



## **Public File**

Application for the publication of  
dumping and/or  
countervailing duty notices

Prepared or preserved tomato  
products exported to Australia from  
Italy

September 2024

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APPLICATION UNDER SECTION 269TB OF THE *CUSTOMS ACT 1901* FOR THE PUBLICATION OF DUMPING AND/OR COUNTERVAILING DUTY NOTICES

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## DECLARATION

I request, in accordance with section 269TB of the *Customs Act 1901* (the Act), that the Minister publish in respect of goods the subject of this application:

- a dumping duty notice, or
- a countervailing duty notice, or
- a dumping and a countervailing duty notice.

This application is made on behalf of the Australian industry producing like goods to the imported goods the subject of this application. The application is supported by Australian producers whose collective output comprises:

- ii. 25% or more of the total Australian production of the like goods; and
- iii. more than 50% of the total production of like goods by those Australian producers that have expressed either support for, or opposition to, this application.

I believe that the information contained in this application:

- iv. provides reasonable grounds for the publication of the notice(s) requested; and
  - is complete and correct.

*Please note that giving false or misleading information is a serious offence.*

Signature: **[sgd]**

Name:

██████ ██████

Position:

Chief Executive Officer

Company:

SPC Operations Pty Ltd

ABN:

56 633 532 162

Date:

4 September 2024



## IMPORTANT INFORMATION

### Signature requirements

Where the application is made:

*By a company* - the application must be signed by a director, servant or agent acting with the authority of the body corporate.

*By a joint venture* - a director, employee, agent of each joint venturer must sign the application. Where a joint venturer is not a company, the principal of that joint venturer must sign the application form.

*On behalf of a trust* - a trustee of the trust must sign the application.

*By a sole trader* - the sole trader must sign the application.

*In any other case* - contact the Commission's Client support section for advice.

### Assistance with the application

The Anti-Dumping Commission has published guidelines to assist applicants with the completion of this application. Please refer to the following guidelines for additional information on completing this application:

- *Instructions and Guidelines for applicants on the application for the publication of dumping and/or countervailing duty notices*
- *Instructions and Guidelines for applicants on the examination of a formally lodged application*

The Commission's client support section can provide information about dumping and countervailing procedures and the information required by the application form. Contact the team on:

**Phone:** 13 28 46

**Email:** [clientsupport@adcommission.gov.au](mailto:clientsupport@adcommission.gov.au)

Information is available from the Commission's website at [www.adcommission.gov.au](http://www.adcommission.gov.au).

Small and medium enterprises (i.e., those with less than 200 full-time staff, which are independently operated and which are not a related body corporate for the purposes of the *Corporations Act 2001*), may obtain assistance, at no charge, from the International Trade Remedies Advisory (ITRA) Service. For more information on the ITRA Service, visit [www.business.gov.au](http://www.business.gov.au) or telephone the ITRA Service Hotline on +61 2 6213 7267.

### Important information

To initiate an investigation into dumping and/or subsidisation, the Commission must comply with Australia's international obligations and statutory standards. This form provides an applicant industry with a framework to present its case and will be used by the Commission to establish whether there appear to be reasonable grounds for the publication of a dumping duty or countervailing duty

notice and initiate an investigation. To assist consideration of the application it is therefore important that:

- all relevant questions are answered; and
- information that is reasonably available be supplied.

The Commission does not require conclusive evidence to initiate an investigation, but any claims made should be reasonably based. An application will be improved by including supporting evidence and where the sources of evidence are identified. Simple assertion is inadequate to substantiate an application.

To facilitate compilation and analysis, the application form is structured in 3 parts:

1. **Part A** seeks information about the Australian industry. This data is used to evaluate industry trends and assess claims of material injury due to dumping/subsidisation. Where an Australian industry comprises more than one company, each should separately prepare a response to Part A to protect commercial confidentiality.
2. **Part B** relates to evidence of dumping.
3. **Part C** is for supplementary information that may not be appropriate to all applications. However some questions in Part C may be essential for an application, for example, if action is sought against subsidisation.

All questions in Parts A and B must be answered, even if the answer is 'Not applicable' or 'None'. Where appropriate, applicants should provide a short explanation about why the requested data is not applicable. This will avoid the need for follow up questions by the Commission.

The application form does not specifically address all the information required when making a claim that the establishment of an Australian industry producing like goods has been or may be materially hindered. If you are considering making such a claim, please contact the Commission to discuss information requirements.

The application form requests data over several periods ( $P^1, P^2, \dots, P^n$ ) to evaluate industry trends and to correlate injury with dumped or subsidised imports. The labels  $P^1 \dots P^n$  are used for convenience in this application form. Lodged applications should identify the period relevant to the data. This form does not specify a minimum period for data provision. However, sufficient data must be provided to substantiate the claims made. If yearly data is provided, this would typically comprise a period of at least four years (for example the current financial year in addition to three prior years). Where information is supplied for a shorter period, applicants may consider the use of quarterly data. Data must also be sufficiently recent to demonstrate that the claims made are current.

When an investigation is initiated, the Commission will verify the claims made in the application. A verification visit to the Australian industry usually takes several days.

Applicants should be prepared to substantiate all Australian industry financial and commercial information submitted in the application. Any worksheets used in preparing the application should therefore be retained to facilitate verification.

During verification, the Commission will examine company records and obtain copies of documents relating to the manufacture and sale of the goods.

<b>Appendices</b>	Some questions require attachments to be provided. The attachment numbering sequence should refer to the question answered. For example, question A2.2 requests a copy of an organisation chart. To facilitate reference, the chart should be labelled <u>Attachment A2.2</u> . If a second organisation chart is provided in response to the same question, it should be labelled <u>Attachment A2.2.2</u> (the first would be labelled <u>Attachment A2.2.1</u> ).
<b>Provision of data</b>	<p>Industry financial data must, wherever possible, be submitted in an electronic format.</p> <ul style="list-style-type: none"> <li>• The data should be submitted on a media format compatible with Microsoft Windows.</li> <li>• Microsoft Excel, or an Excel compatible format, is required.</li> <li>• If the data cannot be presented electronically please contact the Commission’s client support section for advice.</li> </ul>
<b>Lodgement of the application</b>	<p>This application, together with the supporting evidence, must be lodged in the manner approved by the Commissioner under subsection 269SMS(2) of the Act. The Commissioner has approved lodgement of this application by either:</p> <ul style="list-style-type: none"> <li>- preferably, email, using the email address <a href="mailto:clientsupport@adcommission.gov.au">clientsupport@adcommission.gov.au</a>, or</li> <li>- post to: The Commissioner of the Anti-Dumping Commission GPO Box 2013 Canberra ACT 2601, or</li> <li>- facsimile, using the number (03) 8539 2499.</li> </ul>
<b>Public Record</b>	<p>During an investigation all interested parties are given the opportunity to defend their interests by making a submission. The Commission maintains a public record of these submissions. The public record is available on the Commission’s website at <a href="http://www.adcommission.gov.au">www.adcommission.gov.au</a>.</p> <p>At the time of making the application both a confidential version (for official use only) and non-confidential version (public record) of the application <u>must</u> be submitted. Please ensure each page of the application is clearly marked “FOR OFFICIAL USE ONLY” or “PUBLIC RECORD”. The non-confidential application should enable a reasonable understanding of the substance of the information submitted in confidence, clearly showing the reasons for seeking the publication of a dumping duty or countervailing duty notice, or, if those reasons cannot be summarised, a statement of reasons why a summary is not possible.</p>

# **PART A**

## **INJURY**

### **TO AN AUSTRALIAN INDUSTRY**

#### **IMPORTANT**

All questions in Part A should be answered even if the answer is 'Not applicable' or 'None'. If an Australian industry comprises more than one company/entity, each should separately complete Part A.

## A-1 Identity and communication

Please nominate a person in your company for contact about the application:

Contact Name:	██████████
Company and position:	Chief Executive Officer, SPC Operations Pty Ltd
Address:	Level 1/3 Bristol St, Essendon Fields, VICTORIA 3041
Telephone:	██████████
Facsimile:	N/A
E-mail address:	██████████
ABN:	56 633 532 162

### Alternative contact

Name:	██████████
Position in company:	Chief Financial Officer
Address:	Level 1/3 Bristol St, Essendon Fields, VICTORIA 3041
Telephone:	██████████
Facsimile:	N/A
E-mail address:	██████████

If you have appointed a representative to assist with your application, provide the following details and complete Appendix A8 (Representation).

Name:	Chad Uphill
Business name:	Chad Uphill Trade Advisory
Address:	P.O. Box 3004, Minnamurra, NSW 2533
Telephone:	+61 2 412 377 603
Facsimile:	N/A
E-mail address:	chad@cutrade.com.au
ABN:	31 207 328 729

## A-2 Company information

1. State the legal name of your business and its type (e.g. company, partnership, sole trader, joint venture). Please provide details of any other business names you use to manufacture/produce/sell the goods that are the subject of your application.

The Australian manufacturer applicant requesting the imposition of anti-dumping measures applicable to prepared or preserved tomatoes (interchangeably **prepared/preserved tomatoes**) from Italy is SPC Operations Pty Ltd (**SPC**) (ABN: 56 633 532 162). This is the only business name under which the goods are produced and sold.

2. Provide your company's internal organisation chart. Describe the functions performed by each group within the organisation.

Refer Confidential Attachment A-2.2. The functions performed by each group within the organisation can be summarised as follows [**confidential text deleted: commercially sensitive organisational details**].

3. List the major shareholders of your company. Provide the shareholding percentages for joint owners and/or major shareholders.

Refer Confidential Attachment A-2.3(a) and (b). SPC [**confidential text deleted: ownership details**].

4. If your company is a subsidiary of another company list the major shareholders of that company.

Refer Confidential Attachment A-2.3(b).

5. If your parent company is a subsidiary of another company, list the major shareholders of that company.

Refer A-2.3 above.

6. Provide an outline diagram showing major associated or affiliated companies and your company's place within that structure (include the ABNs of each company).

Refer A-2.3 above.

7. Are any management fees/corporate allocations charged to your company by your parent or related company?

Directors' fees are the only charges made.

8. Identify and provide details of any relationship you have with an exporter to Australia or Australian importer of the goods.

SPC has no relationships with exporters/importers of the goods the subject of this application.



9. Provide a copy of all annual reports applicable to the data supplied in appendix A3 (Sales Turnover). Any relevant brochures or pamphlets on your business activities should also be supplied.

Refer Confidential Attachments A-2.9.1 through to A-2.9.4. For relevant internal SPC promotional material, refer Confidential Attachment A-2.9.5 and A-2.9.6.

10. Provide details of any relevant industry association.

SPC is a member of the following associations:

- The Australian Food and Grocery Council (<https://www.afgc.org.au/>);
- The Australian Processing Tomato Research Council (<https://aptrc.asn.au/>); and
- The Canned Fruits Industry Council of Australia.

### **A-3 The imported and locally produced goods**

1. Fully describe the imported product(s) the subject of your application:
  - Include physical, technical or other properties.
  - Where the application covers a range of products, list this information for each make and model in the range.
  - Supply technical documentation where appropriate.

The goods the subject of the application are tomatoes (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 (prepared or preserved tomatoes), exported from Italy.

The following tomato products do not form part of this application:

- pastes;
- purees;
- sauces;
- pasta sauces;
- juices; and
- sundried tomatoes.

The common container sizes of the imported prepared or preserved tomatoes the subject of this application are 300 grams (g) to 850g, however this application covers all container sizes up to and including 1.14 litres.

The imported goods can be packaged in different containers, such as cans, glass jars, pouches or tetra packs. Products sold in multi-unit packs for example, 3 x 400g cans, are to be considered as three single packs.

The imported prepared or preserved tomatoes can be labelled with a generic, a house brand/private label for the retailer, or a proprietary label. The imported prepared or preserved tomatoes the subject of this application include all imported prepared or preserved tomatoes regardless of how labelled.

2. List the tariff classification(s) and statistical code(s) of the imported goods.

The tariff classification of the goods the subject of this application is 2002.10, statistical code 60 in Schedule 3 of the *Customs Tariff Act 1995*.<sup>1</sup> The following is an extract from Schedule 3:

Tariff Code	Statistical Code	Description
2002.10.00	60	Tomatoes, prepared or preserved, otherwise than by vinegar or acetic acid – in packs not exceeding 1.14L.

3. Fully describe your product(s) that are 'like' to the imported product:

- Include physical, technical or other properties.
- Where the application covers a range of products, list this information for each make and model in the range.
- Supply technical documentation where appropriate.
- Indicate which of your product types or models are comparable to each of the imported product types or models. If appropriate, the comparison can be done in a table.

SPC's products are prepared or preserved tomatoes either whole (peeled or unpeeled) or in pieces (such as diced, chopped, or crushed) in water or juice, with or without added vegetables, herbs and /or spices, prepared or preserved otherwise than by vinegar or acetic acid, in pack sizes typically up to and including 1.14 litres, and which are suitable for purchase from retailers by individual consumers.

Specifically:

- SPC produces prepared or preserved tomatoes in the form of chopped, flavoured, whole and crushed tomatoes. Although diced products are preferred by the vast majority of consumers, price is the key purchase criteria.
- SPC's prepared or preserved tomatoes are packed into cans. Imported products competing with SPC's products are also typically in cans. However, the imported goods can be in various other forms of packaging, including glass jars and pouches. These products are similar to SPC's products as they have similar functional and commercial attributes. The package does not alter the essential characteristics of the product.
- The majority of the SPC's and imported products in the supermarkets are in 400g and 810g size cans, however consumers switch between these based on price.

4. Describe the ways in which the essential characteristics of the imported goods are like to the goods produced by the Australian industry.

The prepared/preserved tomato products produced by SPC are identical to, or very closely resemble, the imported tomato products, on the basis that:

- the products have similar compositions, sizes, cuts and ingredients;
- the products are directly substitutable;

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<sup>1</sup> The goods are defined by the goods description, not the tariff classification.

- the products compete directly in the same markets; and
- the products have the same end-uses.

### Physical likeness

- The imported products are available in the same size packaging as SPC's products. The majority of the products available are in the 400g and 800/810g size cans;
- The key ingredient in the imported goods are prepared tomatoes. SPC's prepared products are also tomatoes, and are available with similar compositions and liquids; and
- Both the imported goods and SPC's products are available in the same cuts, such as diced, chopped, whole, crushed or mixed with herbs and spices. The imported goods may also include an *organic* range, to which SPC's products are considered alike.<sup>2</sup>

### Production likeness

- The goods are produced using the same/similar raw material inputs. The goods are produced using similar equipment and a similar manufacturing processes.

### Commercial likeness

- Both SPC's and the imported goods are available on supermarket shelves, and compete with each other; and
- Consumers readily switch between SPC's and imported products. The key purchase criteria driving the purchase decision is price.

### Functional likeness

- Both SPC's and the imported goods are used by consumers for preparing meals and are interchangeable.

SPC therefore considers that on the basis of possessing similar essential characteristics as the imported goods, it can be concluded that the locally produced goods are alike to imports from Italy.

5. What is the Australian and New Zealand Standard Industrial Classification Code (ANZSIC) applicable to your product.

The ANZSIC code applicable to prepared tomato products industry is category 1140 *Fruit and Vegetable Processing*.<sup>3</sup>

6. Provide a summary and a diagram of your production process.

SPC's prepared tomatoes production can be generally described as follows:

1. fresh tomatoes are delivered to SPCA's production facility directly by the local tomato growers on the same day that they are harvested from the vine;
2. the delivered fresh tomatoes are moved immediately to the processing line, so as to

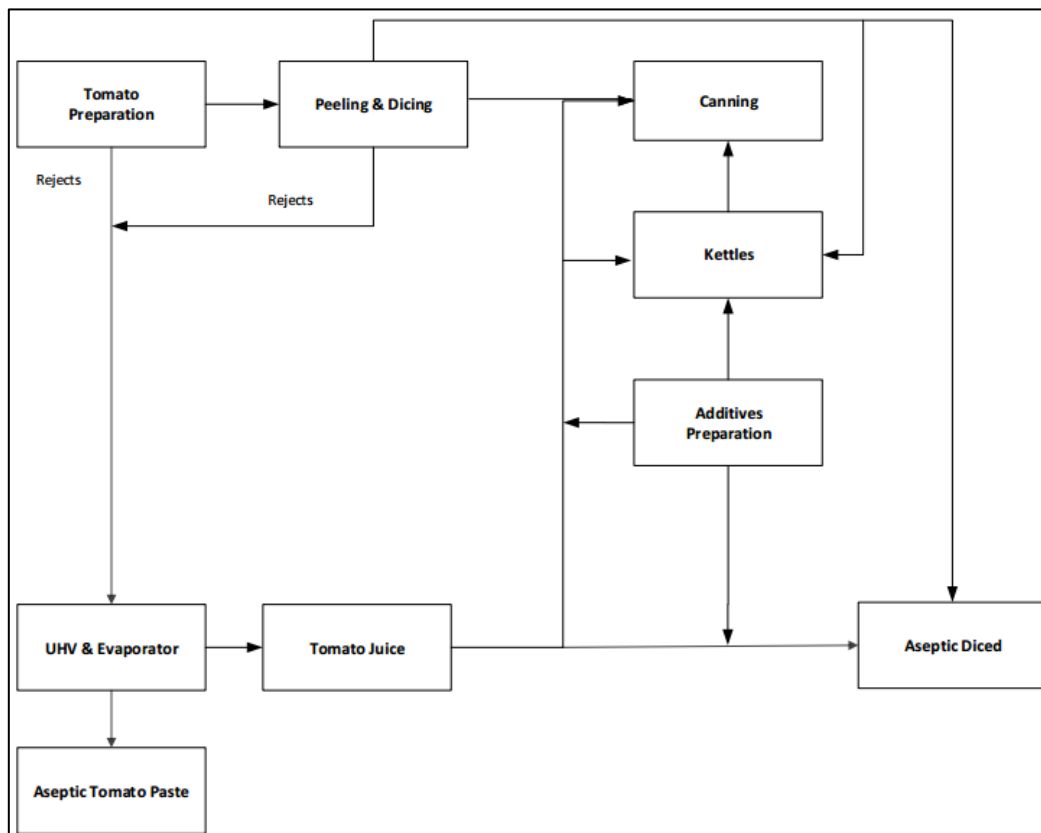
<sup>2</sup> In the Final Report to Investigation No. 271, the Commission was ...satisfied that SPCA produces goods that have characteristics closely resembling the goods exported to Australia, including Italian prepared or preserved tomatoes using peeled tomatoes, San Marzano variety or organic tomatoes. Refer page 16 of the final report.

<sup>3</sup> Refer <https://www.abs.gov.au/statistics/classifications/australian-and-new-zealand-standard-industrial-classification-anzsic/2006-revision-2-0/detailed-classification/c/11/114/1140>

- be washed and graded;
3. the higher quality fresh tomatoes are then steam-peeled whilst the 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;
  4. the peeled tomatoes are graded a second time, so as to be sorted for processing as either whole tomato products if they are higher quality or if they are lower quality tomatoes, these are graded a third time for dice, chop or crush cut profiles;
  5. once sorted and processed according to cut profile, all products are put into cans. Each can is filled with standardised ratios of processed tomatoes to liquid filling stage (juice that is derived from step 3 above). 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 (referred to as 'value added' products);
  6. once filled to product specifications, cans are sealed and pasteurised (cooked) to preserve the product and moved to cool to ambient temperature.
  7. once cooled, all unlabelled cans (referred to as the 'bright can' stage) are moved to storage according to product grouping;
  8. cans are labelled on an as-needed basis prior to shipping, depending on specific order requirements and customer demands.

SPC aims to bring the fresh tomatoes to the bright can stage (that is, an unlabelled can) within 24 hours of delivery.

A summary in diagrammatic representation is as follows:



**Non-Confidential Table A-3.6:** production process overview

Detailed production process schematics are provided at Confidential Attachment A-3.6.1 and 3.6.2.

7. If your product is manufactured from both Australian and imported inputs:
  - describe the use of the imported inputs; and
  - identify that at least one substantial process of manufacture occurs in Australia (for example by reference to the value added, complexity of process, or investment in capital).

The key raw material input for the prepared tomatoes is raw tomatoes, which are domestically sourced.

8. If your product is a processed agricultural good, you may need to complete C-3 (close processed agricultural goods).

Domestic prepared or preserved tomato products produced by SPC are not close processed agricultural products because the harvest of tomatoes grown for consumption in fresh form (i.e. for the fresh tomato market) is not substantially devoted to use in the production of prepared or preserved tomato products (i.e. for the prepared tomato market).

Tomatoes are also grown in Australia for other products such as paste, puree, sauces. SPC is not aware of the quantity of tomatoes produced for sale into the fresh tomato market.

9. Supply a list of the names and contact details of all other Australian producers of the product.

Over the proposed investigation period, there were no other Australian producers of prepared or preserved tomato products of the kind specified in this application. However, as of May 2024, [**confidential text deleted**: commercial sensitive competition details]. See Confidential Attachment A-3.9 for further details.

10. If different models can be established for the goods subject to the application:
  - What are the differences in physical characteristics that give rise to distinguishable and material differences in price?

These characteristics are detailed below in the proposed Model Control Code (**MCC**) structure. Given that SPC's goods are considered 'like' to the subject goods, irrespective of whether the subject goods are proprietary or private label, the main physical characteristics that give rise to differences in price are container size, packaging medium, and the tomato cut. These can be readily assessed in SPC's Confidential Appendix A4 data.

- Provide supporting documentation or analysis supporting the differences in physical characteristics that affects price comparability. Unit costs may also be used to demonstrate differences in physical characteristics where it affects price comparability.

Confidential Appendix A4 provides the relevant data that supports an assessment of the differences in physical characteristics that affect price comparability. Refer also the details provided in Confidential Attachment A-5.9.

- In providing the list of physical differences, identify the characteristics in order of significance.

The proposed MCC structure below sequentially identifies physical characteristics in the order of significance.

- Identify key characteristics where the physical differences are significantly different and it is not meaningful to compare models with different physical characteristics.

The physical characteristics in the below-proposed MCC structure have been reported for sales and cost data in Confidential Appendix A4. The cost data presented in Appendix A4 comprises all standard costs of production, plus selling, general and administrative (**SG&A**) expenses. In this way, SPC can disclose costs on an MCC basis.

- Identify the physical characteristics that can be reported in relation to sales and cost data respectively. This should be reflected in the sales data provided in appendices A4 and A6.
- Complete the table below having regard to the information provided above. The Commission will consider this information in establishing a model control code structure for the investigation.

The following table details the proposed MCC structure for prepared/preserved tomatoes:

Item	Category	Sub-category	Identifier	Sales Data	Cost Data
1	Total container size in net weight (grams)	<400	3	Mandatory	Mandatory
		400 – 425	4		
		>425 – <800	5		
		800 – 850	8		
		>850 – 1,400	9		
2	Packing medium	Juice	J	Mandatory	Mandatory
		Juice/paste/sauce	JP		
		Other	O		
3	Value add (e.g. herbs and spices)	Value-added	VA	Mandatory	Mandatory
		Non-value added	NVA		
4	Tomato cut	Crushed	CR	Mandatory	Mandatory
		Diced	DC		
		Whole	WH		
		Other	O		
15	Container type	Tin can – lacquered	TCL	Mandatory	Optional
		Tin can – not lacquered	TCN		
		Other	O		
6	Quality	Prime	P	Mandatory	Optional
		Non-prime (e.g. damaged can)	N		

## A-4 The Australian market

### 1. Describe the end uses of both your product and the imported goods.

SPC's prepared or preserved tomatoes products and the comparable imported products have the same end-uses; namely that they are used predominantly in the preparation of meals such as sauces, soups, and stews for consumption by Australian households. The goods compete for shelf space in supermarket outlets, and in sales to smaller retailer outlets such as delicatessens and corner stores.

Smaller quantities are likely purchased for use in the food service industry. Generally however, the food service industry purchases product in larger pack sizes above 1.14 litres for production of larger volumes of sauces, soups and stews.

### 2. Describe the Australian market for the Australian and imported product and the conditions of competition within the overall market. Your description could include information about:

- sources of product demand;
- marketing and distribution arrangements;
- typical customers/users/consumers of the product;
- the presence of market segmentation, such as geographic or product segmentation;
- causes of demand variability, such as seasonal fluctuations, factors contributing to overall market growth or decline, government regulation, and developments in technology affecting either demand or production;
- the way in which the imported and Australian product compete; and
- any other factors influencing the market.

SPC's preserved tomato products and the comparable imported goods are both demanded by consumers for household meal preparation.

Broadly, the market for preserved tomatoes comprises the following segments:

- sales to the major supermarkets, Woolworths and Coles; and
- sales to convenience stores and smaller food stores.

Both products are purchased by these channels for on-sale to end-consumers.

Major supermarket chains account for the most significant share of the sales of the products concerned, with the remaining sales being to smaller retailers.

Further, as mentioned above, a lesser volume is sold to the food services industry. This segment mainly consists of sales to the catering industry, restaurant trade and institutions such as hospitals, nursing homes and correctional facilities.

Marketing arrangements differ according to the channel through which the products are sold. Major supermarket chains purchase products and require SPC to accept various marketing conditions for the sale of the product.

Distribution arrangements differ according to the retailer concerned, with major retail chains requiring SPC to supply products to their distribution centres. SPC supplies smaller retailers



through distributors.

As indicated above, the major customers of SPC's products are the supermarket chains and to a much lesser extent the smaller retailers.

There is no significant geographic or product segmentation for the goods. Consumers will substitute between different pack sizes within the range of the sizes of the product that are the subject of this application depending on the prices of the various sizes (for example, consumers may substitute two 400g for one 800g item depending on relative pricing).

Consumer demand for the preserved tomatoes category as a whole has been reasonably stable, with imported products increasingly substituting for the Australian manufactured goods. Therefore, demand for the Australian SPC preserved tomato product range has fallen considerably in recent years owing to the impact of the dumped and subsidised imported products from Italy.

The Australian supply of raw material tomatoes for processing is seasonal. SPC source raw material tomatoes primarily from growers in Victoria. This temperate climate dictates that the main tomato-growing season typically spans from late spring (October/November) through summer (December to February) and into early autumn (March/April). Australian and imported products compete fundamentally on price, given that their composition and other features are essentially the same. The major supermarket chains are the major purchasers of both products in the Australian market, and in recent years have imported increasing quantities, particularly those marketed under their own private label brands.

3. Identify if there are any commercially significant market substitutes for the Australian and imported product.

There are no commercially significant market substitutes for the Australian and imported product.

4. Complete appendix A1 (Australian production). This data is used to support your declaration at the beginning of this application.

SPC has completed Confidential Appendix A1 for total production (local and export sales) for the twelve months ending 31 March 2024.

5. Complete appendix A2 (Australian market).

SPC has completed Confidential Appendix A2 – Australian market for preserved tomatoes.

The import data represented in Confidential Appendix A-2 is based on import statistics provided by *TradeData International*.<sup>4</sup>

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<sup>4</sup> Refer <https://tradedata.net/>



6. Use the data from appendix A2 (Australian market) to complete this table:

*Indexed table of sales quantities*

Year ending March	(a)	(b)	(c)	(d)	(e)	(f)	Total Market
	Applicant Sales	Other Aust. Sales	Total Aust. Sales	Dumped Imports	Other Imports	Total Imports	
2021	100.00	100.00	100.00	100.00	100.00	100.00	100.00
2022	104.65	100.00	104.65	71.78	63.09	71.51	78.70
2023	102.72	100.00	102.72	81.37	76.73	81.23	85.89
2024	74.82	100.00	74.82	77.75	82.56	77.90	77.23

#### A-5 Applicant's sales

1. Complete appendix A3 (sales turnover).

SPC has completed Confidential Appendix A3 for all sales of preserved tomatoes.

2. Use the data from appendix A3 (sales turnover) to complete these tables.

*Indexed table of Applicant's sales quantities*

Quantity (Kg's)	Year ending March			
	2021	2022	2023	2024
<b>All Products</b>				
Australian market	100.00	98.52	96.63	81.48
Export Market	100.00	83.44	82.30	79.11
<b>Total</b>	<b>100.00</b>	<b>97.80</b>	<b>95.95</b>	<b>81.37</b>

<b>Like goods</b>				
Australian market	100.00	104.65	102.72	74.85
Export Market	100.00	210.26	187.44	114.40
<b>Total</b>	<b>100.00</b>	<b>104.75</b>	<b>102.80</b>	<b>74.85</b>

*Indexed table of Applicant's sales values*

Value (\$)	Calendar Year			
	2021	2022	2023	2024
<b>All Products</b>				
Australian market	100.00	98.90	104.74	96.00
Export Market	100.00	88.30	91.82	98.03
<b>Total</b>	<b>100.00</b>	<b>98.35</b>	<b>104.06</b>	<b>96.11</b>
<b>Like goods</b>				
Australian market	100.00	98.99	102.97	89.69
Export Market	100.00	200.69	176.49	110.70
<b>Total</b>	<b>100.00</b>	<b>99.08</b>	<b>103.04</b>	<b>89.71</b>

3. Complete appendix A5 (sales of other production) if you have made any:
  - internal transfers; or
  - domestic sales of like goods that you have not produced, for example if you have imported the product or on-sold purchases from another Australian manufacturer.

SPC has completed Confidential Appendix A5.

4. Complete appendix A4 (domestic sales).

SPC has completed Confidential Appendix A4 for the twelve months ending 31 March 2024.

5. If any of the customers listed at appendix A4 (domestic sales) are associated with your business, provide details of the association. Describe the price effect of the association.

SPC does not have any associations with the customers listed in Confidential Appendix A4.

6. Attach a copy of distributor or agency agreements/contracts.

Not applicable, as SPC negotiates directly with its major customers.

7. Provide copies of any price lists.

Refer Confidential Attachment A-5.7.

8. If any price reductions (for example commissions, discounts, rebates, allowances and credit notes) have been made on your Australian sales of like goods provide a description and explain the terms and conditions that must be met by the customer to qualify.
  - Where the reduction is not identified on the sales invoice, explain how you calculated the amounts shown in appendix A4 (domestic sales).
  - If you have issued credit notes (directly or indirectly) provide details if the credited amount has **not** been reported appendix A4 (domestic sales) as a discount or rebate.

SPC provides discounts for some sales identified in Confidential Appendix A4. Discounts are separately identified. The discounts provided would relate to any of the following:

- trading terms which are a fixed % of the invoice value of goods. The % vary but customer & channel;
- off invoice discounts;
- rebates / incentives; and/or
- promotional funding to fund discounts to the end consumer.

9. Select two domestic sales in each quarter of the data supplied in appendix A4 (domestic sales). Provide a complete set of commercial documentation for these sales. Include, for example, purchase order, order acceptance, commercial invoice, discounts or rebates applicable, credit/debit notes, long or

short-term contract of sale, inland freight contract, and bank documentation showing proof of payment.

Commercial documentation collated by SPC is provided at Confidential Attachment A-5.9.

10. Provide a list of model control codes from appendix A4.

Refer Confidential Appendix A4.

## **A-6 General accounting/administration information**

1. Specify your accounting period.

SPC's financial year is 1 June to 31 July.

2. Provide details of the address(es) where your financial records are held.

SPC's financial records are held at:

- Andrew Fairley Avenue, Shepparton, VICTORIA, 3630; and
- Level 1/3 Bristol St, Essendon Fields, VICTORIA 3041.

3. To the extent relevant to the application, please provide the following financial documents for the two most recently completed financial years plus any subsequent statements:

- chart of accounts;

Refer Confidential Attachment A-6.3.

- audited consolidated and unconsolidated financial statements (including all footnotes and the auditor's opinion);

Refer Confidential Attachments A-2.9.1 through to A-2.9.4.

- internal financial statements, income statements (profit and loss reports), or management accounts, that are prepared and maintained in the normal course of business for the goods.

*These documents should relate to:*

1. the division or section/s of your business responsible for the production and sale of the goods covered by the application, and
2. the company overall.

Refer Confidential Attachments A-6.3.1 through to A-6.3.4.

4. If your accounts are **not** audited, provide the unaudited financial statements for the two most recently completed financial years, together with your taxation returns. Any subsequent monthly, quarterly or half yearly statements should

also be provided.

The accounts of SPC are audited annually. For SPC Operations, refer Confidential Attachments A-6.3.1 through to A-6.3.4.

5. If your accounting practices, or aspects of your practices, differ from Australian generally accepted accounting principles, provide details.

SPC's accounting practices are in accordance with Australia's generally accepted accounting principles.

6. Describe your accounting methodology, where applicable, for:
  - the recognition/timing of income, and the impact of discounts, rebates, sales returns warranty claims and intercompany transfers;

Revenue is recognised and measured at the fair value of the consideration received or receivable to the extent that it is probable that economic benefits will flow to SPC (**the Group**), and the revenue can be reliably measured.

Revenue from sales made to wholesale customers is recognised when control of the goods has transferred, being the point in time when 1) the goods have been shipped to the wholesaler and 2) the wholesaler has full discretion over the subsequent distribution of the goods and the price at which the goods are sold. Based on the terms of the contract, at the time the goods are shipped, the wholesaler is deemed to have accepted the products and therefore assumes any related inventory risk (e.g., obsolescence or other loss).

Goods are often sold to wholesale customers with rebates based on minimum sales quantities over a 12-month period. Revenue from these sales is measured at the price specified in the contract, net of any estimated rebates. The Group uses its cumulative knowledge and experience in estimating expected rebates and applies the expected value method. Revenue is only recognised where it is highly probable that a significant reversal of revenue will not occur. The Group recognises a liability for any rebates it expects to pay in a future reporting period.

The Group's sales are accompanied by an obligation that the Group will provide a refund where the goods are deemed to be faulty. This obligation is accounted for in accordance with the requirements of *AASB 137 Provisions, Contingent Liabilities and Contingent Assets*. The Group does not provide service type warranties.

In preparing the consolidated financial statements, the effects of all transactions, balances and unrealised gains and losses on transactions between entities in the corporate group are eliminated.

- provisions for bad or doubtful debts;

Impairment of trade receivables and contract assets have been determined using the simplified approach in AASB 9 which uses an estimation of lifetime expected credit losses. The Group has determined the probability of non-payment of the receivable and contract asset and multiplied this by the amount of the expected loss arising from default.

The amount of the impairment is recorded in a separate allowance account with the loss being recognised in finance expense. Once the receivable is determined to be uncollectable then the gross carrying amount is written off against the associated allowance

- the accounting treatment of general expenses and/or interest and the extent to which these are allocated to the cost of goods;

The costs of conversion of inventories include costs directly related to the units of production. They also include a systematic allocation of fixed and variable production overheads that are incurred in converting materials into finished goods. Other costs are included in the cost of inventories only to the extent that they are incurred in bringing the inventories to their present location and condition. No interest costs are recovered into the costs of inventories.

- costing methods (eg by tonnes, units, revenue, activity, direct costs etc) and allocation of costs shared with other goods or processes;

SPC uses the standard cost method for measuring the cost of inventory. Shared costs are allocated based on units of production.

- the method of valuation for inventories of raw material, work-in-process, and finished goods (eg FIFO, weighted average cost);

Inventories including raw materials, work in progress and finished goods are stated at the lower of cost (including fixed and variable factory overheads where applicable) and net realisable value. Cost is determined on the basis of first-in-first-out, average or standard, whichever is the most appropriate in each case.

Net realisable value is the estimated selling price in the ordinary course of business, less the cost of completion and selling expenses.

- valuation methods for scrap, by-products, or joint products;

Scrap and by-products are valued at net realisable value, whereas joint products are valued at lower of cost and net realisable value.

- valuation methods for damaged or sub-standard goods generated at the various stages of production;

Finished goods are stated at the lower of cost (including fixed and variable factory overheads where applicable) and net realisable value.

- valuation and revaluation of fixed assets;

Each class of property, plant and equipment is carried at cost or fair value less, where applicable, any accumulated depreciation and impairment.

Land and buildings are measured at cost. Property, plant and equipment are measured at cost. Capital works in progress represent expenditure which is not yet complete but once complete will be capitalised as part of the cost of plant and equipment.

At the end of each annual reporting period, the depreciation method, useful life, and residual value of each asset is reviewed. Any revisions are accounted for prospectively as a change in estimate.

- average useful life for each class of production equipment, the depreciation method and depreciation rate used for each;

Property, plant and equipment, other than freehold land, is depreciated or amortised on a straight-line basis at various rates dependent upon the estimated average useful life for that asset to SPC. The estimated useful lives of each class of asset for the current and prior year are as follows:

- Freehold and leasehold buildings, 25 to 40 years;
  - Plant and equipment, 3 to 15 years;
  - Motor vehicles, 8 years; and
  - Computer equipment, 5 years.
- treatment of foreign exchange gains and losses arising from transactions and from the translation of balance sheet items; and

Foreign currency transactions are recorded at the spot rate on the date of the transaction. At the end of the reporting period:

- foreign currency monetary items are translated using the closing rate;
- non-monetary items that are measured at historical cost are translated using the exchange rate at the date of the transaction; and
- non-monetary items that are measured at fair value are translated using the rate at the date when fair value was determined.

Exchange differences arising on the settlement of monetary items or on translating monetary items at rates different from those at which they were translated on initial recognition or in prior reporting periods are recognised through profit or loss, except where they relate to an item of other comprehensive income or whether they are deferred in equity as qualifying hedges.

- restructuring costs, costs of plant closure, expenses for idle equipment and/or plant shut-downs.

Provisions (restructuring costs) are recognised when a present legal or constructive obligation has arisen as a result of a past event and it is probable that an outflow of economic benefits will be required to settle the obligation and a reliable estimate can be made of the amount of the obligation.

At each reporting date, SPC assesses whether there is an indication that an asset may be impaired. Where an indicator of impairment exists or where annual impairment testing for an asset is required, SPC makes a formal estimate of the recoverable amount. An impairment loss is recognised for the amount by which the carrying amount of an asset exceeds the recoverable amount, which is defined as the greater of an asset's fair value less costs to sell, or value in use.

7. If the accounting methods used by your company have changed over the period covered by your application please provide an explanation of the changes, the date of change, and the reasons.

Not applicable.

## A-7 Cost information

1. Complete appendices A6.1 and A6.2 (cost to make and sell) for domestic and export sales.

SPC has completed Confidential Appendix A6.1 and A6.2. These have been completed in the context of the MCC-specific cost and sales comments at A-3.10 above.

2. Provide a list of model control codes from appendix A6.1 and A6.2.

The full list of Model Control Codes is provided above at A-3.10.

## A-8 Injury

The principal indicators of injury are price, volume and profit effects – although not all of these must be evident. For this application, profit refers to amounts earned. Profitability is the ratio of profit to sales revenue. Where the application includes a claim of threat of material injury you must also complete question C.2.

1. Estimate the date when the material injury from dumped and/or subsidised imports commenced.

SPC alleges that the material injury in its various forms, and arising from the volume and price effects of the dumped and subsidised goods from Italy, has transpired across the full proposed injury analysis and investigation periods (the years ending March 2021 through to 2024).

Specifically, SPC claims, and will establish in the subsequent parts of this application, that it has experienced material injury during the proposed injury and investigation periods in the form of:

- lost sales volume;
- lost market share;
- price suppression;
- price depression;
- loss of profits;
- loss of profitability;
- lower revenue;
- reduced return on investment;
- reduced capacity utilisation;
- higher finished goods inventories;
- reduced employment; and
- reduced hours worked.

2. Using the data from appendix A6 (cost to make and sell), complete the following tables for each model control code of your production. P<sup>n</sup> is the most recent period.

*Index of production variations*

<b>Year ending March</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>
425 grams	100.00	[XXX]	[XXX]	[XXX]
825 grams	100.00	[XXX]	[XXX]	[XXX]
<b>Total</b>	100.00	99.95	69.72	98.24

*Index of cost variations*

<b>Year ending March</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>
425 grams	100.00	[XXX]	[XXX]	[XXX]
825 grams	100.00	[XXX]	[XXX]	[XXX]
<b>Total</b>	100.00	83.51	109.28	102.48

*Index of price variations*

<b>Year ending March</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>
425 grams	100.00	[XXX]	[XXX]	[XXX]
825 grams	100.00	[XXX]	[XXX]	[XXX]
<b>Total</b>	100.00	94.59	100.25	119.88

*Index of per unit profit variations*

<b>Year ending March</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>
425 grams	(100.00)	[XXX]	[XXX]	[XXX]
825 grams	(100.00)	[XXX]	[XXX]	[XXX]
<b>Total</b>	(100.00)	(425.39)	(1176)	(35872)

*Index of profitability variations*

<b>Year ending March</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>
425 grams	(100.00)	[XXX]	[XXX]	[XXX]
825 grams	(100.00)	[XXX]	[XXX]	[XXX]
<b>Total</b>	(100.00)	(447.62)	(1173)	(29922)



3. Complete appendix A7 (other injury factors).

Where applicable to injury claims, prepare an indexed table for other injury factor(s) in the format above.

*Index of relevant Appendix A7 factors*

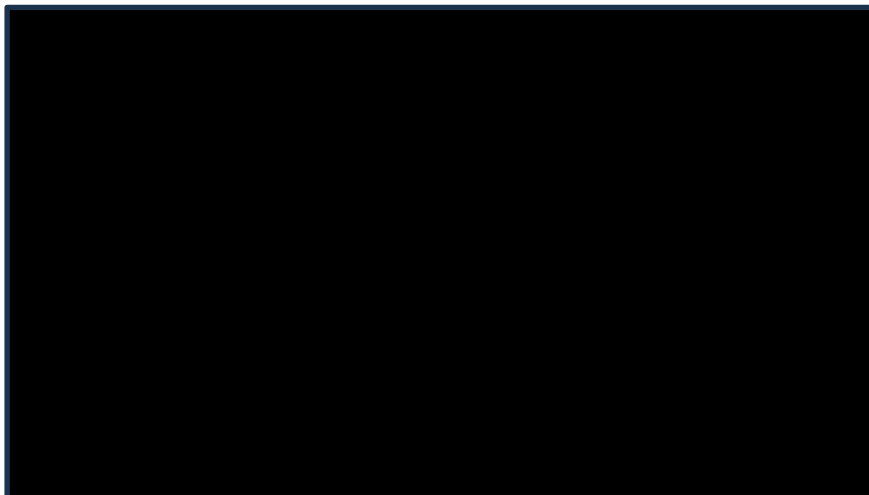
<b>Preserved Tomatoes</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>
Revenue	100.00	98.99	102.97	89.69
Return on investment	100.00	129.34	(43.49)	83.62
Capacity utilisation	100.00	97.04	66.91	106.84
Finished goods inventories	100.00	100.00	166.38	221.51
Employment	100.00	70.11	115.77	98.56
Hours worked	100.00	70.53	119.60	104.38

**A-9 Link between injury and dumped or subsidised imports**

To establish grounds to initiate an investigation there must be evidence of a causal relationship between the injury and the alleged dumping or subsidisation. This section provides for an applicant to analyse the data provided in the application to establish this link. It is not necessary that injury be shown for each economic indicator.

1. Identify from the data at appendix A2 (Australian market) the influence of the volume of dumped and/or subsidised imports on your quarterly sales volume and market share.

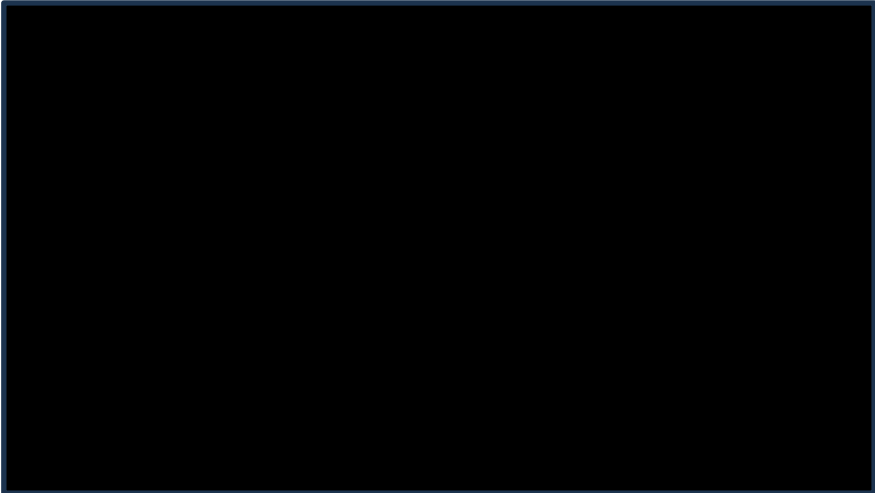
There is a direct correlation between the ongoing presence and increase in volumes of preserved tomatoes imported from Italy and the Australian industry's annual sales volume and market share for the like goods. Confidential Chart A-9.1.1 below highlights this:



**Confidential Chart A-9.1.1:** Year Ending March 2021-2024 Australian market share (source: Appendix A2)

Across the injury analysis and investigation periods, imports of preserved tomatoes from Italy have dominated the Australian market. Following the 2021 base year, imports from Italy declined, then increased and stabilised – taking share from the Australian industry. Critically,

the Australian market over the injury analysis period has declined by an estimated [XX] percent. This has translated to a material loss of market share for the Australian industry while Italy has maintained, and slightly advanced, its presence:



**Confidential Chart A-9.1.2:** Year Ending March 2021-2024 sales volume comparison (source: Appendix A2)

Consistent with the above import trade data assessment of the prevalence of Italian preserved tomatoes in the Australian market, SPC’s independent, brand-specific, and container size specific market analysis highlights that imported Italian tomatoes hold a large and growing share of the Australian market, as depicted below:



**Confidential Chart A-9.1.3:** Moving Annual Total (MAT) Australian market share assessment, by brand<sup>5</sup>

<sup>5</sup> Confidential Attachment A-9: SPC presentation, *Australian vs Imported – May 2024* (p. 12).



**Confidential Chart A-9.1.4:** Moving Annual Total (MAT) Australian market share assessment, by product size<sup>6</sup>

2. Use the data at [appendix A2](#) (Australian market) to show the influence of the price of dumped and/or subsidised imports on your quarterly prices, profits and profitability provided at [appendix A6.1](#) (costs to make and sell). If appropriate, refer to any price undercutting and price depression evident in the market.

### Influence on prices

The correlation between the Australian industry's quarterly selling prices for the like goods and the annual FOB export prices for the dumped and subsidised imports across the injury analysis and investigation period exists because the Australian industry's prices were heavily influenced by the presence and prices of the dumped and subsidised imports. Specifically, SPC has responded to the presence of imports (by importers of the dumped and subsidised goods) by suppressing its price increases for like goods. This has been of particular prevalence during the proposed 2023/24 investigation period.

The Commission's Dumping and Subsidy Manual (**the Manual**)<sup>7</sup> states that price suppression, in terms of Article 3.2 of *The Anti-Dumping Agreement*, is where price increases for the Australian industry's products, which otherwise would have occurred, have been prevented to a significant degree.<sup>8</sup> In determining whether price suppression has occurred, the Commission may examine:<sup>9</sup>

- a comparison of prices with costs to assess whether over time (e.g. the injury analysis period) or within a specified period (e.g. the investigation period) prices have not increased at the same rate as cost increases; and/or
- an assessment as to whether the prices for the Australian industry's product are lower than prices that may have been achieved in the absence of dumping.

In either case, the Commission will base its price suppression analysis on a counterfactual conclusion – assessing what trend in, or level of, prices the Australian industry would have achieved in the absence of dumping.<sup>10</sup>

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<sup>6</sup> Ibid.

<sup>7</sup> Dumping and Subsidy Manual, December 2021.

<sup>8</sup> The Manual, p. 16.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

SPC submits that, absent imports from Italy at material margins of dumping, it would have achieved prices indicative of a level playing field in the Australian market.

### ***Injury Case Studies***

SPC provides the following evidence of customer price correspondence and negotiations for supply of prepared/preserved tomatoes for the 2023/24 period. The price undercutting, price depression, and price suppression evident has caused material injury to SPC.

**[confidential text deleted: injury case study details]**<sup>11</sup>

This is all undertaken against a backdrop of low priced dumped and subsidised Italian exports of preserved tomatoes to the Australian market, the trend of which is accelerating. For example, in June 2023, the Italian producer and exporter *Mutti* reported that export volumes had exceeded 50 percent for the first time:<sup>12</sup>

#### ***Exports exceed 50% for the first time***

*Mutti's solid leadership of the tomato products market in Italy and Europe is underpinned by a market share of 33.7% in Italy (higher than the sum of the market shares of its three strongest competitors) and 15% in Europe.*

*Exports are particularly important in relation to 2021: for the first time, the proportion of sales generated abroad – around EUR 286 million – represents 51% of total sales, and exceeds the amount generated in Italy itself, which stands at around EUR 277 million (and 49% of total sales). Similarly, the distribution of volumes, which total 335,000 tonnes, follows and consolidates the same pattern, with an increase in the quantities sold abroad, of approximately 190,400 tonnes this year, which should be compared to the 144,600 tonnes sold throughout Italy.*

Later, in November 2023, *Mutti* publicised that its foreign operations now account for 53 percent of its profits.<sup>13</sup> In relevant part:<sup>14</sup>

*Already this summer, the company recorded "foreign" sales of EUR 286 million, i.e. around 51% of the total, exceeding for the first time the results generated within Italy, valued at EUR 277 million and 49% of the total.*

*Currently, the *Mutti* group is the market leader in seven European countries: France, Sweden, Denmark, Norway, Finland, Slovenia and Italy. In Germany, where the company opened its fifth branch in January 2022, it is consolidating its position as the market's second-largest brand. Growth also continued outside Europe, in **Australia** and the United States. [emphasis added].*

**[confidential text deleted: injury case study details]**<sup>15</sup>

This analysis indicates that Australian industry prices have been undercut and that SPC would have achieved higher prices in the absence of the presence of preserved tomatoes exported from Italy at dumped and subsidised prices. In other words, the systemic

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<sup>11</sup> Refer Confidential Attachments A-9.2(2)-(3).

<sup>12</sup> Refer [Mutti: 563 million in sales, including more than half from exports - Tomato News](#)

<sup>13</sup> Refer [Mutti strengthens its focus on exports - Tomato News](#) and [Mutti reports strong 2022 results - Italianfood.net](#)

<sup>14</sup> Ibid.

<sup>15</sup> Refer Confidential Attachments A-9.2(2)-(3).

underselling and price undercutting caused the Australian industry to experience price depression and suppression that it would not have otherwise experienced if not for the offers for sale of dumped and subsidised goods.

**Influence on profits and profitability**

SPC competes on price in order to maintain production volume. Therefore, the Australian industry’s profits (expressed as net gains or loss) and profitability are affected by factors impacting its ability to maintain sales volumes and prices sufficient to cover costs.

Confidential Charts A-9.2.1 and A-9.2.2, below, show the influence of the growing presence of imported Italian preserved tomatoes in the Australian market on SPC’s RSV across its main customer base. This declining RSV has detrimentally impacted the Australian industry’s profits and profitability over the proposed injury assessment and investigation period:



**Confidential Chart A-9.2.1:** Woolworths scan data for tomato units sold and RSV<sup>16</sup>



**Confidential Chart A-9.2.1:** Woolworths scan data for tomato units sold and RSV<sup>17</sup>

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<sup>16</sup> Confidential Attachment A-10.

<sup>17</sup> Ibid.

3. Compare the data at [appendix A2](#) (Australian market) to identify the influence of dumped and/or subsidised imports on your quarterly costs to make and sell at [appendix A6.1](#) (for example refer to changes in unit fixed costs or the ability to raise prices in response to material cost increases).

Confidential Chart A-9.3.1 below indicates that the Australian industry experienced regular price suppression throughout the assessment period with persistently high volumes of the goods exported from Italy, in a declining market:



**Confidential Chart A-9.3.1:** Italy volume influence on net prices, together with unit CTMS of Australian industry's own production (Sources: Appendix A2 and A6.1)

4. The quantity and prices of dumped and/or subsidised imported goods may affect various economic factors relevant to an Australian industry. These include, amongst other things, the return on investment in an industry, cash flow, the number of persons employed and their wages, the ability to raise capital, and the level of investment in the industry. Describe, as appropriate, the effect of dumped and/or subsidised imports on these factors and where applicable use references to the data you have provided at [appendix A7](#) (other economic factors). If factors other than those listed at [appendix A7](#) (other economic factors) are relevant, include discussion of those in response to this question.

The impact of dumped and subsidised preserved tomatoes from Italy has been significant in terms of price-effect and volume injury. SPC can demonstrate at Confidential Appendix A7 that it has also experienced injury in other forms, including:

- lower revenue;
- reduced return on investment;
- reduced capacity utilisation;
- higher finished goods inventories;
- reduced employment; and
- reduced hours worked.

The deterioration in each of the identified 'other' indicators can be readily attributed to the increase in imports from Italy, and a subsequent deterioration in sales of the locally produced like goods.

5. Describe how the injury factors caused by dumping and/or subsidisation and suffered by the Australian industry are considered to be ‘material’.

SPC considers that it has experienced material injury during the proposed injury assessment and dumping periods in the form of:

- lost sales volume;
- lost market share;
- price suppression;
- price depression;
- loss of profits;
- loss of profitability;
- lower revenue;
- reduced return on investment;
- reduced capacity utilisation;
- higher finished goods inventories;
- reduced employment; and
- reduced hours worked.

**Volume/market share effects**

SPC has been unable to maintain sales volume across the injury analysis period, which has been reflected in its material loss of market share to dumped and subsidised imports from Italy.

Table A-9.5.1 below indicates that SPC’s total domestic sales volume for preserved tomatoes has decreased by approximately 25 percent:

Preserved tomatoes	YE Mar. 2021	YE Mar. 2022	YE Mar. 2023	YE Mar. 2024
Sales quantity	100.00	104.65	102.72	74.82

**Non-Confidential Table A-9.5.1:** Index of Australian industry’s sales of preserved tomatoes (source: Appendix A6.1)

Confidential Chart A-9.5.2 below shows that SPC’s share of the Australian market for preserved tomatoes has progressively declined since 2021:



**Confidential Chart A-9.5.2:** Australian market share for preserved tomatoes (source: Appendix A2)

As noted above and reemphasised here – Italy has maintained its Australian market share of preserved tomatoes in a declining overall market. This has placed even greater pressure on the Australian industry to maintain sales volumes and market share, albeit unsuccessfully. SPC therefore considers it has suffered material injury in the form of lost sales volumes since 2021/22, which continued through to 2023/24.

**Price depression and suppression**

Price suppression occurs when price increases, which otherwise would have occurred, have been prevented. One indicator of price suppression is the margin between revenues and costs. This approach is proposed by SPC in its analysis, as it contends that a normal business unaffected by dumping would look to increase prices to, at a minimum, cover its Cost to Make and Sell (**CTMS**) and attempt to maximise profits.

Confidential Charts A-9.5.3 and A-9-5.4 below demonstrate movements in SPC’s net sales revenue and total CTMS, and domestic weighted average unit costs and prices for preserved tomatoes during the proposed injury analysis period:



**Confidential Chart A-9.5.3:** Net revenue and total CTM&S (source: Appendix A6.1)



**Confidential Chart A-9.5.4:** Australian selling price and CTM&S (source: Appendix A6.1)

SPC’s weighted average unit costs fluctuated above and below unit selling prices prior to the proposed investigation period, evidencing a trend in price suppression. For the proposed



investigation period, SPC's fully absorbed CTMS now far exceeds selling prices.

SPC therefore considers that it has suffered material injury in the form of price suppression. This is demonstrated by the inability of SPC to increase prices sufficiently to cover increases in the fully absorbed CTMS of the goods. SPC also considers that it has suffered price depression, in the form of net selling prices being lower than they otherwise would be in the absence of dumped, subsidised, and materially injurious Italian exports.

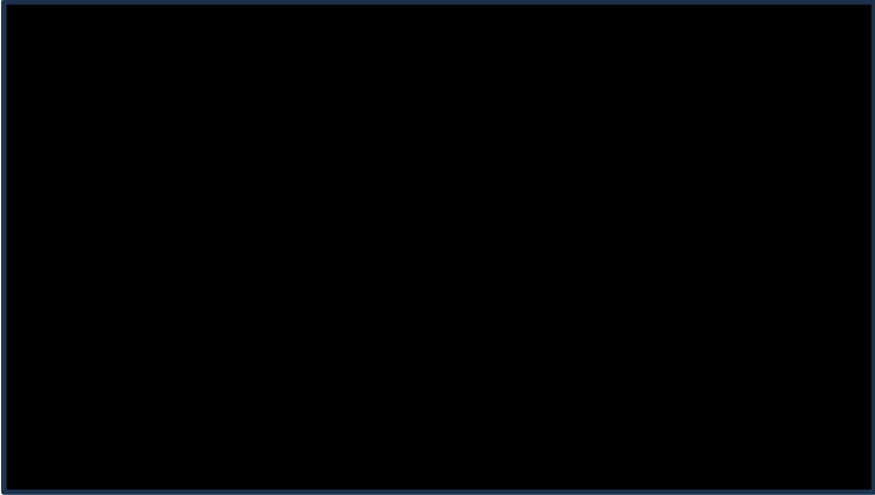
**Profits & profitability**

As explained above, SPC considers that it has suffered injury in the forms of price suppression and depression and that injury was caused by sales of preserved tomatoes exported from Italy at dumped prices.

Confidential Chart A-9.5.5 below indicates that the Australian industry experienced materially negative profits and profitability over the proposed full injury analysis period:



**Confidential Chart A-9.5.5:** Australian industry profits and profitability – actuals (source: Appendix A6.1)



**Confidential Chart A-9.5.5.1:** Australian industry profits and profitability – indexed (source: Appendix A6.1)

The ongoing prevalence of price suppression observed has impacted negatively on the profits and profitability of SPC over the proposed injury analysis and investigation periods.

SPC considers that its unit revenue would have improved if the price suppression and depression were not occurring. Therefore, SPC considers that it has suffered injury in the form of reduced profits and profitability and that injury was caused by sales of preserved tomatoes exported from Italy at dumped prices, and that the injury was material.

### ***Other economic factors***

#### ***Lower revenue***

As indicated in Table A-9.5.6 below, revenue was lower than it otherwise would be if not for dumped, subsidised, and material injurious Italian-origin subject goods imports:

<b>Period</b>	<b>2020/21</b>	<b>2021/22</b>	<b>2022/23</b>	<b>2023/24</b>
Revenue	100.00	98.99	102.97	89.69

**Non-Confidential Table A-9.5.6:** Index of changes to revenue (source: Appendix A7)

#### ***Reduced return on investment***

As indicated in Table A-9.5.7 below, there was a decline in return on investment (**ROI**) in the proposed investigation period, a trend that would not have been apparent but for dumped, subsidised, and material injurious subject goods imports:

<b>Period</b>	<b>2020/21</b>	<b>2021/22</b>	<b>2022/23</b>	<b>2023/24</b>
ROI	100.00	129.34	(43.49)	83.62

**Non-Confidential Table A-9.5.7:** Index of changes to ROI (source: Appendix A7)

#### ***Reduced capacity utilisation***

As indicated in Table A-9.5.8 below, capacity utilisation declined and stagnated over the proposed inquiry period. Given SPC's available capacity, capacity utilisation would have otherwise been higher if not for the dumped and subsidised goods. The declining demand for SPC's preserved tomatoes is therefore directly attributable to dumped and subsidised Italian tomato imports:

<b>Period</b>	<b>2020/21</b>	<b>2021/22</b>	<b>2022/23</b>	<b>2023/24</b>
Capacity utilisation	100.00	97.04	66.91	106.84

**Non-Confidential Table A-9.5.8:** Index of changes to capacity utilisation (source: Appendix A7)

#### ***Finished goods inventories***

SPC's finished goods inventories have increased over the proposed injury analysis period, as a direct result of lower sales volumes due to the presence of dumped and subsidised Italian preserved tomato exports in the Australian market:

<b>Period</b>	<b>2020/21</b>	<b>2021/22</b>	<b>2022/23</b>	<b>2023/24</b>
Finished inventories	100.00	100.00	166.38	221.51

**Non-Confidential Table A-9.5.9:** Index of changes to employment (source: Appendix A7)

#### ***Reduced employment***

An index of the number of persons employed by SPC in the production of like goods across the proposed injury analysis and dumping periods is provided in Table A-9.5.9 below. There was a decline in this indicator over the assessment period. The number of staff employed by

SPC would have otherwise been higher if not for the dumped and subsidised goods:

Period	2020/21	2021/22	2022/23	2023/24
Employment	100.00	70.11	115.77	98.56

**Non-Confidential Table A-9.5.10:** Index of changes to employment (source: Appendix A7)

### ***Reduced hours worked***

An index of the number of hours worked by persons employed by SPC in the production of like goods across the proposed injury analysis and dumping periods is provided in Table A-9.5.10 below. There was a stagnation in this indicator over the assessment period. In the same manner as the above employment indicator, the number of hours worked would have otherwise been higher if not for the dumped and subsidised goods:

Period	2020/21	2021/22	2022/23	2023/24
Hours worked	100.00	70.53	119.60	104.38

**Non-Confidential Table A-9.5.11:** Index of changes to hours worked (source: Appendix A7)

### ***Materiality of Injury***

In the context of current Australian market conditions for preserved tomatoes, SPC contends that the injury suffered by it (and caused by the dumped/subsidised imports from Italy) is greater than that likely to occur in the normal ebb and flow of business.

SPC has experienced declines in revenue over the injury analysis and investigation periods, alongside corresponding declines in profitability.

SPC has lost market share and has experienced price suppression and depression within the investigation period. When considered as a whole, these factors have adversely impacted on preserved tomatoes profits and profitability, collectively and not in isolation, and when taking into account all relevant economic factors, SPC has experienced injury from dumped and subsidised imports from Italy, and this injury is considered material.

6. Discuss factors other than dumped and/or subsidised imports that may have caused or may threaten to cause injury to the industry. This may be relevant to the application in that an industry weakened by other events may be more susceptible to injury from dumping and subsidisation.

Subsection 269TAE(2A) contains a non-exhaustive list of factors that the Minister must have regard to when considering whether injury is being caused by factors other than exportation of the dumped and subsidised goods.

### ***The volume and prices of imported like goods that are not dumped***

Confidential Chart A-9.6.1 below indicates that imports from Italy constitute the single largest source (by volume) of preserved tomatoes exported to Australia, and to a material degree, of no less than [XX] percent of total imports:

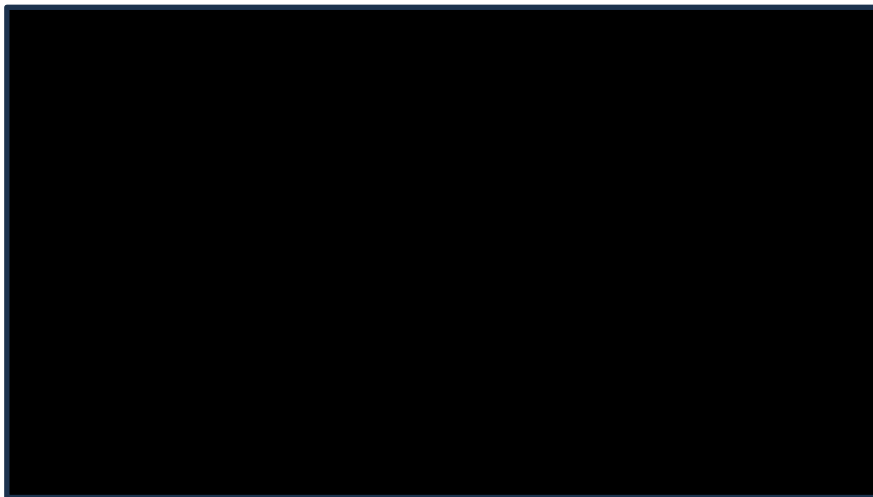


**Confidential Chart A-9.6.1:** Source country imports summary (source: Appendix A2)

SPC contends that Italy exported the subject goods to Australia during the proposed investigation period at sufficient volumes and at sufficiently low prices, as compared to the export volumes and prices from other sources, to cause the Australian industry the material injury alleged. Therefore, despite any effect of imports from other sources, the injury to the Australian industry caused by the goods from Italy is material and significant.

***Contractions in demand or changes in patterns of consumption***

Confidential Chart A-9.6.2 below illustrates that the demand for the goods and like goods generally declined across the injury analysis period, reaching its lowest volumes in the proposed investigation period. The Australian market for preserved tomatoes declined during this period by [XX] percent when compared to twelve months ending March 2021:



**Confidential Chart A-9.6.2:** Australian preserved tomatoes market (source: Appendix A2)

SPC is not aware of any material changes in patterns of consumption in the proposed investigation period such that the reduced the demand for the goods and like goods in the Australian market can be explained by anything outside of which has been assessed above.

***Developments in technology***

SPC is unaware of any developments in technology that would otherwise explain any aspect of the material injury experienced by the Australian industry.

### ***Export performance and productivity of the Australian industry***

Given the minor proportion of SPC's sales being on the export market, it cannot be a factor causing injury.

#### ***Causation***

For all the reasons discussed above, SPC considers that the injury suffered by it is directly attributable to the alleged dumped and subsidised exports from Italy. It is not necessary that the dumping and subsidisation be the sole cause of injury to the Australian industry. It must however not be insignificant or immaterial.

7. This question is not mandatory, but may support your application. Where trends are evident in your estimate of the volume and prices of dumped and/or subsidised imports, forecast their impact on your industry's economic condition. Use the data at appendix A2 (Australian market), appendix A6 (cost to make and sell), and appendix A7 (other economic factors) to support your analysis.

SPC seeks to compete in the Australian market with fairly priced imports. SPC does not consider that imports from Italy are priced on a fair basis. This application demonstrates that exports from Italy are at dumped and subsidised prices that have undercut SPC's selling prices throughout the proposed investigation period. As a result, SPC has experienced injury in the following forms:

- lost sales volume;
- lost market share;
- price suppression;
- price depression;
- loss of profits;
- loss of profitability;
- lower revenue;
- reduced return on investment;
- reduced capacity utilisation;
- higher finished goods inventories;
- reduced employment; and
- reduced hours worked.

SPC contends that the injury experienced is material in nature and can be directly attributed to the dumped and subsidised imports from Italy. The upward trajectory of Italian exports to Australia over the injury analysis and investigation periods will continue unabated in the absence of appropriate trade measures. The forecast impact on the Australian industry is therefore a continued deterioration in sales volume, market share, profits and profitability, the continued inability to raise prices sufficient to cover CTMS, and ongoing deleterious effects on investment returns, capacity utilisation, inventories, and employment.

By this application therefore, SPC is seeking the imposition of dumping measures to address dumped and subsidised exports and consequently return import prices to non-dumped and non-subsidised levels.

# PART B

## DUMPING

### **IMPORTANT**

All questions in Part B should be answered even if the answer is 'Not applicable' or 'None' (unless the application is for countervailing duty only: refer Part C). If an Australian industry comprises more than one company/entity, Part B need only be completed once.

## B-1 Source of exports

1. Identify the country(ies) of export of the dumped goods.

The goods the subject of this application are exported from Italy.

2. Identify whether each country is also the country of origin of the imported goods. If not, provide details.

Italy is also the country of origin of the imported goods.

3. If the source of the exports is a non-market economy, or an 'economy in transition' refer to Part C.4 and Part C.5 of the application.

Not applicable.

4. Where possible, provide the names, addresses and contact details of:

- producers of the goods exported to Australia;
- exporters to Australia; and
- importers in Australia.

SPC understands that the major supermarket and/or their agents are the key Australian importers.

- Woolworths Group Limited  
1 Woolworths Way  
Bella Vista, NSW 2153  
Ph: 02 8885 0000  
<https://www.woolworthsgroup.com.au/>
- Coles Supermarkets  
800 Toorak Road  
Hawthorn East, VIC 3123  
Ph: 03 9829 5111  
<https://www.colesgroup.com.au/home/?page=home>
- Aldi  
1 Sergeants Road  
Minchinbury, NSW 2770  
Ph: 02 9675 9000  
<https://corporate.aldi.com.au/>

5. If the import volume from **each** nominated country at Appendix A.2 (Australian Market) does not exceed 3% of all imports of the product into Australia refer to Part C.6 of the application.

Not applicable as the import volume from Italy exceeds 3% of all imports of the goods the subject of this application.

6. In the case of an application for countervailing measures against exports from a developing country, if the import volume from **each** nominated country at Appendix A.2 (Australian Market) does not exceed 4% of all imports of the product into Australia refer to Part C.6 of the application.

Not applicable.

## **B-2 Export price**

Possible sources of information on export price include export price lists; estimates from the Australian Bureau of Statistics; a deductive export price calculation from the Australian selling price of the imported goods; export sales quotations or invoices; foreign government export trade clearances.

1. Indicate the FOB export price(s) of the imported goods. Where there are different model control codes or levels of trade involved, an export price should be supplied for each.

Italian FOB export prices of the imported goods have been provided based on purchased trade data for the proposed investigation period.<sup>18</sup> FOB export prices have been assessed at the applicable tariff code level (i.e. tomatoes, prepared or preserved, otherwise than by vinegar or acetic acid – in packs not exceeding 1.14L). Refer A-3.2 above also.

2. Specify the terms and conditions of the sale, where known.

The export prices for the imported goods from Italy are FOB, export point of sale.

3. If you consider published export prices are inadequate, or do not appropriately reflect actual prices, please calculate a deductive export price for the goods. Appendix B1 (Deductive Export Price) can be used to assist your estimation.

The researched export price data for Italy is considered adequate for the purposes of this application.

4. It is important that the application be supported by evidence to show how export price(s) have been calculated or estimated. The evidence should identify the source(s) of data.

Refer to Confidential Appendix A2 for import volume and value details for the goods the subject of this application.

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<sup>18</sup> Data provided by TradeData International.



### B-3 Selling price (normal value) in the exporter's domestic market

Possible sources of information about domestic selling prices in the country of export include: price lists for domestic sales (with information on discounts); actual quotations or invoices relating to domestic sales; published material providing information on the domestic selling prices; or market research undertaken on behalf of the applicant.

1. State the selling price for each model control code of like goods sold by the exporter, or other sellers, on the domestic market of the country of export.

SPC has obtained domestic retail selling prices for preserve tomatoes in Italy. SPC does not have access to selling prices paid by the retailer to the tomato processor, nor the selling prices from the processor to any food service industry providers.

To arrive at an ex-factory price, SPC has adjusted the retail selling prices for the following:

- Value Added Tax (VAT);
- a retailer's margin and an amount for a trade deal/wholesale discount; and
- domestic freight.

In accounting for the above, domestic prices for preserved tomatoes sold in Italy are provided at Confidential Attachment B-4.1.

2. Specify the terms and conditions of the sale, where known.

Refer Section B-4.

3. Provide supporting documentary evidence.

Refer Section B-4.

4. List the names and contact details of other known sellers of like goods in the domestic market of the exporting country.

SPC understands that the North Italian tomato district hosts several medium/large tomato processing companies, mostly cooperatives.<sup>19</sup> The leading company in the tomato processing sector, *Mutti*, is located in Parma.<sup>20</sup> Mutti has three processing factories: in Basilicanova di Parma, the largest; in Oliveto Citra; and in Collecchio.<sup>21</sup> The second main producer in the Italian tomato processing sector is *Conserva Italia*, a cooperative consortium located in Bologna that owns brands such as Valfrutta, Yoga, Derby Blue, Jolly Colombani, Cirio, and Juver.<sup>22</sup>

The South Italian tomato district is characterized by a high number of processing companies, which are smaller than those in the North district.<sup>23</sup> These include *Divella*, *Dentamaro*, *Desantis*, and *Granoro*.<sup>24</sup>

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<sup>19</sup> Refer [A Hedonic Analysis of Processed Tomato Prices Using Italian Regional Markets Data - PMC \(nih.gov\)](#) at 1. Introduction.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

## **B-4 Estimate of normal value using another method**

This section is not mandatory. It need only be completed where there is no reliable information available about selling prices in the exporter's domestic market. Other methods of calculating a normal value include:

- the cost to make the exported goods plus the selling and administration costs (as if they were sold in the exporter's domestic market) plus an amount for profit (if applicable);
- OR
- the selling price of like goods from the country of export to a third country.

1. Indicate the normal value of the like goods in the country of export using another method (if applicable, use appendix B2 Constructed Normal Value).

Not applicable. SPC considers that sufficient reliable information has been provided above for selling prices in the exporter's domestic market.

2. Provide supporting documentary evidence.

Refer Confidential Attachment B-4.1.

## **B-5 Adjustments**

A fair comparison must be made between the export price and the normal value. Adjustments should be made for differences in the terms and circumstances of the sales such as the level of trade, physical characteristics, taxes or other factors that affect price comparability.

1. Provide details of any known differences between the export price and the normal value. Include supporting information, including the basis of estimates.

Refer Confidential Attachment B-4.1.

2. State the amount of adjustment required for each and apply the adjustments to the domestic prices to calculate normal values. Include supporting information, including the basis of estimates.

The adjustments for export inland freight and port handling charges have not been included.

## B-6 Dumping margin

1. Subtract the export price from the normal value for each model control code of the goods (after adjusting for any differences affecting price comparability).

SPC has calculated prima facie dumping margins for preserved tomatoes exported from Italy for the 12 months ending March 2024.

*Table B-6.1 – Dumping margins for preserved tomatoes from Italy*

<b>Quarter</b>	<b>Dumping Margin – EU\$/kg</b>	<b>Dumping Margin – % of export price</b>
Apr. – Jun. 2023	[\$XXX]	61.47%
Jul. – Sept. 2023	[\$XXX]	54.59%
Oct. – Dec. 2023	[\$XXX]	52.03%
Jan. – Mar. 2024	[\$XXX]	52.25%

Refer Confidential Attachment B-4.1 for dumping margin calculations.

2. Show dumping margins as a percentage of the export price.

SPC has included dumping margins as a percentage of the export price in the above table B-6.1.

# PART C

## SUPPLEMENTARY SECTION

### IMPORTANT

Replies to questions in Part C are not mandatory in all instances but may be mandatory for certain applications.

## C-1 Subsidy

This section must be completed where countervailing duties are sought to offset foreign government assistance through subsidies to exporters or producers.

If the application is for countervailing duty alone, the domestic price information required by Part B of the application need not be supplied.

Responses to questions A-9 will need to identify the link between subsidisation and injury.

1. Identify the subsidy paid in the country of export or origin. Provide supporting evidence including details of:
  - (i) the nature and title of the subsidy;
  - (ii) the government agency responsible for administering the subsidy;
  - (iii) the recipients of the subsidy; and
  - (iv) the amount of the subsidy.

### 1. Introduction

SPC submits that Italian preserved tomato producers benefit from subsidies conferred by the Government of Italy (**GOI**). The information reasonably available to SPC makes clear that these subsidies are either specifically provided to, or benefit, producers of the subject goods and are therefore countervailable benefits for preserved tomato production.

SPC requests that the Commission investigate the subsidisation of subject good producers. It is noted that most Italian preserved tomato producers are unlikely to provide publicly available financial statements.

As detailed below, the subsidies conferred on subject goods producers are not negligible or insignificant and exceed the applicable thresholds set forth in the *Customs Act 1901* and Article 27 of the WTO Agreement on Subsidies and Countervailing Measures (**SCM Agreement**).

Article 11.2 of the SCM requires an application include sufficient evidence of the existence of a subsidy. This requirement has been considered by previous WTO panels, who have found that the quantity and the quality of the evidence required to meet the threshold of sufficiency of the evidence is 'less than that required to reach a final determination'.<sup>25</sup> However, there must be adequate evidence of the elements of subsidy.<sup>26</sup> SPC submits that the GOI has been actively supporting tomato growers and producers of processed tomatoes through various initiatives, and that what follows constitutes sufficient evidence in this regard.

The following sources are relied upon – previous Australian Anti-Dumping Commission Assessments of the Italian tomatoes market, United States Department of Commerce investigations and past countervailing duty findings, relevant WTO documents, and other relevant publications and articles.

However, subsidy programs described in this section do not cover all likely actionable benefits conferred by the GOI. SPC requests that the Commission seek further information

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<sup>25</sup> Panel Report, US – Softwood Lumber V, para. 7.84; Panel Report, China – GOES, para. 7.5

<sup>26</sup> Panel Report, US – Supercalendered Paper, para. 7.148.

from the GOI, as well as from exporters, to determine with greater precision the full extent of specific subsidies conferred on Italian producers of the subject goods.

## 2. Sources Used

The programs listed as potentially conferring actionable or prohibited subsidies on Italian producers and exporters of preserved tomatoes are based on the following sources:

- a) The Australian Anti-Dumping Commission's assessment of the Italian tomatoes market in FY2013 Investigation No. 217 (**INV 217**),<sup>27</sup> and its later CY2014 assessment in Investigation No. 276 (**INV 276**);<sup>28</sup>
- b) United States Department of Commerce's 2024 Decision Memorandums for the Results of the Fifth Sunset and (separately) Administrative Review of the Countervailing Duty Order on Certain Pasta from Italy,<sup>29</sup> and
- c) Current and recent European Union (**EU**)/Italy notifications of active subsidy programs to the WTO, pursuant to Article XVI:1 of the GATT 1994, and Article 25 of the SCM Agreement.

## 3. Analysis

### *Australian Investigations 217 / 276*

In INV 217, the Commission undertook a particular market situation (**PMS**) assessment of the various forms of support and development assistance provided to agricultural sectors in the EU, including in the cultivation of raw tomatoes for processing. Payments made under the EU's *Common Agricultural Policy* (**CAP**) formed the main component of this PMS assessment. The assessment was based primarily on questionnaire responses from the GOI, the European Commission, and select exporters regarding the benefits received by the exporters, directly or indirectly related to the production of the final tomato product.<sup>30</sup>

The evidence gathered by the Commission in INV 217 revealed that the majority of selected exporters received some form of government payment during the investigation period.<sup>31</sup> The Commission's resultant PMS assessment was such that:<sup>32</sup>

*...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).*

The initial relevance here for this application is that GOI support was found to be provided to subject exporters of preserved tomatoes.

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<sup>27</sup> Dumping of Prepared or Preserved Tomatoes, exported from Italy.

<sup>28</sup> Dumping of Prepared or Preserved Tomatoes, exported from Italy by Feger Di Gerardo Ferraioli S.P.A. and La Doria S.P.A.

<sup>29</sup> Non-Confidential Attachment C-1.1: *Certain Pasta from Italy and the Republic of Türkiye: Final Results of the Expedited Fifth Sunset Reviews of the Countervailing Duty Orders* (1 July 2024); and Confidential Attachment C-1.2: *Decision Memorandum for the Preliminary Results of the Administrative Review of the Countervailing Duty Order on Certain Pasta from Italy; 2022* (20 May 2024).

<sup>30</sup> Refer Final Report to INV 276 (**REP 276**), p. 69.

<sup>31</sup> Final Report to INV 217, p. 34.

<sup>32</sup> *Ibid*, p. 34.

In INV 276 the Commission again assessed allegations of a PMS in the Italian tomatoes market. SPC had submitted that the supply and price of raw tomatoes in that market was influenced by direct and indirect payments made to tomato growers under the EU's CAP – in particular, that payments were made to tomato growers under the Single Payment Scheme (SPS).<sup>33</sup> In addition, SPC claimed the existence of regulations on imports of raw tomatoes and other trade distorting measures and support offered through Italian Producer Organisations (POs).<sup>34</sup>

At the time, SPC estimated that the amount paid in 2013 under the SPS was up to 37 percent of the price paid for raw tomatoes by the prepared or preserved tomato processors.<sup>35</sup> SPC claimed that the direct payments had an influence on the supply and pricing of raw tomatoes, and the pricing of the finished products that eventually impacted the processor's overall profitability.<sup>36</sup>

To fully assess and appraise the factors underpinning the PMS allegations, the Commission engaged the consulting firm *Law and Economics Consulting Associates (LECA)*.<sup>37</sup> Inter alia, its brief was to undertake an examination of direct and indirect payments made to tomato growers under the EU's CAP, assess regulations on imports of raw tomatoes, and determine levels of GOI support offered to Italian POs.<sup>38</sup>

LECA's assessment of GOI policies specific to the Italian tomatoes market identified three main factors:<sup>39</sup>

- *CAP payments – LECA considered that the CAP payments appeared to have resulted in distortionary effects on the raw tomato market in Italy. LECA identified the three features of CAP payments that serve to generate distortionary effects as (i) lack of uniformity across different types of agricultural products; (ii) **the generally high level of the subsidies**; and (iii) the extent to which they are “coupled” to the level of output.*
- *the risk of Italian Producer Organisations engaging in cartel like behaviour; and*
- *regulation of imports of raw tomatoes. [emphasis added]*

On the above, LECA made the following observations:<sup>40</sup>

- *Until 2003 CAP payments were directly linked to the level of production for specific agricultural products (“coupled payments”), and were paid mainly by crop type, area aid (by hectare), or by livestock (per animal). While there have been attempts to decouple payments since 2003 Fischler reforms, raw tomatoes remained one of the last agricultural products to be totally decoupled as it was politically difficult to adjust.*
- *The 2003 reforms to decouple payments under the SPS were incomplete in Italy and total farm assistance for tomatoes has not been fully decoupled. EU CAP payments continue to be based on historical levels received by farmers in previous years, which were based on the past system of coupled payments. These “historical reference”*

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<sup>33</sup> REP 276, p. 65.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid, p. 66.

<sup>38</sup> Ibid, p. 67.

<sup>39</sup> Ibid, p. 70-71.

<sup>40</sup> Ibid, p. 71.

*payments meant Italy retained the historically high subsidy levels for tomato farms. To the extent the total payment was transferred to a per hectare payment, by dividing the total payment by the hectares in production at the time, this implied that increased production might still be rewarded with greater assistance. The CAP payments are thus implicitly tied to output and encourage farmers to maintain production to ensure continuation of the support.*

- *Historically, tomato growers received higher average CAP payments than other sectors. The LECA report calculated a subsidy rate for tomato growers based on data in the FADN database, and showed that tomato growers received more than double the average of other industries.*

SPC reiterates that the Commission's assessment in INV 276 was to the existence or otherwise of a PMS in the Italian tomatoes market, rather than a determination of the existence or otherwise of countervailable subsidies. On the PMS, the Commission ultimately concluded, as it did in INV 217, that a PMS did not exist in Italy for prepared or preserved tomatoes that rendered sales of the goods unsuitable for use in determining normal values under subsection 269TAC(1).<sup>41</sup>

However, relevant to the question of materially injurious subsidisation, the Commission's assessment in INV 276 of the GOI's policies is noteworthy. The Commission assessed the flow-on impact of the CAP payments to raw tomato growers on the final preserved tomato price,<sup>42</sup> the most detailed impact assessment of which was provided by LECA. LECA determined:<sup>43</sup>

- *The LECA report uses production data for 2011 drawn from the FADN database.*
- *Based on FADN data, the subsidy per hectare received by tomato farms in Emilia Romagna (one of the major tomato production regions in Italy and one where there is a very high degree of specialisation with almost half of the entire horticultural area covered by processing tomato) was on average €775/ha for 2011.*
- *LECA modelled the variable cost of production based on the same FADN data and arrived at a variable cost of production of €3232/ha.*
- *The subsidy rate as a proportion of variable costs (net of the subsidy) was 32% per hectare.*
- *In the extreme scenario, where 100% of the mark up on costs flows-on through the value chain, the price of final prepared or preserved tomatoes price would also increase by 32%.*
- *In a realistic scenario, the market condition at each point in the value chain would dictate the degree to which the CAP payment flows-on. The likely scenario is that 73% of the 32% subsidy would flow onto the cost of raw tomatoes for prepared or preserved tomato production. That is, if subsidies were removed, the cost of raw tomatoes would increase by 23% (73% x 32%).*
- *La Doria's data shows that the cost share of raw tomatoes in their total production*

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<sup>41</sup> Ibid, p. 80.

<sup>42</sup> Ibid, p. 76.

<sup>43</sup> Ibid, p. 76-77.



cost are approximately [redacted] %. This means that [redacted] % of production costs would increase by 23% if subsidies were removed, i.e. a flow-on in prepared or preserved tomato production costs of [redacted] % (23% x [redacted]%).

- Overlaying the market conditions for the market for prepared or preserved tomatoes (i.e. assuming the same variables of supply and demand as used above, 73% of the cost flows-on), a [redacted] % increase in production cost leads to a [redacted] % increase in prepared or preserved tomatoes prices.

The estimated flow-on impact of the CAP payments on the final prepared or preserved tomato price is [redacted] %.

More recent commentary and analysis suggests that coupled support has been/is still being provided to Italian tomato growers.

In an assessment of the CAP reforms of 2014-2020, a research paper by the *Department of Agricultural, Food and Environmental Sciences, University of Perugia, Italy*,<sup>44</sup> detailed that the Italian government budget for direct payments for 2013-2019 totalled EU\$27,090 million (approximately EU\$3,800 million annually).<sup>45</sup> On these coupled/direct payments:

*...nearly 400 million € are provided annually to the livestock, arable lands and the olive oil sectors. In particular, nearly 50% of the coupled support budget is allocated to animal production (milk, beef, sheep and goat), 35% to arable crops (cereals, protein crops, **tomato**, sugar beet, and soybean), and the remaining funds incentivize olive oil production. [emphasis added].*<sup>46</sup>

The research paper further summarised the coupled support for tomatoes in the context of other funding, as follows:<sup>47</sup>

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<sup>44</sup> Non-Confidential Attachment C-1.7: *A critical assessment of the implementation of CAP 2014- 2020 direct payments in Italy*. Stefano Ciliberti, Angelo Frascarelli. Department of Agricultural, Food and Environmental Sciences, University of Perugia, Italy.

<sup>45</sup> Ibid, p. 7 (267).

<sup>46</sup> Ibid, p. 9 (269).

<sup>47</sup> Ibid, p. 8 (268).

Decision	National choice
Active farmer (exemption threshold to be an active farmer)	<1250 € for other areas; <5000 € for mountain areas.
Minimum requirements for receiving direct payments	<250 € direct payments in 2015-2016; <300 € direct payments in 2017
Type of regionalization/model of internal convergence	National/Irish model
Basic payment scheme	58% of national budget
Redistributive payment	No
Greening (amount of payment)	30% of national budget (calculated as 30% of payment entitlements held by the farmer)
Areas that have natural constraints	No
Young farmers' scheme	1% of national budget (value: 25% of the average value of payment entitlements)
Coupled support	11% of national budget (of which: 25.1% for beef, 20.8% for milk, 16.4% for olive oil, 14% for cereals, 8.3% for protein crops, 5.3% for rice, 4% for sugar beet, 3.5 for sheep, 2.6% for industry tomato)
Small farmers scheme (max. payment)	Yes (<1,250 €)
Degressivity and Capping (% reduction of direct payments)	50%, if dir. paym.> 150M €; 100%, if dir. paym.>500M €; salary costs deducted.

**Non-Confidential Table C-1:** coupled support summary

It is evident then, and contrary to the assessment that CAP payments to tomato growers have been de-coupled, that direct payments have continued post the Commission's assessments in INV 217/276.

Whether decoupling then implies non-countervailability of a subsidy is arguable also:<sup>48</sup>

*Critics of the decoupled payment system argue that although such payments are not directly tied to production requirements, they may continue to have important effects on production. [D]irect payments often have purposes in addition to income support. In fact, in a very unstable world market, in which prices and yields fluctuate considerably from year to year, risk-averse producers may benefit considerably from income stabilization. This income-stabilizing attribute has a corresponding insurance effect, which may affect optimal decisions. In addition, there is a wealth effect on optimal decisions, namely, that the higher average income that arises from the support policy may affect producer decisions.*

More contemporaneous evidence of likely countervailable subsidies to the Italian tomato industry comes in the form of the recently announced and approved *Italian CAP Strategic Plan 2023-2027*.<sup>49</sup>

*On 2 December 2022, the European Commission definitively approved the Italian CAP Strategic Plan 2023-2027. The text approved after a long and demanding discussion between the Ministry of Agriculture, the Regions and the Brussels offices, has seen the two main requests of the Interprofessional Organization of the Tomato Industry of Northern Italy, in agreement with that of Central and Southern Italy, accepted: the confirmation of the measure of the coupled premium per hectare for*

<sup>48</sup> Ibid, p. 3 (267).

<sup>49</sup> See [https://agriculture.ec.europa.eu/cap-my-country/cap-strategic-plans/italy\\_en](https://agriculture.ec.europa.eu/cap-my-country/cap-strategic-plans/italy_en) and <https://www.reterurale.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/24037>

areas cultivated with tomatoes.<sup>50</sup>

According to official GOI direct payment documents for the implementation of the strategic plan,<sup>51</sup> the coupled benefit afforded to active Italian tomato farmers is EU\$173.64 per hectare for the FY2024 through to FY2027 period, then increasing to EU\$179.91 for the FY2028 period.<sup>52</sup> Total hectares covered annually is 60,205, equating to total unit hectares covered over the full FY2024 – FY2028 period of 301,025.<sup>53</sup> The annual indicative financial allocation by the GOI for this subsidy is AU\$10.456 million, equating to a total spend over the FY2024 – FY2028 period of EU\$50.646 million.<sup>54</sup>

SPC requests that the Commission fully assess the GOI direct payment documents related to the new strategic plan, as provided in this application, and as would be requested of the GOI in a government questionnaire response on initiation. SPC submits that the evidence available indicates the actionable nature of the CAP payment subsidies,<sup>55</sup> that they meet the definition of what constitutes a subsidy under the SCM, and have consequently permitted the exportation of Italian preserved tomato products to the Australian market at injurious volumes and prices.

SPC therefore submits that the above analysis and changes/iterations in the level of direct GOI support vis the CAP highlights that Italian tomato processors have, do, and will continue to receive raw tomato inputs at less than adequate remuneration. SPC therefore request that the Commission investigate this – the rationale being that the Commission has not assessed this issue since INV 276 (and not under a countervailing lens), and that there appears to be sufficient recent evidence to suggest that CAP payments to tomato growers are not decoupled.

SPC also submits that Italian tomato producers and exporters receive electricity subsidies which would deem the incurrence of such costs at less than adequate remuneration and hence potentially countervailable. The Italian producer and exporter *Mutti* has recently confirmed the receipt of substantial government subsidies in relation to its energy costs.<sup>56</sup>

### ***United States – Certain Pasta from Italy***

In the July 2024 results of the expedited fifth sunset review of the countervailing duty order on certain pasta from Italy and the Republic of Turkey (**the pasta sunset review**), the United

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<sup>50</sup> Non-Confidential Attachment 1.8: *Italy: satisfaction over the PAC 2023-27 strategic plan*. Tomato News, 20 December 2022.

<sup>51</sup> Available here: [https://www.reterurale.it/PAC\\_2023\\_27/PagamentiDiretti](https://www.reterurale.it/PAC_2023_27/PagamentiDiretti)

<sup>52</sup> Non-Confidential Attachment C-1.9: PD 06 – CIS(04) – Support coupled to income by area – Tomato processing. Financial table with output, at 9. 8.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

<sup>55</sup> There is a clear and ongoing benefit to Italian tomato growers courtesy of coupled CAP payments. For example, according to Tomato News on 29 May 2022; *For tomato growers, CAP payments linked to surface area have always been an essential component of the profit margin. The national convergence of the CAP and the abolition of greening support after 2023 will result in a loss of more than 60% of this income.*

*And The Italian production of processing tomatoes is in competition on the international markets with similar productions from other EU countries, such as Spain, Portugal, Greece and France. In all these countries, tomato growers are guaranteed coupled support per hectare of an amount higher than that currently recognized and being proposed again to Italian growers for 2023-27. See*

[https://www.tomatonews.com/en/the-northern-italy-pomodoro-io-challenges-several-points-of-the-cap-2023-2027\\_2\\_1647.html](https://www.tomatonews.com/en/the-northern-italy-pomodoro-io-challenges-several-points-of-the-cap-2023-2027_2_1647.html)

*In a later March 2023 article, the beneficial impact of coupled payments for processed tomatoes was discussed ...the operating margin per hectare followed a negative trend over the 2009-2019 decade, although it has somewhat recovered in the last five years, thanks to the positive effects of coupled premiums conditioned by contracts with the processing industry and the organization of supply by the POs. Therefore, it seems wise and desirable to maintain coupled support...See*

[https://www.tomatonews.com/en/italy-coupled-aid-for-2023\\_2\\_1913.html](https://www.tomatonews.com/en/italy-coupled-aid-for-2023_2_1913.html)

<sup>56</sup> Non-Confidential Attachment C-1.3: *2022 financial results; Mutti Group: +16% turnover and exports worth 51%*. Refer also [https://www.tomatonews.com/en/mutti-563-million-in-sales-including-more-than-half-from-exports\\_2\\_2019.html](https://www.tomatonews.com/en/mutti-563-million-in-sales-including-more-than-half-from-exports_2_2019.html)

States Department of Commerce (**U.S. DOC**) concluded that revocation of the countervailing duty orders against both countries would be likely to lead to a continuation of net countervailable subsidies, at the following rates for the following Italian exporters:

<b>Company</b>	<b>Subsidy Rate (percent <i>ad valorem</i>)</b>
Agritalia, S.r.l.	10.45
Arrighi S.p.A. Industrie Alimentari	10.34
De Matteis Agroalimentare S.p.A.	9.64
Delverde, S.r.l.	13.25
F.lli DeCecco di Filippo Fara S. Martino S.p.A.	9.90
Industria Alimentare Colavita, S.p.A.	9.50
Isola del Grano, S.r.L.	17.19
Italpasta S.p.A.	17.19
Italpasta S.r.l.	10.34
La Molisana Alimentari S.p.A.	11.31
Labor, S.r.L.	17.19
Molino e Pastificio DeCecco S.p.A. Pescara	9.90
Pastificio Guido Ferrara	8.83
Pastificio Campano, S.p.A.	9.96
Pastificio Riscossa F.lli Mastromauro S.r.L.	14.30
Tamma Industrie Alimentari di Capitanata	13.25
All Others	11.01

**Non-Confidential Table C-2:** 2024 Italian pasta exporter subsidy rates<sup>57</sup>

The programs assessed by the U.S. DOC are likely to have conferred (and continue to confer) countervailable benefits to Italian producers and exporters the subject of this application, on the basis that certain of the assessed pasta exporters also produce preserved tomatoes.

The U.S. DOC assessed that the following programs provided countervailable benefits to Italian pasta exporters in the original investigation:<sup>58</sup>

1. Local Income Tax (ILOR) Exemptions;
2. Industrial Development Grants Under Law 64/86;
3. Industrial Development Loans Under Law 64/86;
4. Export Marketing Grants Under Law 304/90;
5. Social Security Reductions and Exemptions:
  - a. Sgravi Benefits (Law 1089/68);
  - b. Fiscalizzazione Benefits;
  - c. Law 407/90 Benefits;
  - d. Law 863 Benefits;
6. European Regional Development Fund;
7. European Social Fund;

<sup>57</sup> Non-Confidential Attachment C-1.1: Department of Commerce, International Trade Administration Notice: *Certain Pasta from Italy and the Republic of Türkiye: Final Results of the Expedited Fifth Sunset Reviews of the Countervailing Duty Orders*. July 1, 2024.

<sup>58</sup> Confidential Attachment C-1.4: *Issues and Decision Memorandum for the Final Results of the Fourth Expedited Five-Year Sunset Review of the Countervailing Duty Order on Certain Pasta from Italy*. As at the date of this application, the Issues and Decision Memorandum for the fifth sunset review in question was unpublished. The subsidy programs and applicable rates from the fourth sunset review however remain unchanged.

See also *Final Affirmative Countervailing Duty Determination: Certain Pasta from Italy*, 61 FR 30288 (June 14, 1996); see also *Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta from Italy*, 61 FR 38544 (July 24, 1996) (Order).

8. Export Restitution Payments;
9. Lump-Sum Interest Payment Under the Sabatini Law for Companies in Southern Italy; and
10. Remission of Taxes on Export Credit Insurance Under Article 33 of Law 227/77.

During the sunset review, the U.S. DOC added data from subsidy programs subsequently found to be countervailable (during the first through nineteenth administrative reviews). These subsequent programs include the following:<sup>59</sup>

- 1) Grant Received Pursuant to the Community Initiative Concerning the Preparation of Enterprises for the Single Market (PRISMA);
- 2) Industrial Development Grants under Law 488/92;
- 3) Industrial Development Grants under Law 183/76;
- 4) Law 598/94 Interest Subsidies;
- 5) Law 236/93 Training Grants;
- 6) Law 341/95 Interest Contributions on Debt Consolidation Loans;
- 7) Regional Tax on Income of Productive Activities Deduction in Accordance with Article 11 of Law 446/1997 (IRAP);
- 8) Duty Free Import Rights;
- 9) Corporate Income Tax (IRPEG) Exemptions;
- 10) Development Grants under Law 30 of 1984;
- 11) Law 908/55 Revolving Fund for Economic Initiatives Loan;
- 12) Social Security Reductions and Exemptions-Sgravi-Article 44 of Law 448/01;
- 13) Law 289/02, Article 62, Investment in Disadvantaged Areas;
- 14) Law 289/02, Article 63, Increase in Employment;
- 15) Law 662/96, Article 2, Paragraph 203, letter d-Patti Territoriali;
- 16) Law 196/97;
- 17) European Regional Development Fund Programma Operativo Plurifondo;
- 18) Law 223/91 Article 8, Paragraph 2;
- 19) Law 223/91 Article 8, Paragraph 4;
- 20) Legislative Decree 276/03;
- 21) Law 662/96, Article 2, Paragraph 203, letter e (Contratto di Programma);
- 22) Interest Contributions Under Law 488/92;
- 23) Law 46/1982, Article 14 loans (Fondo Innovazione Tecnologica);
- 24) Law 46/1982 Article 14 grants (Fondo Innovazione Tecnologica);
- 25) Regional Law 34/1988;
- 26) Measure 3.14 of the POR Sicilia 2000/2006;
- 27) Tax Credits under Article 280 of Law 296/2006;
- 28) Article 23 of Legislative Decree 38/2000;
- 29) Tremonti Ter;
- 30) PO FESR Measure 4.1.1.1;
- 31) Law 167/2011;
- 32) Article 42 of Law 78/2010;
- 33) Article 1 of Law 296/06;
- 34) POR FESR Molise 2007/2013;
- 35) Law 223/91, Article 25, Paragraph 9;
- 36) Ministerial Decrees of July 23, 2009 and August 6, 2010 (Berlusconi Grant); and
- 37) Ministerial Decrees of July 23, 2009 and August 6, 2010, (Berlusconi Loan).

Applied to this application, the relevance of the fifth pasta sunset review is that certain of the Italian pasta exporters can also be evidenced as being engaged in the processing of

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<sup>59</sup> Confidential Attachment C-1.4: *Issues and Decision Memorandum for the Final Results of the Fourth Expedited Five-Year Sunset Review of the Countervailing Duty Order on Certain Pasta from Italy*



preserved tomatoes. From the above subsidy rates table, these exporters are set out below:

Pasta exporter	Subsidy rate	Preserved tomatoes reference
Agritalia, S.r.l.	10.45%	<a href="https://www.agritalia.com/products/other/tomato-product/">https://www.agritalia.com/products/other/tomato-product/</a>
F.lli DeCecco di Filippo Fara S. Martino S.p.A.	9.90%	<a href="https://www.dececco.com/au_en/products/tomatoes-sauces/">https://www.dececco.com/au_en/products/tomatoes-sauces/</a>
Pastificio Riscossa F.lli Mastromauro S.r.L.	14.30%	<a href="https://www.riscossa.it/it/dispensa-riscossa/1544/linea-rossa.php">https://www.riscossa.it/it/dispensa-riscossa/1544/linea-rossa.php</a>
Tamma Industrie Alimentari di Capitanata	13.25%	<a href="https://tamma.it/en/non-solo-pasta/datterino-tomatoe/">https://tamma.it/en/non-solo-pasta/datterino-tomatoe/</a> <a href="https://tamma.it/en/non-solo-pasta/datterino-tomatoe/non-solo-pasta/datterini/">https://tamma.it/en/non-solo-pasta/datterino-tomatoe/non-solo-pasta/datterini/</a> <a href="https://tamma.it/en/non-solo-pasta/cherry-tomatoes/">https://tamma.it/en/non-solo-pasta/cherry-tomatoes/</a> <a href="https://tamma.it/en/non-solo-pasta/strained-tomatoes/">https://tamma.it/en/non-solo-pasta/strained-tomatoes/</a> <a href="https://tamma.it/en/non-solo-pasta/diced-tomatoes/">https://tamma.it/en/non-solo-pasta/diced-tomatoes/</a>

**Non-Confidential Table C-3:** Italian pasta and preserved tomato producers

Furthermore, on 20 May 2024 the U.S. DOC published its Decision Memorandum for the Preliminary Results of an Administrative Review of the Countervailing Duty Order on Certain Pasta from Italy.<sup>60</sup> The U.S. DOC found that that Pastificio Gentile S.r.l. (**Gentile**) and Sgambaro SpA. (**Sgambaro**), the mandatory respondents in the administrative review, received the following countervailable subsidies during the review period:<sup>61</sup>

1. Sgravi – Art 1 par 161 and 168 Law 178/2020;
2. Regional Tax on Income of Productive Activities Deduction in Accordance with Article 11 of Legislative Decree n. 446/1997 (IRAP);
3. Preferential Financing for Export Promotion Under Law 394/81;
4. Sgravi Benefits – Article 1, paragraph 773 of Law No. 296/2006;
5. Sgravi Benefits – Article 1, paragraph 100 of Law No. 160/2019;
6. Research, Development and Innovation 2020-2022 (Nuova Sabatini);
7. Measure 123;
8. Article 1 par. 200, 201 and 202 law 27 December 2019, n. 160;
9. Article 1, paragraphs 1051-1063 of Law No. 178/2020;
10. Tax Credit under Article 15 Law Decree n. 4, 27 January 2022; and
11. Article 5 of the Law Decree n. 17 dated 1 March 2022.

The relevance here is that Gentile can also be shown as involved in preserved tomatoes (refer: <https://www.pastificiogentile.com/leconserve>).

A summary of the above subsidiaries has been provided in the table below. SPC has sought to provide all relevant details, to the extent of the information available to it. Where the specific Government of Italy agency providing the subsidy is unknown, 'GOI' has been referenced.

<sup>60</sup> Non-Confidential Attachment C-1.2: Decision Memorandum for the Preliminary Results of the Administrative Review of the Countervailing Duty Order on Certain Pasta from Italy; 2022. May 20, 2024.

<sup>61</sup> Ibid, p. 11 onwards.

Nature/title of subsidy	Government agency responsible	Recipients of the subsidy	Amount of the subsidy (ad valorem/details)
<b>Pasta Sunset Review – existing subsidies</b>			
Local Income Tax (ILOR) Exemptions	GOI	Various exporters	Various <sup>62</sup>
Industrial Development Grants Under Law 64/86	Terminated, according to the GOI. <sup>63</sup>		
Industrial Development Loans Under Law 64/86	Terminated, according to the GOI (as above).		
Export Marketing Grants Under Law 304/90	GOI	Various exporters	
Social Security Reductions and Exemptions	GOI – Mezzogiorno area	Various exporters	
European Regional Development Fund	GOI – operated by the EU	Various exporters	
European Social Fund	GOI – operated by the EU	Various exporters	
Export Restitution Payments	Terminated, according to the GOI. <sup>64</sup>		
Lump-Sum Interest Payment Under the Sabatini Law for Companies in Southern Italy	Mediocredito Centrale	Various exporters	
Remission of Taxes on Export Credit Insurance Under Article 33 of Law 227/77	GOI	Various exporters	
<b>Pasta sunset review – new subsidies<sup>65</sup></b>			
Grant Received Pursuant to the Community Initiative Concerning the Preparation of Enterprises for the Single Market (PRISMA)	GOI – via the European Structural Fund	Applicable to various exporters found to be in receipt of this subsidy during the first through nineteenth administrative reviews, at various rates <sup>66</sup>	
Industrial Development Grants under Law 488/92	Terminated, according to the GOI. <sup>67</sup>		Various
Industrial Development Grants under Law 183/76	Terminated, according to the GOI. <sup>68</sup>		Various
Law 598/94 Interest Subsidies	GOI	Refer footnote 83.	30% - 45%
Law 236/93 Training Grants	Regional GOI govt's.		Various
Law 341/95 Interest Contributions on Debt Consolidation Loans	GOI		Various
Regional Tax on Income of Productive Activities Deduction in Accordance with Article 11 of Law 446/1997 (IRAP)	GOI		EU\$13,500 – \$15,000 per employee.
Duty Free Import Rights	GOI		Various

<sup>62</sup> As determined in the original investigation. Refer p. 14 of Confidential Attachment C-1.4.

<sup>63</sup> Notwithstanding the GOI's claims, the DOC has found that ...Commerce normally expects a program enacted by statute or regulation to be repealed by statute or regulation. In this case, the GOI relied on general statements without supporting documentation in arguing that the programs were terminated and that the benefits under the programs were fully allocated. Consequently, we disagree that these programs should be treated as terminated for purposes of the analysis of whether countervailable subsidization is likely to continue or recur. Refer p. 12 of Non-Confidential Attachment C-1.4.

<sup>64</sup> See footnote 80.

<sup>65</sup> Page 14, Non-Confidential Attachment C-1.4.

<sup>66</sup> Ibid. To the rates found in the original investigation we have added the rates from the subsidy programs subsequently found to be countervailable (during the first through nineteenth administrative reviews). The subsequent programs include the following: [DOC referencing the new above past sunset review subsidies].

<sup>67</sup> See footnote 80.

<sup>68</sup> See footnote 80.

Corporate Income Tax (IRPEG) Exemptions			Various
Development Grants under Law 30 of 1984	Friuli-Venezia Giulia		20%
Law 908/55 Revolving Fund for Economic Initiatives Loan	Friuli-Venezia Giulia		50% debt rate discount
Social Security Reductions and Exemptions-Sgravi-Article 44 of Law 448/01	Terminated, according to the GOI. <sup>69</sup>		Various
Law 289/02, Article 62, Investment in Disadvantaged Areas	GOI	Refer footnote 83.	
Law 289/02, Article 63, Increase in Employment	GOI	Refer footnote 83.	EU\$150-300 per employee
Law 662/96, Article 2, Paragraph 203, letter d-Patti Territoriali	Terminated, according to the GOI. <sup>70</sup>		Various
Law 196/97	GOI	Refer footnote 83.	25%-100% deduction for social security contributions
European Regional Development Fund Programma Operativo Plurifondo	The ERDF, the GOI, and the Regione Campania.	Refer footnote 83.	
Law 223/91 Article 8, Paragraph 2	GOI		
Law 223/91 Article 8, Paragraph 4	Terminated, according to the GOI. <sup>71</sup>		
Legislative Decree 276/03	GOI	Refer footnote 83.	Total exemption from social security contributions
Law 662/96, Article 2, Paragraph 203, letter e (Contratto di Programma)	Terminated, according to the GOI. <sup>72</sup>		
Interest Contributions Under Law 488/92	GOI	Refer footnote 83.	0.50% interest on fixed rate loans
Law 46/1982, Article 14 loans (Fondo Innovazione Tecnologica)	Ministry of Economic Development	Refer footnote 83.	
Law 46/1982 Article 14 grants (Fondo Innovazione Tecnologica)	Ministry of Economic Development		
Regional Law 34/1988	Regional Department of Industry (Sicily)		
Measure 3.14 of the POR Sicilia 2000/2006	Regional Department of Industry (Sicily)		
Tax Credits under Article 280 of Law 296/2006	GOI	Refer footnote 83.	10% - 15% tax credits
Article 23 of Legislative Decree 38/2000	National Institute for Insurance Against Injuries in the	Refer footnote 83.	

<sup>69</sup> See footnote 80.

<sup>70</sup> See footnote 80.

<sup>71</sup> See footnote 80.

<sup>72</sup> See footnote 80.



	Workplace		
Tremonti Ter	GOI	Refer footnote 83.	50% income tax deduction on new equipment
PO FESR Measure 4.1.1.1	GOI / Sicily regional government	Refer footnote 83.	
Law 167/2011	GOI		
Article 42 of Law 78/2010	GOI		
Article 1 of Law 296/06	GOI		
POR FESR Molise 2007/2013	GOI (Molise region)		
Law 223/91, Article 25, Paragraph 9	GOI		
Ministerial Decrees of July 23, 2009 and August 6, 2010 (Berlusconi Grant)	Terminated, according to the GOI. <sup>73</sup>		Various
Ministerial Decrees of July 23, 2009 and August 6, 2010, (Berlusconi Loan)	Terminated, according to the GOI. <sup>74</sup>		Various
<b>Pasta administrative review – subsidies</b>			
Sgravi – Art 1 par 161 and 168 Law 178/2020	GOI	Gentile and Sgambaro	0.30% (Gentile)
Regional Tax on Income of Productive Activities Deduction in Accordance with Article 11 of Legislative Decree n. 446/1997 (IRAP)	GOI	Gentile and Sgambaro	0.43% (Gentile)
Preferential Financing for Export Promotion Under Law 394/81	GOI	Gentile and Sgambaro	0.21% (Gentile) 0.06% (Sgambaro)
Sgravi Benefits – Article 1, paragraph 773 of Law No. 296/2006	GOI	Gentile and Sgambaro	0.08% (Sgambaro)
Sgravi Benefits – Article 1, paragraph 100 of Law No. 160/2019	GOI	Gentile and Sgambaro	0.01% (Sgambaro)
Research, Development and Innovation 2020-2022 (Nuova Sabatini)	GOI	Gentile and Sgambaro	0.33% (Sgambaro)
Measure 123	GOI (via the European Agricultural Fund for Rural Development)	Gentile and Sgambaro	0.02% (Sgambaro)
Article 1 par. 200, 201 and 202 law 27 December 2019, n. 160	GOI	Gentile and Sgambaro	0.08% (Sgambaro)
Article 1, paragraphs 1051-1063 of Law No. 178/2020	GOI	Gentile and Sgambaro	0.63% (Sgambaro)
Tax Credit under Article 15 Law Decree n. 4, 27 January 2022	GOI	Gentile and Sgambaro	1.05% (Sgambaro)
Article 5 of the Law Decree n. 17 dated 1 March 2022	GOI	Gentile and Sgambaro	0.11% (Sgambaro)

**Non-Confidential Table C-4:** subsidies summary

<sup>73</sup> See footnote 80.

<sup>74</sup> See footnote 80.

A second inference can be drawn to verified exporters in INV 217/276. In assessing the subject exporters current product range, the table below indicates which exporters produce/manufacture and sell pasta and pasta related products:

Verified exporter: INV 217/276	Pasta products reference
Fiamma Vesuviana Srl	<a href="https://fiammavesuviana.ca/PastaFoodService.html">https://fiammavesuviana.ca/PastaFoodService.html</a> and <a href="https://fiammavesuviana.ca/PastaEndUser.html">https://fiammavesuviana.ca/PastaEndUser.html</a>
Greci Industria Alimentare S.p.A.	The exporter does not produce pasta directly under its main brand, but does include pasta in its portfolio through its subsidiary, Pastificio Zaffiri. Refer <a href="https://www.pastazaffiri.it/">https://www.pastazaffiri.it/</a>
Menu Srl	<a href="https://www.menu.it/en/products/pasta-rice-and-cereals">https://www.menu.it/en/products/pasta-rice-and-cereals</a>
Princes Industrie Alimentari SRL	<a href="https://www.princesgroup.com/it/our-brands/">https://www.princesgroup.com/it/our-brands/</a> (through the <i>Napolina</i> brand).

**Non-Confidential Table C-4:** Italian pasta and preserved tomato producers

With the assessed specificity and assessed benefit in the pasta sunset review, SPC alleges that the same is likely to apply for Italian prepared/preserved tomato producers where it is shown that the producer in question manufactures both goods.

A third and related inference can be drawn as to the relevance of the U.S. pasta sunset review precedent by taking full inventory of geographical consistencies between Italian pasta and preserved tomato producers, which may indicate the receipt of specific countervailable subsidies on a location and product-type premise. In the absence of producer/exporter financial statements detailing the specifics of any government funding received, or any other such information, this adds further prima facie evidence to SPC’s countervailing allegations for the Commission to pursue.

Regions known for pasta production:

1. Abruzzo:
  - i. pasta producers: De Cecco, La Molisana
  - ii. key features: production of drum wheat and traditional methods of pasta production.
  
2. Campania:
  - i. pasta producers: Pastificio di Martino, Pastificio Setaro.
  - ii. key features: known for its dried pasta making traditions and macaroni products.
  
3. Emilia-Romagna:
  - i. pasta producers: Barilla (though headquartered in Parma, the company has multiple production facilities).
  - ii. key features: known for both industrial pasta production and artisanal pasta like tortellini.
  
4. Puglia:
  - i. pasta producers: Granoro.
  - ii. key features: a major producer of drum wheat.

### Regions known for tomato production:

1. Campania:
  - i. tomato producers: Mutti (through farming operations), La Doria.
  - ii. key features: known for the San Marzano tomato, which is protected by Protected Designation of Origin (PDO) status.
2. Puglia:
  - i. tomato producers: Conserve Italia, Princes Industrie Alimentari.
  - ii. key features: one of Italy's largest tomato-growing regions, particularly for processing into sauces and tinned products.
3. Emilia-Romagna:
  - i. tomato producers: Mutti (headquartered in Parma), Steriltom.
  - ii. key features: production of processed tomato products, supporting industrial and artisanal tomato processing.

The three overlapping regions are hence Campania, Puglia, and Emilia-Romagna. Funding under the CAP is certainly a feature in these areas. In the Emilia-Romagna region, the GOI notes that the *Common Market Organization* is used to intervene in various production sectors:<sup>75</sup>

*The Common Market Organization (CMO, Article 33 of the EC Treaty) refers to a set of rules adopted by EU or national bodies that regulate the markets of agricultural products with a view to achieving the objectives of the Common Agricultural Policy, the so-called CAP.*

*In particular, it is the responsibility of the CMO to implement the provisions on price regulation, **subsidies** for the production and distribution of the various products, the creation of systems for the accumulation of stocks, as well as to make the common import and **export stabilization mechanisms** operational. [emphasis added].*

SPC therefor requests that the Commission assess all available evidence of potential countervailable subsidies with geographic relevance to the U.S. pasta sunset review.<sup>76</sup>

### ***EU/Italy WTO Subsidy Notifications, and other evidence***

SPC refers the Commission to Italy's and the EU's 2023 notifications to the WTO's Committee on Subsidies and Countervailing Measures.<sup>77</sup> These notifications, pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the SCM Agreement, advise the Committee of Italy's and the EU's subsidisation policies.

These notifications identify subsidies that may, upon investigation, prove to be countervailable to Italian preserved tomato producers and exporters. This includes ongoing

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<sup>75</sup> Refer [Common organizations of the market — Agriculture, hunting and fishing \(regione.emilia-romagna.it\)](https://www.regione.emilia-romagna.it)

<sup>76</sup> In the Campania region, refer for example [Rural Development Complement of the Campania Region 2023-2027 \(regione.campania.it\)](https://www.regione.campania.it). In the Puglia region, refer for example [Fact sheet on the Rural Development Programme 2014-2020 for the Piedmont Region \(europa.eu\)](https://europa.eu)

<sup>77</sup> Non-Confidential Attachment C-1.5: *NEW AND FULL NOTIFICATION PURSUANT TO ARTICLE XVI:1 OF THE GATT 1994 AND ARTICLE 25 OF THE AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES*, European Union, 25 July 2023. Non-Confidential Attachment C-1.6: *NEW AND FULL NOTIFICATION PURSUANT TO ARTICLE XVI:1 OF THE GATT 1994 AND ARTICLE 25 OF THE AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES*, European Union Italy Addendum, 29 August 2023. See also [Results list \(wto.org\)](https://www.wto.org)

assistance provided by the CAP, and various regional subsidies that may prove specific.<sup>78</sup> SPC therefore requests that the Commission investigate whether Italian preserved tomato producers benefit from subsidies listed in the Notifications.

#### 4. Conclusion

Taken together, the above indicates that there is reliable and detailed evidence that the Italian preserved tomato industry likely receives countervailable subsidies, and that these are neither negligible nor *de minimus*. On the basis of this application, SPC therefore requests that the Commission initiate a countervailing investigation into preserved tomato exports from Italy to Australia, investigate the programs listed above, and any other programs identified during the course of the proposed inquiry period.

#### C-2. Threat of material injury

You must complete this section if the application includes a claim that material injury is threatened to an Australian industry because of the exportation of goods into the Australian market.

1. Identify the change(s) in circumstances that would make material injury foreseeable and imminent unless dumping or countervailing measures were imposed, for example by having regard to:
  - (i) the rate of increase of dumped/subsidised imports;
  - (ii) changes to the available capacity of the exporter(s);
  - (iii) the prices of imports that will have a significant depressing or suppressing effect on domestic prices and lead to further imports;
  - (iv) inventories of the product to be investigated;
  - (v) for applications claiming subsidisation, the nature of the subsidies in question and the trade effects likely to arise therefrom; or
  - (vi) any other relevant factor(s).

Not applicable.

2. If appropriate, include an analysis of trends (or a projection of trends) and market conditions illustrating that material injury is both foreseeable and imminent.

Not applicable.

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<sup>78</sup> SPC also refers the Commission to *Invitalia* – the Italian government body responsible for working with central and regional public authorities to implement programs co-financed by the EU. See <https://www.invitalia.it/eng>

### C-3. Close processed agricultural goods

Where it is established that the like (processed) goods are closely related to the locally produced (unprocessed) raw agricultural goods, then – for the purposes of injury assessment – the producers of the raw agricultural goods form part of the Australian industry. This section is to be completed only where processed agricultural goods are the subject of the application. **Applicants are advised to contact the Commission’s client support section before completing this section.**

1. Fully describe the locally produced raw agricultural goods.
2. Provide details showing that the raw agricultural goods are devoted substantially or completely to the processed agricultural goods.
3. Provide details showing that the processed agricultural goods are derived substantially or completely from the raw agricultural goods.
4. Provide information to establish **either**:
  - a close relationship between the price of the raw agricultural goods and the processed agricultural goods; **or**
  - that the cost of the raw agricultural goods is a significant part of the production cost of the processed agricultural goods.

### C-4. Exports from a non-market economy

Complete this section only if exports from a non-market economy are covered by the application. The domestic price information required by Part B of the application need not be supplied if this question is answered.

Normal values for non-market economies may be established by reference to selling prices or to costs to make and sell the goods in a comparable market economy country.

1. Provide evidence the country of export is a non-market economy. A non-market economy exists where the government has a monopoly, or a substantial monopoly, of trade in the country of export and determines (or substantially influences) the domestic price of like goods in that country.
2. Nominate a comparable market economy to establish selling prices.
3. Explain the basis for selection of the comparable market economy country.
4. Indicate the selling price (or the cost to make and sell) for each model control code of the goods sold in the comparable market economy country. Provide supporting evidence.

**C-5 Exports from an ‘economy in transition’**

An ‘economy in transition’ exists where the government of the country of export had a monopoly, or substantial monopoly, on the trade of that country (such as per question C-4) and that situation no longer applies.

Complete this section only if exports from an ‘economy in transition’ are covered by the application. **Applicants are advised to contact the Commission’s client support section before completing this section**

1. Provide information establishing that the country of export is an ‘economy in transition’.
2. A price control situation exists where the price of the goods is controlled or substantially controlled by a government in the country of export. Provide evidence that a price control situation exists in the country of export in respect of like goods.
3. Provide information (reasonably available to you) that raw material inputs used in manufacturing/producing the exported goods are supplied by an enterprise wholly owned by a government, at any level, of the country of export.
4. Estimate a ‘normal value’ for the goods in the country of export for comparison with export price. Provide evidence to support your estimate.

**C-6 Aggregation of Volumes of dumped goods**

Only answer this question if required by question B-1.5 of the application and action is sought against countries that individually account for less than 3% of total imports from all countries (or 4% in the case of subsidised goods from developing countries). To be included in an investigation, they must collectively account for more than 7% of the total (or 9% in the case of subsidised goods from developing countries).

	Quantity	%	Value	%
All imports into Australia		100%		100%
Country A*				
Country B*				
etc*				
<b>Total</b>				

\* Only include countries that account for less than 3% of all imports (or 4% in the case of subsidised goods from developing countries). Use the data at Appendix A.2 (Australian Market) to complete the table.

## APPENDICES

Appendix A1	Australian Production
Appendix A2	Australian Market
Appendix A3	Sales Turnover
Appendix A4	Domestic Sales
Appendix A5	Sales of Other Production
Appendix A6.1	Cost to Make and Sell (& profit) Domestic Sales
Appendix A6.2	Cost to Make and Sell (& profit) Export Sales
Appendix A7	Other Injury Factors
Appendix A8	Authority to Deal With Representative