



CUSTOMS ACT 1901 - PART XVB

STATEMENT OF ESSENTIAL FACTS NO. 217

**ALLEGED DUMPING OF PREPARED OR PRESERVED
TOMATOES**

EXPORTED FROM ITALY

4 February 2014

SEF 217 Prepared or preserved tomatoes - Italy

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ABBREVIATIONS

ACBPS	Australian Customs and Border Protection Service
ADA	Anti-Dumping Authority
ADN	Anti-Dumping Notice
AUD	Australian dollars
CFR	Cost and freight
CTM	Cost to make
CTMS	Cost to make & sell
CTS	Cost to sell
DDP	Duty Delivered Paid
EUR	Euro
Feger	Feger di Gerardo Ferraioli S.p.A.
FIS	Free into store
FOB	Free On Board
GAAP	Generally accepted accounting principles
La Doria	La Doria S.p.A.
NIP	Non-injurious Price
PAD	Preliminary Affirmative Determination
RBA	Reserve Bank of Australia
SEF	Statement of Essential Facts
SPCA	SPC Ardmona Operations Ltd
The Act	<i>Customs Act 1901</i>
The applicant	SPC Ardmona Operations Ltd
The Commission	The Anti-Dumping Commission
The Commissioner	The Commissioner of the Anti-Dumping Commission
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
the Minister	the Minister for Industry
The Parliamentary Secretary	The Parliamentary Secretary to the Minister for Industry
USP	Unsuppressed Selling Price
WTO	World Trade Organisation

1 SUMMARY AND RECOMMENDATIONS

This investigation is in response to an application by SPC Ardmona Operations Limited (SPCA) in relation to the allegation that dumped prepared or preserved tomatoes exported to Australia from Italy caused material injury to the Australian industry producing like goods.

This statement of essential facts (SEF) sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) proposes to base a recommendation in relation to the application.

1.1 Preliminary findings

The Anti-Dumping Commission (the Commission) has found that prepared or preserved tomatoes exported from Italy were exported at dumped prices during the investigation period, the volumes of dumped goods were not negligible and that those exports caused material injury to the Australian industry.

The Commission has found that prepared or preserved tomatoes exported to Australia by the following exporters during the investigation period were not dumped or dumped but with a negligible dumping margin:

- La Doria S.p.A (La Doria)
- Feger di Gerardo Ferraioli S.p.A (Feger).

Based on these findings, and subject to any submissions received in response to this SEF, the Commissioner proposes to recommend that the Parliamentary Secretary to the Minister for Industry (the Parliamentary Secretary) publish:

- a dumping duty notice in respect of all exports of prepared or preserved tomatoes from Italy except by La Doria and Feger.

In addition, the Commissioner also proposes to terminate the dumping investigation so far as it relates to La Doria and Feger, subject to submissions received in response to this SEF.

1.2 Application of law to facts

1.2.1 Authority to make decision

Division 2 of Part XVB of the *Customs Act 1901* (the Act) sets out, among other matters, the procedures to be followed and the matters to be considered by the Commissioner in conducting investigations in relation to the goods covered by an application.

1.2.2 Application

On 17 June 2013, SPCA lodged an application requesting that the Minister publish a dumping duty notice in respect of prepared or preserved tomatoes exported to Australia from Italy.

After examining the application, the Commissioner was satisfied that:

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- there was an Australian industry in respect of like goods; and
- there appeared to be reasonable grounds for the publication of a dumping duty notice in respect of goods the subject of the application.

On 10 July 2013, the delegate of the Commissioner decided not to reject the application and published a notice in *The Australian* newspaper of the initiation of this investigation.

In respect of this investigation:

- the investigation period¹ for the purpose of assessing dumping is 1 July 2012 to 30 June 2013; and
- the injury analysis period for the purpose of determining whether material injury has been caused to the Australian industry is from 1 January 2009.

1.2.3 Preliminary Affirmative Determination

The delegate of the Commissioner, after having regard to the application and submissions, was satisfied that there were sufficient grounds for the publication of a dumping duty notice in respect of prepared or preserved tomatoes exported to Australia by certain exporters from Italy, and made a preliminary affirmative determination (PAD)² to that effect on 1 November 2013. PAD 217 contains details of the decision and is available on the public record at <http://www.adcommission.gov.au/cases/EPR217.asp>.

To prevent material injury to the Australian industry occurring while the investigation continues, securities are being taken³ in respect of any interim dumping duty that may become payable in respect of prepared or preserved tomatoes from Italy that were entered into home consumption on or after 1 November 2013.

1.2.4 Statement of essential facts

The Commissioner must, within 110 days after the initiation of an investigation, or such longer period as the Minister allows, place on the public record a statement of the facts on which the Commissioner proposes to base a recommendation in relation to the application.

In formulating the SEF the Commissioner must have regard to the application concerned, any submissions concerning publication of the notice that are received by the Commission within 40 days after the date of initiation of the investigation and any other matters considered relevant.

The initiation notice advised that the SEF for the investigation would be placed on the public record by 28 October 2013. However, the delegate of the Commissioner was of the view that the prescribed 110 days to place the SEF on the public record for the investigation was likely to be insufficient and requested that the Minister extend the publication timeframes on two occasions.

¹ As defined by section. 269T(1).

² Under section 269TD.

³ Under section 42

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The Minister under s. 269ZHI of the Act extended the deadline for the publication of the SEF for the investigation to **4 February 2014**. Anti-Dumping Notice (ADN) Nos 2013/84 and 2013/103 were issued on 25 October 2013 and 12 December 2013 respectively notifying the Minister's decision.

Interested parties are invited to make submissions to the Commission in response to the SEF within 20 days of the SEF being placed on the public record. Final recommendations will be made in a report to the Parliamentary Secretary due on or before **21 March 2014**.

1.3 Preliminary findings and conclusions

The Commission has made the following findings and conclusions based on available information at this stage of the investigation.

1.3.1 The goods and like goods (Chapter 3 of this report)

Locally produced prepared or preserved tomatoes are like to the goods the subject of the application.

1.3.2 Australian industry (Chapter 4 of this report)

There is an Australian industry producing like goods of prepared or preserved tomatoes, being SPCA.

1.3.3 Market (Chapter 5 of this report)

The Australian market for prepared or preserved tomatoes is predominately supplied to the retail sector by the local Australian producer and imports from Italy.

1.3.4 Market situation (Chapter 6 of this report)

The evidence available to the Commission in the circumstances of the investigation is not sufficient to support a finding that these payments operate in a manner which distorts competitive market conditions and would lead the Commission to consider that it cannot use normal values pursuant to s.269TAC(1) (sales made in the ordinary course of trade).

1.3.5 Dumping (Chapter 6 of this report)

The Commission has assessed that prepared or preserved tomatoes exported to Australia from Italy during the investigation period were dumped (except by La Doria and Feger which were found to have negligible margins). The dumping margins determined for all exporters are set out below.

Manufacturer/Exporter	Visited	Dumping margin
Selected exporters		
La Doria	Yes	0.50%
Feger	Yes	1.25%

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De Clemente Conserve S.p.A (De Clemente)	Yes	3.25%
Conserve Italia Soc. Coop Agr (Conserve Italia)	Yes	4.54%
I.M.C.A. S.p.A (IMCA)	No	26.35%
Lodato Gennaro & C. S.p.A.(Lodato)	No	26.35%
Residual exporters		
Princes Industrie Alimentari SRL	No	5.06%
Attianese S.p.A.	No	5.06%
Fiamma Vesuviana Srl	No	5.06%
Greci Industria Alimentare S.p.A.	No	5.06%
Menu Srl	No	5.06%
Mutti S.p.A.	No	5.06%
Nolana Conserve Srl	No	5.06%
Rispoli Luigi & C (S.R.L.)	No	5.06%
Steriltom Srl	No	5.06%
Un Cooperative exporters (All other)	No	26.35%

1.3.6 Injury Assessment (Chapter 8 of this report)

The Commission is satisfied that the Australian industry producing like goods has experienced material injury in the form of;

- loss of sales volume;
- loss of market share;
- price depression;
- price suppression;
- reduced profits;
- reduced profitability;
- reduced revenues;
- reduced return on income; and
- loss of employment.

1.3.7 Has dumping caused material injury (Chapter 9 of this report)

The Commission is satisfied that the material injury experienced by the Australian industry is as a result of dumped imports from Italy.

1.3.8 Will dumping and material injury continue? (Chapter 10 of this report)

The Commission is satisfied that dumping and material injury will continue if measures are not imposed.

1.3.9 Non-injurious price (Chapter 11 of this report)

The Commission considers that the non-injurious price (NIP) can be established by reference to a constructed minimum selling price that the Australian industry could be expected to achieve in a market unaffected by dumping.

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The Commission has determined that the NIP exceeds normal values. This means that the recommended rates of interim dumping duty equals the corresponding dumping margins. The Commission proposes that the measures be in the form of a combined fixed and variable duty with the fixed component to be calculated as a percentage of the Free On Board (FOB) export price.

2 BACKGROUND

2.1 Authority to make decision

Division 2 of Part XVB of the *Customs Act 1901* (the Act) sets out, among other matters, the procedures to be followed and the matters to be considered by the Commissioner in conducting investigations in relation to the goods covered by an application.

2.2 Initiation

On 17 June 2013, an application was lodged by SPCA requesting that the Minister responsible for anti-dumping publish a dumping duty notice in respect of prepared or preserved tomatoes exported to Australia from Italy.

SPCA allege the Australian industry has suffered material injury caused by prepared or preserved tomatoes exported to Australia from Italy at dumped prices.

The applicant claim the industry has been injured through:

- loss of sales volume;
- reduced market share;
- reduced revenues;
- price depression;
- price suppression;
- reduced profits;
- reduced profitability;
- reduced cash flow; and
- reduced attractiveness for reinvestment in the tomato processing business.

The Commissioner was satisfied that the application was made in the prescribed manner by a person entitled to make the application.

Public notification of initiation of the investigation was made on 10 July 2013 in *The Australian* newspaper and ADN No. 2013/59.

2.3 Previous cases

In April 1992, the then Minister for Customs accepted the recommendations of the Anti-Dumping Authority (ADA) report (No. 68 of April 1992) and imposed countervailing duties on canned tomatoes from Italy, Spain and Thailand and dumping duties on the same goods from Italy and China.

Following a Federal Court challenge by an Italian exporter, the countervailing and dumping duties on canned tomatoes from Italy were removed in June 1993. Pursuant to a subsequent appeal to the Full Bench of that Court by the ADA, the Minister reinstated the duties. In February 1994, as a result of the Court decision, importers were advised that dumping and countervailing duties would be payable on future imports but that the amount of duty was to be reassessed. This was addressed in ADA report No. 124 of May 1994.

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In 1997 the ADA (Report No. 169) concluded a continuation inquiry whereby countervailing and dumping duties on canned tomatoes from Italy were continued for a further five years.

In 2001, an application to continue the countervailing duty measures was submitted with the Trade Measures Branch of the ACBPS. Following an inquiry the ACBPS concluded that the measures should continue for a further five years (Trade Measures Report No. 52 refers). The Minister took steps to continue those measures for a further five years. The measures lapsed on 27 April 2007.

2.3.1 Current measures

There are currently no anti-dumping or countervailing duties applying to the goods exported to Australia.

2.4 Preliminary affirmative determination

The delegate of the Commissioner, after having regard to the application and submissions, was satisfied that there were sufficient grounds for the publication of a dumping duty notice in respect of prepared or preserved tomatoes exported to Australia from Italy and made a preliminary affirmative determination (PAD) to that effect on 1 November 2013. PAD 217 contains details of the decision and is available on the public record at <http://www.adcommission.gov.au/cases/EPR217.asp>.

To prevent material injury to the Australian industry occurring while the investigation continues, securities are being taken ⁴ in respect of any interim dumping duty that may become payable in respect of prepared or preserved tomatoes from Italy that were entered into home consumption on or after 1 November 2013.

2.5 Statement of Essential Facts extensions

Pursuant to s.269ZHI of the Act, the Commission sought and was granted two extensions by the Minister that provided additional to time to publish this SEF.

The initial extension was sought to allow exporters sufficient time to complete the exporter questionnaire as the timing of the initial response period conflicted with the harvest and processing of raw tomatoes in Italy. The granting of this extension allowed the Commission to publish this statement on 16 December 2013.

A second extension was requested when information came forth putting into question the determination of the roles of parties following the verification visit. The Commission needed to examine all the relevant circumstances of this trading relationship before it could conclude the dumping margin calculations for certain exporters. The second extension allowed the Commission to publish this statement on or before 4 February 2014. For more information on these extensions refer to ADNs 2013/84 and 2013/103.

The Final report with the Commissioner's recommendations is to be provided to the Parliamentary Secretary on or before 21 March 2014.

⁴ Under section 42

2.6 Responding to this SEF

This SEF sets out the essential facts on which the Commission proposes to base its final recommendations to the Parliamentary Secretary.

This SEF represents an important stage in the investigation. It informs interested parties of the facts established and allows them to make submissions in response to the SEF.

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

Interested parties have 20 days to respond to the SEF. The Commission will consider responses received in that timeframe in making its final report to the Parliamentary Secretary. The report will recommend whether or not a dumping duty notice should be published, and the extent of any interim duties that are, or should be, payable.

Responses to this SEF should be received by the Commission no later than 24 February 2014. The Commissioner is not obliged to have regard to any submission made in response to the SEF received after this date if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Parliamentary Secretary.

The Commissioner must report to the Parliamentary Secretary by 21 March 2014.

Submissions should preferably be emailed to operations1@adcommission.gov.au. Alternatively, they may be sent to fax number +61 2 6275 6990, or posted to:

Director Operations 1
Anti-Dumping Commission
Customs House
5 Constitution Avenue
Canberra ACT 2601

Confidential submissions must be clearly marked and a non-confidential version of any submission is required for inclusion on the Public Record.

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

The Public Record contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's visit reports and other publicly available documents. It is available online at www.adcommission.gov.au or by request in hard copy in Canberra by phoning (02) 6275 6547 to make an appointment.

2.7 Safeguards inquiry

On 26 September 2013 the Productivity Commission released its accelerated report titled *Safeguards Inquiry into the Import of Processed Tomato Products, Productivity Commission Accelerated Report*. The final report was released on 12 December 2013.

Whilst many submissions were made by interested parties citing the accelerated report and claiming that the report supports the claims that exported Italian prepared or preserved tomatoes are not the cause of injury to the Australian industry, the safeguard inquiry uses different tests and has stated that the term *serious* injury used in the safeguards inquiry and *material* injury used in the anti-dumping context have different thresholds.

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Furthermore the accelerated report also examined in addition to the Article 2.1 of the World Trade Organisation (WTO) Agreement on Safeguards, if provisional safeguard measures should apply using the test contained in Article 6 of the WTO Agreement on Safeguards, which states inter alia, *in critical circumstances where delay would cause damage (to the domestic industry) which it would be difficult to repair*. The Productivity Commission found no evidence to satisfy this test.

In the December 2013 report the Productivity Commission succinctly described the main differences of the Safeguards and anti-dumping investigations:

Anti-dumping measures are distinct from safeguard measures, and different tests are applied for the two types of trade remedies. A key point of difference is that anti-dumping duties are intended to remedy injury caused when the price of imports is below their 'normal value'. By contrast, safeguard measures are intended to remedy injury caused by a recent surge in the quantity of imports. Dumping could be a factor causing a surge in imports if dumping was a recent occurrence. It does not follow that the imposition of dumping duties means safeguards are also warranted. Dumping may have been occurring over a long period of time, and is not a necessary or sufficient condition for a finding that safeguards are warranted.

A second point of difference relates to the level of injury that the domestic industry must have suffered for the measures to be applied. Anti-dumping duties can be applied if 'dumped' imports are causing or threatening to cause material injury to the domestic industry. Safeguard measures can be applied if increased imports are causing or threatening to cause serious injury to the domestic industry. Although the WTO Agreement on Safeguards provides no clear guidance on what constitutes serious injury, it is consistently interpreted as being a more demanding test than the material injury test applying in anti-dumping.

Because the two systems are intended to deal with different circumstances, and apply different tests to determine whether measures are warranted, there should be no expectation that a finding that measures are warranted under one system would lead to a similar finding under the other. Conversely, a finding that measures are not warranted under one system would not automatically lead to the same finding under the other⁵.

The Anti-Dumping Commission supports this view.

The Productivity Commission found the evidence pursuant to Article 2.1 of the WTO Agreement on Safeguards to apply safeguard action did not exist namely:

"Finding 2.1

There has not been a sufficient increase in import volumes of the products under reference to satisfy the requirement under Article 2.1 of the WTO Agreement on

⁵ Productivity Commission, Safeguards Inquiry into the Import of Processed Tomato Products Report, 12 December 2013, p 20

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Safeguards. However, there is evidence that imports have increased relative to domestic production, sufficient to meet the WTO standard. This change was largely driven by changes in domestic production.

Finding 2.2

Increased imports of the processed tomato products under reference have not caused serious injury to the domestic industry producing like or directly competitive products. Instead, the injury has resulted from a combination of factors, including:

- *sustained competitive pressure from imports*
- *supermarket private label strategies, facilitated by the appreciation of the Australian dollar*
- *extreme weather events.*

Therefore, safeguard action under the WTO Agreement on Safeguards is not warranted".⁶

⁶ Ibid p15

3 THE GOODS AND LIKE GOODS

3.1 Preliminary finding

The Commission considers that locally produced prepared or preserved tomatoes are like to the goods the subject of the application (the goods).

3.2 Legislative framework

Subsection 269TC(1) of the Act requires that the Commissioner must reject an application for a dumping duty notice if, inter alia, the Commissioner is not satisfied that there is, or is likely to be established, an Australian industry in respect of like goods.

In making this assessment, the Commissioner must firstly determine that the goods produced by the Australian industry are “like” to the imported goods. Subsection 269T(1) defines like goods as:

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

An Australian industry can apply for relief from injury caused by dumped or subsidised imports even if the goods it produces are not identical to those imported. The industry must however, produce goods that are “like” to the imported goods.

Where the locally produced goods and the imported goods are not alike in all respects, the Commission assesses whether they have characteristics closely resembling each other against the following considerations:

- i. physical likeness;
- ii. commercial likeness;
- iii. functional likeness; and
- iv. production likeness.

3.3 The goods

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 goods excluded from this definition are pastes, purees, sauces, pasta sauces, juices and sundried tomatoes.

3.4 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.

3.5 Claims by interested parties

The majority of interested parties were in agreement that the Australian industry produced like goods to those exported from Italy. However the Commission was informed that there may be another producer of like goods apart from SPCA.

Some interested parties submitted that a significant factor to consider when defining like goods is the significant commercial differences that occur between a private label and a proprietary label sold into the retail sector. Suppliers of proprietary label products incur significant promotional expenditure to market their products with retailers. In contrast, suppliers of private label products do not incur such expenses as promotional activity for these products are the responsibility of the retailers.

It was suggested that for proprietary labels, a sales force, significant or otherwise, is required to gather orders and provide merchandising support. This is in addition to the promotional support required to maintain a presence on the market shelf.

A further claim was made by importers that the Australian made goods are not like to the goods exported from Italy due to a claim that tomato paste was used by SPCA in producing some of their goods, which was not present in the Italian imported goods.

3.6 The Commission's assessment

The Commission's inquiries into whether there are other members of the Australian industry producing like goods reveals that there are other manufacturers of preserved tomatoes produced goods in containers exceeding 1.14 litres. Given that these goods were primarily destined for the food, service and industrial sector and did not compete against imports in the retail sector, the Commission considers that these other manufacturers do not produce like goods and are therefore not considered part of the Australian industry.

SPCA alleged in its application that the industry produces like goods to the goods the subject of the application by addressing the factors in the like goods framework generally used by the Commission in making its assessment. Based on information gathered from SPCA, importers and exporters during the investigation the Commission considers that the Australian industry produces like goods on the following grounds:

- *physical likeness* - the primary physical characteristics of imported and locally produced goods are similar. Whilst recipes differed slightly amongst the numerous producers, the key ingredient in the imported and locally produced goods are raw tomatoes and tomato juice. SPCA's products were also sold in the same packaging as the imported goods, being available in 400 gram (g) net weighted and 800g size cans; Whilst SPCA may use tomato paste to thicken the juice surrounding the tomatoes in the can, many Italian exporters used a tomato juice concentrate for similar purposes.

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- *commercial likeness* - the imported and locally produced goods are commercially alike, directly competitive and are sold to common customers. Whilst differences exist in terms of the promotional activities associated with sales of proprietary and private label products, the Commission does not consider this diminishes the view that prepared or preserved tomatoes are commercially alike. This issue is further addressed at section 5.2.1 of this report;
- *functional likeness* - the imported and locally produced goods are functionally alike as they have the same end-uses; and
- *production likeness* – based on visits to SPCA and exporters of prepared or preserved tomatoes, the Commission has confirmed that the imported and locally produced goods are manufactured in a similar manner.

The Commission considers that SPCA produces like goods that have characteristics closely resembling, the goods the subject of the application. Consequently the Commission considers that the goods manufactured by SPCA are like goods to the goods under consideration.

3.7 Close processed agricultural goods

In its application SPCA indicated that the prepared or preserved tomato products are not close processed agricultural products. SPCA stated the fresh tomatoes used in the production of the prepared or preserved tomato products are not substantially devoted to the production of prepared or preserved tomato products.

The Commission was advised that the vast majority of tomatoes grown for processing in Australia are used in the production of tomato paste, passata and other tomato based products with a small portion being used in the production of the prepared or preserved tomatoes.

The Commission found that the tomatoes sourced by SPCA were purchased from a single supplier. The Commission was informed that this single source was a grower and processor of tomatoes and also acted as a trader for other tomato growers.

The Commission considers that the goods are not close processed agricultural goods.

4 THE AUSTRALIAN INDUSTRY

4.1 Finding

The Commission has found that:

- the like goods were wholly manufactured in Australia; and
- there is an Australian industry consisting of SPCA that produce like goods in Australia.

4.2 Legislative framework

The Commission must be satisfied that “like” goods are produced in Australia. Subsections 269T(2) and 269T(3) of the Act specify that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. In order for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

4.3 Production process

SPCA advised the production process in relation to prepared or preserved tomatoes is standardised for all products with marginal differences made at various production stages depending on specific product variables (such as cut profile and value adding).

SPCA submitted it undertakes a substantial process of manufacture in the production of like goods. The Commission was able to confirm during its verification visit the following production activities performed by SPCA:

1. Raw material delivery

Fresh tomatoes are delivered to SPCA’s production facility directly from local tomato growers. SPCA requires tomatoes to be delivered on the same day they are harvested from the vine.

2. Washing, grading and peeling

SPCA aims to process tomatoes from delivery to an intermediate finished product (unlabelled can) within 24 hours.

Accordingly, fresh tomatoes are moved from the point of delivery to the processing line and are washed and graded to into tiers of quality:

- Higher quality tomatoes are graded for processing as canned prepared or preserved tomato products;
- Lower quality tomatoes are graded for use in the production of juice which is either used as filling in the canning process or evaporated and used to produce concentrates and paste products.

Tomatoes bound for processing are then peeled using a steam-peeling process.

3. Second grading

Peeled tomatoes are then graded for a second time according to peeled quality. Higher quality peeled tomatoes are selected for processing for whole tomato products, lower quality tomatoes are graded for dice, chop or crushed cut profiles in descending order depending on specific quality profiles.

4. Filling and liquid adding

Once sorted and processed according to cut profile, all products are moved for canning. Each can is filled with standardised ratios of processed tomatoes to liquid filling stage (juice derived from stage 2). Products are then sorted by can size and cut profile.

At this stage, depending on specific product requirements, certain cans are produced with additional ingredients such as herbs, spices and other flavouring. These products are internally delineated by can size, cut profile and additional ingredients and are summarily referred to as 'value added' products.

5. Pasteurisation, cooling and labelling

Once filled to product specifications, cans are sealed and pasteurised (cooked) to preserve the product and then moved to cool to ambient temperature.

Once cooled, all unlabelled cans (referred to as the 'bright can' stage) are moved to storage according to product grouping.

Cans are labelled depending on specific order requirements and customer demands on an as-needed basis prior to shipping.

4.3.1 Other producers

As discussed at Section 3.6 of this report, the Commission became aware of other manufacturers of prepared or preserved tomatoes. The Commission wrote to other prospective manufacturers of the goods and was informed that they do not produce prepared or preserved tomatoes in containers not exceeding 1.14 litres.

4.4 The Commission's assessment

The Commission has found that:

- there is an Australian industry⁷ consisting of SPCA producing like goods; and
- the like goods were wholly manufactured in Australia.

The Commission considers SPCA to be the only manufacturer of the goods in Australia with container sizes not exceeding 1.14 litres.

⁷ For the remainder of the report the term, Australian industry and SPCA are used interchangeably.

5 AUSTRALIAN MARKET

5.1 Finding

The Commission estimates that in the 2013 financial year the size of the prepared or preserved tomatoes market was approximately 54,000 tonnes. The Commission has established that the goods are predominantly sold into the retail sector by SPCA and importers.

5.2 Market supply and structure

The Commission found the goods, apart from a small quantity of sales to the food service industry sector, are sold to retail consumers via supermarkets and grocery stores and the smaller independent food outlets. Retailer supply chains for the goods are via importations on behalf of the retail outlet, direct importations by the retail outlet and, or direct purchases from the Australian industry.

The Commission notes there whilst there are a large number of importers of prepared or preserved tomatoes from Italy, the vast bulk of the imported goods are either purchased directly by the major supermarkets or on their behalf via a smaller subset of importers.

SPCA sells directly to the major supermarkets and other retail outlets. The Commission did not find other Australian manufacturers of like goods selling into the Australian market.

Despite the numerous outlets available to the retail consumer, the Commission estimated that approximately 82% of all prepared or preserved tomato sales occur via the major supermarkets comprising Coles, Woolworths, Aldi and the Metcash network of supermarkets (IGA etc).

5.2.1 Products

The Commission found the goods can be separated into two groups being private labels and proprietary labels. The distinction between the two labels is that private labels are brands created and owned by the supermarkets with the goods being made under toll type arrangements. Examples of private label goods include Coles Brand, Coles Smart Buy, Woolworths Home Brand, Woolworths Select, etc.

A proprietary label is generally created and owned by the manufacturer or distributor such as Annalisa, Ardmona, Edgell, Val Verde, etc.

Within the two types of label categories the Commission also found that there were five general sub-categories. These were; diced/chopped, crushed, whole peeled, value added and miscellaneous. Value added were prepared or preserved tomatoes with the addition of other ingredients such as herbs and vegetables and in some instances tomato paste. The miscellaneous category included prepared or preserved baby tomatoes, cherry tomatoes and organic etc.

5.2.2 Quality

The Commission examined the prepared or preserved tomatoes pricing and was informed by interested parties, that the consumer price points for the various goods was a function of the label appearance, type of can (lacquered with easy opening lid (ring pull top) or standard can) and on opening, sight, smell and taste. In terms of production costs, premium priced products typically were more expensive to produce due to the container type being an internally lacquered can with a ring pull top. Standard cans with standard lids were typically cheaper due to the raw material costs of these cans.

Interested parties indicated that content quality also had an impact on producer's costs. A higher brix (measure of sugar content) resulted in a thicker and a more flavoursome product due to, primarily, the inclusion of a tomato juice concentrate.

5.2.3 Buying arrangements

An important element in the market structure of the goods is the manner in which the major supermarkets procure the goods.

The Commission found that private labels are usually purchased under tender. Before being included in the tender offer, the producer must be certified with the major retailer. Once certified they are invited to tender in accordance with product specifications and volumes required. The tender documents are forwarded to producers before the commencement of the harvest season.

Once parties agree on price, it is fixed for the term of the contract which is usually twelve months with shipment of the goods occurring as required up to the level of the contracted volume.

Retailers advised that price was not the only consideration in the awarding of contracts. Other considerations include the business relationship, quality, and ability to supply the contracted volume.

For proprietary labels, major retailers are often approached by suppliers or distributors. The purchase price is negotiated however the invoice price is not the final price. For proprietary label purchases, major retailers seek a promotional plan. In this plan vendors indicate when and by how much they will spend on promoting their products. For items on special to the retail customer, the vendor typically funds the discount to the shelf price.

For proprietary labelled products, in addition to the promotional expenditure, vendors were also required to provide trading terms. The Commission found that these varied between retailers and varied by function. The trading terms were again an adjustment to the invoiced selling prices for various activities undertaken by the retailer.

5.2.4 Selling arrangements

The Commission found that the label had relevance to the sale and marketing of the goods.

Private labels were marketed by the supermarkets and any promotion or discounts were funded by the supermarket. In contrast, proprietary label goods were sold with a

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promotion schedule which included inter alia, price reductions and other promotion strategies. The Commission found that pricing promotions or price discounting were funded in the main by the vendor of the goods.

Supermarkets maintain a shelving plan that shows the locations of particular products on the supermarket shelves. Typically product categories are grouped together; for example prepared or preserved tomatoes. Within the plan are preferred positions, such as eye height shelving which is generally reserved for products with the highest sales volume. The top shelf and bottom shelves are reserved for products that are low volume sellers and, or are soon to be deleted from the product range.

From the evidence provided by SPCA the Commission confirmed that private label products were located in the preferred locations whilst its products were placed in the unfavourable locations on the shelving plan.

The Commission considered the distinction between private and proprietary labels important when examining the vendors selling documents and the purchasers purchasing documents as the invoice price was not always an accurate determination of the net sales revenue for the vendor or the purchase price for the buyer.

Accordingly, when the Commission examined wholesale prices it eliminated all selling terms and promotions to achieve net selling prices.

5.2.5 Pricing tiers

Interested parties indicated the goods were broken into either three or four tiers of pricing when sold to the retail customer. The Commission examined this and found that prices could generally be grouped into the following four label categories from highest to lowest priced:

- Local proprietary labels;
- Italian proprietary labels;
- Premium private labels; and
- Generic or value private labels.

Figure 1 below shows the high and low range of 400g chopped/diced retail shelf prices over the investigation period for the four categories. Similar pricing patterns were evident in 800g cans.

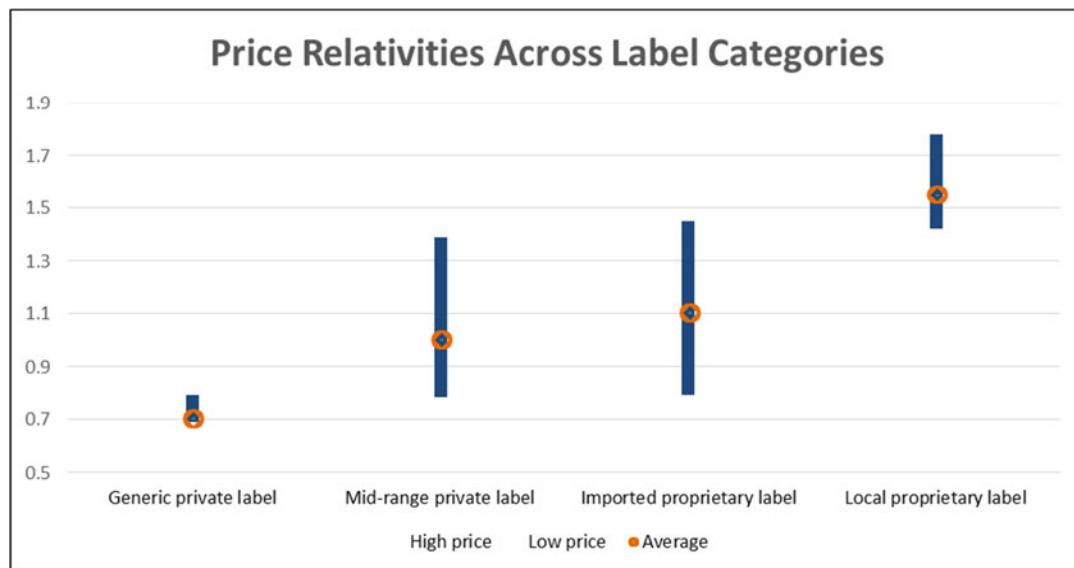


Figure 1 – Retail shelf prices by label categories

Within each of the label categories, further price differentiation was evident which largely reflected differences in the recipes or quality of tomatoes. Whole, chopped or diced cans were generally evenly priced on a per kilo basis, followed by organic and value added goods.

To examine these prices the Commission requested point of sale selling prices from the retailers. The Commission also received AZTEC point of sale data via SPCA. This included sales from the major retailers except Aldi Partnership. The available data confirmed the tiers of pricing discussed above.

The Commission found that for the goods under investigation, in particular SPCA's goods, proprietary Italian labels and the premium private labels, sales volumes notably increased in response to price discounting. The Commission examined the impacts of price discounting and volume impacts from the information supplied by retailers and found a strong correlation between price reductions and increase sales volumes.

Figure 2 indicates the impact on volume for premium private or proprietary labelled goods when price discounting occurs at the retail level. It shows the sales volumes are highly responsive to price decreases.

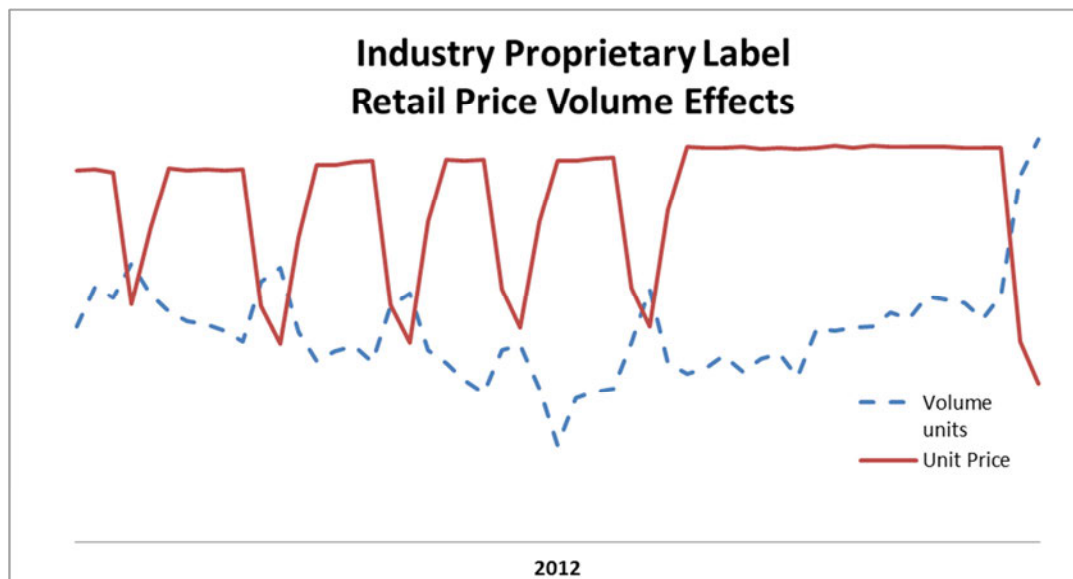


Figure 2 – Relationship between prices and volumes of proprietary label

The Commission also examined the generic or value end of prepared or preserved tomatoes with regard to price elasticity of demand and found that pricing was static in this category and the volume sold moved more in line with seasonal trends—a slight tapering of sales volumes in the warmer months.

In April 2011, Coles extended the ‘*down down*’ promotional strategy to its premium private label reducing a 400g (net) can from \$1.19 to \$0.80 (retail price). This dramatically changed the retail pricing of Italian prepared or preserved tomatoes. The relevance of the ‘*down down*’ program is that Coles indicated that price will remain low.

5.3 Market size

The Commission used information gathered from SPCA, exporters, importers and the ACBPS import database to examine the Australian market size for prepared or preserved tomatoes.

Figure 3 depicts the Commission’s estimate of the Australian market size for prepared or preserved tomatoes. It is estimated that the Australian market for prepared or preserved tomatoes was approximately 54,000 tonnes in the 2013 financial year. The Commission found the market size has decreased approximately 8.9% when compared to the 2010 financial year.

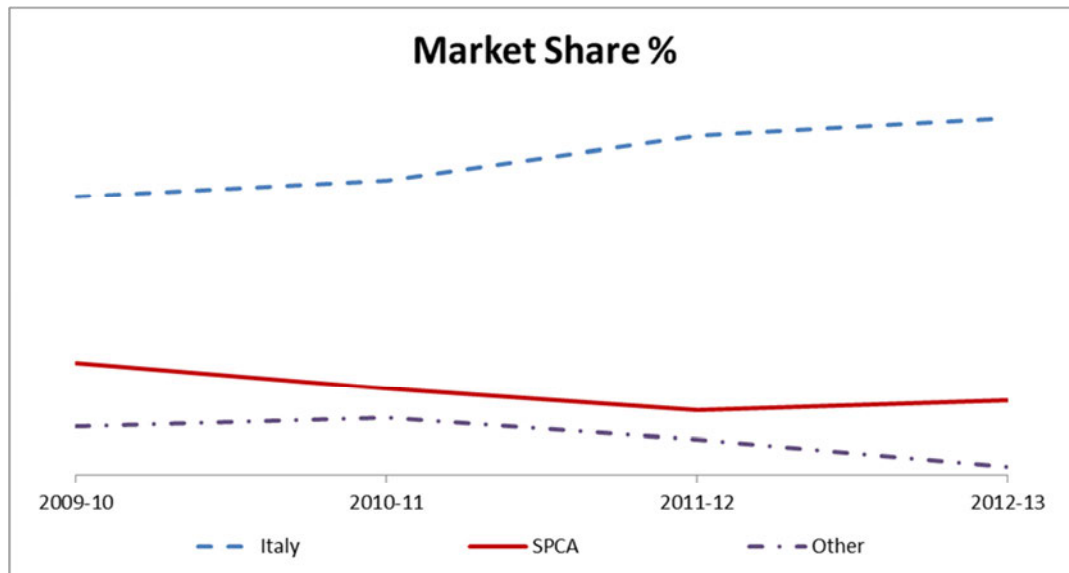


Figure 3 – Australian market size using ACBPS data base and SPCA sales data

When examined in totality the volume of the goods exported from Italy increased 16.4% since June 2010, whilst SPCA and other countries' volumes decreased by 39.7% and 84.9% respectively.

5.4 Importers

The Commission performed a search of the ACBPS import database and identified importers of prepared or preserved tomatoes. Relevant information was requested from the following importers with a view to undertaking verification of information provided:

- Woolworths Ltd
- Grocery Holdings Pty Ltd
- Metcash Trading Ltd
- Aldi Partnership
- Conga Foods
- Orange and Green Pty Ltd
- P&T Basile Pty Ltd
- Leo's Imports

Aldi Partnership and Leo's Imports declined to provide requested information and did not cooperate with the investigation. Verification was undertaken with the remaining importers which accounted for approximately 60% to 70% of prepared or preserved tomato volume exported from Italy during the investigation period.

Visit reports for the above importers can be found on the electronic public record available on the Commission website at <http://www.adcommission.gov.au/>.

The Commission found the importers generally operated in one of three ways – as an indent importer selling the goods on the water before arrival into Australia, importing the goods and acting as a distributor to smaller retailers or importers purchasing the goods either from the exporter or via an intermediary and then selling the goods in their store to retail customers.

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6 MARKET SITUATION

6.1 Background

Section 269TAC(1) of the Act provides that the normal value of any goods exported to Australia is the price paid or payable for like goods sold domestically in the ordinary course of trade in arm's length transactions. However, s.269TAC(2)(a)(ii) provides that the normal value of the goods exported to Australia cannot be determined under subsection (1) where the Minister is satisfied that:

'...because the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under subsection (1)'.

One such situation may be where domestic selling prices in the country of export have been materially affected by government influence rendering those prices unsuitable for use in establishing normal values.

Where such a market situation exists, normal value cannot be established on the basis of domestic sales. Instead, the normal value may be determined on the basis of a cost construction or third country sales. Therefore, a determination as to whether there is a market situation has potential consequences for the assessment of normal value and dumping margins.

In its application SPCA did not claim that a 'market situation' exists in Italy and domestic sales of prepared or preserved tomatoes are not suitable for determining normal values. During previous investigations into the alleged dumping and/or subsidisation of goods exported from member countries within the European Union (EU), processed dried currants being the most recent example, the Commission has become aware of certain agricultural development and support policies that are administered by EU member states (in cooperation with the European Committee (EC) and other bodies).

These policies provide for various forms of support and development assistance to be delivered to agricultural sectors including, but not limited to, the cultivation of products for processing.

Preliminary research into publically available information highlighted a number of common policies established under formal EU regulations which may apply to the cultivation of tomatoes for processing, and the production of like goods sold into the Italian domestic market.

The Commission is aware that the primary agricultural policy applicable throughout the EU (and administered by the European Commission) is referred to as the Common Agricultural Policy (CAP). The European Commission states that the main aims of the CAP are: "[T]o improve agricultural productivity, so that consumers have a stable supply of affordable food. To ensure that EU farmers can make a reasonable living."⁸

⁸ European Commission, *The Common Agricultural Policy: A partnership between Europe and Farmers*, p.3, available at: http://ec.europa.eu/agriculture/cap-overview/2012_en.pdf.

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The Commission understands that the CAP has undergone a number of reforms. In 2003 reforms were initiated shifting support towards direct aids to farmers, and away from price support (commonly referred to generally as 'de-coupling' reforms). This has significantly changed the mechanisms through which support mechanisms and benefits are administered to achieve its key policy objectives.

Available information also indicated to the Commission that the CAP is still operational within the EU and is administered, including within Italy.

At the time of initiation, the Commission considered that there was sufficient information to warrant inquiring into whether the EU's agricultural policies created a market situation that led to a distortion of competitive market conditions to such an extent that domestic sales were no longer suitable for establishing normal values.

6.2 Market situation

The Act does not provide any definition of particular circumstances or factors which would satisfy the Parliamentary Secretary that a 'market situation' exists in a domestic market. The WTO Anti-Dumping Agreement is similarly silent in relation to the definition of the concept of a 'particular market situation' referred to within Article 2.2.

The Commission considers that the nature of the consideration at the heart of the market situation analysis involves consideration of all relevant market variables in relation to the subject good in totality and, as such, the term 'a situation' for the purposes of the subsection defies precise definition. To this end, the Commission is of the view that 'a situation' refers to the presence of a factor or composite factors which collectively operate to cause a degree of distortion in the market that renders arm's-length transactions in the ordinary course of trade in that market unsuitable for use in determining normal values.

More specifically, the Commission considers that a market situation assessment involves an examination of factors which may affect the interaction of supply and demand in a sector, industry or particular market, to a considerable extent that prices and costs in that market can no longer be viewed as being established under those market principles. To that end, the Commission considers that governments can directly influence domestic prices through the imposition of restrictions on how prices are charged for a product. This can be in the form of direct price regulation (floor or ceiling pricing mechanisms) or indirect influence through policies that impact on the supply of the subject goods or the supply or price of inputs used in the production of the subjects goods.

The influence of government does not, in itself, mean that a 'market situation' exists. The Commission needs to examine the effect such influence has on the market and the extent to which domestic prices are distorted and unsuitable for proper comparison with corresponding export prices.

The Commission considers that, in the context of this analysis, evidence of Government policies and programs, including but not limited to the CAP, that confer benefits which specifically or indirectly flow to the relevant market under consideration, may have an effect on the domestic commerce with respect to the goods. The Commission holds that this information is relevant to analysis of whether factors exist which can be characterised as a 'market situation' for the purposes of s.269TAC(2)(a)(ii).

6.2.1 Evidentiary threshold

The Commission notes that the Act does not provide any guidance, implicit or explicit, to the evidentiary standard required to warrant a finding being made that a situation exists in the market for the purposes of s. 269TAC (2)(a)(ii). Ultimately, the Parliamentary Secretary must be satisfied that because the situation in the domestic market, domestic prices are not suitable for determining normal values under s.269TAC(1).

The Commission considers that the issues as to whether or not a 'market situation' exists in the domestic market of an exporting country, is a matter for the Parliamentary Secretary to consider whether he or she is satisfied on the basis of consideration of the totality of all relevant available evidence that a 'market situation' exists for the purposes of s. 269TAC(2)(a)(ii) in so far as the evidence provides a reliable understanding of the prevailing characteristics of the market for the goods in that country.

The Commission does not consider the fact that conclusive evidence cannot be reasonably acquired requires the Parliamentary Secretary to find that a 'market situation' does not exist. Similarly, it does not consider it reasonable to suggest that the absence of conclusive information or evidence of quantifiable market distortion precludes the ability of the Minister to be satisfied that a 'market situation' does exist.

6.2.2 Submissions on the Commission's basis for examining market situation

The Commission notes that the EC and Italian Government made specific submissions questioning the validity of the Commission's enquiries regarding the operation of mechanisms and programmes administered by the EC and Italian Government through which benefits may have been provided to growers and processors of the goods in Italy.

The submissions provided by the EC and the Italian Government contend that the questionnaire provided by the Commission, which seeks specific information regarding the operation of such programmes, improperly introduces into an anti-dumping investigation, inquiries into subsidies that may only be investigated within a countervailing investigation.

As is discussed in detail above, consideration as to whether a situation exists in the market for the purposes of s.269TAC(2)(a)(ii) necessarily involves the analysis of all relevant factors and variables associated with the domestic market of the subject goods.

The Commission believes that the criticisms submitted by the EC and Italian Government reflect a misunderstanding of the differences between:

- a) analysis of Government policies which are appropriately characterised as subsidy programs for the purposes of determining countervailable subsidies and the calculation of applicable countervailing duties under s.269TJ; and
- b) consideration of subsidy programs for the purposes of market situation analysis for the purposes of s. 269TAC(2)(a)(ii).

The Commission emphasises that consideration of the existence and operative effect of government administered benefits upon a domestic market is distinctly different to specific investigation of subsidy programs under s. 269TJ.

Consideration of whether a situation exists in the relevant market is concerned with the operation of policies and regulations (whether overt or implied) and their potential impact on the suitability of domestic selling prices for normal value purposes. Accordingly, the question to be answered is whether the relevant policies operate in a manner which:

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- a) leads to a distortion of competitive market conditions in relation to the subject goods such that domestic sales are unsuitable for the purposes of determining normal value; and
- b) affects the conditions of commerce related to the production or manufacture of like goods such that the records of exporters of prepared or preserved tomatoes cannot be relied upon to reasonably reflect competitive market costs associated with production in accordance with the provisions of Regulation 180(2) of the Customs *Regulations 1926*.

The Commission notes previous anti-dumping investigations⁹ administered by the EC where it undertook an examination of factors which may potentially be actionable under the countervailing framework. Those inquiries examined whether:

- a) prices of raw material inputs were artificially low; and
- b) had regard to evidence of the operation of government support programs which apply to the relevant domestic industry for the production of subject goods.

The assessments were relevant to the EC's consideration of whether costs reasonably reflected the costs of production in relation to the goods. A process apparently very similar in nature to that undertaken by the Commission in this inquiry.

6.3 Enquiry framework

The Commission was satisfied that, at the time of initiation of the investigation, that there was relevant publicly available information to indicate that the EU may affect the interaction of supply and demand in the market for processed tomato products. The impact of the EU's policies was believed sufficient to consider that prices and costs in that market can no longer be viewed as being established under those market principles and allowing normal values to be established pursuant to s.269TAC(1).

The Commission considered that there was sufficient information and reasonable bases for the inclusion of specific enquiries with the EC and Italian governments which seek to identify the agricultural policies and specific programmes currently administered in Italy. The Commission's assessment was set out in *Issues Paper – Suitability of domestic Sales* dated 10 July 2013.

The Commission submitted specific questionnaires with the EC and Italian governments which sought to identify the agricultural policies and specific programmes currently administered in Italy. Specific enquiries were also included within questionnaires submitted to Italian exporters for the purposes of acquiring an understanding of the form and substance of any benefits received by exporters of the goods pursuant to policies administered by the EC and/or Italian Government.

⁹ Cotton yarn from Brazil, Egypt, India, Thailand and Turkey, OJ L 271, 1991, p. 17, rec. 13; Silicon from Russia, OJ L 339, 2003 p. 3, rec 27; Potassium chloride from Belarus, Russia and Ukraine, OJ L 302, 2005, p. 14, rec. 31; Aluminium foil from Russia, OJ L 26, 2006, p.1, rec. 13; Welded tubes and pipes of iron or non-alloy steel from Belarus, Bosnia and Herzegovina, China and Russia, OJ L 343, 2007, p. 1, rec. 111; Ammonium nitrate from Ukraine, OJ L 75, 2008, p. 8, rec. 26.

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The information gathered in relation to agricultural support programs in Italy was requested by the Commission for two purposes:

- a) to investigate whether, by virtue of policy programs applying to the cultivation of tomatoes in Italy, there is a situation in the Italian domestic market for prepared or preserved tomato products that renders domestic sales unsuitable for determining normal values in accordance with s. 269TAC(2)(a)(ii); and
- b) to assess whether the records of exporters of prepared or preserved tomatoes reasonably reflect competitive market costs associated with the production or manufacture of like goods in accordance with the provisions of Regulation 180(2) of the *Customs Regulations 1926*.

6.4 Responses

The EC provided a formal response to the Commission by letter on 5 and 7 August 2013.

The first letter articulated the EC's views regarding the Commission's issues paper regarding a 'market situation', and the 'market situation' questionnaire provided to the EC and the Italian Government by the Commission. The correspondence of 7 August 2013 provided further comment with respect to these issues and also provided specific submissions regarding the corresponding enquiries included in questionnaires submitted by the Commission to exporters.

The Italian Government provided formal submissions in relation to these issues dated 7 and 13 August 2013.

All but one exporter who provided completed questionnaire responses to the Commission indicated that the section relating to 'market situation' ("Section H" of the questionnaire) was not applicable as they did not receive any benefits. One exporter indicated that they did receive a small benefit and provided other relevant facts.

Notwithstanding the above, the Commission holds the view that enquiries into the situation of the domestic market in Italy to be relevant and reasonable within the framework of determining normal values and, specifically, costs are representative of market conditions and normal values can be determined in accordance with the Act.

6.5 The Commission's view

Consideration as to whether a 'market situation' exists for the purposes of s.269TAC(2)(a)(ii) involves the analysis of all relevant facts to determine whether competitive conditions have been materially distorted and price can no longer be viewed as being established under market principles.

To that end, the Commission considers that governments can directly influence domestic prices in a number of ways.

This can occur directly in the form of price regulation (floor or ceiling pricing mechanisms) or the dominance of government-owned or controlled enterprises to such an extent that those enterprises are price-leaders in the domestic market.

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Governments can also indirectly influence domestic prices through instruments that indirectly impact on the supply of the subject goods or the supply or price of inputs used in the production of the subjects goods. For example:

- governments can control import and export levels through licensing, quotas, duties or taxes to maintain domestic prices at certain levels;
- governments can subsidise producers by providing direct financial subsidies or low-price inputs in order to maintain selling prices of a product at certain levels;
- governments can purchase goods in sufficient quantities to raise the domestic price of goods or sell stockpiled goods to put downward pressure on prices;
- through taxation or other policies, governments can regulate the level of profits that a company can achieve which will affect selling prices; and
- the government can regulate or control production levels or the number of producers or sellers permitted in the market in order to affect domestic prices.

6.5.1 Consideration of exporter material

During the course of the exporter verification program, the Commission investigated whether any benefits, payments or forms of support had been received from the Italian government, the EC or, any other affiliated agency or group by the selected exporters visited by the Commission. The Commission examined requested information which directly or indirectly related with the sale or production of prepared or preserved tomatoes for calendar years 2011, 2012 and year-to-date (YTD) June 2013.

6.5.2 Payments received by selected exporters

Direct CAP payments

From the advice provided by selected exporters the Commission understands that prior to 2001, tomato processors in Italy were eligible for direct financial support from the Italian government under the auspices of the CAP. Between 2000 and 2001 the support policies applied under the CAP were amended and direct payments were provided to the growers of tomatoes rather than the processors.

The Commission understands that support payments under the CAP had undergone further amendments after 2001 to the effect that payments are no longer paid in relation to the cultivation of tomato crops specifically, and are instead (subject to relevant eligibility criteria) available to agricultural land holdings irrespective of the commodity cultivated upon the land.

The Commission investigated whether each exporter visited owned, operated or was affiliated with any agricultural land holdings associated with the cultivation of tomatoes or other crops, which may be eligible for payments under the CAP.

During the course of verification, the Commission found only one small instance where a selected exporter had received, or was eligible to receive, any payments under the auspices of the CAP related to agricultural land holdings. The Commission verified the payments to this exporter and was satisfied that the quantum of payment was not material.

Other government payments

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Notwithstanding the above, the Commission notes that it identified a number of miscellaneous payments received by a number of selected exporters during the period of investigation, provided pursuant to initiatives and programs administered by the Italian government. The value of such payment was not considered material.

In summary, payments were provided to manufacturers under the auspices of support initiatives and incentives associated with regional development agendas related to, inter alia, employment, technological development and innovation. The Commission notes that it found no evidence to suggest that such government initiatives relate specifically to the production of processed tomatoes.

6.6 The Commission's assessment

The Commission must consider the impact of the relevant policies and whether these policies distort competitive market conditions in relation the subject goods such that domestic sales are unsuitable for the purposes of determining normal value pursuant to s.269TAC (1).

On the basis of the available evidence, the Commission was satisfied that there is evidence that manufacturers of processed tomato products were eligible for, and did receive, financial benefits from the Italian Government paid under the auspices of the CAP until 2001.

However, the Commission is also satisfied that, following reform of the operation of the CAP (and the benefit payment mechanisms prescribed therein) no direct CAP payments were received by any selected exporter during the investigation period.

Notwithstanding the above, the Commission notes that there is evidence that the majority of selected exporters received some form of government payment during the investigation period. The available evidence suggests that government payments received by one exporter during the period was administered under general support programs which does not specifically relate to the production of tomatoes but was paid in relation to the agricultural land on which crops (including, but not limited to tomatoes) are grown.

The Commission considered the distortion, if any, that was likely to occur via the purchase prices of the raw tomatoes. From evidence gathered during the verification visits, the Commission found that there were many suppliers of tomatoes and that the prices did vary from region to region before such adjustments of brix levels and quality. Furthermore the Commission found that the price negotiations for the canned tomato products were not influenced by these payments to farmers. The Commission found this price was set via negotiations that considered numerous factors including harvest yield, business relationships and volumes ordered.

The Commission analysed the weighted average price of tomatoes purchased by the Australian industry from local suppliers as a notional price of fresh tomato paid by processors in a market unaffected by any support programs, payments or benefits which may distort the price of fresh tomatoes in the market.

The Commission then compared this notional benchmark against the verified raw material purchase price paid by selected exporters from tomato suppliers in Italy to assess whether there is any indication that payments paid to tomato growers have flowed

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through to distorted selling prices paid by the tomato processors in the form of lower prices.

In all instances, the Commission found that the price of fresh tomato paid by Italian processors was either similar or higher than the benchmark price of fresh tomato available in Australia.

On this basis, in the absence of positive evidence to the contrary, the evidence indicates that any payments provided directly to tomato growers in Italy are benefitting the growers in isolation and are not transferred to processors in the form of lower prices.

The Commission is satisfied that, whilst the evidence indicates that producers of processed tomatoes in Italy receive support from the Italian government under various domestic industry support programs, the evidence available to the Commission in the circumstances of the investigation is not sufficient to support a finding that these payments operate in a manner which distorts competitive market conditions and would lead the Commission to consider that it cannot use normal values pursuant to s.269TAC(1) (sales made in the ordinary course of trade).

7 DUMPING INVESTIGATION

7.1 Findings

Dumping margins for the investigation period were calculated by comparing weighted average export prices with the corresponding weighted average normal values. Dumping margins are summarised in the following table:

Manufacturer/Exporter	Visited	Dumping margin
Selected exporters		
La Doria S.p.A.	Yes	0.50%
Feger	Yes	1.25%
De Clemente	Yes	3.25%
Conserve Italia	Yes	4.54%
I.M.C.A.*	No	26.35%
Lodato Gennaro & C. S.p.A.*	No	26.35%
Residual exporters		
Princes Industrie Alimentari SRL	No	5.06%
Attianese S.p.A.	No	5.06%
Fiamma Vesuviana Srl	No	5.06%
Greci Industria Alimentare S.p.A.	No	5.06%
Menu Srl	No	5.06%
Mutti S.p.A.	No	5.06%
Nolana Conserve Srl	No	5.06%
Rispoli Luigi & C (S.R.L.)	No	5.06%
Steriltom Srl	No	5.06%
Uncooperative exporters¹⁰ (All other)	No	26.35%

*The Commission determines these exporters to be uncooperative exporters.

7.2 Introduction

Dumping occurs when a product from one country is exported to another country at a price less than its normal value. The export price and normal value of goods are determined under sections 269TAB and 269TAC of the Act respectively.

This chapter explains the results of investigations by the Commission into whether prepared or preserved tomatoes were exported from Italy at dumped prices during the investigation period.

¹⁰ S.269T of the Act refers to a definition of an uncooperative exporter.

7.3 Selected Exporters¹¹

At the commencement of the investigation, a large number of potential exporters of prepared or preserved tomatoes from Italy were identified. Questionnaires were forwarded to all known exporters from Italy.

Following initial feedback, and completed responses to Part 1 of the Exporter Questionnaire, the Commission considered that the number of exporters that provided information was too large to determine individual dumping margins for each of them. As a result, the Commission undertook a sampling exercise where it identified 7 selected exporters which accounted for approximately 70% of the export volume to Australia.

Pursuant to s.269TACAA of the Act, the Commission selected the following exporters:

- Conserve Italia
- COREX S.p.A.
- De Clemente
- Feger
- I.M.C.A.
- La Doria
- Lodato Gennaro & C. S.p.A.

The Commission received questionnaire responses that were assessed by the Commission as being substantially complete from:

- Conserve Italia
- COREX S.p.A.
- De Clemente
- Feger
- La Doria.

The verification visit reports for each of the cooperating exporters are available at the Commission's website <http://www.adcommission.gov.au/> and provide additional detail to what is discussed below.

7.3.1 Insufficient exporter questionnaire responses

Exporter questionnaire responses were also submitted by:

- Lodato Gennaro & C. S.p.A.;
- I.M.C.A.

Questionnaire responses submitted by these parties provided limited information required by the exporter questionnaire. The Commission considered the information provided in these questionnaire responses was not suitable for verification and making a reasonable assessment of dumping. Each party was contacted by the Commission and informed of

¹¹ S.269T of the Act refers – an exporter whose exportations were investigated for the purposes of deciding whether or not to publish that notice.

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the deficiencies in its respective questionnaire response, and the Commission's finding that the response was not suitable for verification.

7.3.2 La Doria

Export price

Export prices were established pursuant s.269TAB(1)(a) where the goods were sold from the exporter to the importer. However the Commission found that La Doria also sold goods via an intermediary that subsequently on-sold the goods to the importer. In these instances export prices were established pursuant to s.269TAB(1)(c) having regard to all the circumstances of exportation.

Normal value

Where the Commission found directly comparable goods, the normal values were established pursuant s.269TAC(1) on an ex-works basis based on directly comparable domestic sales that were made the ordinary course of trade.

Following the ordinary course of trade tests, the Commission found a substantial number of domestic sales that were not considered to be in the ordinary course of trade. Of these sales, a large volume was found to be sold on the export market.

On examination the Commission found that for some of these sales, the final destination was Australia.

For these sales the Commission included these sales with the already identified export sales to Australia. These sales were adjusted to make them comparable as if they were export sales made directly from La Doria.

To ensure the comparability of normal values to export prices, the Commission considered adjustments were required pursuant to s.269TAC (8) of the Act for:

- domestic inland freight (negative adjustment);
- domestic credit (negative adjustment);
- domestic commissions (negative adjustment); and
- handling and loading charges (negative adjustment for domestic charges and positive adjustment for export charges).

For models where La Doria did not make domestic sales of directly comparable models to those exported to Australia, and for the one model where there was an insufficient volume of domestic sales in the ordinary course of trade, the Commission has established normal values pursuant to s.269TAC(2)(c) of the Act by using La Doria's cost of production of the exported goods plus appropriate amounts for selling, general and administration expenses¹² as if the goods were sold on the domestic market and an amount for profit¹³ based on all sales of like goods sold in the ordinary course of trade.

¹² *Customs Regulation 1926* Reg 180 Determination of cost of production and *Customs Regulation 1926* Reg 181 Determination of administrative, selling and general costs.

¹³ *Customs Regulation 1926* Reg 181A Determination of profit.

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To ensure the comparability of normal values to export prices, the Commission considered adjustments were required pursuant to s.269TAC (9) for:

- domestic inland freight (negative adjustment);
- domestic credit (negative adjustment);
- domestic commissions (negative adjustment); and
- handling and loading charges (negative adjustment for domestic charges and positive adjustment for export charges).

The dumping margin was established in accordance with s.269TACB(2)(a) of the Act, by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period.

The dumping margin for La Doria is de minimis. Pending any submissions that require further investigation, the Commissioner proposes to terminate the dumping investigation so far as it relates to La Doria.

7.3.3 Feger

Export price

Export prices were established pursuant s.269TAB(1)(a) where the goods were sold from the exporter to the importer. However the Commission found that Feger also sold goods via a buying agent that subsequently sold the goods to the importer. In these instances export prices were established pursuant to s.269TAB(1)(c) having regard to all the circumstances of exportation. The Commission used the arm's length FOB invoice price paid by the trader to Feger.

Normal value

For three of the models exported to Australia by Feger, normal values were established pursuant s.269TAC(1) based on a sufficient volume of domestic sales of comparable like goods sold in the ordinary course of trade.

To ensure the comparability of normal values to export prices, the Commission considered adjustments were required pursuant to s.269TAC(8) of the Act and adjusted for:

- Packing (positive adjustment);
- Commissions (positive adjustment);
- Transportation (positive adjustment);
- handling and logistics (positive adjustment); and
- domestic credit terms (positive adjustment).

For the remaining three models exported to Australia, there was not a sufficient volume of relevant domestic sales sold in the ordinary course of trade.

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The Commission established normal values pursuant to s.269TAC(2)(c) of the Act by using Feger's cost of production of the exported goods plus appropriate amounts for selling, general and administration expenses¹⁴ as if the goods were sold on the domestic market and an amount for profit¹⁵ based on domestic sales of like goods sold in the ordinary course of trade.

The dumping margin was established in accordance with s.269TACB(2)(a) of the Act, by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period.

The dumping margin for Feger is de minimis.

Pending any submissions that require further investigation, the Commissioner proposes to terminate the dumping investigation so far as it relates to Feger.

7.3.4 De Clemente

Export price

The Commission found that De Clemente does not sell the goods directly to the importer. Goods are sold via a buying agent that sells to the importer.

Therefore export prices were established pursuant s.269TAB(1)(c) having regard to all the circumstances of exportation. The Commission had regard to the arms' length FOB invoice prices paid by the buying agent to De Clemente.

Normal value

Normal values were established pursuant s. 269TAC(1) based on domestic sales of comparable like goods that were sold in the ordinary course of trade.

To ensure the comparability of normal values to export prices, the Commission considered adjustments were required pursuant to s.269TAC(8) and adjusted for:

- inland freight and FOB costs (positive adjustment);
- domestic credit terms (positive adjustment);
- discounts and rebates (negative adjustment); and
- packing costs (positive adjustment).

The dumping margin was established in accordance with s.269TACB(2)(a) of the Act, by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period.

¹⁴ *Customs Regulation 1926* Reg 180 Determination of cost of production and *Customs Regulation 1926* Reg 181 Determination of administrative, selling and general costs.

¹⁵ *Customs Regulation 1926* Reg 181A Determination of profit.

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The dumping margin for De Clemente is 3.25%.

7.3.5 Conserve Italia

Export price

Export prices were established pursuant s.269TAB(1) where the goods were sold from the exporter to the importer using the arm's length FOB invoice price paid by the importer. The Commission also found that Conserve Italia sold goods via a buying agent that subsequently sold the goods to the importer. In these instances export prices were established pursuant to s.269TAB(1)(c) having regard to all the circumstances of exportation. The Commission had regard to the arms' length FOB invoice prices paid by the buying agent to Conserve Italia.

Normal value

Normal values were established pursuant s.269TAC(1) based on domestic sales of comparable like goods that were sold in the ordinary course of trade.

Where like goods were not sold on the domestic market in sufficient volumes in the ordinary course of trade, the Commission established normal values pursuant to s.269TAC(2)(c) by using Conserve Italia's cost of production of the exported goods plus appropriate amounts for selling, general and administration expenses¹⁶ as if the goods were sold on the domestic market and an amount for profit¹⁷ based on all domestic sales of like goods sold in the ordinary course of trade.

To ensure the comparability of normal values to export prices, the following adjustments were made:

The Commission made adjustments pursuant to s.269TAC (8) or s.269TAC(9), as relevant, for:

- export inland freight handling, loading and ancillary costs (positive adjustment);
- domestic commission (positive adjustment);
- domestic advertising (positive adjustment);
- domestic inland freight (positive adjustment); and
- domestic CONAI tax.

By submission Conserve Italia requested that the Commission make an adjustment for sales of the goods via the intermediary. Although unproven, Conserve Italia considers the amount paid by the importer to the intermediary to be more than the just the invoice price paid by the intermediary to Conserve Italia.

The Commission found that the intermediary was acting as a buying agent for the importer with payment to the intermediary for these services being made by the importer.

¹⁶ *Customs Regulation 1926* Reg 180 Determination of cost of production and *Customs Regulation 1926* Reg 181 Determination of administrative, selling and general costs.

¹⁷ *Customs Regulation 1926* Reg 181A Determination of profit.

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The Commission knows that the buying agent provides other services for which it is only reasonable to be remunerated for.

The Commission examined all the circumstances surrounding the sale of goods in these transactions and despite the intermediary being the buyer of the goods, the price paid to Conserve Italia was a price negotiated by the intermediary on behalf of the importer.

The dumping margin was established in accordance with s.269TACB(2)(a) of the Act, by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period.

The dumping margin for Conserve Italia is 4.54%.

7.3.6 Corex S.p.A.

In its exporter questionnaire response, Corex outlined the extent of its involvement in export transactions to Australia and claimed that it undertook sufficient activities to be considered the exporter of the goods during the investigation period.

Following inquiries with all relevant parties involved in the production and sale of the goods, the Commission considered there to be sufficient evidence that Corex S.p.A was not the exporter of the goods but a trading intermediary.

The Commission was informed of the necessary requirements stipulated by Corex S.p.A's customers that gave suitable confidence to the Commission that the manufacturer was aware of the final destination of the goods. Given these requirements, the Commission considers that there is a sufficient nexus between the manufacturer and Corex S.p.A's customers to determine these sales as if the manufacturer was the exporter.

Consequently, the Commission considers Corex S.p.A not to be an exporter of prepared or preserved tomatoes under investigation.

7.3.7 I.M.C.A.

The Commission considers I.M.C.A. to be an uncooperative exporter and established export prices pursuant to s.269TAB(3) of the Act having regard to all relevant information by reference to export prices determined with verified information of cooperating exporters¹⁸ over the investigation period. The Commission used the lowest export price from exporters found to have a dumping margin greater than 2%.

Normal values were established pursuant to s.269TAC(6) of the Act having regard to all relevant information. The Commission used the highest normal value from cooperative exporters found to have a dumping margin greater than 2%.

The dumping margin for I.M.C.A is 26.35%

¹⁸ S.269T of the Act refers to a definition of a cooperative exporter

7.3.8 Lodato

The Commission considers Lodato to be an uncooperative exporter and established export prices pursuant to s.269TAB(3) of the Act having regard to all relevant information by reference to export prices determined with verified information of cooperating exporters over the investigation period. The Commission used the lowest export price from exporters found to have a dumping margin greater than 2%.

Normal values were established pursuant to s.269TAC (6) of the Act having regard to all relevant information. The Commission used the highest normal value from exporters found to have a dumping margin greater than 2%.

The dumping margin for Lodato is 26.35%.

7.4 Residual Exporters¹⁹

Following initial feedback, and assessment of completed responses to Part 1 of the Exporter Questionnaire, the Commission considered it necessary to identify certain exporters as residual exporters based on export volume to Australia. On 8 August 2013, the Commission released its Sampling Report.

The Commission considered that those exporters that provided Part 1 of the Exporter Questionnaire and were not selected exporters were deemed to be residual exporters. These entities were:

- Agritalia SRL
- Attianese S.p.A.
- Fiamma Vesuviana SRL
- Greci Industria Alimentare S.p.A.
- Menu' SRL
- Mutti S.p.A.
- Nolana Conserve SRL
- Princes Industrie Alimentari SRL
- Rispoli Luigi & C (S.R.L.)
- Steriltom Srl.

In accordance with s.269TACAB(2) the Commission established export prices for residual exporters pursuant to s.269TAB(3) having regard to all relevant information.

The Commission used the weighted average export prices of cooperative selected exporters whose dumping margin was greater than 2%.

Normal values were established pursuant to s.269TAC(6) of the Act having regard to all relevant information. The Commission used the weighted average normal values from cooperative selected exporters found to have a dumping margin greater than 2%.

The dumping margin for all residual exporters is 5.06%.

¹⁹ S.269T of the Act refers – an exporter whose exports were not examined, however the exporter was not considered uncooperative.

7.5 Uncooperative exporters

Following initiation of the investigation, the Commission wrote to all known exporters, Italian industry associations and the Government of Italy informing them of the investigation and seeking cooperation and provided the exporter questionnaire for their convenience.

To be considered cooperative or a residual exporter the exporters had to return the exporter questionnaire to the Commission complete and in the time period stipulated.

Pursuant to s.269T(1) of the Act, the Commission considered that exporters that were not identified as *selected* or *residual* exporters were considered uncooperative exporters.

For uncooperative exporters, the Commission established export prices pursuant to s.269TAB(3) of the Act having regard to all relevant information by reference to export prices determined with verified information of cooperating exporters over the investigation period. The Commission used the lowest export price from cooperative selected exporters found to have a dumping margin greater than 2%.

Normal values were established pursuant to s.269TAC(6) of the Act having regard to all relevant information. The Commission used the highest normal value from cooperative selected exporters found to have a dumping margin greater than 2%.

The dumping margin for uncooperative exporters is 26.35%.

7.6 Volume of dumped exports

Pursuant to s.269TDA(3) of the Act, the Commissioner must terminate the investigation if satisfied that the total volume of goods that are dumped is a negligible volume. Subsection.269TDA(4) defines a negligible volume as 3% of the total volume of goods imported into Australia over the investigation period.

The Commission calculated that the volume of dumped goods represents approximately 56% of all goods exported from Italy. The Commission considers the volume of dumped goods not a negligible volume.

8 ECONOMIC CONDITION OF THE INDUSTRY AND HAS DUMPING CAUSED MATERIAL INJURY?

8.1 Finding

The Commission has made a finding that SPCA has suffered material injury and that there is a causal link between the material injury experienced by the Australian industry and dumped imports from Italy. The Commission has found that due to these dumped imports, SPCA has suffered injury in the form of:

- loss of sales volume;
- reduced revenues;
- price depression;
- price suppression;
- reduced profits;
- reduced profitability, and
- reduced return on income.

8.2 Introduction

This section examines whether dumped imports of preserved or prepared tomatoes from Italy have caused material injury to the Australian industry.

The Parliamentary Secretary may publish a dumping duty notice and impose anti-dumping measures on exports of like goods, where the Parliamentary Secretary is satisfied that:

- the amount of the export price of the goods is less than the amount of the normal value of those goods; and
- the amount of the export price of like goods that may be exported to Australia in the future may be less than the normal value of the goods;
- because of that, material injury to the Australian industry producing like goods has been or is being caused or is threatened, or the establishment of an Australian industry producing like goods has been or may be materially hindered.²⁰

8.3 Approach to assessing material injury

In assessing whether dumped goods have caused material injury, the Commission has relied on purchasing and retail shelf pricing information submitted by Coles and Woolworths which represent approximately 60% of the total imported volume and 73% of goods sourced from selected exporters.

8.4 Australian industry claims

In its application SPCA claimed that it has suffered injury from prepared or preserved tomatoes exported to Australia from Italy. It considers that the prices being paid at the

²⁰ Section 269TG

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retail sector level of trade for the exported goods has undercut its retail pricing. SPCA indicated that the undercutting is occurring at the wholesale level of trade as well.

Whilst SPCA continues to supply the major supermarkets in both proprietary labels and private labels, the undercutting of the exported goods, has, over time led to a decline in sales volume sold to these customers. SPCA considers it cannot compete at these lower prices both at the retail and wholesale level.

A reduction in sales volume has had a financial impact on the unit cost to make and profitability. Although cost improvements have been demonstrated the consequence of reduced sales volumes and cost cutting has led to staff reductions. Additional consequences have been a reduced return on investment and a reduced attractiveness for investment.

SPCA also claims it has suffered price suppression and price depression. SPCA indicated that prices have risen, but they also have fallen whilst the margin between the cost to make and sell and revenue has at times decreased, and although to the contrary, has done so following cost cutting activities that have led to other forms of injury such as reduced employment.

8.5 Price effects

8.5.1 Retail selling strategies

Information gathered during the investigation shows that the major supermarket retailers account for approximately 82% of the Australian market for prepared or preserved tomatoes. The Commission found that Coles and Woolworths and to a lesser degree Aldi Partnership hold significant buying power due to the size of their purchases and sales volumes in the retail sector. The concentration of large volume contracts amongst a few large retailers has resulted in strong and aggressive competition between suppliers to secure these supply contracts.

The volumes and mix of private label products required for sale in the respective stores of Coles and Woolworths are offered to tender annually. The tender price submitted by suppliers will often be the starting point for further price negotiations. Interested parties informed that the nature of these negotiations were intended to extract the best possible price on behalf of the retailer.

As noted earlier in this report and highlighted in figure 4, shelf prices for generic private label products were predominantly static during the investigation period with a reduction evident in June 2013. This confirms the strategy of the retailers to ensure that private label products at the value end of the pricing spectrum are to be maintained at low levels.

This strategy has also been extended to premium private label products with Coles extending its 'down down' promotion which saw the reduction of a 400g (net) can from \$1.19 to \$0.80 in April 2011. As evident in the graph below, those prices have continued through the investigation period. SPCA indicated the significance of this promotion was that Coles indicated that the reduced prices would continue to remain low.

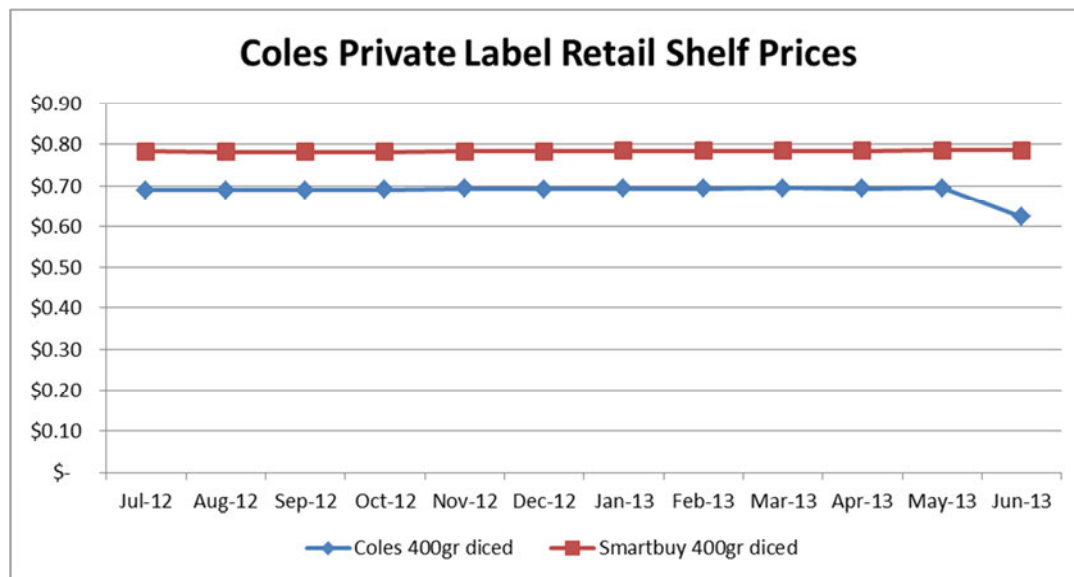


Figure 4 - Generic private label retail shelf prices using Coles and Woolworths pricing data

For suppliers of proprietary label products, a promotional plan is required to be submitted to the retailer in advance of sales being made. This plan sets out the marketing and promotional strategies being put forward by the supplier. A promotional plan may translate into price discounting off the standard shelf price which is funded by the vendor. The Commission was informed that because of the high price elasticity of the goods, higher promotional spending results in greater sales volumes.

This is supported by figure 2 (section 5) that shows that sales volumes significantly improve with price discounting. The Commission considers it is evident that a relationship exists between the reduction in prices and corresponding spike in volumes.

SPCA indicated that maintaining sales volume in the major supermarkets is important. Products that continue to underperform will at some point be replaced with alternative products. Consequently SPCA has to promote its goods to maintain sales volumes; however, SPCA supplied the shelf layout plans for Coles and Woolworths shelf space being offered for their prepared or preserved tomatoes was shows the this space offered to SPCA has been declining.

8.5.2 Price injury

SPCA submitted that retail shelf prices for Italian imports are a reflection of, and correlate strongly with, the purchase prices paid by the retailers. To support this view SPCA compared prices at the wholesale and retail levels using retail scanned data and deducting estimated costs to calculate selling prices to the retailers.

An examination of available information gathered during the investigation also supports this view with retail prices following a similar decline to Free-Into-Store (FIS) prices since 2010.

To examine the effects of price undercutting the Commission considers it appropriate to assess price undercutting at both the retail level and at the wholesale levels of trade. Figure 1 (section 5) shows the range of shelf prices during the investigation period across

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the four types of label categories. It is clear that shelf prices of SPCA's products were undercut by Italian dumped imported products.

The Commission also calculated the weighted average FOB unit price of the Italian goods and converted those prices to an FIS level that is equivalent to the terms of trade that SPCA has with the retail sector. Figure 5 below shows price undercutting with the margin increasing over the injury analysis period.

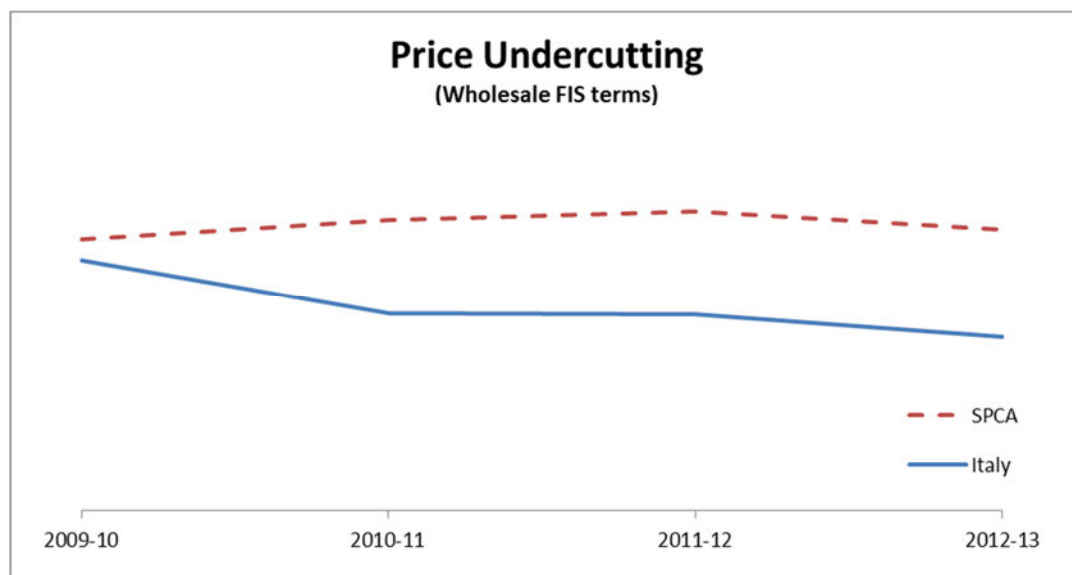


Figure 5 – Wholesale price undercutting analysis

On a product specific basis, a comparison of weighted average selling prices over the investigation period shows that Italian prepared or preserved tomato retail prices for chopped, diced and whole peeled tomatoes were between 16% and 55% below SPCA's prices. For value added products, the Italian retail prices were below SPCA's prices by approximately 30% to 35%.

Evidence provided by SPCA indicated that as soon as the 'down down' program commenced the volume of the Coles brand Italian 400g diced tomatoes rose dramatically and was sustained.

This decrease coupled with the demand elasticity of the goods meant SPCA needed to react to these retail price demands. SPCA considered that the 'down down' program made other retailers change their pricing policies.

Coles stated that the Australian industry's products do not compete head to head with Italian imports as there is specific demand for the Italian goods. However Coles did indicate that customers will readily switch between labels depending on price and other promotions. Coles submitted that the tendency for customers to switch was less likely at the value end of the pricing tiers.

The Commission examined the price sensitivity of the goods and considers that the goods priced in the upper three tiers of the supermarket pricing strategy are very price sensitive. The Commission considers that purchases of Italian imports at dumped prices have allowed retailers to maintain their reduced shelf prices for generic private label products

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and provide for a margin of undercutting that is greater than what it otherwise would have been in the absence of dumping.

The retailer pricing strategies, the degree of undercutting evident at both the wholesale and retail level and the consumers' propensity to change brands depending on price, has placed SPCA under pressure to react with a promotional and marketing campaigns aimed at discounting its prices in an attempt to maintain sales volume and market share.

SPCA's promotional activities during the investigation period have directly impacted on its net unit revenue which is highlighted in figure 6. It shows SPCA's unit revenue and unit costs, in respect of prepared or preserved tomatoes from 2009-10 period. Of particular note, is the decrease in SPCA's unit cost to make and sell (CTMS) which stems from a reduction in the number of employees and other efficiency gains implemented in its operations.

Notwithstanding the fall in its costs, SPCA's net unit revenue fell at a greater rate in the investigation period, as the company attempted to minimise falling sales volumes from aggressive price competition from dumped imports on retail shelves. This ultimately resulted in SPCA incurring greater unit losses in the investigation period than at any other time during the injury analysis period.

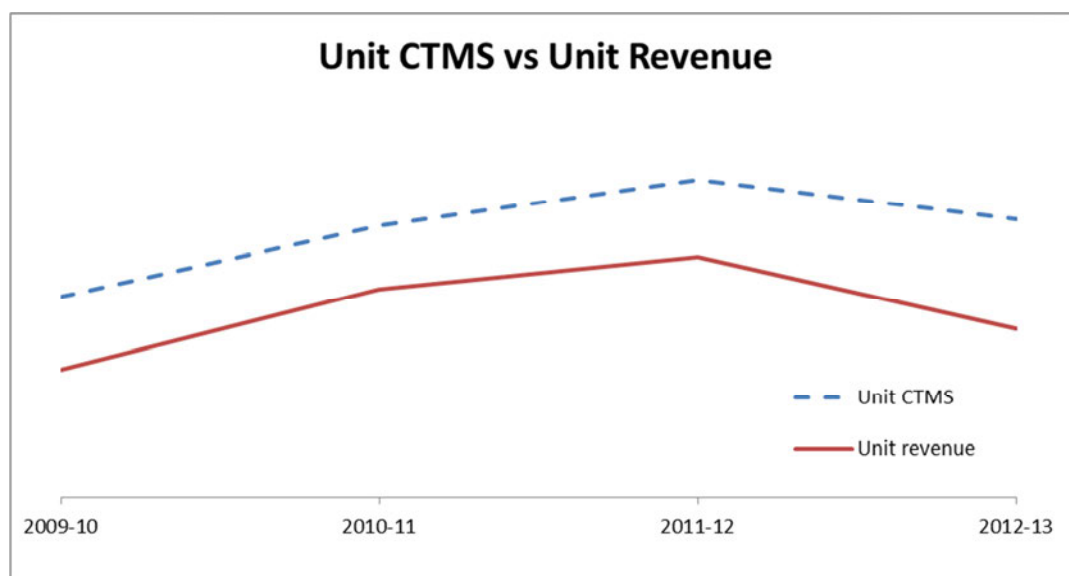


Figure 6 - Price suppression analysis using SPCA's revenue and costs

The Commission has found that dumped imports of prepared or preserved tomatoes from Italy have been a contributing factor to the Australian industry suffering injury in the form of price depression and price depression.

8.6 Volume effects

8.6.1 Sales volume

Lost sales

As noted in the previous section, the investigation has found that a strong correlation exists between the discounting of SPCA's proprietary products and corresponding increase in sales volumes. Analysis of competing brands such as Annalisa, Val Verde

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and Cappriccio shows a similar relationship between price reductions and growth in sales volume.

In terms of premium private label products, a similar association between prices and volumes was evident with Woolworths Select range. However, in the case of Coles' product range, the evidence did not show this relationship existed as prices had remained unchanged throughout the investigation period.

An assessment of SPCA's domestic sales volumes of prepared or preserved tomatoes shows a steady decline from 2009 to 2011, after which SPCA experienced a slight improvement, followed by a decline from June 2012. Overall SPCA's sales volume to June 2013 has decreased by approximately 39% when compared to June 2010 period.

The Commission considers that suppliers of imported proprietary products to the retail sector were able to discount the price of their products during the investigation period to levels lower than they would have otherwise in the absence of dumping. These promotional campaigns appeared to occur on a regular basis and resulted in increased sales during those periods. In part therefore, it is reasonable to consider that the dumped imports contributed to SPCA losing sales at the retail level as consumers switched between the various brands on offer.

It is important to note however that several other factors were present in the Australian market which also contributed to SPCA's fall in volume. Firstly, the major supermarkets determine the shelf placement of all products within a range of goods. In doing so, retailers tend to provide the prime locations to the highest volume selling goods, often being their own private labels. Consequently SPCA's products have been moved to unfavourable locations on shelves within the prepared or preserved tomato range of goods which can exacerbate the lower sales performance.

The Commission considers that the strategy of shelf placement by the retailers is not related to their purchase of dumped imports from Italy. As a result, lost sales due to the unfavourable placement of SPCA's products on the retail shelf cannot be attributed to dumped imports. However the Commission considers the dumped goods are displacing SPCA's products in the retailers' shelf space.

Secondly, a significant volume of imported prepared or preserved tomatoes from Italy were found to not have been dumped in Australia. These were supplied by La Doria and Feger during the investigation period. Lost sales to La Doria and Feger cannot be attributed to dumped imports.

Lastly, interested parties have expressed the view that a significant proportion of consumers seek to specifically purchase Italian canned tomatoes irrespective of any price differential or brand association. Some parties have attributed this to consumer perceptions of quality differences between the imported and domestically produced goods. The Commission considers that consumer preferences for region specific products that contribute to SPCA's decline in sales cannot be attributed to dumped imports.

Market share

Figure 7 below shows the market share in the Australian market for prepared or preserved tomatoes from June 2010 to June 2013. It highlights that SPCA's market share decreased from June 2010 until June 2012 before improving slightly in the investigation period reflecting SPCA's sales volumes trend.

Since June 2010 to June 2013 SPCA's market share has decreased approximately 34 percentage points. In contrast, the market share of Italian prepared or preserved tomatoes increased by approximately 27 percentage points whilst the market share for countries other than Italy decreased by approximately 83 percentage points. Of note, the market share for the Italian goods has been increasing in a declining market putting greater pressure on the Australian industry to maintain sales volumes and market share.

The volume for the Italian goods has increased during the injury analysis period by 16% to June 2013 whilst SPCA's volume has fallen by 39% in the same corresponding period.

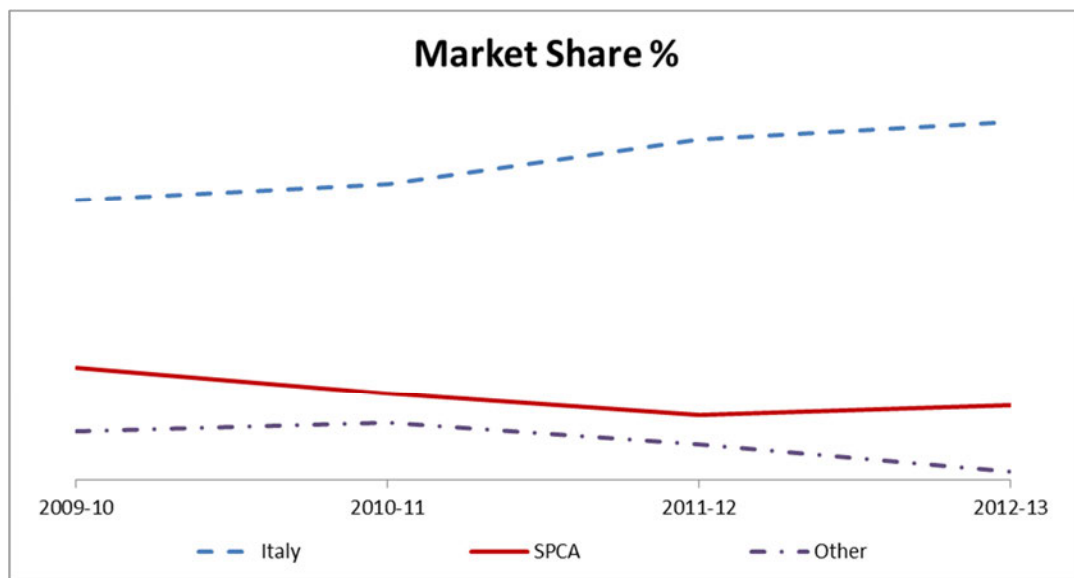


Figure 7 – Market share analysis using SPCA data, ACBPS data and exporter data.

To assess the impact of dumped imports, the Commission estimated the volume of Italian dumped goods to be approximately 56% of the total Italian goods exported to Australia during the investigation period.

The Commission has found that dumped imports of prepared or preserved tomatoes from Italy have been a contributing factor to the Australian industry suffering injury in the form of lost sales and reduced market share during the investigation period.

8.6.2 Profits and profitability

Figure 8 shows movements in SPCA's profitability in respect of prepared or preserved tomatoes from June 2010 to June 2013. The graph demonstrates a declining trend in profitability over the injury analysis period and specifically from June 2011 to the end of the 2013 financial year. A similar trend was evident for actual profits achieved by SPCA over the injury analysis period.

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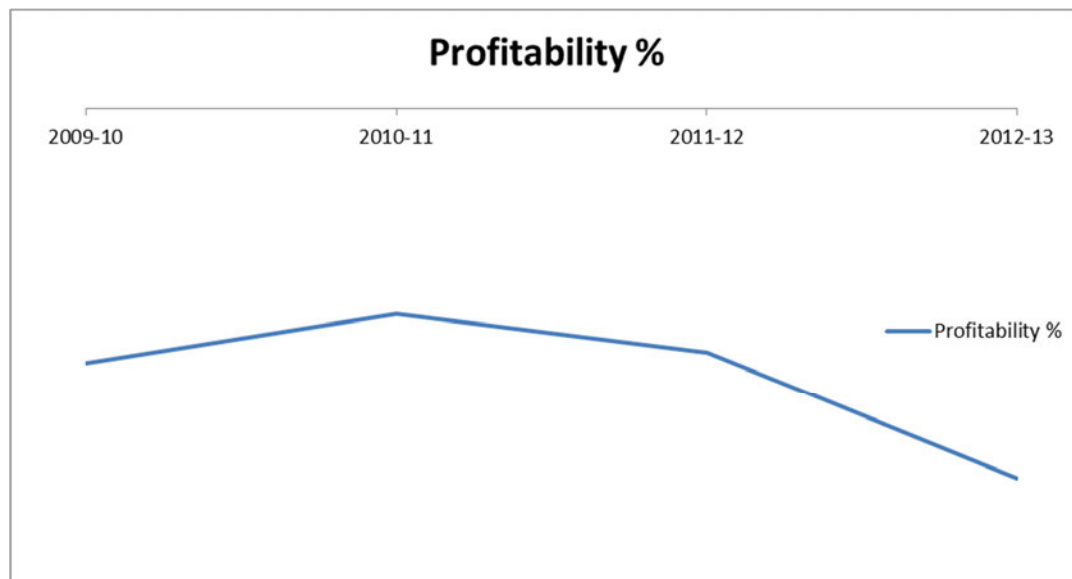


Figure 8 - SPCA profitability using SPCA's revenue and costs

It highlights the impact of SPCA's decisions to promote its products through heavy discounting of the retail price in direct competition with both imported private and proprietary labels. In effect, the price discounting had a significant impact on SPCA's financial performance, eliminating the effect of achieved operational efficiencies.

The Commission has found that the Australian industry has suffered injury in the form of lost profits and profitability that can be attributed to dumped imports.

8.7 Other economic factors

The Commission has verified information presented by SPCA at Appendix A7 of its application and makes the following findings.

8.7.1 Assets

SPCA indicated the value of assets in the production of prepared or preserved tomatoes decreased during the financial years 2009-2012.

The value of the assets presented in the Appendix A7 represents the whole company. Whilst the Commission can see a reduction of assets from a company-wide perspective; SPCA could not separate the specific assets for the production of the goods. Accordingly the Commission cannot confirm if injury caused by dumping has occurred in the form of reduced assets.

8.7.2 Capital investment

SPCA indicated the value of capital investment in the production of prepared or preserved tomatoes decreased during the financial years 2009-2012.

The value of the capital investment presented in the Appendix A7 represents the whole company. Whilst the Commission can see a reduction in capital investment from a company-wide perspective; SPCA did not separate the specific components for the

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production of the goods. Accordingly the Commission cannot confirm if injury caused by dumping has occurred in the form of reduced capital investment.

8.7.3 Capacity

Capacity in relation to prepared or preserved tomatoes has remained static since 2010.

8.7.4 Capacity utilisation

Capacity utilisation has declined each year since 2010 to 2012, almost halving since 2010.

8.7.5 Employment numbers

Employment has decreased from FY2010 to FY2012. Over this period SPCA identified the number of staff related to the goods at the Shepparton canning facility and other support staff involved in the logistics, administration and sales of the goods that have lost their jobs.

8.7.6 Stocks

SPCA identified decreasing closing stock values since 2010.

8.8 Other causes of injury

During the investigation the Commission either found or was informed by interested parties of the following other possible causes of injury:

- Un-dumped goods;
- Other country pricing;
- The appreciation of the Australian dollar;
- SPCA's decreased exports;
- The effect of the 2011 floods;
- Capacity constraints;
- Lack of investment in the tomato growing industry;
- Structural issues in the tomato processing industry;
- SPCA's poor financial decisions;
- Long term loss making; and
- Private label strategies and supply diversification by supermarkets.

8.8.1 Un-dumped goods

The Commission considered un-dumped goods were also a cause of injury to the Australian industry and estimated that the volume of un-dumped goods to be approximately 44% of the total export volume from Italy. However, it is reasonable to expect that dumped prices offered to importers/retailers during contract negotiations would have influenced and impacted on prices being tendered by exporters of un-dumped product. In a market unaffected by dumped prices of prepared or preserved tomatoes from Italy, the Commission would consider that prices of un-dumped goods would be higher.

8.8.2 Effect of imports from other countries

The Commission examined the volume and value of exportations from countries other than Italy. The main exporting countries of prepared or preserved tomatoes during the injury analysis period apart from Italy were, Argentina, China, New Zealand, and the United States of America (USA). Information from the ACBPS database shows that FOB export prices of these other countries apart from the USA and Argentina were above the FOB prices from Italy. Although the FOB prices from USA and Argentina were below the Italian FOB prices, during the course of the injury analysis period Argentina stopped exporting the goods altogether and the volume exported by the USA significantly decreased. During the injury analysis period the volume from other countries decreased from 20.9% to 1.4% of the total market.

Further, there has been no evidence presented or gathered by the Commission to indicate that imports from these other countries were making their way into the critical segment of the retail market, being the four key retailers.

The Commission considers that goods exported from countries other than Italy have not materially contributed to SPCA's injury.

8.8.3 Exchange rates

Since 2007 the AUD / EUR exchange rate has appreciated significantly. Information available from the Reserve Bank of Australia shows currency fluctuations and in particular the appreciation of the AUD against key foreign currencies. It reveals that the AUD appreciated 37% between 2009 and 2013 and at its peak in 2012 the AUD had appreciated in excess of 42% over the EUR.

Given the majority of prepared or preserved tomatoes exported from Italy were sold in euros, the Commission examined the impact of the appreciation on FOB prices. It shows that unit FOB prices in Australian dollar terms decreased by up to 45% since 2009.

However it is important to note that when export prices are examined in EUR, unit prices have also fallen by 11.9% between June 2010 and June 2013. This suggests that decreases in export prices were not solely driven by the appreciation of the Australian dollar. These observations are contrary to the views expressed by many exporters and importers that attributed the entire injury to exchange rate fluctuations rather than any reduction in the EUR FOB price.

So whilst the appreciation of the Australian dollar was a significant contributor to the low import prices evident in the Australian market during the investigation period, the Commission notes that un-dumped prices or corresponding normal values in equivalent Australian dollar terms were materially higher than corresponding export prices.

The Commission considers the appreciation of the AUD is a significant contributing factor to the injury suffered by the Australian industry by reducing the FOB value in Australian dollar terms thereby improving the competitiveness of the imported goods.

8.8.4 Decreased export sales

Submissions have been received from interested parties indicating that SPCA's injury or part thereof is caused from its reduced export sales. The Commission examined this factor and concludes that in absolute terms SPCA has had a significant decline in its export sales performance. However, in relative terms, the volume sold since 2009, has been negligible relative to the volume SPCA sold in Australia.

The Commission considers the impact of declining export sales by SPCA has not materially contributed to the injury indicators found during the investigation period.

8.8.5 Floods of 2011

Interested parties submitted that the Australian industry suffered as a result of floods that occurred during 2011 that destroyed a significant proportion of raw tomatoes that are supplied to SPCA.

The Commission found no evidence that this hampered SPCA's ability to source raw tomatoes for the production of prepared or preserved tomatoes during the investigation period.

8.8.6 Private label strategies and supply diversification by supermarkets

Interested parties have argued that one of the causes for decreasing prices in the Australian market is the private label strategy of the major supermarkets. The private label pricing strategy places these goods in direct competition to the proprietary labels.

Interest parties argued that this strategy has been the main cause for declining prices more generally. In one submission, it was argued that the major retailers have sought to obtain the cheapest prices from reliable sources by encouraging multiple suppliers to promote both price competition and ensure continuity of supply. Consequently the interested party concludes the reduction of prices has led to an increase of supply of Italian sourced goods.

The Commission has also been advised that one particular supplier ceased price negotiations for the supply of a fixed volume contract as prices had fallen below the cost of production.

The Commission agrees with the view that the private label strategy of the supermarkets has contributed to the competitive environment in the Australian market. This in turn has contributed to suppliers of Italian imports seeking to secure the fixed volume contracts at prices less than the normal value.

8.9 Materiality

To assess the materiality of the injurious effects of dumped imports from Italy, the Commission has adjusted retail shelf prices upwards to account for the weighted average margin of dumping for all dumped goods exported to Australia. In effect, this will reflect a market where retail selling prices are unaffected by dumping. This approach also ensures that factors other than dumping that may have contributed to the injury being experienced by SPCA are isolated from the effects of dumping.

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The Commission considers that the higher shelf prices after removing the effects of dumping would have allowed SPCA to be less aggressive with its price discounting which would have resulted in the shelf price of its products being higher by approximately 9%. This would directly translate into a 9% increase in SPCA's profitability during the investigation period.

Therefore, the Commission preliminarily concludes that dumped imports caused material injury to the Australian industry producing like goods.

8.10 The Commission's Assessment

The Commission has found that dumped prepared or preserved tomatoes exported from Italy have caused material injury to the Australian industry producing like goods. The injurious effects of the dumped goods were in the form of:

- reduced revenues;
- price depression;
- price suppression;
- reduced profits;
- reduced profitability, and
- reduced return on income.

In reaching this conclusion, the Commission has identified and isolated the impact of other factors evident in the Australian market that may have contributed to the injurious effects experienced by SPCA. Factors other than dumping that have been identified include:

- undumped imports from Italy;
- imports from countries not the subject of the investigation;
- the appreciation of the Australian dollar; and,
- a decrease in SPCA'S export sales.

In doing so, the Commission has ensured that the impact of these other factors have not been attributed to the dumped exports.

9 WILL DUMPING AND MATERIAL INJURY CONTINUE?

9.1 Findings

The Commission makes a finding that exports of prepared or preserved tomatoes from Italy in the future may be at dumped prices, and that continued dumping may cause further material injury to the Australian industry.

9.2 The Commission's Assessment

9.2.1 Will dumping continue?

The Commission's dumping analysis found dumping margins between 3.25% and 26.34% of prepared or preserved tomatoes exported from Italy during the investigation period.

The Commission considers that due to the significant portion of goods sold via a small number of retailer organisations that exert significant buying power over the suppliers of those goods, Italian producers will continue to compete aggressively for large volume contracts offered by retailers.

From verification visits it has been calculated that approximately 56% of the goods exported from Italy were at dumped prices. Given the extent of the dumping and the buying strategies of the major supermarkets, the Commission considers that exporters, in the absence of anti-dumping duties, would continue to sell their goods to Australia at prices below normal values. Given the price elasticity of demand for the goods, in particular the imported proprietary and private labelled goods, retailers will continue to strive for lower prices creating a circumstance of continued lower prices which the Australian industry cannot compete with.

The Commission considers that dumping will continue if anti-dumping duties are not imposed.

9.2.2 Will material injury continue?

The Commission has reviewed the Australian industry's performance over the injury analysis period and has made a finding that prepared or preserved tomatoes exported from Italy at dumped prices has caused material injury to the Australian industry.

The Commission considers that the material injury will continue in the absence of anti-dumping duties. This view is formed by the dynamics of the procurement strategies of the major supermarkets, the willingness of the exporters to secure the sales contracts and the propensity of consumers to continue to switch between proprietary and premium private priced labels based on price.

The Commission considers that in the absence of anti-dumping measures the impact may be particularly evident in:

- loss of sales volume;
- reduced market share;
- reduced revenues;

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- price depression;
- price suppression;
- reduced profits; and
- reduced profitability.

Based on the available evidence, the Commission makes a finding that exports of prepared or preserved tomatoes (other than by exporters found to be not dumping or dumping to a negligible degree) in the future may be at dumped prices and that continued dumping may cause further material injury to the Australian industry.

10 NON-INJURIOUS PRICE

10.1 Assessment of NIP

The Commission has preliminarily assessed that the NIP can be determined using SPCA's cost to make and sell to determine a minimum price that the Australian industry could be expected to achieve in a market unaffected by dumping.

10.2 Introduction

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

The calculation of the NIP provides the mechanism whereby this lesser duty provision is given effect. The NIP is the minimum price necessary to prevent the injury, or a recurrence of the injury, caused to the Australian industry by the dumping and subsidisation²¹.

Anti-dumping measures are based on FOB prices in the country of export. Therefore a NIP is calculated in FOB terms to compare to the country of export.

10.3 SPCA's claims

On 29 August 2013, SPCA lodged a submission regarding the USP calculation. In their submission SPCA considered it was inappropriate to establish a USP using selling prices unaffected by dumping. This was based on its view that the Australian market has been affected by dumped imports for numerous years prior to the investigation period.

SPCA submitted that the USP be constructed from its 2012 CTMS information provided to the Commission plus an appropriate rate of profit reflecting the expected rate of return for this category of product.

10.4 The Commission's assessment

In considering whether lesser duties are sufficient to remove the injurious effects of dumping, the Commission has considered what might be the minimum price for prepared or preserved tomatoes that SPCA could be expected to achieve in a market unaffected by exports at dumped prices.

The Commission agrees that SPCA's historical domestic selling prices are not appropriate given the influence of Italian imports at dumped prices. In these circumstances the Commission considers it appropriate to construct a notional minimum price using SPCA's cost to make and sell for like goods sold during the investigation period.

²¹ The non-injurious price is defined in section 269TACA

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For the purposes of assessing whether a lesser amount of duty is warranted to remedy the injury caused by dumping, the Commission has adjusted the minimum price to reflect a free-on-board price to be compared with normal values. The comparison shows that the minimum NIP exceeded established normal values. Accordingly, the Commission intends recommending that the full margins of dumping be the basis for imposing interim dumping duties.

NIP calculations are at **Confidential Appendix 2**.

11 PROPOSED MEASURES

11.1 Background

Recent changes to the legislation allow the Minister to utilise additional methods of calculating the interim dumping duty beyond the single form that was previously available in the Act. The new forms of duty are prescribed in the *Customs Tariff (Anti- Dumping) Regulation 2013* and include:

- Combination of fixed and variable duty method;
- Floor price duty method;
- Fixed duty method (\$X per tonne); or
- Ad valorem duty method (i.e. a percentage of the export price).

11.2 Proposed measures

The Commission proposes to recommend to the Parliamentary Secretary that a dumping duty notice be published in respect of prepared or preserved tomatoes exported to Australia from Italy for all exporters except La Doria and Feger.

Pending the consideration of any further submissions on the matter, the Commissioner proposes to terminate the investigation in respect of prepared or preserved tomatoes exported to Australia by La Doria and Feger.

The lesser duty rule can only reduce the amount of interim dumping duty where the NIP is lower than the ascertained normal value.

For all exports of prepared or preserved tomatoes from Italy, the established NIP exceeds the respective normal values. This means that the lesser duty rule is not the relevant measure for the setting of interim dumping rates. The recommended rates of duty reflect the full margin of dumping determined for relevant exporters.

The Commission proposes to recommend that the dumping duties take the form of a combined fixed and variable duty. The fixed component of duty will be based on a proportional or ad valorem rate equal to the dumping margins determined for relevant exporters outlined in the table below and calculated as a percentage of the export price.

Manufacturer/Exporter	Visited	Effective rate of duty
Selected exporters		
De Clemente	Yes	3.25%
Conserve Italia Soc. Coop Agr	Yes	4.54%
I.M.C.A.	No	26.35%
Lodato	No	26.35%
Residual exporters		
Princes Industrie Alimentari SRL	No	5.06%
Attianese S.p.A.	No	5.06%
Fiamma Vesuviana Srl	No	5.06%
Greci Industria Alimentare S.p.A.	No	5.06%

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Menu Srl	No	5.06%
Mutti S.p.A.	No	5.06%
Nolana Conserve Srl	No	5.06%
Rispoli Luigi & C (S.R.L.)	No	5.06%
Steriltom Srl	No	5.06%
Uncooperative exporters (All other)	No	26.35%

12 REVISION TO SECURITIES

12.1 Current provisional securities

On 1 November 2013, the Delegate of the Commissioner made a PAD and required that securities be taken pursuant to s.42 of the Act on exports of prepared or preserved tomatoes from Italy by the following exporters:

Manufacturer/Exporter	Effective rate of security
La Doria	negligible
Conserve Italia Soc. Coop Agr	negligible
COREX S.p.A.	7.88%
De Clemente	6.50%
Feger	9.11%
Princes Industrie Alimentari SRL	8.16%
Residual exporters	
Attianese S.p.A.	8.62%
Rispoli Luigi & C (S.R.L.)	8.62%
Fiamma Vesuviana Srl	8.62%
Greci Industria Alimentare S.p.A.	8.62%
Menu Srl	8.62%
Mutti S.p.A.	8.62%
Nolana Conserve Srl	8.62%
Steriltom Srl	8.62%
Uncooperative exporters (All other)	9.11%

12.2 Amended provisional securities

At section 7 to this report, the Commission outlines the relevant legislative provisions used to determine export prices, normal values and dumping margins for all relevant exporters. Following verification of requested information, the Commission has calculated that dumping margins differ from those calculated at the time of making the PAD.

The Commission considers that it is appropriate to amend the securities to reflect the dumping margins. As a result, exports by Conserve Italia will now be covered by securities and exports by Feger will be exempt from securities.

The Australian Customs and Border Protection Service will require and take securities under section 42 of the Act in respect of interim duty that may become payable. Securities will apply in respect of imports of certain prepared or preserved tomatoes exported from Italy and entered for home consumption on or after 4 February 2014.

These revised securities will be imposed at the rate specified in the below table.

Manufacturer/Exporter	Visited	Effective rate of security
Selected exporters		
La Doria	Yes	negligible
Feger	Yes	negligible
De Clemente	Yes	3.25%
Conserve Italia Soc. Coop Agr	Yes	4.54%
I.M.C.A.	No	26.35%
Lodato	No	26.35%
Residual exporters		
Princes Industrie Alimentari SRL	No	5.06%
Attianese S.p.A.	No	5.06%
Fiamma Vesuviana Srl	No	5.06%
Greci Industria Alimentare S.p.A.	No	5.06%
Menu Srl	No	5.06%
Mutti S.p.A.	No	5.06%
Nolana Conserve Srl	No	5.06%
Rispoli Luigi & C (S.R.L.)	No	5.06%
Steriltom Srl	No	5.06%
Uncooperative exporters (All other)	No	26.35%

On 4 February the Commission published a public notice in *The Australian* newspaper advising interested parties of the amendments to the securities. The Commission has also published ADN 2014/09 to advise interested parties of these changes.

13 APPENDICES AND ATTACHMENTS

Confidential Appendix 1	Assessment of the economic condition on the Australian industry
Confidential Appendix 2	NIP