

# PUBLIC RECORD



**Australian Government**  
**Anti-Dumping Commission**

## INVESTIGATION No. 217

### ALLEGED DUMPING OF PREPARED OR PRESERVED TOMATO PRODUCTS

### EXPORTED FROM ITALY

### VISIT REPORT - IMPORTER

## COLES

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

Prepared or Preserved Tomato Products – Importer Visit Report –  
Coles

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## ABBREVIATIONS

\$	Australian dollars
ADN	Australian Dumping Notice
The Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
CFR	Cost and freight
COGS	Cost of goods sold
the Commission	Anti-Dumping Commission
CTM	Cost to make
CTMS	Cost to make & sell
CTS	Cost to sell
EBIT	Earnings before interest and tax
EDITA	Earnings before interest, tax, depreciation and amortisation
FOB	Free On Board
GAAP	Generally accepted accounting principles
Metcash Trading Limited	Metcash
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

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## 1 BACKGROUND AND PURPOSE

### 1.1 The application

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

Following consideration of the application, the Anti-Dumping Commission (the Commission) initiated an investigation on 10 July 2013. Public notification of initiation of the investigation was published in *The Australian* on 9 July 2013. Further details of this investigation are provided in Anti-Dumping Notice No. 2013/59 which is available at <http://www.adcommission.gov.au/cases/EPR217>.

The Commission has previously conducted dumping and countervailing investigations relating to canned tomatoes, from which dumping duties were imposed on the goods from Italy and China and countervailing duties imposed on the same goods from Italy, Spain and Thailand in 1992. Both dumping and countervailing duties were continued on canned tomatoes from Italy following continuation inquiries. The last set of measures that continued to apply to canned tomatoes from Italy were countervailing duty measures which lapsed in 2007. This was following an application lodged by Ardmona Foods Limited and SPC Limited (Trade Measures Report No. 52 refers).

There are no current dumping or countervailing measures on tomatoes exported to Australia from Italy.

### 1.2 Purpose of visit

The purpose of the visit was to:

- confirm that Coles is the importer of tomatoes attributed to it within the import database and obtain information to assist in establishing the identity of the exporter(s) of the tomatoes;
- verify information on imports of tomatoes to assist in the determination of export prices;
- establish whether the purchases of tomatoes were arms-length transactions;
- establish post-exportation costs;
- identify sales and customers and verify sales volume, selling prices and selling costs;
- obtain general information about the Australian market for tomatoes; and
- provide the company with an opportunity to discuss any issues it believed relevant to the investigation.

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### 1.3 Meeting details

<b>Company</b>	Coles
<b>Address</b>	Grocery Holdings Pty Ltd 800 Toorak Road Hawthorn East VIC 3123
<b>Date of visit</b>	14 August 2013

The following were present at various stages of the meetings.

Grocery Holdings Pty Ltd	Chris Mara, Adviser, Government Affairs Brian Keane, Category Manager Rosie Ingrouille, Category Manager
the Commission	Joanne Reid , Director Operations Nicole Platt, Manager Operations Rebecca Hurley, Graduate

### 1.4 Investigation process and timeframes

We advised the company of the investigation process and timeframes as follows.

- The investigation period is 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 (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 (and if) it becomes satisfied that there appears to be, or that it appears there will be, sufficient grounds for the publication of a dumping duty notice.

This was distinguished from the 'reasonable grounds' threshold for initiation of the investigation.

- 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 Customs Act 1901* (the Act).

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

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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.

This 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 Coles that we would prepare a confidential report of our visit and provide it to the company to review its factual accuracy, and to identify those parts of the report it considers to be confidential. A non-confidential version of the report would also be prepared in consultation with Coles and subsequently placed on the investigation's Public Record.

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## 2 THE GOODS

### 2.1 Description

#### 2.1.1 General description

The goods the subject of the application (the goods) are prepared or preserved tomato products. The application specifies that:

*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.*

#### 2.1.2 Exclusion of certain goods from investigation

SPCA indicated the goods excluded from this application are:

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

The Commission considers that the goods covered by the investigation do not include those listed above.

### 2.2 Product information

SPCA claims that prepared or preserved tomato products exported to Australia from Italy are either peeled or unpeeled, and in variety of specific compositions including whole or in pieces (diced, chopped or crushed) and with or without the addition of other ingredients including, but not limited to, vegetables, herbs and spices.

SPCA stated in the application:

*The common container sizes of the imported prepared or preserved tomatoes the subject of this application are 300grams to 850grams, but the application covers all container sizes up to and including 1.14L.*

*The imported goods could be packaged in different containers such as cans, glass jars, pouches or Tetra packs<sup>1</sup>.*

*The imported prepared or preserved tomatoes can be labelled with a generic, a house brand / private label for retailer or a proprietary label. The imported goods the subject of this application covers all imported prepared or preserved tomatoes regardless of how labelled. The GUC are generically called prepared or preserved tomatoes.*

*SPCA understands that imported prepared or preserved tomatoes are commonly packed in cans, jars, pouches or Tetra packs in sizes typically ranging from 300grams to 850grams.*

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<sup>1</sup> Tetra packs are proprietary packaging mediums produced, under copyright, by the Tetra Pak company.

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The applicant claims that the imported product is marketed for sale in the Australian market under one of two tiers of product labelling:

- Private label product – product labelled with specific commercial branding to the specifications of Australian importers; or
- Proprietary label product – product labelled with proprietary commercial branding of the processor or exporter.

No assertions are made in the application regarding international standards of production applicable to the goods. Discernible quality or specification differences between the tiers of imported product, aside from specific differences in composition (for example cut profile) are also absent.

The ANZSIC code applicable to the domestic prepared tomato products industry is category 2130 for Division C: Manufacturing, Sub-division 21: Food, Beverage and Tobacco manufacturing, Heading 213: Fruit and Vegetable Processing, sub-heading 2130.

### 2.3 Tariff classification

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

There are currently no Tariff Concession Orders applicable to the relevant tariff subheading.

### 2.4 Like goods

Coles has 28 different Stock Keeping Units (SKUs) for tomatoes, 13 of which are Coles' private label. The private label tomatoes are at two tiers – Coles and Smart Buy. Coles stated that the product in the Coles and Smart Buy tomatoes is essentially the same with the only difference being in the packaging.

Coles stock a range of whole, diced, crushed and 'value add' canned tomatoes. Roma tomatoes are the predominant variety from Italy. Coles stocked a line of baby cherry tomatoes for a short time but this product has now been deleted from its offering.

Coles stated that the taste and colour of Australian tomatoes is slightly inferior to Italian tomatoes, although essentially the imported product and the Australian product have the same function and end use.

Coles provided us with specification sheets for Coles brand whole peeled and diced tomatoes (**confidential attachment 1**).

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### 3 COMPANY DETAILS

#### 3.1 Company background

Grocery Holdings Pty Ltd (Coles) is an Australian supermarket chain which has been operating in Australia since 1914, and until 2008 operated under Coles Group Limited. In 2008 Coles Group Limited was purchased by Wesfarmers, who continues to retain control of the just under 750 Coles stores Australia-wide, with a nation-wide staffing of over 100,000 employees.

As Coles approaches its 100<sup>th</sup> year of operation, it reports an estimated 19 million customers per week, contributing towards an estimated one billion transactions across Australia each year.

Coles supplies domestically-manufactured and imported foods to its customers shopping in-store at its various supermarket chains. Coles stated that it does not participate in any wholesale operations, and sells only to its private consumer base.

Coles estimates that it has about 26% of the grocery sector in Australia, with Woolworths having around 38%.

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

Coles advised that its financial year is from 1 July to 30 June, in line with the standard Australian financial year.

At the verification Coles explained that it operates a sophisticated accounting system incorporating several computerised systems to record and collate sales data from the hundreds of stores into a central operating system. Not only are retail sales recorded but also all dispatch and stock controls from warehousing facilities and distributors.

#### 3.3 Relationship with suppliers and customers

##### 3.3.1 Suppliers

Coles stated that it has no relationship with any of its suppliers of canned tomatoes, other than a normal commercial relationship of buyer and seller.

##### 3.3.2 Customers

Coles has no relationship with any of its customers.

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### 4 AUSTRALIAN MARKET AND SALES

#### 4.1 General

Coles stated that canned tomatoes make up around [REDACTED] of its total range of canned vegetables. It stated that the canned vegetable market as a whole is in decline.

In terms of branding Coles stated that some labels are names derived by the importer (for example Capriccio), but others are the manufacturer's own label, such as La Nova and Mutti. In the past Coles stocked a variety of tomato known as 'La Gina' but this has recently been replaced by the Capriccio brand. The Mutti brand is considered a premium label.

The market is segmented into three tiers – low cost (eg Smart Buy), mid-tier (eg Coles) and premium (eg Ardmona and some proprietary labels). Consumer demand dictates the proportions of each that Coles stocks, although it has a policy of always providing a low cost option across almost every range. Coles provided the following indicative prices for a 400g can across the various tiers:

- Smart Buy – [REDACTED] Coles – [REDACTED]
- Capriccio - \$1.35
- Mutti - \$1.85

Coles stated that consumers will readily switch between the middle and top tiers depending on special offers but buyers of the Smart Buy label are less likely to change brands.

#### 4.2 Distribution and Selling

Coles explained that while it operates out of distribution centres for the storage and subsequent division of goods for different sales centres, there is an emphasis on a 24-hour turnaround to ensure food remains fresh and to a minimum standard for sale. While frozen foods and fresh fruit such as apples may be stored for longer periods of time, Coles aims to make stock available to its stores as soon as possible. Coles stated that it does not engage in any wholesale business activity, and only sells its products to customers in-store.

#### 4.3 Sales

##### 4.3.1 Ordering and sales process

Coles explained that it conducted its tender process for products on an annual basis. The tender process involves forecasting required volumes for the following 12 months then sending these volume levels to tender participants who then send in their price offerings and negotiations commence from there.

When selecting the successful supplier of a tender process, Coles considers the quality of the product and the reliability of supply, not just the price. Once a supplier is selected,

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contracts are signed and Coles then orders the product for delivery on an as needed basis.

Suppliers build up relationships with Coles that assist with the confidence of supply issues. Coles maintains a list of approved suppliers, however Coles conducts its own tests on products for particular specifications and inspect production facilities regularly to ensure that all required standards are being met.

Labelling and design are done in-house at Coles and provided to the manufacturers for labelling prior to supply.

### 4.3.2 Price Setting

When purchasing proprietary labels, such as SPCA made products, an amount is factored into the purchase price for term discounts, which include amounts for settlement discounts, volume rebates and distribution centre allowances. This amount is currently [REDACTED] for dealing with SPCA. Terms are deducted from invoice amounts together with promotional discounts that have been applied over the proceeding payment period.

Coles advised that each state within Australia is its own cost centre. Pricing generally only differs for remote stores. Usually products are sold for the same price across stores and Coles wears the extra distribution costs associated with supply to more remote areas. Each store manager has the discretion to lower prices for competition reasons; however this is usually limited to fresh produce products.

When setting the retail sales price, Coles starts with the cost from the supplier and works on a margin to add by category. This margin generally starts at around [REDACTED], then factors such as promotional activity, ceiling price levels, wastage and store costs are factored in. Whilst suppliers do provide a recommended retail price, it is entirely at Coles' discretion as to what price it sells a particular product for.

Coles provided data relating to its sales of tomato products during the investigation period. The data was provided in an Excel spreadsheet and Coles advised that it came from their sales system. Coles did not provide any information to enable us to verify the accuracy of the total volume and value of sales to its management systems. The data is at **Confidential Appendix 1**.

The average selling price per kilogram by label and type based on the Excel spreadsheet was as follows:

**[CONFIDENTIAL TABLE]**

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### 4.3.3 Promotions

Promotional discounts may be in the form of case deals or a 'cents per unit' form. Whatever promotion is provided by a supplier is reflected in the price paid to the supplier. Coles advised that it partially funds catalogue promotions and so not all promotional costs are worn by the suppliers.

Coles provided the following information in relation to promotional activities with SPCA:

*"Promotion schedules are set in 6 monthly lots. These can include both catalogue promotions and shelf promotions. SPCA used to initiate promotions and volume uplifts with case allowance funding (min 20%) for regular shelf price reductions & Cat promotions, however has recently advised Coles that it can no longer afford to participate in continuing this promotional activity. It has proposed everyday promotional price reductions (similar to Coles Down Down programme on private label Coles products). Funding offered by SPCA for this activity is not at the level previously provided for regular shelf price reductions & Cat promotions, therefore Coles are still in negotiation with SPCA on this proposed activity. NB although SPCA previously provided a minimum 20% case allowance for promotions the actual promotional sell price often was discounted by substantially more than the offered case allowance. This additional level of discounting was covered by Coles and not passed on to SPCA. This would also be Coles' position in the outcome of our current negotiations."*

There is no minimum promotion required by Coles when contracting with a supplier. Without promotion though, sales volumes are likely to decrease. Generally suppliers approach Coles with promotional plans.

Promotions may take several forms. Coles has recently brought in the "down down" promotion whereby products are reduced in price for 6 months at a time, and this is usually in the amount of ■■■ discounted. There is promotional pricing where a special runs for one to two weeks at a time and there are catalogue promotions which usually involve a bundle of promotions from a particular supplier, for example, all SPCA products are on sale at one particular time.

Coles conducts weekly promotion meetings to decide on particular promotions based on available catalogue space and sales uplift factors. By placing a special advertisement in a catalogue there is usually instant sales volume uplift.

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### 5 IMPORTS

#### 5.1 Introduction

Coles imports tomatoes [REDACTED] direct from the manufacturer and also via an agent – [REDACTED]. Coles reported that the manufacturers of the goods supplied via [REDACTED] are:

- [REDACTED]

During the investigation period Coles also imported tomatoes directly from:

[REDACTED]  
[REDACTED]  
[REDACTED]

#### 5.2 Rationale for importing

Coles stated that there is consumer demand for an Italian tomato product, although it did not provide any evidence in support of this statement. Coles stated that as a consequence the Australian industry never competes head-to-head with imported product for tenders issued by Coles because the tender will specify Italian tomatoes or Australian tomatoes.

#### 5.3 Volume of trade

The following table summarises the volume purchased (in kilograms) from each source during the investigation period. The data is at Confidential Appendix 1.

**[CONFIDENTIAL TABLE]**

#### 5.4 Ordering process and price

Coles used the services of [REDACTED] to procure the majority of its imported canned tomatoes during the investigation period. Coles supplied a copy of its agreement with [REDACTED] dated 2007 (**confidential attachment 2**). It is stated to expire in 2011, however Coles advised that it continues in the same form currently. The commission stated in the agreement is [REDACTED] of the manufacturer's selling price. Some of the services that [REDACTED] is contracted to supply are:

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- Execution of all purchase orders by Coles at prices determined by Coles;
- Liaison with the manufacturer in relation to any queries associated with supply;
- Carry out quality assurance and compliance checks of the product to ensure it meets Coles' requirements;
- Check invoices against orders to ensure the goods supplied match requirements;
- Carry out market research activities in the country of supply, for example obtaining information about current market prices and conditions that may affect the future prices of the products;
- Manage freight forwarding; and
- Actively seek out new suppliers.

Coles stated that it deals directly with the manufacturer of the goods procured via [REDACTED] in relation to the specification and price of the goods and that it pays the manufacturer directly while [REDACTED] is paid the commission monthly on account. However the documents supplied by Coles in relation to selected importations show that [REDACTED] invoices Coles directly for the goods. The manufacturer is not identified on the invoice from [REDACTED]. The remittance advices provided by Coles show that it pays [REDACTED] for the goods. The documents provided therefore contradict Coles' verbal advice.

In response to the above Coles provided the following statement:

*"[REDACTED] is Coles' buying and shipping agent, however also purchases stock from our suppliers at the negotiated EUR price and submits "spot buy" costs in \$AUD. This has been utilised when there is a benefit to Coles in exchange rate, and was the preferred method of purchase for tomato shipments during the investigation period, however payments were also made directly to manufacturers."*

Coles supplied a copy of its current supply agreements with [REDACTED] [REDACTED] (**confidential attachment 3**). The agreements set out the net cost per unit and estimated supply volume for the term of the agreement.

### 5.5 Verification of imports

Coles did not complete the sales route spreadsheet prior to the visit but provided it following the visit at our request. Coles provided electronic copies of documents that it said pertained to each of the ten selected shipments. The initial data provided contained only seven of the selected shipments. Coles provided the documents for the remaining shipments following the visit. Copies of the documents are at **confidential attachment 4**.

One of the selected shipments was describe as tomato paste in the import database. The documents provided by Coles substantiated that it was an import of tomato paste so this shipment was excluded from the analysis.

We attempted to verify the documents to the sales route spreadsheet prepared by Coles but found it difficult to match the invoiced quantities and values to the Customs entries. During the checking of the documents it became apparent that the goods were generally shipped from Italy to a Coles hubbing facility in Malaysia. Coles had not volunteered this

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information at the visit so we enquired about the process of importation. Coles confirmed that the goods are generally sent to Malaysia, unpacked, sorted into deliveries by port of discharge in Australia and re-packed with other Coles retail goods that are destined for the same location.

In response to the above circumstance Coles provided the following statement:

*“This information on the route taken to ship tomatoes from Italy to Australia was not deemed to be relevant to the inquiry, as it was only utilised for some shipments during the 12 months of the investigation period plus any additional shipping costs utilising this route were not passed on to the final landed cost of the products.”*

For the selected shipments the invoice from the supplier/manufacturer shows the total quantity of goods sold for all Australian locations and occasionally provided a table showing the number of cartons destined for each port. We were able to verify the quantity and value shipped to an individual port that formed one of the Customs entries included in the selected shipments; however we are unable to verify that the total quantity of goods invoices was ultimately shipped to Australia.

For the above reason it was similarly difficult to calculate the importation costs associated with the selected shipments because the container numbers on the supplier invoices did not match the container numbers on the bills of lading and freight invoices to Australia. In addition the tomatoes were generally shipped with a large volume of other goods destined for Coles' retail stores so a high degree of apportionment is required to establish importation costs pertaining only to tomatoes.

Coles initially did not supply the freight costs associated with shipping the goods from Italy to Malaysia but provided them on our request.

Due to the complexities in establishing importation costs pertaining to tomatoes we have estimated these costs based on invoices from Coles' logistics providers that contained details of charges per container. We estimated that a typical 20-foot container of tomatoes would contain approximately 17,760kg of tomatoes and calculated a total importation cost per kilogram.

This can be considered a rough estimate only as we observed that there are significantly different ocean freight costs depending on the port of discharge in Australia and due to the fact some containers were sent directly from Italy to Australia while others were shipped via Malaysia.

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

Coles was unable to provide an income statement or any information to enable us to reliably establish the selling, general and administrative costs associated with the sale of tomatoes. It provided the income statement and other reports relating to its parent company – Wesfarmers – but these did not provide a sufficient level of detail relating to Coles' operations as distinct from other Wesfarmers' interests.

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### 5.7 Profitability

Due to the difficulties discussed above in establishing importation costs and the lack of information about SG&A costs we are unable to establish with any certainty the profitability of Coles' sales of tomatoes.

The revised sales route spreadsheet is at **Confidential Appendix 2**.

### 5.8 Export prices for selected shipments

The following table summarises the volume purchased and FOB unit price (in kilograms) of the imported product by label and type:

[CONFIDENTIAL TABLE]

Note that Coles was unable to provide details of any off-invoice rebates or discounts applied to the invoiced price for proprietary labels. The above values represent the invoiced price only.

### 5.9 Forward orders

Coles did not provide details of any forward orders.

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### 6 WHO IS THE IMPORTER AND EXPORTER

#### 6.1 Who is the importer?

We reviewed the documents provided in respect of the selected shipments. We note that:

- Coles is named as the customer on supplier invoices;
- Coles is named as the consignee on the bill of lading; and
- Coles officially takes ownership of the goods at the time they are loaded onto the ship for exportation.

We consider Coles to be the beneficial owner of the goods at the time of importation and therefore the importer, regardless of whether or not [REDACTED] provided services in association with the importation.

#### 6.2 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.

It is common for traders and other intermediaries to play a role in the exportation of the goods. These parties will typically provide services such as arranging transportation, conducting price negotiations, arrange contacts with the producer, etc.

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.

Subject to further inquiries we are satisfied that for all purchases – including those where [REDACTED] was the agent – the manufacturer of the goods can be considered the exporter of the goods imported by Coles. To our knowledge, these entities are principles in the country of export, which manufacture the goods and gave up the goods for shipment directly to Coles. Coles was unable to identify the manufacturer for import transactions via [REDACTED] in the purchases spreadsheet provided.

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### 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 arms' length transactions.

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; 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.

For purchases of proprietary label products the invoice price is not the price paid. As discussed these entities agree to spend promotional money to market the goods via either a print or electronic media or shelf price reductions of both. Under these circumstances, Coles deducts an amount from the invoice remittance. Pursuant to s.269TAA (1A) the Commission does not consider the promotional spend renders the sales as not arms' length. The Commission is aware of this type of practice in the supermarket retail sector and as such these commercial arrangements are an established trading practice.

We are satisfied that import transactions between Coles and its suppliers are at arms' length in terms of s. 269TAA.

For the purchases of non-proprietary label goods, we examined the commercial documents and evidence of payment. We found no information to suggest that the purchases from the suppliers were not arms' length.

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### 8 RECOMMENDATIONS

From our investigations, we are of the opinion that, for the goods imported by Coles via [REDACTED]:

- the goods have been exported to Australia otherwise than by the importer;
- the goods have not 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 canned tomatoes imported by Coles from all sources can be established under s.269TAB(1)(c) of the *Customs Act 1901* (the Act), having regard to all the circumstances of the exportation.

From our investigations, we are of the opinion that, for the goods imported by Coles directly from the manufacturer:

- 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 canned tomatoes imported by Coles from all sources can be established under s.269TAB(1)(a) of the Act, using the invoiced price, less deductions to the FOB level as required.

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<b>Confidential Appendix 1</b>	Sales and purchases data
<b>Confidential Appendix 2</b>	Sales route spreadsheet
<b>Confidential Attachment 1</b>	Specification sheets
<b>Confidential Attachment 2</b>	Agreement with [REDACTED]
<b>Confidential Attachment 3</b>	Supply agreements
<b>Confidential Attachment 4</b>	Source documents for selected shipments