUC.

Conga Foods provided source documentation packages which confirmed, inter alia, that Conga Foods had correctly identified that the shipments did not relate to consignments of the GUC.

On this basis we were satisfied that Conga Foods had accurately identified that all selected shipments should be excluded from the verification process.

6.4.1 Reconciliation to source documents (accuracy)

From the importer transaction form completed by Conga Foods we were able to reconcile the shipment number, bill of lading number, and packing list for the selected shipments with the source documentation provided in relation to each selected shipment.

We confirmed that all selected shipments, with one exception, comprised mixed consignments of the GUC and other goods. In completing the importer transaction form Conga Foods had provided summary information of the total quantity per shipment and total quantity of the GUC per consignment.

For each selected mixed shipment, we confirmed, with reference to packing lists and commercial invoices that the total quantity and composite quantity of the GUC was accurately stated by Conga Foods.

We were able to reconcile the total invoiced price, and composite invoiced value of the GUC to source commercial documentation.

6.4.2 Proof of payment

The selected shipments comprised:

- two shipments supplied by [REDACTED] [Italian supplier];
- one shipment from [REDACTED] [Italian supplier]; and
- two shipments from [REDACTED] [Italian supplier]

The source commercial invoices provided by the supplier to Conga Foods reflected that all three suppliers specified payment [REDACTED] [contractual matter]

For each selected shipment we verified that Conga Foods paid the supplier directly via [REDACTED] [Payment terms] price reflected in the importation spreadsheet, and source commercial documentation.

We were satisfied that the amount on the commercial invoice was the price paid to the supplier by Conga Foods.

6.5 Shipping and Importation costs

6.5.1 Shipping costs

Within the source document packages, Conga Foods provided invoices for ocean freight for each of the 10 selected shipments, and confirmation of payment to the freight provider (via EFT receipts).

For mixed-goods consignments Conga Foods had apportioned the total value of ocean freight to the GUC

[REDACTED]
[costing process].

Conga Foods advised that marine insurance is covered [REDACTED]

[REDACTED]
[contractual matter]

Conga Foods advised that, pursuant to its insurance contract, insurance is issued per shipment [REDACTED]

[REDACTED]
[cost allocation process]

We requested, and Conga Foods provided, evidence of the internal confirmation of the insurance charge in relation to a selected shipment ([REDACTED]) and confirmed that this value reconciled with the value allocated in the transaction worksheet completed by Conga Foods. This document is attached as **confidential attachment IMP XX**.

We calculated the average shipping costs for the selected [REDACTED] selected shipments to be [REDACTED] [number] per kilogram (expressed in AUD).

6.5.2 Importation costs

Under the heading of 'Australian Importation Costs' on the importer transaction form, Conga Foods entered amounts for;

- Customs entry fee
- Customs brokers fees,
- Quarantine charges
- Port service charges
- Delivery;
- Bank charges; and
- Import Duty

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All importation charges relevant to specific purchase orders were incurred by a third-party freight agency who then submitted a commercial invoice to Conga Foods for the total value of costs incurred.

Like ocean freight and marine insurance, Conga Foods have apportioned each cost

[cost allocation process]

We were able reconcile the total itemised amounts reflected in invoiced provided to Conga by the provider, to the total amounts used to apportion costs for each cost item in the transaction sheet.

For completeness, an itemised breakdown of weighted average importation costs calculated from the data provided for ■ selected shipments (excluding shipping expenses) is presented below:

Item	Average cost \$AU/KG
Customs duty	■
Port charges	■
Customs entry & broker fees	■
Delivery	■
Bank charges	■
Quarantine fees	■
Total	■

6.5.3 Selling, general and administrative (SG&A) costs

Conga Foods stated that SG&A costs referable to the sale of the GUC related to the following expense categories:

- Corporate administration;
- Storage of the goods;
- Selling expenses;
- Picking expenses (selection of the goods from storage);

- Dispatch of the goods (movement from storage to departure point);
- Freight (from warehouse to customer)

[REDACTED] [accounting process] A detailed summary matrix was also provided within which an [REDACTED] [accounting process] was listed, by apportioning the relevant unit cost according to the total unit quantity or total product lines of each (by product code sold by Conga Foods during the POI. Conga Foods working is included as **confidential attachment SGA 1**.

[REDACTED] [Accounting process]

Conga Foods then applied this SGA % to the total sales value per consignment to derive a total SGA per shipment.

For completeness, Conga Foods advised that the rate of [REDACTED] allocated to the GUC for the purposes of the visit was sufficiently close to the rate of SGA expense relative to total revenue as reflected in the overall profit and loss statement for Conga Foods.

[REDACTED] [confidential company information]

6.6 Export prices for selected shipments

As stated [REDACTED] [customer] purchased the goods on [REDACTED] terms. Below is a table identifying the unit [REDACTED] prices by exporter and by label.

Exporter/Label	Sum of Total weight (KG)	Sum of Total invoiced price (EURO)	Sum of WA unit value (EURO/KG)
[REDACTED] [Italian supplier]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED] - SOLENATURA DICED TOMATOES 12X400G	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED] - SOLENATURA PEELED TOMATOES 12X400G	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED] - VAL VERDE ORGANIC DICED TOMATOES 12X400G	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED] [Italian supplier].	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED] VAL VERDE DICED TOMATOES 12X400G	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED] - VAL VERDE DICED TOMATOES 12X800G	[REDACTED]	[REDACTED]	[REDACTED]

■■■■ - VAL VERDE DICED TOMATOES WITH CHILLI AND HERBS 12X400G	■■■■	■■■■	■■■■
■■■■ - VAL VERDE CHERRY TOMATOES 12X400G	■■■■	■■■■	■■■■
■■■■ - VAL VERDE PEELED TOMATOES 12X400G	■■■■	■■■■	■■■■
■■■■ - VAL VERDE DICED TOMATOES WITH OREGANO AND BASIL 12X400G	■■■■	■■■■	■■■■
■■■■ - VAL VERDE DICED TOMATOES WITH OLIVES 12X400G	■■■■	■■■■	■■■■
■■■■ - VAL VERDE DICED TOMATOES WITH CAPSICUM AND ONION 12X400G	■■■■	■■■■	■■■■
■■■■ - VAL VERDE GOURMET TOMATOES 12X400G	■■■■	■■■■	■■■■
■■■■ [Italian supplier]	■■■■	■■■■	■■■■
■■■■ - VAL VERDE DICED TOMATOES 12X400G	■■■■	■■■■	■■■■
■■■■ - VAL VERDE PEELED TOMATOES 12X400G	■■■■	■■■■	■■■■
■■■■ - SOLENATURA DICED TOMATOES 12X400G	■■■■	■■■■	■■■■
■■■■ - SOLENATURA PEELED TOMATOES 12X400G	■■■■	■■■■	■■■■
■■■■ - VAL VERDE GOURMET TOMATOES 12X400G	■■■■	■■■■	■■■■
■■■■ - SOLE NATURA CRUSHED TOMATOES 12X400G	■■■■	■■■■	■■■■
■■■■ - CIRIO PEELED TOMATOES 12X400G	■■■■	■■■■	■■■■
■■■■ - CIRIO CHERRY TOMATOES 12X400G	■■■■	■■■■	■■■■
Grand Total	■■■■	■■■■	■■■■

6.7 Profitability

As referred to above, Conga Foods confirmed that three of the ■■■■ import shipments selected for verification related to consignments of goods not within the definition of the GUC ■■■■.

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Source documents supported these assertions and, as such total, and unit, sales revenue for selected importations was calculated for the remaining ■ selected shipments confirmed by the Commission to relate to consignments of the GUC.

We used the actual revenue for each shipment to calculate the total profit for shipments (total selling price minus total cost to import and sell) in the importer transaction form.

This displayed that all of the selected sales were profitable,
■■■■■■■■■■ [market sensitive]

7 WHO IS THE IMPORTER AND EXPORTER

7.1 Who is the importer?

7.1.1 Direct importations

For all direct importations for which import data and Conga Foods purchase data listed Conga Foods to be the importer of the goods (a total of [REDACTED] kilograms), we noted that Conga Foods:

- is named as the customer on supplier invoices issued by the Italian supplier;
- is named as the consignee on the bill of lading;
- retains legal ownership once the goods [REDACTED] **[contractual terms]**; and
- incurs all relevant costs associated with the importation of the goods from [REDACTED] **[Incoterm]** point to clearance free-in-store at its distribution centres in Australia.

On this basis, we consider Conga Foods was the beneficial owner of the goods at the time of importation and is therefore the importer.

7.1.2 [REDACTED] **[sales classification]** purchases

For all [REDACTED] procurements undertaken by Conga Foods during the period of investigation (a total of [REDACTED] kilograms) we noted that:

- Conga Foods is named on the initial sale invoice supplied by the Italian supplier specifying sale of goods at [REDACTED] **[Incoterm]** point; and
- Conga Foods provides payment to the supplier for the agreed [REDACTED] value of the goods (in an identical manner to direct importations) and retains beneficial legal ownership of the goods at the point of sale.

However:

- Conga Foods invoices [REDACTED] **[customer]** for the sale of the entirety of the purchased consignment [REDACTED] **[contractual terms]**
- Is listed on commercial sales invoices as the supplier of the goods to its Australian customer, specifying sale at an agreed sale price [REDACTED] **[contractual terms]**
- Receives complete payment for the [REDACTED] goods from its customer without having retained physical custody of the goods;
- Beneficial legal ownership of the goods passes from Conga Foods to its Australian customer [REDACTED]; and
- The Australian customer incurs all costs associated with the importation of the goods [REDACTED] and customs clearance and domestic logistics within Australia.

On this basis, we consider that Conga Foods Australian customer was the beneficial owner of the goods at the time of importation into Australia and is therefore the importer for the purposes of the investigation.

On the basis of the above, the Commission will consider Conga Foods to be an importer of the goods in relation to its direct importations only. In relation to [REDACTED] **[sales classification]** purchases, Conga Foods will be regarded as an intermediary trader facilitating the supply of the goods between the Italian supplier and the relevant Australian importer.

7.2 Who is the exporter?

The Commission will generally identify the exporter as:

- a principal in the transaction, located in the country of export from where the goods were shipped, who gave up responsibility by knowingly placing the goods in the hands of a carrier, courier, forwarding company, or their own vehicle for delivery to Australia; or
- a principal in the transaction, located in the country of export, who owns, or previously owned, the goods but need not be the owner at the time the goods were shipped.

In relation to direct importations of the goods by Conga Foods, we are satisfied that:

- the commercial invoices identify the supplier;
- the bills of lading identify the supplier as the shipper of the goods; and
- the supplier arranges and pays for the goods to be transported to the wharf and loaded onto the ship in the country of export; and
- Conga Foods pays the relevant supplier

In relation to [REDACTED] **[sales classification]** supply arrangements facilitated by Conga Foods, the Commission notes that it is common for traders and other intermediaries to play a role in the exportation of the goods.

In such cases, the trader typically acts as an intermediary who, although one of the principals, is essentially a facilitator in the sale and shipment of the goods on behalf of the manufacturer. Typically the manufacturer as a principal who knowingly sent the goods for export to any destination will be the exporter.

Therefore, depending on the facts, the Commission considers that only in rare circumstances would an intermediary be found to be the exporter. Typically this will occur where the manufacturer has no knowledge that the goods are destined for export to any country and the essential role of the intermediary is that of a distributor rather than a trader.

Although identified as exporters in the Customs and Border Protection database, Conga Foods is otherwise identifiable as an importer of the goods that sells the goods procured from its Suppliers on an [REDACTED] **[sales classification]** basis to [REDACTED] **[customer]**.

Subject to further inquiries, we are satisfied the following can be considered the exporter of goods from Italy.

- [Redacted] [Italian Supplier]
- [Redacted] [Italian supplier]; and
- [Redacted] [Italian supplier]

8 ARMS LENGTH

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

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

On the basis of the sampled importations of the GUC by Conga Foods during the POI we found that Conga Foods was trading profitably in each instance. Further, we did not find any evidence that:

- there is any consideration payable other than price between Conga Foods or its suppliers;
- the price is influenced by a commercial or other relationship between Conga Foods and its Italian suppliers; or that
- Conga Foods provides any form of compensation or consideration to its suppliers with respect to the supply of the GUC other than the price invoiced by the supplier, and paid by Conga Foods.

Therefore, we consider that sales between Conga Foods and the identified exporters were arms length transactions

9 DUMPING, MATERIAL INJURY AND CAUSATION

9.1 General

We asked Conga foods to outline its views (if any) in relation to injury and causation with respect to the investigations.

In summary Conga Foods stated that it believes there are significant considerations regarding the Australian market for the GUC and the operations of the applicant which are material to the Commission's consideration of material injury and causation, should the goods be found to be exported to Australia from Italy at dumped prices, as understood by the Act.

For completeness, Conga Food's views are summarised below:

9.2 Dumping

Conga Foods believes that the goods it procures from its suppliers in Italy are sold at commercially competitive [REDACTED] [Incoterm] prices which reflect fair market conditions. Specifically;

- Conga Foods contends that the Australian export market for the GUC produced in Italy is very small relative to other regions and that it does not make commercial sense for suppliers to sell into the Australian market at dumped prices.
- Notwithstanding the relative size of the Australian export market, the demand for GUC from Italy is consistently high and Conga Foods is aware of anecdotal evidence which suggests that the price at which the GUC is exported to Australia by its suppliers is significantly higher than the price attainable in other export markets.
- Conga Foods advised that the Italian market for the GUC at the wholesale level is not comparable to the Australian market in terms of market segmentation and product label tiering. As such, Conga Foods assert that the Commission should have regard to considerations of level of trade and price comparability when turning its mind to the determination of normal values for the GUC.

9.3 Material Injury

Conga Foods dispute the applicant's allegations that it has suffered material injury as a result of imported goods from Italy, dumped or not. Specifically;

. Conga Foods referred to the submission of Kagome Foods Australia Pty Ltd (Kagome) to the Productivity Commission's safeguard's inquiry concerning the GUC and noted that most product canned by SPC Ardmona is actually processed by Kagome. Conga Foods submitted that it is therefore important to ensure that the processing costs of Kagome are also considered to ensure no profit shifting between the entities.

- Conga Foods assert that market data regarding the position of Australian proprietary product produced by the applicant within the major retail sector relative to imported private label and proprietary product was consistently high during the period of investigation and remains stable;
- Conga Foods stated that it is aware of certain instances in which certain product lines produced by the applicant have been deleted from the supply arrangement with major retail customers (or volume substantially decreased) however these instances have been the result of unsuccessful brand re-adjustments and marketing strategies by the applicant, and are unrelated to competition with alternative goods, dumped or otherwise.

9.4 Causation

Conga Foods stated that, in the event that indicia of material injury to the applicant are found to be present, the Commission should have regard to other causative factors. Specifically;

- Conga Foods advised that it understands that the applicant's production of the GUC, and the associated costs of production, are affected by inherent inefficiencies of technology, economies of scale and a business model which incurs additional costs and margins associated with the procurement of raw tomato from Australian farmers via an intermediary supplier/processor.
- Conga Foods stated that they believe that the inefficiencies inherent to the applicant's production of the GUC result in the applicant's product being positioned for sale into the market at price that is significantly higher than imported goods of comparable quality which benefit from more efficient material procurement, more favourable economies of scale associated with much larger annual production volumes and lower labour costs and advanced production technologies.
- Conga Foods suggest also that the Australian market for the importation of the GUC from Italian suppliers has benefited from an unusually strong Australian currency relative to the EURO which has resulted in lower imported prices which, in turn, has enabled greater flexibility in the price positioning of imported product at the wholesale level of the Australian market and in terms of the retail price to consumers.

Conga Foods advised that it would provide the Commission with a formal submission outlining its views with respect to these issues in due course, once it has had opportunity to review the non-confidential report of the Commission's verification visit undertaken with the applicant.

10 UNSUPPRESSED SELLING PRICE

Unsuppressed selling price (USP) and non-injurious price (NIP) issues are examined at an early stage of an investigation and, where possible and appropriate, preliminary examinations are made during the application consideration period for the purpose of assessing injury and causal link and therefore the appearance of reasonable grounds for the publication of a dumping duty notice.

The Commission generally derives the NIP by first establishing a price at which the applicant might reasonably sell its product in a market unaffected by dumping. This price is referred to as the USP.

The Commission's preferred approach to establishing USPs observes the following hierarchy:

- industry selling prices at a time unaffected by dumping;
- constructed industry prices – industry cost to make and sell plus profit; or
- selling prices of un-dumped imports.

Having calculated the USP, The Commission then calculates a non-injurious price by deducting the costs incurred in getting the goods from the export free on board point (or another point if appropriate) to the relevant level of trade in Australia. The deductions normally include overseas freight, insurance, into-store costs and amounts for importer expenses and profit.

The Commission advised Conga Foods to consider whether it wished to make any specific submissions regarding the calculation of an USP or NIP, and offered to discuss these issues in greater detail with Conga Foods at a later date, should it wish to do so.

11 RECOMMENDATIONS

From our investigations, we are of the opinion that, for the GUC directly imported by Conga Foods from its suppliers in Italy:

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

Subject to further inquiries with these exporters, we recommend that the export price for goods imported by from manufacturer/exporter can be established under s.269TAB(1)(a) of the Act, using the invoiced price, less deductions to the FOB level as required.

Conversely, with respect to consignments of the GUC supplied to [REDACTED] [customer] by Conga Foods pursuant to [REDACTED] [contractual matter] supply arrangements, we are of the opinion that:

- the goods have been exported to Australia otherwise than by the importer;
- the goods have been purchased from the exporters by an intermediary party unaffiliated with the importer; and
- the goods are purchased by the declared importer from the intermediary party prior to importation of the goods into Australia.

Subject to further inquiries in relation to these shipments, we recommend that the export price for the GUC imported by [REDACTED] [customer] from suppliers in Italy via Conga Foods can be established having regard to all the circumstances of the exportation, in accordance with s.269TAB(1)(c) of the Customs Act 1901.

12 APPENDICES AND ATTACHMENTS

Confidential Attachment GEN 1	Visit Agenda
Confidential Attachment Sales 1	██████ [customer] Trading Terms document
Confidential Attachment Sales 2	██████ [customer] product review documents
Confidential Attachment Sales 3	██████ sales packages
Confidential Attachment Sales 4	Australian sales packages
Confidential Attachment IMP 1	Source documentation (irrelevant shipments)
Confidential Attachment IMP 2	Conga Foods internal supply commitment summary
Confidential Attachment IMP 3	Selected importation source document packages
Confidential Attachment IMP 4	Sales route exercise
Attachment SGA 1	Conga Foods SGA calculations