



## **INVESTIGATION 217**

### **ALLEGED DUMPING OF PREPARED OR PRESERVED TOMATOES**

#### **EXPORTED FROM ITALY**

#### **VISIT REPORT - IMPORTER**

#### **ORANGE & GREEN PTY LTD**

THIS REPORT AND THE VIEWS OR RECOMMENDATIONS CONTAINED THEREIN  
WILL BE REVIEWED BY THE CASE MANAGEMENT TEAM AND MAY NOT REFLECT  
THE FINAL POSITION OF THE ANTI-DUMPING COMMISSION

**August 2013**

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**ABBREVIATIONS**

\$	Australian dollars
ACBPS	Australian Customs and Border Protection Service
The Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
COGS	Cost of goods sold
Commission	Anti-Dumping Commission
CTM	Cost to make
CTMS	Cost to make & sell
CTS	Cost to sell
DDP	Delivered Duty Paid
EXW	Ex works
FOB	Free On Board
NIP	Non-injurious Price
PAD	Preliminary Affirmative Determination
SEF	Statement of Essential Facts
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

## 1 BACKGROUND AND PURPOSE

### 1.1 Background

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 10 July 2013 (Anti-Dumping Notice No. 2013/59 refers).

Following initiation of the investigation, a search of Australian Customs and Border Protection Service's (ACBPS) import database indicated that Orange & Green Pty Ltd (Orange & Green) had imported prepared or preserved tomato products from Italy during the investigation period (1 July 2012 to 30 June 2013).

The Anti-Dumping Commission<sup>1</sup> (the Commission) wrote to Orange & Green 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 spread sheets to complete.

Orange & Green completed the importer questionnaire, providing details regarding the company, overseas supplier information, importations and sales.

### 1.2 Purpose of visit

The purpose of the visit was to:

- confirm that Orange & Green is the importer of prepared or preserved tomato products and obtain information to assist in establishing the identity of the exporter(s) of prepared or preserved tomato products;
- verify information on imports of prepared or preserved tomato products to assist in the determination of export prices from Italy;
- establish whether the purchases of prepared or preserved tomato products were arms-length transactions;
- establish post-exportation costs incurred in importing;
- identify sales and customers and verify sales volume, selling prices and selling costs;
- recommend how export price may be determined under s.269TAB of the *Customs Act 1901* (the Act);

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<sup>1</sup> Formerly International Trade Remedies Branch of Australian Customs and Border Protection Service.

- obtain general information about the Australian market for prepared or preserved tomato products; and
- provide the company with an opportunity to discuss any issues it believed relevant to the investigation.

### 1.3 Meeting details

Company	Orange & Green Pty Ltd
Address	Suite 7, 400 Canterbury Road Surrey Hills VIC 3127
Dates of visit	19 August 2013

The following were present at the meeting:

Orange & Green Pty Ltd	Rudi van der Vlies – Managing Director Janet Pearce – Financial Controller Jake Beddows – Account Manager Sari Sinko –Supply Chain Manager
the Commission	Sanjay Sharma – Manager - Operations 2 Bill Walsh – Manager – Operational Policy Gareth Davies - Legal Policy Officer – Operational Policy

### 1.4 Investigation process and timeframes

At the beginning of the Meeting we advised the company of the investigation process and timeframes as follows.

- The investigation period is from 1 July 2012 to 30 June 2013.
- The injury analysis period is from 1 January 2009 for the purpose of analysing the condition of the Australian industry.
- A preliminary affirmative determination (PAD) may be made no earlier than day 60 of the investigation (i.e. 9 September 2013) and provisional measures may be imposed at the time of the PAD or at any time after the PAD has been made. The Commission will not make a PAD until it is satisfied that there appears to be, or that it appears there will be, sufficient grounds for the publication of a dumping duty notice.
- The Statement of Essential Facts (SEF) for the investigation is due to be placed on the public record by 28 October 2013, or such later date as the Minister allows under s.269ZHI of the Act.

The SEF will set out the material findings of fact on which the Commission intends

to base its recommendations to the Minister, and will invite interested parties to respond, within 20 days, to the issues raised therein.

- Following receipt and consideration of submissions made in response to the SEF, the Commission will provide its final report and recommendations to the Minister.

The final report is due no later than 12 December 2013, unless an extension to the SEF is approved by the Minister.

### **1.5 Visit report**

We advised Orange & Green that we would prepare a report of our visit and provide an opportunity for them 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 public record version of the report and place this on the Public Record.

## 2 THE GOODS

### 2.1 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.’*

### 2.2 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 general duty rate of 5% applies.

### 3 COMPANY DETAILS

#### 3.1 Commercial operations

Orange & Green is an Australian proprietary company established in 2001. It has three individual shareholders. The head office of the company is based in Surrey Hills, Melbourne, Victoria.

Orange & Green is a management service company which represents [REDACTED] European and Northern American manufacturers in the Australia and New Zealand.

Orange and Green is part of the Orange & Green Shared Services group which services a number of overseas manufacturers. The companies in the group are all separate entities, and include:

[REDACTED]  
[names of compaies] Organizational chart of Orange & Green is at **Confidential Attachment GEN1**.

Prepared or preserved tomato products are only a small component of Orange & Green's overall business (representing approximately [REDACTED]% of total turnover of all products).

Orange and Green have [REDACTED] staff with an annual turnover of A\$[REDACTED]. Tomato products represent approximately A\$[REDACTED] of that turnover.

#### 3.2 Accounting structure and details of accounting systems

Orange & Greens financial year is from 1 July to 30 June. Being a private Company, Orange & Green does not audit and publish its financial accounts.

Orange & Green uses the [REDACTED] fully integrated accounting system.

#### 3.3 Relationship with suppliers and customers

##### 3.3.1 Suppliers

Orange & Green act as a local Australian office for various overseas manufacturers from Europe and North America. Orange & Green provides a number of services to those manufacturers such as:

- Commercial Services eg:account management, market research, product development
- Supply Chain Management
- Quality Assurance
- Administration services

Orange & Green has around [REDACTED] product categories and manages approximately [REDACTED] different products lines. The major product categories are:

[REDACTED]



[redacted] [list of product categories] Orange & Green imports all the goods under consideration from its only supplier [redacted] from Italy. [redacted] supplies Orange & Green with [redacted] different canned tomato 'skus' (product lines) of prepared or preserved tomato products as described below:

[redacted]  
[redacted] [list of prepared or preserved tomato products]

Skus [redacted] are standard canned tomato products while Skus [redacted] are herb flavoured or organic prepared or preserved canned tomato products.

### 3.3.2 Customers

Orange & Green sells all prepared and preserved tomato products imported from Italy to [redacted] in Australia, [redacted] [the Customer].

[redacted]  
[redacted] [shipping and logistics arrangement]

### 3.4 Like Goods

Orange & Green was asked if it has any concerns with the description of the goods in the application as described in paragraph 2.1. Orange & Green was also asked if 'their tomato products' fell within the description of the goods as provided in the application or were *like goods*.

Orange & Green agreed that the definition of the goods in the application covered their [redacted] skus of prepared or preserved tomato products imported from Italy. No further comments were provided on the description of the goods or on like goods.

#### ***Product description***

Orange & Green stated that the tomato products it sells into the Australian market are imported from Italy. They procure all of their goods from [redacted] who is the manufacturer of the goods.

Orange & Green stated that their tomato products can be broken down into two segments based on the quality levels of the:

- Standard canned tomatoes; and
- Premium canned tomatoes.

#### ***Standard Skus (Standard canned tomatoes)***

The standard skus includes:

- [redacted] ) [type of good]

[redacted]  
[redacted] . [pricing arrangement]

### ***Premium skus (Premium canned tomatoes)***

Premium skus are:

[redacted]  
[redacted] [type of good] Orange & Green buy these goods from the supplier on [redacted] terms and [redacted] . Flavoured and Organic canned tomato products are shipped [redacted] .  
[redacted] . [domestic logistics]

Orange & Green described the product difference between these two segments as that the standard skus are more economical in price due to the following:

- brix level of juice,
- label differentiation (eg: UV varnish);
- tomato content (e.g. % of tomato pieces compared to juice);
- can differentiation eg: easy opening, lacquer.

### ***Difference with SPCA tomato products***

[redacted]  
[redacted] [difference between local and exported goods]

## 4 IMPORTS

### 4.1 Introduction

Prior to the visit the Commission identified from the ACBPS's import database that Orange & Green imported approximately [REDACTED] of preserved or prepared tomato products from Italy during the investigation period.

At the visit Orange & Green clarified that the some of the weights in the ACBPS's database are listed as gross weight while others as net weight. Consequently the information in ACBPS data base has under reported the actual quantity. Orange & Green adjusted provided an spreadsheet where a gross weight had been used to show net weight and the corrected import volume in the investigation period was [REDACTED] kilograms (net weight).

Orange & Green advised the Commission that it has contacted its customs clearance agent to enter the goods under consideration in net weights in future.

We noted that there is a variance of about 10.7% between their corrected import volume and their total sales volume for the investigation period. The Commission considers this variance is due to the timing difference between imports and sales, specifically difference between imports and sales volume can be attributed to our warehouse holdings here in Australia.

[REDACTED]  
[domestic inventory]

A list of all importations during the investigation period for Orange & Green is at **Confidential Attachment IMP1**.

The amended total quantity of [REDACTED] different skus of prepared or preserved tomato products imported by Orange & Green during the IP from Italy is summarised in the following table.

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

### 4.2 Ordering process and price

The two major categories of prepared or preserved canned tomato products supplied by [REDACTED] are 'Branded' and 'Private Label'. Branded canned tomatoes are not specifically labelled for any retailer and can be sold by any retail store to the consumers. Private label contain the Customer's name in the labels and can only be sold by the Customer to the consumers.

All [REDACTED] skus of prepared or preserved tomato products imported by Orange & Green in the Investigation period (IP) were Private Label products. At the visit, we sighted that all [REDACTED] skus of canned tomatoes that stated [REDACTED]" on the can labels.

Orange & Green described the importation and sales process of prepared or preserved tomato products as follows.

#### 4.2.1 Tender Process

- Tomatoes are harvested in Italy between June and September every year. This sets the time-frames within which processors must procure and process raw tomato to produce the goods.
- Tenders are called annually between July and August by the Customer, [REDACTED]
- The Customer negotiates the price with Orange & Green upon the receipt of the final tender documents (copy of recent document is at **Confidential Attachment IMP2**).
- Once the volume and price are finalised and fixed for the next 12 months, Orange & Green enters into a contract with (volume to be supplied by quantity of cans of prepared or preserved tomato products) with its only supplier [REDACTED].
- [REDACTED] [tender process]
- The supply of the goods starts from December and finishes in November every year.

#### 4.2.2 Ordering Process

##### (i) Standard Skus

On request from [REDACTED], Orange & Green orders the goods from its supplier [REDACTED] on a container basis.

[REDACTED] [price setting and ordering process] (ii) Premium

##### Skus

- Orange & Green works closely with its customer to forecast the demand for the goods;
- [REDACTED]; [domestic inventory holding]
- Orange & Green sends an email to [REDACTED] as and when the supply is required;
- [REDACTED] ships the goods to the port specified by Orange & Green; and

- Orange & Green stores the goods in its warehouse which is later collected by its Customer when required.

#### 4.2.3 Shipment

Once produced, cans are packed in trays. Each tray contains 12 cans of prepared or preserved tomato products.

[redacted] [overseas logistics] The supplier invoices Orange & Green once the goods have cleared the FOB point for shipment to Australia. The goods are shipped in containers by sea. The payment terms are [redacted] from the date of the invoice.

(i)

[redacted] [overseas logistics]

[redacted] The goods are shipped in containers to Australia by sea. The payment terms are [redacted] from the date of the invoice. [payment terms]

Orange & Green stated that the average timeframe, from the date an order is submitted to its suppliers in Italy to the date the goods is delivered [redacted] [delivery timeframe]

### 4.3 Verification of imports

Prior to the visit, the Commission selected eight shipments from the ACBPS database for Orange & Green to complete part B of the importer questionnaire. Orange & Green completed the spreadsheet containing the data for these eight shipments and emailed copies of the following documents for each shipment:

- Import Insurance worksheet;
- Sea WayBill Shipping documents;
- Purchase invoice from [redacted];
- Shipment packing and lot code list prepared by [redacted]
- Australian Customs Entry for home consumption documents;
- Tax invoice provided by shipping company; and
- Payment advice to shipping company.

The spread sheet and source documents are at **confidential attachment IMP3**.

#### 4.3.1 Reconciliation to source documents

From the importer transaction spreadsheet completed by Orange & Green we reconciled the shipment number, order number, quantity, price, and packing list for the selected

shipments with the source documentations provided in relation to each selected shipment.

#### 4.3.2 Proof of payment

The selected consignments were supplied by [REDACTED] on FOB. At the visit, we selected two additional invoices that were supplied by [REDACTED] on EXW.

We confirmed that all consignments were supplied pursuant to direct negotiation between Orange & Green and the supplier and did not involve the participation of any traders, or intermediary parties.

The	source	documents	included
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[contract terms]	[REDACTED]
[REDACTED]	[REDACTED]	[contract terms]	[REDACTED]
[REDACTED]	[REDACTED]	[contract terms]	[REDACTED]

For each of the selected shipments we verified that Orange & Green paid the supplier directly via EFT for the FOB price reflected in the importation form and source commercial documentation.

At the visit we requested and Orange & Green to provide remittance advise and bank statements for the payments made to [REDACTED] shipping and transport companies for two of the selected shipments.

We were satisfied that the amount on the commercial invoice was the price paid to the supplier by Orange & Green.

#### 4.3.3 Shipment costs

Within the source document packages, Orange & Green provided invoices for ocean freight for each of the eight selected shipments, and confirmation of payment to the freight provider (via EFT receipts) which matched the amounts recorded on the importer transaction form.

##### 4.3.3.1 Insurance costs

Orange & Green advised that marine insurance is covered by an annual insurance contract issued by [REDACTED] which applies to all importations undertaken by Orange & Green (including other products it imports and sells into the Australian market). Orange & Green provided a copy of its insurance contract for the period 30 June 2013 to 30 June 2014 (**Confidential Attachment IMP3 refers**) showing a rate of CIF (Cost, Insurance and Freight terms) + 10% of the value of the shipment.

Orange & Green initially claimed the insurance cost to be [REDACTED]% of the FOB invoice price value. On further inquiry at the visit Orange & Green revised insurance costs to [REDACTED]% of

the FOB invoice value. The Commission accepted that the revised insurance cost is more realistic and used this when calculating insurance costs for all eight selected shipments.

#### 4.3.3.2 Importation costs

Prior to the visit Orange & Green provided the following data;

- Overseas freight;
- Customs entry fee;
- port service charges;
- delivery; and
- Import duty.

We were able reconcile seven of the eight shipments of the itemised amounts reflected in source documents provided by Orange & Green to the amounts listed for each cost item in the transaction sheet. For shipment number 4, the customs entry document was missing. On further inquiry, Orange & Green provided this document to the Commission.

We were not able to reconcile shipment number 6 to the source documents. On further inquiry, Orange & Green stated that there was a minor calculation error and provided the revised amounts and source documents. The Commission was able to reconcile the revised amounts and adjusted the amount for shipment number 6 to reflect the same.

We were able to confirm that Orange & Green paid the amount reflected in the source documents.

On the basis of the above verification, we are satisfied that the importer transaction spread sheet is complete, accurate and reliable.

#### 4.3.3 Shipping and Importation cost calculations

We calculated the weighted average shipping costs for the selected 8 shipments to be A\$ [REDACTED] per kilogram (**Confidential Appendix 1 refers**).

##### *Freight costs*

Item	Weighted Average cost \$/kilogram
Overseas Freight	[REDACTED]
Insurance	[REDACTED]
<b>TOTAL</b>	[REDACTED]

*Importation costs*

We calculated the individual weighted average unit importation cost in relation to eight selected imports as summarised in the table below:

Item	Weighted Average cost \$/kilogram
Customs entry fee	██████████
Port service charges	██████████
Delivery Charges	██████████
Import Duty	██████████
<b>Total</b>	██████████

#### 4.4 Selling, general and administrative (SG&A) costs

Orange & Green SG&A costs relate to the following expenses:

- the salary of staff involved in the general administration, order and importation process and liaising with the Customer (excluding ocean freight and marine insurance) and
- the warehouse and transport costs associated with the storage of goods in ██████ different regions.

To allocate SG&A costs per consignment Orange & Green estimated a rate of █% of its sales revenue with respect to all products.

Orange & Green then applied this SG&A percentage to the total sales value per consignment to derive a total SG&A per shipment. On the importer transaction form Orange & Green included SG&A costs for each of the selected shipments based as an amount per kilogram.

Orange & Green is an importer of a range of products of which tomatoes is a relatively small proportion. Orange & Green also provides management services to other companies. Therefore, not all SG&A expenses reflected in its profit and loss account are directly relevant to the importation of the goods. As such, we calculated the SG&A as a proportion of turnover value of the ██████skus of prepare or preserved canned tomato products over the turnover value of the all products in the investigation period **(Confidential Appendix 1 refers)**. This equates to ██████% of the SG&A allocated for all skus of canned tomato products. The Commission considers the revised SG&A is a more realistic for tomatoes and used this basis to calculate the SG&A for all eight selected shipments.

The above costs are based on the relevant proportion of the goods imported during the IP. The Commission sighted Orange & Green 's accounting system on the computer



screen to verify the costs and turnover to financial reports to support each of the amounts provided.

#### 4.5 Export prices for shipments

Based on verification of all selected eight shipments, we calculated the weighted average FOB unit export price (in AUD) for preserved or prepared tomato products over the investigation period to be \$[REDACTED] per kilogram (net) ( **Confidential Appendix 1 refers**).

Premium skus	Sum of Quantity (KG)	AUD FOB Invoice price	Export Price
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>Grand Total</b>	[REDACTED]	[REDACTED]	[REDACTED]

Based on the information provided, the Commission calculated the weighted average EXW unit export price (in AUD) for preserved or prepared tomato products using the two verified invoices to be \$[REDACTED] per kilogram (**Confidential Appendix 2 refers**).

Standard skus	Sum of Quantity (KG)	AUD EXW Invoice Price	EXW Export Price
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>Grand Total</b>	[REDACTED]	[REDACTED]	[REDACTED]

#### 4.6 Forward orders

At the visit Orange & Green provided us the details of forward orders for prepared and preserved tomato products imported from Italy (**Confidential Attachment FOR1 refers**).

The summary of prepared and preserved tomato products forward orders is shown in the table below.

Supplier	Tomato	Shipping Terms	Expected Arrival	Quantity (cases)	Quantity (KG)
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

We noted that there was nothing of significance by way of source of supply, volume or price.

## 5 WHO IS THE IMPORTER AND EXPORTER

### 5.1 Who is the importer?

As noted, Orange & Green purchases [REDACTED] standard skus of prepared or preserved canned tomatoes on EXW terms, and [REDACTED] skus of flavoured and organic prepared or preserved canned tomatoes on FOB terms.

#### 5.1.1 Direct Importations

We reviewed the documents that related to the purchases on FOB. We note that Orange & Green;

- is named as the customer on supplier invoices issued by the Italian supplier;
- is named as the consignee on the bill of lading (sea waybill);
- retains legal ownership once the goods clear FOB point; and
- incurs all relevant costs associated with the importation of the goods from FOB point to the warehouse distribution centres in Australia.

We consider Orange & Green was the beneficial owner of the goods at the time of importation and is the importer.

#### 5.12 Ex works purchases

At the visit we obtained two set of documents in respect of the purchase of standard goods bought on EXW terms. We note that Orange & Green;

- is named as the customer on the supplier invoices issued by the Italian supplier; and
- purchase terms were EXW.

Orange & Green advised that

[REDACTED]

[overseas delivery logistics]

On this basis, we consider Orange & Green's customer was the beneficial owner of the goods at the time of importation into Australia and is therefore the importer for the purposes of this investigation. Orange & Green's role was to facilitate supply to the importer in Australia.

For completeness, the Commission notes that the Orange & Green's Customer has been identified as an importer of the goods from ACBPS's import database and is being separately visited by the Commission.

On the basis of the above and to avoid duplication, the Commission will consider Orange & Green to be an importer of the goods in relation to its direct importations only.

[REDACTED], Orange & Green will be regarded as an intermediary trader facilitating the supply of the goods between the Italian supplier and the relevant Australian importer.

Orange & Green purchase and sale data with respect to these sales will be used to determine relevant FOB price from the relevant supplier to assist with the determination of FOB export prices in relation to the importations of the relevant Australian importer.

## 5.2 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, which owns, or previously owned, the goods but need not be the owner at the time the goods were shipped.

Where there is no principal in the country of export the Commission will normally consider the exporter to be the person who gave up responsibility for the goods as described above.

Upon review of the source documentation provided we are satisfied:

- the commercial invoices identify the supplier;
- the bills of lading (sea waybill) identify the supplier as the shipper of the goods;
- 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
- Orange & Green pays the relevant supplier.

Subject to further inquiries, we consider [REDACTED] to be the exporter of the goods. To our knowledge, this entity is the principal in the country of export which manufactures the goods. [REDACTED]

## 6 AUSTRALIAN MARKET

### 6.1 General

Orange & Green confirmed that they only supply [REDACTED] skus of prepared or preserved canned tomato products to [REDACTED] (retail chain of stores) that it imports from Italy.

Orange & Green stated that growth of its Australian market for the goods under consideration has been between 10% and 20% over the last few years [REDACTED]

[REDACTED]. [market conditions]

[REDACTED]  
[competitors of Orange & Green]

[REDACTED] [product pricing] Orange & Green stated that although quality has an effect on customer preference, the biggest factor in customer preference is price. Orange & Green stated that even though tomato products are essential products the customers will buy regularly, it is not the key product that attracts consumers to a particular retail store.

### 6.2 Australian sales

Orange & Green imports and supplies canned prepared or preserved tomato products in 400 grams as 'private label' only. Orange & Green sell their other non-tomato products to a variety of customers across the Australian market including the major retailers.

Orange & Green supplies either as

[REDACTED] [terms of trade] Copies of contracts with both exporter and the Australian customer for all [REDACTED] skus of prepared or preserved tomato products are at **Confidential Attachment SAL1**.

Orange & Green imported a total of [REDACTED] Kilograms (net weight) from Italy in the IP with the total value of A\$[REDACTED].

### 6.3 Distribution and Selling arrangements

- (i) *Standard Skus*
- (ii) Orange & Green does

[redacted]  
[redacted] [distribution arrangements] Premium Skus

The [redacted] skus of prepared or preserved tomato products sold are the [redacted] flavoured skus and [redacted] sku. Orange & Green's customer has [redacted].

#### 6.4

[redacted]  
[redacted] [distribution arrangements]

### 6.5 Sales

#### 6.5.1 Ordering and sales process

##### *Ordering*

Goods are bought once a year from [redacted] with Orange & Green negotiating the price directly with [redacted] in mid-year when tomatoes are harvested in Italy.

The price negotiations take into consideration the manufacturing costs, tomato buying price of from the farmers which in turn depends on the success of the quantity and quality tomatoes.

[redacted]. Once the volume and price is successfully negotiated, the supply of the goods takes place for the next twelve months (mainly from December to November).

Orange & Green places the order by emailing [redacted] and when the demand arises.

[redacted] [distribution arrangements]

A total of canned prepared or preserved tomato products purchased during the IP are [redacted] kilograms (net weight).

##### *Sales*

Goods are bought by the Orange & Green's customer through a tendering process. This tendering process takes place between May and June of each year and is completed before the harvesting season when the negotiations with the supplier for the prepared or preserved tomato products commences.

[REDACTED] . [contract agreement]

Annually, the Customer sends out the tender documents for the individual lines requiring Orange & Green (and other potential tenderers) to provide a completed submission and samples. The tender is required to meet certain specification as to:

- Product
- Packaging
- Outer carton

The customer requires that pricing to be considered along the following:

- [REDACTED]

) [terms of trade]

The contract with the Customer is based on volumes required for the oncoming year. The goods are produced and warehoused in Italy until required by the Customer. The Customer orders stocks based on its forecast mailly from previous year demands. Oange and Green maintains a buffer of [REDACTED] stock in case of sudden change in market demand.

Total sales of canned prepared or preserved tomato products in the IP were [REDACTED] Kilograms with a total value of A\$[REDACTED]. The following table shows the weighted averaged quarterly price of the [REDACTED] skus sold by Orange & Green in the IP.

Weighted average unit sales prices by Orange & Green per quarter, by product, during the IP (A\$per kilogram (net))					
Product	Q1	Q2	Q3	Q4	Product weighted average price
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

### *Rebates and Discounts*

Orange & Green confirmed that it does not provide any form of rebate or discounts to its customer. The Commission found no evidence to indicate that rebate and discounts were provided by Orange & Green to its Customer.

*Commission*

Orange & Green confirmed that it does not provide any commissions to its Customer in respect of the sales of prepared or preserved tomato products. The Commission found no evidence to indicate that commissions were provided by Orange & Green to its Customer.

*Terms of Trade*

Orange & Green [REDACTED] for the date of invoice. We confirmed that the credit terms offered by Orange & Greens to its customer is [REDACTED].

*Damaged Goods*

Orange & Green confirmed that it replaces any damaged good to its customer but does not claim it back from its supplier. In case of any major loss of volume due to damaged goods are covered by Insurance. There was no major damage loss in the IP.

**6.5.2 Sale verification****6.5.3 Accuracy – verification to source documents**

As part of its questionnaire response, Orange & Green provided us with all its sales of Prepared and Preserved tomato products for the period from 1 July 2012 to 30 June 2013 (**Confidential Appendix 3**).

At the visit we sought source documents for 5 invoices related to the [REDACTED] skus. Orange & Green provided source documents for the [REDACTED] invoices which included customer invoices to its Australian customers, invoices for local freight from the port to its warehouse and evidence of payment by Orange & Green's customer. These source documents are at **Confidential Attachment SAL2**.

For these selected sales we matched the invoice details (value, quantity, invoice date, delivery terms and credit terms) to Orange & Green's sales listing (**Confidential Attachment SAL3 refers**). We also sighted the bank statement extracts provided displayed the payment to Orange & Green. We matched the payments displayed on the bank statement extracts for the selected sales to Orange & Green's sales listing and sales records.

We are therefore satisfied that invoice details recorded in Orange & Green sales records provided are accurate, and that Orange & Green customers paid the invoiced amounts for those transactions.

**6.5.4 Completeness and relevance – verification to Orange & Green's accounts**

The Commission requested Orange & Green to provide documents to conduct an upward reconciliation of sales to the financial statements, to verify the completeness and relevance of Orange & Green's sales listing. Orange & Green explained that its financial accounts are not yet finalised at that point in time and provided us with draft record of transactions by account codes.

As noted earlier, Orange & Green's financial year is from July to June. Orange & Green provided extracts of accounts from its system to verify its sales of the [REDACTED] skus of



prepared or preserved canned tomato products listing for the IP. We were able to reconcile the sales volume of Orange & Green in its sales listing to total prepared or preserved tomato product for Orange & Green as recorded in the ACBPS import database by volume.

To further test the completeness of the sales data, Orange & Green showed us the total sales of all products. Orange & Green also showed us for of each skus of prepared or preserved tomato product the total sales volume and value in the IP. We were able to reconcile the volume and value of all prepared or preserved tomato products to the sales data provided by Orange & Green to its accounting system.

Consequently, we are satisfied that Orange & Green sales listing provided is complete and relevant record of Orange & Green's sales of prepared or preserved tomato products for the IP.

## **6.6 Selling, general and administrative (SG&A) costs**

Orange & Green explained that it allocated SG&A costs of █% based on its estimate with regards to total sales revenue with respect to all products.

As discussed in section 4.3.3 of this report, Orange & Green is an importer of a range of products including the goods. Orange & Green also provides management services to other companies. Therefore not all SG&A expenses reflected in its profit and loss account are directly relevant to the importation of the goods. As such, we calculated the SG&A as a proportion of turnover value of the █ skus of tomato products over the turnover value of the all products in the investigation period using the verified data (**Confidential Appendix 1 refers**). This equates to █% of the SG&A allocated for all skus of canned prepared or preserved tomato products.

### **6.6.1 Profitability of sales**

Orange & Green calculated the total profitability for each of the eight shipments (total selling price minus total cost to import and sell) in the importer transaction form.

This displayed that all eight consignments were profitable. The range of profitability for the shipments was calculated to be between █ based on amended SG&A rate of █% calculated by the Commission. We note that overall weighted average rate of profit for the selected shipments was █% (**Confidential Attachment IMP3 refers**).

**7 ARMS LENGTH**

In determining export prices under s.269TAB(1)(a) and normal values under s.269TAC(1), the Act requires that the relevant sales are arm's length transactions.

Section 269TAA outlines the circumstances in which the price paid or payable shall not be treated as arm's 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; and
- 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.

Furthermore, where:

- goods are exported to Australia otherwise than by the importer and are purchased by the importer from the exporter (whether before or after exportation) for a particular price; and
- the Minister is satisfied that the importer, whether directly or through an associate or associates, sells those goods in Australia (whether in the condition in which they were imported or otherwise) at a loss;

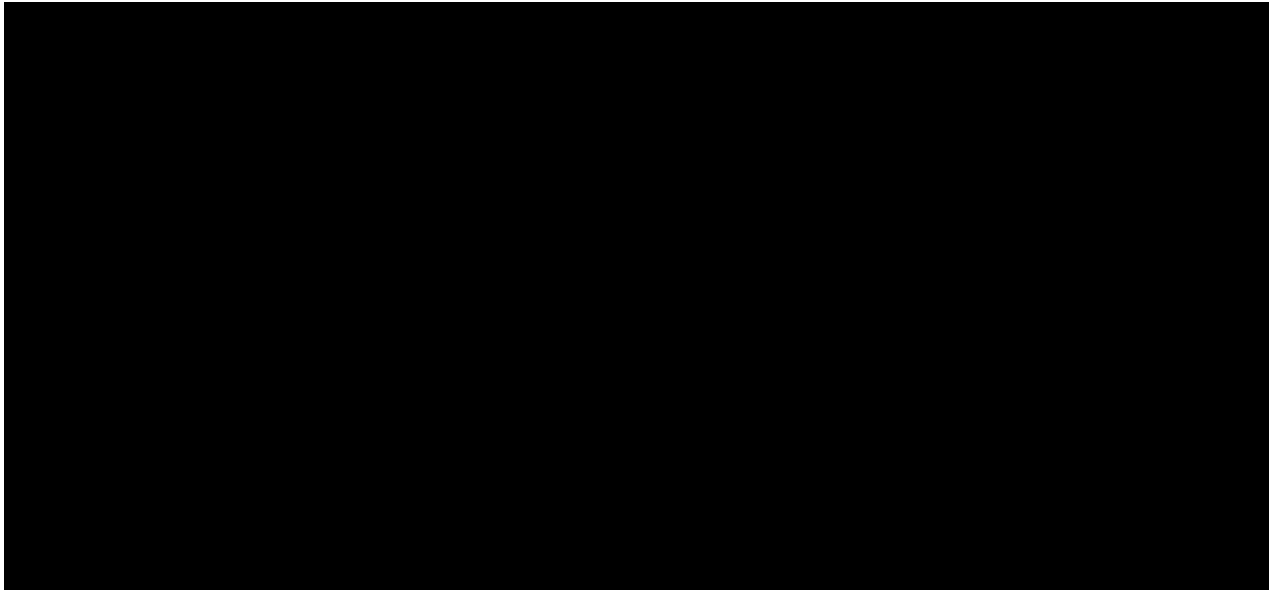
the Minister may treat the sale of those goods at a loss as indicating that the importer or an associate of the importer will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or a part of the price.

For sales between Orange & Green's supplier (██████) we noted that overall the sales of the imported prepared and preserved canned tomato products in the Australian market were profitable (██████%). We also noted that the purchase price of prepared and preserved tomato products, is determined based on the sales process and negotiations with customers and the producer of the goods. We did not find any evidence that:

- there is any consideration payable other than price; or that
- the price is influenced in Orange & Green's favour by a commercial or other relationship between Orange & Green and its suppliers from Italy.

We confirmed during our verification that the price invoiced by Orange & Greens supplier ██████ was the price paid by Orange & Green. Therefore, at this stage, we consider sales between Orange & Greens supplier ██████ and Orange & Green were arm's length transactions.

We are satisfied that import transactions between Orange & Green and its suppliers are at arm's length in terms of s.269TAA.

**8 GENERAL COMMENTS****8.1 General**

[Orange and Green's general view about the Australian market and injury to the Applicant]

## 9 RECOMMENDATIONS

### *FOB Purchases*

As a result of the importer questionnaire submitted by Orange & Green and the verification conducted on site, and for reasons set out above, we are of the opinion that the prepare or preserved tomato products imported by Orange & Green are:

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

the goods are subsequently sold by the importer to a person who is not an associate of the importer. The export price for these FOB sales can be established under s.269TAB(1)(a).

### *Ex works purchases*

Orange & Green's customer was, in our opinion, the importer. This company is being visited separately and a separate report made on its purchases. In our opinion Orange & Green is involved in the transaction as a trader, and the relevant section to establish export price in our opinion is s.269TAB(1)(c).

## 10 APPENDICES AND ATTACHMENTS

<b>Confidential Appendix 1</b>	Shipping costs, profits, FOB export price and SG&A calculations
<b>Confidential Appendix 2</b>	Calculation for EXW Export Price
<b>Confidential Appendix 3</b>	Sales spread sheet for prepared or preserved tomato products in the IP
<b>Confidential Attachment GEN1</b>	Organisational chart of Orange & Green Pty Ltd
<b>Confidential Attachment IMP1</b>	Goods imported by Orange & Green in the IP
<b>Confidential Attachment IMP2</b>	Copy of recent tender document
<b>Confidential Attachment IMP3</b>	Spread sheet and Importation documents for the eight selected shipments
<b>Confidential Attachment IMP4</b>	Insurance documents
<b>Confidential Attachment FOR1</b>	Documents for forward orders
<b>Confidential Attachment SAL1</b>	Copy of contract to supply the goods to the domestic customer
<b>Confidential Attachment SAL2</b>	copy of source documents for freight and evidence of payments
<b>Confidential Attachment SAL3</b>	Select copies of Orange & Green sales invoices