



Australian Government  
Department of Industry,  
Science and Resources

Anti-Dumping  
Commission

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## **Consideration report number 654**

Application for a dumping duty notice and countervailing duty notice

Submitted by SPC Operations Pty Ltd

In relation to tomatoes, prepared or preserved, exported to Australia from the Italian Republic.

24 September 2024

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# ABBREVIATIONS

Abbreviations	Full reference
ABF	Australian Border Force
ADRP	Anti-Dumping Review Panel
The Act	<i>Customs Act 1901 (Cth)</i>
The applicant	SPC Operations Pty Ltd
AUD	Australian dollar
BISS	basic income support for sustainability
BPS	Basic Payment Scheme
Canadian sugar case	Canadian review of anti-dumping and countervailing duties on refined sugar
CAP	Common Agricultural Policy
CIS	coupled income support
The commission	Anti-Dumping Commission
The Commissioner	Commissioner of the Anti-Dumping Commission
CON488	Continuation No. 488
CTMS	cost to make and sell
ED Canberra	Delegation for the European Union in Australia
EDGARD	Directorate-General for Agriculture and Rural Development, European Commission
EDGT	Directorate-General for Trade, European Commission
EPR	Electronic Public Record
EU	European Union
EXW	ex-works
FIS	free into store
FOB	free on board
GATT 1994	General Agreement on Tariffs and Trade
The goods	tomatoes, prepared or preserved
GOI	Government of Italy
INV217	Investigation No. 217
INV276	Investigation No. 276
ITA	the Italian Trade Agency
Italy	the Italian Republic
LSI	Le Specialita Italiane Sri
PMS	particular market situation
REINV360	Reinvestigation No. 360
REV349	Review No. 349
REV354	Review No. 354
REV462	Review No. 462
REV508	Review No. 508
ROI	return on investment
TradeData	TradeData International Pty Ltd
Scan data	retail sales data
SCM Agreement	Agreement on Subsidies and Countervailing Measures
SG&A	selling general and administrative
Simplot	Simplot Australia Pty Limited
SPC	SPC Operations Pty Ltd
SPS	Single Payment Scheme

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US	United States of America
US DOC	United States Department of Commerce
US pasta cases	US DOC countervailing investigations on certain pasta from Italy
VAT	value-added tax
VCS	voluntary coupled support
VOTI	value of taxable importation
WA	weighted average
WTO	World Trade Organization
YE	year ending

# 1. Findings

This report provides the result of the consideration by the Anti-Dumping Commission (the commission) of an application<sup>1</sup> under section 269TB(1)<sup>2</sup> of the *Customs Act 1901 (Cth)* (the Act) by SPC Operations Pty Ltd (referred to as 'the applicant' or 'SPC') for the publication of dumping and countervailing duty notices in respect of tomatoes, prepared or preserved (referred to as 'tomatoes' or 'the goods') exported to Australia from the Italian Republic (Italy).

SPC alleges that the Australian industry for tomatoes has suffered material injury caused by the goods being exported to Australia from Italy at dumped and subsidised prices. The legislative framework that underpins the making of an application and the commission's consideration of an application is contained in Divisions 1 and 2 of Part XVB of the Act.

## 1.1 Finding

In accordance with section 269TC(1), the Commissioner of the Anti-Dumping Commission (Commissioner) has examined the application and is satisfied that:

- the application complies with the requirements of section 269TB(4) (as set out in section 2.2 of this report)
- there is an Australian industry in respect of like goods (as set out in section 2.4 of this report)
- there appear to be reasonable grounds for the publication of dumping and countervailing duty notices in respect of the goods the subject of the application (as set out in sections 3, 4, 5 and 6 of this report).

## 1.2 Decision

Based on the above findings, the Commissioner has decided to not reject the application and to initiate an investigation to determine whether a dumping and/or a countervailing duty notice should be published.

The Commissioner further specifies that:

- the investigation period for examining dumping and subsidisation<sup>3</sup> with respect to exports to Australia be set for the period of 1 October 2023 to 30 September 2024, and
- details of the Australian market from 1 October 2020 will be examined for injury analysis purposes.<sup>4</sup>

In accordance with the requirements set out in section 269TC(4), the Commissioner must give public notice of a decision to not reject an application, which in this case will be given in ADN 2024/065.

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<sup>1</sup> Electronic Public Record (EPR), document number 1.

<sup>2</sup> All legislative references in this report are to the *Customs Act 1901 (Cth)* unless otherwise specified.

<sup>3</sup> As per section 3.2 of *The Anti-Dumping Commission Dumping and Subsidy Manual (December 2021)*, the investigation period is generally the 12 months preceding the initiation date and ending on the most recently completed quarter or month.

<sup>4</sup> For the purposes of this report that details the commission's consideration of the application, the commission has assessed an injury analysis period of 1 April 2020 to 31 March 2024. For the purposes of the investigation, the commission proposes an injury analysis period from 1 October 2020. Upon initiation of the investigation, the commission will request additional information from SPC.

## 2. The application and the Australian industry

### 2.1 Background

There are currently no measures in place relating to tomatoes. The commission has previously investigated allegations of dumping of tomatoes exported to Australia from Italy and published dumping duty notices. Subsidisation has not previously been alleged nor investigated. Table 1 summarises the history of cases.<sup>5</sup>

Date of ADN	Case Number	Affected Exporters	Outcomes
16 April 2014 <a href="#">2014/32</a>	Investigation 217 (INV217)	All except La Doria and Feger di Gerardo <sup>6</sup>	Measures applied; margins between 3.25% and 26.35%
14 August 2015 <a href="#">2015/100</a>	Exemptions (various) (Related to INV217 measures)	Various <sup>7</sup>	Found not exempt; margins between 3.25% and 26.35%
10 February 2016 <a href="#">2016/13</a>	Investigation 276 (INV276)	La Doria and Feger di Gerardo	Measures applied; margins of 4.5% and 8.4%
31 March 2017 <a href="#">Anti-Dumping Review Panel (ADRP) Public Notice</a> Effective date: 11 February 2016	Reinvestigation 360 <sup>8</sup> (REINV360) ADRP Report 35 (Overturned INV276)	La Doria and Feger di Gerardo	INV276 decision overturned. No measures imposed on La Doria and revised margin of 2.3% imposed on Feger di Gerardo
4 May 2017 <a href="#">2017/46</a>	Review 354 <sup>9</sup> (REV354) (Review of INV217 measures)	AR Industrie Alimentari SpA (ARIA)	Margin revised to 17.8%
4 May 2017 <a href="#">2017/47</a>	Review 349 <sup>10</sup> (REV349) (Review of INV217 measures)	All except La Doria, Feger di Gerardo and ARIA	Measures revised; margins between 0% and 118%
9 February 2018 <a href="#">ADRP Public Notice</a>	Reinvestigation ADRP Report 56 (Re: REV349 and REV354)	All except La Doria, Feger di Gerardo and ARIA	Decision on Mutti & LSI <sup>11</sup> overturned; new margin of 3.9% imposed on Mutti and a floor price imposed on LSI
9 April 2019 <a href="#">2019/31</a>	Continuation 488 <sup>12</sup> (CON488) (Re: INV217 measures)	All except La Doria (no measures in place) and Feger di Gerardo (measures from INV276 & REINV360)	Measures allowed to expire

<sup>5</sup> For clarity, accelerated reviews have not been included. Note that between 25 July 2014 and 18 June 2018, there were 15 accelerated reviews, details of which can be found on the commission's electronic public record.

<sup>6</sup> Investigations into La Doria and Feger di Gerardo were terminated; see [ADN 2014/22](#).

<sup>7</sup> Exemptions 0023, 0026, 0029, 0034, 0035 and 0039: The grounds for the applications were that there is no Australian producer of cherry tomatoes, organic tomatoes and San Marzano tomatoes. Multiple applications were received and grouped as they related to similar issues.

<sup>8</sup> On 14 June 2016, the ADRP directed the commission to reinvestigate certain findings made in Anti-Dumping Commission Report No. 276; refer to [ADRP Report No. 35](#).

<sup>9</sup> The commission reviewed measures applied in Investigation 217 as requested by Australian industry.

<sup>10</sup> The commission reviewed measures applied in Investigation 217 as requested by ARIA.

<sup>11</sup> LSI is Le Specialita Italiane Sri.

<sup>12</sup> Continuation 488 relates to measures applied in Investigation 217.

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Date of ADN	Case Number	Affected Exporters	Outcomes
2 October 2019 <a href="#">2019/110</a>	Revocation review 508 <sup>13</sup> (REV508)	Feger di Gerardo	Measures revoked

**Table 1: Summary of tomatoes cases.**

## 2.2 Lodgement of the application

### 2.2.1 Finding

The Commissioner finds that SPC’s application satisfies the lodgement requirements and complies with the form and content requirements set out in the Act.

### 2.2.2 Legislative framework

The procedures for lodging an application are set out in section 269TB. The procedures and timeframes for the Commissioner’s consideration of the application are set out in section 269TC.

### 2.2.3 The Commissioner’s timeframe

Table 2 summarises the timeline in relation to the assessment of the application.

Event	Date	Details
Application lodged & receipted by the Commissioner under sections 269TB(1) and (5).	26 July 2024	The commission received an application from SPC which alleges that the Australian industry has suffered material injury caused by dumped and subsidised tomatoes exported to Australia from Italy.
	6 & 26 August 2024	The commission notified SPC that the application contained critical and important deficiencies that, if left unaddressed, created doubt on the reasonableness of the grounds for the publication of dumping and countervailing duty notices.
Applicant provided further information in support of the application under section 269TC(2A).	12, 13, 27, 28, 29 & 30 August & 4 September 2024	The applicant provided further information and data on 7 occasions in response to 2 deficiency notices in support of the application as provided for in section 269TC(2A). The application was taken to have been lodged and receipted on 4 September 2024, when the final additional information was received. Accordingly, the 20-day period for consideration of the application by the commission was restarted on this date.
Consideration decision due under section 269TC(1).	24 September 2024	The Commissioner to decide whether to reject or not reject the application within 20 days after the applicant provided further information.

**Table 2: The Commissioner’s timeframe for considering an application.**

## 2.3 Compliance with section 269TB(4)

### 2.3.1 Finding

Based on the information submitted by the applicant, the commission considers that the application complies with section 269TB(4).

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<sup>13</sup> Revocation 508 relates to measures applied in Investigation 276.



**2.3.2 Legislative framework**

Section 269TC(1) requires that the Commissioner reject an application for a dumping duty notice if, among other things, the Commissioner is not satisfied that the application complies with section 269TB(4).

**2.3.3 The commission’s assessment**

The Commissioner finds that SPC’s application, the original lodgement and the further information provided complies with section 269TB(4). Table 3 summarises the commission’s assessment of SPC’s compliance with section 269TB(4).

<b>Requirement for the application</b>	<b>Details</b>
Lodged in writing under section 269TB(4)(a).	SPC lodged, in writing, confidential and non-confidential versions of the application. The non-confidential version of the application can be found on the electronic public record on the commission’s website at <a href="http://www.adcommission.gov.au">www.adcommission.gov.au</a> .
Lodged in an approved form under section 269TB(4)(b).	The application is in the approved form (Form B108) for the purpose of making an application under section 269TB(1).
Contains such information as the form requires under section 269TB(4)(c)	SPC provided: <ul style="list-style-type: none"> <li>• a completed declaration</li> <li>• answers to all questions that were required by Form B108 to be answered by the applicant</li> <li>• completed appendices required by Form B108</li> <li>• sufficient detail in the non-confidential version of the application to enable a reasonable understanding of the substance of the information submitted in confidence.</li> </ul>
Signed in the manner indicated in the form under section 269TB(4)(d).	The application was signed in the manner indicated in Form B108 by a representative of the applicant.
Supported by a sufficient part of the Australian industry under section 269TB(4)(e) and determined in accordance with section 269TB(6)	<p>As set out in section 2.4 of this report, the commission is satisfied that there is an industry producing the goods in Australia. In its application, SPC stated that it was the only Australian manufacturer of the goods during the investigations period used in the application (1 April 2023 to 30 March 2024). SPC further advised that a new Australian manufacturer – Simplot Australia Pty Limited (Simplot), under the brand Leggo’s – entered the in May 2024. Supermarket retail sales data (scan data) information provided by SPC indicates that SPC continues to be the predominant manufacturer in Australia in the investigation period proposed for the investigation (1 October 2023 to 30 September 2024).</p> <p>The commission has reviewed the information provided and the Commissioner is satisfied that, in accordance with sections 269TB(6)(a) and (b), the applicant, which produces like goods in Australia, accounts for:</p> <ul style="list-style-type: none"> <li>• more than 50% of the total production of like goods by that proportion of the Australian industry that has expressed either support for, or opposition to, the application, and</li> <li>• not less than 25% of the total production of like goods in Australia.</li> </ul>

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Requirement for the application	Details
Lodged in the manner approved under section 269SMS for the purposes section 269TB(4)(f)	The application was lodged in a manner approved in the commission's instrument made under section 269SMS, being by email to an address nominated in that instrument. <sup>14</sup>

**Table 3: The commission's compliance assessment of the application.**

## 2.4 The goods the subject of the application

### 2.4.1 The goods

Table 4 outlines the goods as described in the application.

Full description of the goods, as subject of the application
Tomatoes, whether peeled or unpeeled, prepared or preserved otherwise than by vinegar or acetic acid, either whole or in pieces (including diced, chopped or crushed) with or without other ingredients (including vegetables, herbs or spices) in packs not exceeding 1.14 litres in volume (prepared or preserved tomatoes), exported from Italy.
Further information
The common container sizes of the imported prepared or preserved tomatoes the subject of this application are 300 grams (g) to 850 g; however, this application covers all container sizes up to and including 1.14 litres (L). 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 × 400 g cans, are to be considered as 3 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.
Exclusions
The following tomato products do not form part of this application: pastes, purees, sauces, pasta sauces, juices, sundried tomatoes.

**Table 4: The goods description.**

### 2.4.2 Tariff classification

The goods are generally, but not exclusively, classified to the tariff classifications in Schedule 3 of the *Customs Tariff Act 1995*.

Tariff classification				
Tariff code	Statistical code	Unit	Description	Duty rate
<b>2002</b>	<b>Tomatoes prepared or preserved otherwise than by vinegar or acetic acid</b>			
2002.10.00	60	kilograms (kg)	Tomatoes, whole or in pieces, in packs not exceeding 1.14 L.	5%

**Table 5: General tariff classification for the goods.**

These tariff classifications and statistical codes may include goods that are both subject and not subject to this investigation. The listing of these tariff classifications and statistical codes are for convenience or reference only and do not form part of the goods the subject of the application. Please refer to the goods description in

<sup>14</sup> As approved by the Commissioner's [Instrument](#) under section 269SMS of the *Act 1901*, 23 November 2018.

section 2.5.1 for authoritative detail regarding the goods the subject of the application.

## **2.5 Like goods and the Australian industry**

### **2.5.1 Finding**

The Commissioner is satisfied that there is an Australian industry producing like goods to the goods the subject of the application on the basis that:

- SPC produces goods that have characteristics that are identical to or closely resemble the goods the subject of the application, and
- The goods are wholly manufactured in Australia.

### **2.5.2 Legislative framework**

Section 269TC(1) requires that the Commissioner reject an application for a dumping and countervailing duty notice if, among other things, the Commissioner is not satisfied that there is, or is likely to be established, an Australian industry in respect of like goods. Like goods are defined under section 269T(1). Sections 269T(2), 269T(3), 269T(4), and 269T(4A) are used to determine whether the like goods are produced in Australia and whether there is an Australian industry.

### **2.5.3 Locally produced like goods**

Table 6 summarises the commission’s assessment of whether the locally produced goods are identical to, or closely resemble, the goods the subject of the application and are therefore like goods.

<b>Factor</b>	<b>The applicant’s claims</b>	<b>The commission’s assessment</b>
Physical likeness	<p>The applicant claims that the local and imported goods are physically alike. In support, SPC claimed:</p> <ul style="list-style-type: none"> <li>• The imported products are available in the same size packaging as SPC’s products. Most of the products available are in the 400g and 800/810g size cans.</li> <li>• The key ingredient in the imported goods is prepared tomatoes. SPC’s prepared products are also tomatoes and are available with similar compositions and liquids.</li> <li>• Both the imported goods and SPC’s products are available in the same cuts, such as diced, chopped, crushed, whole or mixed with herbs and spices. The imported goods may also include an organic range, to which SPC’s products are considered alike.</li> </ul>	<p>The Commissioner is satisfied with the reasonableness of the claims by SPC in relation to the physical likeness between the subject goods and the locally produced goods, noting:</p> <ul style="list-style-type: none"> <li>• The description of imported goods from Italy in the Australian Border Force (ABF) import database describes the same or similar physical attributes to the tomatoes produced by SPC.</li> <li>• The commission has previously investigated tomatoes exported from Italy and found these to be like goods.</li> </ul>

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<b>Factor</b>	<b>The applicant's claims</b>	<b>The commission's assessment</b>
Commercial likeness	<p>The applicant claims that the local and imported goods are commercially alike, stating:</p> <ul style="list-style-type: none"> <li>• Both SPC's and the exporters' goods are available on supermarket shelves and compete with each other.</li> <li>• Consumers readily switch between SPC's and the exporters' products.</li> <li>• The key criterion driving the purchase decision is price.</li> </ul>	<p>The Commissioner is satisfied with the reasonableness of the applicant's claims in relation to the commercial likeness between the goods the subject of the application and the locally produced goods.</p> <p>The commission assessed data in the ABF import database and observed that the same or similar customers to SPC's customers imported the goods from Italy.</p>
Functional likeness	<p>The applicant claims that the local and imported goods are functionally alike because both SPC's and the imported goods are used in the same end-use applications (i.e. by household consumers for preparing meals) and are interchangeable.</p>	<p>The Commissioner is satisfied with the reasonableness of the claims by SPC in relation to the functional likeness between the subject goods and the locally produced goods because they can be used interchangeably in household meal preparation.</p>
Production likeness	<p>The applicant claims that the local and imported goods' production processes are alike because the goods are produced using the same or similar raw material inputs. The goods are produced using similar equipment and similar manufacturing processes.<sup>15</sup></p>	<p>The Commissioner is satisfied that the locally produced goods and imported goods are produced using the same or similar production processes because the inputs in Australian processes also comprise raw tomatoes and the outputs in Australian processes match the goods description.</p>
<b>Commission's assessment</b>		
<p>Based on the analysis above, the commission considers that the locally produced goods have characteristics that are identical to and/or closely resemble the goods the subject of the application, which are goods exported to Australia from Italy, and are like goods. The commission will further examine like goods during the investigation.</p>		

**Table 6: Comparison of the locally produced goods and like goods.**

### 2.5.4 Manufacture in Australia

Table 7 summarises the commission's assessment of whether the goods are wholly manufactured in Australia and whether the like goods are therefore considered to have been manufactured in Australia.

<b>The applicant's claims</b>
<p>SPC's prepared tomatoes production can be generally described as follows:</p> <ul style="list-style-type: none"> <li>• Fresh tomatoes are delivered to SPC's production facility directly by the local tomato growers on the same day that they are harvested from the vine; upon delivery they are moved immediately to the processing line.</li> <li>• The higher-quality fresh tomatoes are steam-peeled. 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.</li> <li>• The peeled tomatoes are graded a second time and sorted for processing as either whole tomato products or as diced, chopped or crushed products. All products are put into cans.</li> </ul>

<sup>15</sup> Further discussed in section 2.4.4 of this report.

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<ul style="list-style-type: none"> <li>• Each can is filled with standardised ratios of processed tomatoes to liquid filling stage (juice derived from step 2 above). Products are sorted by can size and cut profile. Certain cans are produced with additional ingredients, such as herbs, spices, and other flavouring (referred to as 'value added' products).</li> <li>• Once filled to product specifications, cans are sealed and pasteurised (cooked) to preserve the product and moved to cool to ambient temperature, and once cooled, all unlabelled cans (referred to as the 'bright can' stage) are moved to storage according to product grouping.</li> <li>• Cans are labelled on an as-needed basis prior to shipping, depending on specific order requirements and customer demands.</li> </ul> <p>SPC aims to bring the fresh tomatoes to the bright can stage within 24 hours of delivery. SPC provided detailed production process schematics provided in confidential attachments.<sup>16</sup></p>
<b>The commission's assessment</b>
Based on the description of the manufacturing process provided by SPC in its application, the commission is satisfied that like goods are manufactured in Australia, and that the like goods produced by SPC are wholly manufactured in Australia.

**Table 7: Summary of the manufacture process.**

## 2.6 Australian industry information

Table 8 summarises the commission's assessment of whether SPC has provided sufficient information in the application to analyse the performance of the Australian industry.

<b>Have the relevant appendices to the application been completed?</b>		
A1	Australian production	Yes
A2	Australian market	Yes
A3	Sales turnover	Yes
A4	Domestic sales	Yes
A5	Sales of other production	Yes
A6.1	Cost to make and sell (& profit) – Domestic sales	Yes
A6.2	Cost to make and sell (& profit) – Export sales	Yes
A7	Other injury factors	Yes
<b>General administration and accounting information – SPC</b>		
History	SPC has been in operation since May 2019. The company previously submitted applications under the name SPC Ardmona Operations Limited. In its application, SPC confirmed that this is currently the only business name under which the goods are produced and sold.	
Ownership	SPC has provided information in relation to the ownership of their company.	
Operations	SPC has provided details of its areas of operation in their application.	
Financial year	SPC states that their accounting period is from 1 July to 30 June.	
Audited accounts	SPC has provided audited accounts, including its past audited accounts.	
Annual reports	SPC has provided their financial reports, including its past financial reports.	
<b>Production and sales information</b>		

<sup>16</sup> Confidential attachments A-3.6.1 and A-3.6.2.

<b>Cost to make and sell (CTMS) information</b>	The applicant advised that: <ul style="list-style-type: none"> <li>• Production does not take place in all months. In the months where no production takes place, there may be no bright cans produced but work continues on labelling lines and converting those to finished goods.</li> <li>• A new manufacturer of the goods, Simplot under the brand Leggo's, commenced operations in May 2024<sup>17</sup>.</li> </ul>
<b>Other injury factors</b>	
<b>The commission's assessment</b>	
<ul style="list-style-type: none"> <li>• Based on the information in the application, the commission is satisfied that there is sufficient data on which to analyse the performance of Australian industry between 1 April 2020 and 31 March 2024. The period proposed by SPC and is the period the commission examined to assess applicant's claims for this report.</li> <li>• As outlined in section 1.2, the Commissioner has decided that the investigation period of 1 October 2023 to 30 September 2024 will be examined for dumping and subsidisation in investigation. The commission will request additional information from Australian industry the investigation for 1 April 2024 to 30 June 2024.</li> <li>• The commission will seek further information in relation to the new manufacturer identified by SPC.</li> </ul>	

**Table 8: Application completeness assessment.**

**2.6.1 Market size**

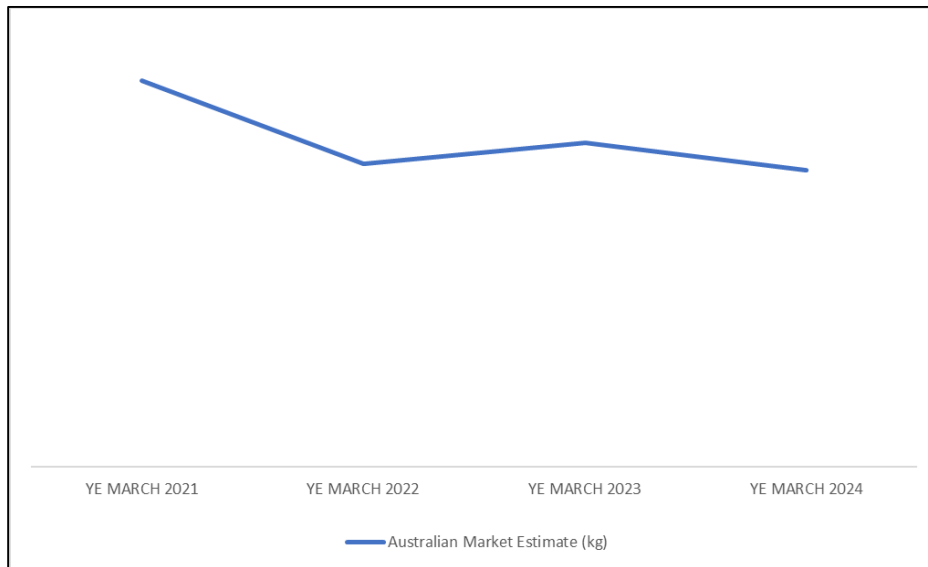
In its application, SPC estimated the size of the Australian market for the goods based on its own sales and purchased import data from TradeData International Pty Ltd (TradeData). The commission examined SPC's approach and considered that its estimate of the Australian market size is reasonable given the limited information available to it.

For the purposes of estimating the Australian market size, the commission has instead relied on SPC's sales data and information obtained from the ABF import database, which is considered more reliable than import data from TradeData in this instance, given the greater detail available in the ABF data. The commission notes that a new Australian industry producer, Simplot, entered the market during May 2024. The commission will seek further information from Simplot regarding its sales during the course of the investigation. The commission's estimate is illustrated in Figure 1 (below).

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<sup>17</sup> Application, p. 15.

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**Figure 1: Australian market.**

**Figure 1** shows that the size of market declined from its peak in year ending (YE) March 2021. There was some recovery in YE March 2023, but this was followed by another decline to reach its lowest level in YE March 2024. The commission will verify the size of the Australian market during the course the investigation, based on verified data obtained from interested parties. The commission's analysis of the Australian market size is contained in **Confidential Attachment 1**.

## 3. Reasonable grounds – dumping

### 3.1 Findings

Pursuant to section 269TC(1)(c), the commission considers that there appears to be reasonable grounds to support the claims that:

- the goods have been exported to Australia from Italy at dumped prices
- the estimated dumping margin for exports from Italy is greater than 2% and therefore is not negligible, and
- the estimated volume of goods Italy that appear to have been dumped is greater than 3% of the total Australian import volume of goods and therefore is not negligible.

### 3.2 Legislative framework

Section 269TC(1) requires that the Commissioner reject an application for a dumping duty notice if, among other things, the Commissioner is not satisfied that there appear to be reasonable grounds for the publication of a dumping duty notice.

Under section 269TG, one of the matters that the Minister for Industry and Science must be satisfied of to publish a dumping duty notice is that the export price of goods that have been exported to Australia is less than the normal value of those goods, i.e., that dumping has taken place (to an extent that is not negligible). This issue is considered in the following sections.

### 3.3 Export price

#### 3.3.1 Legislative framework

Export price is determined by applying the requirements in section 269TAB, taking into account whether the purchase or sale of goods was an arms length transaction under section 269TAA.

#### 3.3.2 The applicant's estimate

Table 9 summarises the approach taken by the applicant to estimate export prices, and the evidence relied upon.

Basis of estimate	Details
Under section 269TAB(3) of the Act, having regard to all relevant information and using data reflecting the price paid for the goods by the importer, less transport and other costs arising after exportation.	SPC relied on import data that they purchased from TradeData to calculate a Free on Board (FOB) export price in Australian Dollars (AUD) for exports from Italy using tariff code 2002.10.00 and statistical code 60.

Table 9: SPC's estimate of export prices from Italy.

#### 3.3.3 The commission's assessment

The commission examined the export price calculations and supporting evidence provided by SPC in its application. The commission considers that SPC's approach to estimating export prices is reasonable, considering the potential limitations of the information available to it.

To assess the reliability of the export prices estimated by SPC, the commission compared the export prices for the subject country in the application with its own assessment of data obtained from the ABF import database. The commission's



calculation of FOB export prices using ABF import data was based on the following methodology:

- Data was extracted from the ABF import database based on relevant tariff classification (2002.10.00) and statistical code (60).
- The data was filtered based on the goods description to exclude import transactions that appeared not to be the goods.
- The data was filtered to exclude line items where the FOB price per kg was outside a price range of \$20. This was done to exclude outlier data or data with errors. This price range was selected based on the commission's analysis of the import data and observations from this application and previous cases (investigations and reviews) of the goods. Specifically, the commission looked at the most recent continuation inquiry and 3 previous reviews 18 and found the price ranges of FOB values were well below the amount of \$20 per kg.

The commission used the ABF data, after applying the above methodology, to calculate a weighted average (WA) FOB export price for Italy. The commission found that its estimates of WA export prices for Italy were lower than SPC's estimates. The commission considers the ABF import data to be more reliable as it allows for a more detailed analysis of the import data to estimate export prices. The commission has relied on its findings on export prices for the purpose of estimating dumping margins at section 3.5.2. SPC's calculation of export prices and the commission's assessment are included in **Confidential Attachment 2**.

### **3.4 Normal value**

#### **3.4.1 Legislative framework**

Normal value is determined by applying the requirements in section 269TAC considering whether:

- the purchase or sale of the goods was an arms length transaction under section 269TAA
- the goods were sold in the ordinary course of trade under section 269TAAD
- there has been an absence or low volume of sales of like goods in the country of export
- whether the situation in the market of the country of export is such that sales in that country are not suitable for determining normal value under section 269TAC(1).

#### **3.4.2 The applicant's estimate**

Table 10 summarises the approach taken by the applicant to estimate normal values and the evidence relied upon.

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<sup>18</sup> Anti-Dumping [Notices 2018/106](#), [2018/110](#), [2018/78](#) and [2018/002](#).

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Basis of estimate	Details
Calculated on the basis of section 269TAC(6) of the Act having regard to all relevant information and using relevant price and deduction information.	<p>SPC obtained retail pricing from online stores and Italian supermarkets for the month of February 2024. The applicant then adjusted these prices to calculate the normal value by deducting:</p> <ul style="list-style-type: none"> <li>• 10% for Value Added Tax (VAT).</li> <li>• 35% for the Italian retailers/distributors margin on sales of tinned tomatoes. The commission notes that the applicant relied on ChatGPT to identify relevant margins and took the median of the range identified by ChatGPT.</li> <li>• 10% for domestic freight costs.</li> </ul> <p>The figure calculated by SPC reflects a normal value at an ex-works (EXW) delivery term.</p>

**Table 10: The applicant’s method to estimate a normal value.**

**3.4.3 The commission’s assessment**

The Commissioner must determine whether there appear to be reasonable grounds for supporting a claim that the goods have been exported at dumped prices. The Commissioner is therefore required to assess whether the estimated normal value provided in the application is reasonable.

The applicant chose to estimate a normal value by identifying the retail price of goods sold in the export country, converting it to a price per kilogram, and deducting estimated amounts for domestic transport, domestic VAT, and the retailer’s margin. The commission found that, in the absence of detailed information available to the applicant, the estimates were reasonable, however the commission used additional information available to it to revise the adjustments applied, including applying an additional adjustment to adjust the normal value to FOB terms.

The commission’s assessment of the applicant’s calculations is detailed in Table 11.

Component	Applicant’s approach	Commission’s assessment
Retail sale prices	Retail sales prices for one month from a range of online stores.	<p>The commission notes that SPC provided an estimated normal value based on retail prices for February 2024. The applicant claimed consumers are price-sensitive and readily change products for a cheaper price, which leads to retailers keeping prices low to compete on price.</p> <p>According with the provisions of section 269TC, the commission considered other relevant information after conducting research of the same retail websites at different periods of time and found other relevant information that confirmed that the prices of the goods did not fluctuate significantly. Consequently, the commission is satisfied when considering this in conjunction with the information in the application that the price of goods was unlikely to have fluctuated significantly during the proposed inquiry period and is satisfied with the applicant’s use of sales prices for a single month to establish the normal value.</p>

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<b>Component</b>	<b>Applicant's approach</b>	<b>Commission's assessment</b>
Value Added Tax	Used a VAT amount of 10%	The commission confirmed using publicly available information, in accordance with the provisions of section 269TC, that a range of VAT rates apply to food products in Italy (including 10%). The commission considers that the rate of 10% is a reasonable rate to apply.
Retailer margin	The applicant used ChatGPT to determine that the retailer margin should be between 20% and 50% and used the average of 35% in its calculations.	The commission did not consider ChatGPT to be a reliable source for this margin. Therefore, in accordance with the provisions of section 269TC, the commission considered other information from 2 alternative sources: <ul style="list-style-type: none"> <li>Publicly sourced data detailing retail margins in Italy.<sup>19</sup></li> <li>Verified Australian retailer margins obtained during CON488.</li> </ul> The commission adopted the verified retailer margin in CON488 which is consistent with the range of retail margins identified in Italy. <sup>20</sup>
Freight costs	The applicant estimated 10% for freight costs	The applicant did not provide a source for the estimated freight cost. Therefore, in accordance with the provisions of section 269TC, the commission used other information obtained in CON488; a WA inland transport cost from cooperative exporters based on a percentage of the net invoice value <sup>21</sup> .
Adjustment from EXW to FOB	The applicant did not make this adjustment	The applicant provided estimated normal values at an EXW level (which did not align with the estimated export price at an FOB level). Therefore, in accordance with the provisions of section 269TC, the commission used other information based on verified exporter data from CON488 to add an amount for delivery and handling costs to adjust the normal value to a FOB value.

**Table 11: The commission's assessment of normal value.**

Based on the commission's calculations, the normal value was lower than the normal value estimated by the applicant.

### **3.5 Dumping margins**

#### **3.5.1 Legislative framework**

Dumping margins are determined in accordance with the requirements of section 269TACB. Dumping margins and dumping volumes cannot be negligible, otherwise the investigation is terminated. Whether the dumping margins and dumping volumes are negligible is assessed under section 269TDA.

#### **3.5.2 The commission's assessment**

Table 12 summarises the dumping margins estimated by the applicant and dumping margins calculated by the commission based on revised estimates of normal values

<sup>19</sup>Centre for the Promotion of Imports from developing countries, [Entering the European market for canned fruits and vegetables](#), CBI website, 2024, accessed 20 August 2024.

<sup>20</sup>Confidential Attachment 2 – Dumping Margin & Export Price

<sup>21</sup>Confidential Attachment 2 – Dumping Margin & Export Price.

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and export prices. Dumping margins are expressed as a percentage of the export price. The table also indicates whether the commission is satisfied that the dumping margins and volume of dumped goods are above negligible levels.

<b>The applicant's estimate</b>	<b>The commission's estimate</b>	<b>Volume</b>
65.8%	46.1%	Above negligible levels

**Table 12: Estimated dumping margins.**

As noted in sections 3.3.3 and 3.4.3, the commission has revised the applicant's estimated export price and normal value for the purposes of estimating its dumping margin specified in Table 12.

Sections 269TDA(3) and (4) provide that an investigation into dumping must be terminated if the total volume of goods exported to Australia during the investigation period is negligible. A negligible volume of goods is less than 3% of the total Australian import volume pursuant to section 269TDA(4). Based on its analysis of the ABF import database, which shows the level of imports as being greater than 3% of the total Australian import volume, the commission is satisfied that there appear to be reasonable grounds to consider that the volume of dumped goods is above negligible levels. The commission's assessment of dumping forms **Confidential Attachment 2**.

## 4. Reasonable grounds – subsidisation

### 4.1 Findings

Pursuant to section 269TC(1)(c), the Commissioner considers that there appears to be reasonable grounds to support the claims that:

- the goods exported to Australia from Italy have been subsidised
- the estimated subsidy margin for exports from Italy is greater than 1% and therefore is not negligible
- the estimated volume of goods from Italy that appear to have been subsidised is greater than 3% of the total Australian import volume of goods and therefore is not negligible.

### 4.2 Legislative framework

Section 269TC(1) requires that the Commissioner reject an application for a countervailing duty notice if, among other things, the Commissioner is not satisfied that there appear to be reasonable grounds for the publication of a countervailing duty notice. Under section 269TJ, one of the matters that the Minister must be satisfied of in order to publish a countervailing duty notice is that subsidisation has taken place (to an extent that is not negligible). This issue is considered in the following sections.

### 4.3 Countervailable subsidy programs

#### 4.3.1 Legislative framework

The determination of whether there are subsidy programs that are countervailable is made in accordance with sections 269T(1), 269T(2AA), 269TACC and 269TAAC.

#### 4.3.2 The applicant's claims

The applicant claimed that benefit was conferred on Italian producers of the goods via approximately 70<sup>22</sup> countervailable subsidy programs during the investigation period. Table 13 summarises the claims and evidence relied on by the applicant.

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<sup>22</sup> This is the total number of programs alleged after removing the double count for the 3 programs that were alleged in the application from 2 sources, i.e. as an EU/GOI programs listed in the US Countervailing Reviews on Certain Pasta from Italy and as a program contained in the EU/Italy WTO notifications.

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Program	Details of claims
<p>The EU's Common Agricultural Policy (CAP) (1 program)</p>	<ul style="list-style-type: none"> <li>• SPC claimed that the CAP is a countervailable subsidy in the form of a less than adequate remuneration (LTAR) program.</li> <li>• SPC refers to the commission's previous investigations (INV217 and INV276), in which CAP formed the main component of a particular market situation (PMS) assessment.<sup>23</sup> Note: a PMS has not been alleged – nor assessed – in this report.</li> <li>• The applicant states that the relevance of referring to INV217 and INV276 is because Government of Italy (GOI) support was found to be provided to producers of raw tomatoes. Raw tomatoes are the main ingredient used in the production of the goods and therefore the benefit incurred by the raw tomatoes producers likely passed through to the producers of the goods. The applicant concedes that the previous investigations did not relate to the determination of the existence or otherwise of countervailable subsidies.</li> <li>• SPC also provided an academic paper published in 2015 that shows the continuation of GOI payments under the CAP for arable crops, including tomatoes.<sup>24</sup> SPC also referred to other online documents that state that the CAP is ongoing, including a CAP strategic plan for Italy for 2023–2027.<sup>25</sup></li> <li>• The applicant notes in its application that the GOI provides both coupled and decoupled payments via the CAP and submits that coupled payments should be considered direct payments. They also submit that decoupled payments are not necessarily non-countervailable.</li> <li>• The applicant does not directly address specificity but includes information in relation to the CAP being provided to agricultural sectors in the EU, including in the cultivation of raw tomatoes for processing.<sup>26</sup></li> </ul>
<p>EU/GOI programs listed in the US Countervailing Reviews on Certain Pasta from Italy (the US pasta cases)<sup>27</sup> (58 programs)</p>	<ul style="list-style-type: none"> <li>• SPC claimed that the 58 programs listed in the reviews of countervailable subsidies in the US pasta cases<sup>28</sup> were likely to have conferred (and continue to confer) benefit to Italian producers and exporters of the goods because some pasta exporters also produce the goods.</li> <li>• The applicant also identified some common exporters between the US pasta cases and exporters of the goods identified in INV217 and INV276, noting that some produce or manufacture both pasta and pasta-related products, including tomatoes.</li> <li>• The applicant also identified significant overlap in the production regions between Italian producers of pasta and the goods and claimed that any subsidy programs received by pasta producers that were specific to a particular region would also be available to producers of the goods.</li> </ul>

<sup>23</sup> The commission notes that there have been no allegations of subsidisation in previous tomatoes cases. The CAP was considered in INV217 and INV276 in the context of a PMS, whereupon the commission found, based on evidence available in the circumstances of the investigations, that CAP payments did not distort the competitive market conditions in Italy and therefore did not impact normal values.

<sup>24</sup> Non-confidential attachment [C-1.7](#).

<sup>25</sup> Directorate-General for Agriculture and Rural Development, [Italy – CAP Strategic Plan](#), European Commission website, n.d., last accessed 23 September 2024; Ministero dell'agricoltura della sovranità alimentare e delle foreste, [Piano Strategico PAC 2023-2027](#), IL PSP website, n.d., last accessed 23 September 2024.

<sup>26</sup> Application, p. 53

<sup>27</sup> EPR Document Number 1, Non-confidential attachments C-1.1, C-1.2 and C-1.4.

<sup>28</sup> EPR Document Number 1, Non-confidential attachments C-1.1, C-1.2 and C-1.4.

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Program	Details of claims
EU/Italy World Trade Organization (WTO) Subsidy Notifications (13 programs <sup>29</sup> )	<ul style="list-style-type: none"> <li>• Pursuant to Article XVI:1 of the General Agreement on Tariffs and Trade 1994 (GATT 1994)<sup>30</sup> and Article 25 of the WTO's Agreement on Subsidies and Countervailing Measures (SCM Agreement), the GOI notifies the WTO's Committee on Subsidies and Countervailing Measures of its subsidisation policies. SPC referred to 2 such notifications published in July 2023 and August 2023 as containing subsidy programs likely to be received by producers of the goods.<sup>31</sup></li> <li>• The July 2023 notification<sup>32</sup> contained 8 relevant programs and the August 2023 notification<sup>33</sup> contained 5 relevant programs.</li> </ul>
Electricity and gas subsidies (2 programs)	<ul style="list-style-type: none"> <li>• SPC identified an electricity subsidy program via a public announcement made by a major exporter of the goods to Australia (Mutti S.p.A.). The notice also referred to a significant gas subsidy received.</li> <li>• SPC claims that these subsidies are potentially countervailable.<sup>34</sup></li> </ul>

**Table 13: Summary of applicant's countervailable subsidies claim.**

### 4.3.3 Consultations

In accordance with section 269TB(2C), the commission invited the GOI and the Delegation for the European Union (EU) for consultations during the consideration of the application. The purpose of the consultations was to provide an opportunity for parties to respond to claims made in the application in relation to countervailable subsidies including whether they exist and, if so, whether they are causing, or are likely to cause, material injury to an Australian industry.

The GOI and the delegation for the EU were provided with all versions of the non-confidential application, including the final version provided by the applicant on 4 September 2024 (see Table 2 for the timeline). Both the GOI and the Delegation for the EU in Canberra (ED Canberra) advised the commission that they wished to participate in consultations. ED Canberra coordinated responses on behalf of the European Commission's Directorate-General for Agriculture and Rural Development (EDGARD) and Directorate-General for Trade (EDGT). The GOI's delegation made submissions of behalf of the Italian Trade Agency (ITA).

Consultation was held on 17 September 2024. Written submissions were received from the EU and the GOI on 19 September 2024. A summary of the written submissions is contained in Table 14.

<sup>29</sup> Only 9 programs are listed in Non-Confidential Attachment 1 for EU/Italy WTO notifications programs, because the CAP was already included (Program 1) and 3 programs (Programs 7, 8 and 10) were also alleged in the application as part of the list of programs from the US pasta cases.

<sup>30</sup> European Union, [New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures](#), World Trade Organization, 2023, last accessed 24 September 2024.

<sup>31</sup> EPR Document Number 1, Non-confidential attachments C-1.5 and C-1.6.

<sup>32</sup> European Union, [WTO Doc G/SCM/N/401/EU Subsidies – 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](#), World Trade Organization, 2023, last accessed 23 September 2024.

<sup>33</sup> European Union, [WTO Doc G/SCM/N/401/EU/Add.15 Subsidies – 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](#), World Trade Organization, 2023, last accessed 23 September 2024.

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/SCM/N401EUA15.pdf&Open=True>

<sup>34</sup> EPR Document Number 1, Non-confidential attachment C-1.3.

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Gov	Summary of the submission
EU	<p>The EU made the following submissions:</p> <ul style="list-style-type: none"> <li>• The application does not contain sufficient evidence to initiate an anti-subsidy investigation according to Article 11.2 of the SCM Agreement.</li> <li>• In relation to the CAP, that: <ul style="list-style-type: none"> <li>○ The period of investigation covers the CAP's previous (2014–2022) and current (2023–2027) programming period.</li> <li>○ The CAP underwent major reforms in 2003 (introducing the single payment scheme (SPS) and 2013 (introducing the Basic Payment Scheme (BPS)), so payments were de-coupled from volume of commodity produced to reduce distortions.</li> <li>○ Under the current CAP (2023–2027), EU Member States have a national CAP Strategic Plan that contains the Basic Income Support for Sustainability (BISS), an annual decoupled payment per hectare, and is a precondition for complementary income support and eco-schemes. These schemes (including the BPS from the 2014–2022 CAP) do not require production, are automatically available to all EU farmers, and are therefore not specific.</li> <li>○ The ADRP previously reversed a 2016 commission finding that decoupled payments to farmers under the CAP had affected competitive market prices for tomatoes in Italy.</li> <li>○ The Canadian authorities in the review of anti-dumping and countervailing duties on refined sugar<sup>35</sup> (the Canadian sugar case) found that decoupled support under the CAP is neither specific nor countervailable.</li> <li>○ The WTO Panel Report DS577 (olives from Spain<sup>36</sup>) found that BPS subsidies were not specific and that pass-through of the payments from farmers to producers of the goods had not been demonstrated.</li> <li>○ Voluntary Coupled Support (VCS) under the CAP 2014–2022 and Coupled Income Support (CIS) under the CAP 2023–2027, may be provided to specific agricultural sectors under specific criteria.</li> </ul> </li> <li>• The findings of the US in the reviews of pasta are not relevant to the goods due to them being different products with different marketing and value chains.</li> <li>• Regarding the causal link between imports from Italy and injury suffered by the applicant, the EU noted that import volumes from Italy have decreased since 2022, while unit value has increased and the applicant was already operating at a loss since 2021; they consider that the injury is likely caused by other factors, such as the contraction of the Australian market and flooding in the applicant's production region.</li> </ul>
GOI	<p>The GOI calls on Australia to reject the application and submitted:</p> <ul style="list-style-type: none"> <li>• The reliance on findings of the US pasta cases is unjustified because: <ul style="list-style-type: none"> <li>○ The findings relate to the US framework for assessing countervailability, which is different to the Australian framework.</li> <li>○ Pasta is unrelated to the goods with the 2 sectors having different business models and the exporters involved in these pasta cases do not export the goods to Australia.</li> <li>○ Some programs referred to are not specific to sector or company.</li> <li>○ The existence of countervailing measures on pasta exported to the US cannot substantiate the initiation of this investigation.</li> </ul> </li> </ul>

<sup>35</sup>Canada Border Services Agency, <https://www.cbsa-asfc.gc.ca/sima-lmsi/ri-re/sug2021/sug2021-nc-eng.html>, Notice of conclusion of re-investigations, March 2022, last accessed 23 September 2024.

<sup>36</sup> WTO Panel Report, [WT/DS577/R](#), United States – Anti-Dumping And Countervailing Duties on Ripe Olives from Spain, last accessed 23 September 2024.



Gov	Summary of the submission
	<ul style="list-style-type: none"> <li>• There has been a reduction in the volume and an increase in the price of Italian exports of the goods to Australia in 2022 and 2023.</li> </ul>

**Table 14: Summary of submissions made by the EU and the GOI.**

#### **4.3.4 Assessment of reasonable grounds**

The commission has examined the alleged subsidy programs claimed in SPC’s application for the purpose of assessing reasonable grounds to not reject the application in accordance with section 269TC(1)(c). Countervailable subsidies are defined under section 269T(1) and section 269TAAC of the Act. A subsidy in respect of goods exported to Australia is a financial contribution by a government<sup>37</sup>, or income or price support, that confers a benefit. A subsidy is only countervailable if it is specific within the meaning of section 269TAAC of the Act.

The commission has considered the evidence contained in SPC’s application, together with other relevant information from the commission’s research and considers that there appear to be reasonable grounds for publication of a countervailing duty notice.

The commission notes that Article 11.2 of the SCM Agreement requires that 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>38</sup> However, there must be adequate evidence of the elements of subsidy.<sup>39</sup> The commission also notes that the applicant can only provide information available to it. Noting the above, the commission has considered the eligibility requirements of each identified program and whether the program:

- appears to have been current and available during the investigation period
- could have involved a financial contribution by a public body that conferred a benefit
- could have benefited a producer of the goods
- could have been specific, for example, to a sector, region or company involved in the production of the goods.

The commission also notes the concerns raised by the GOI and EU during the consultations held on 17 September 2024 (see section 4.3.3) and its written submissions received on 19 September 2024. The commission has considered the submissions by GOI and EU to the extent that they may impact the assessment of whether reasonable grounds have been established and notes these considerations as part of the assessment in Table 15.

Details of the applicant’s claims and the commission’s assessment of the reasonable grounds of the claims for each program alleged is contained in **Confidential Attachment 3**.

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<sup>37</sup> A government may include a government of the country of export, a public body of the country of export of which the government is a member, or a private body entrusted or directed by government or public body to carry out a government function.

<sup>38</sup> Panel Report, *US – Softwood Lumber V*, para. 7.84; Panel Report, *China – GOES*, para. 7.55.

<sup>39</sup> Panel Report, *US – Supercalendered Paper*, para. 7.148.

**PUBLIC RECORD**

Program source	Assessment of reasonable grounds
The EU's CAP	<p>The commission considered information contained in the application, submissions made by the EU and GOI and other research. The commission notes that the CAP is a European Commission strategic policy that contains several initiatives, and that each initiative operates under different processes and criteria. As the applicant has alleged that the CAP is a countervailable subsidy program, the commission considered whether any of the initiatives under the CAP appear to meet the definition of a countervailable subsidy available to producers of the goods.</p> <p>The commission assessed that VCS and CIS payments to Italian producers of tomatoes appear, on reasonable grounds and the information currently before the commission, to meet the definition of a countervailable subsidy under section 269T and section 269TAAC.</p> <p>The commission notes:</p> <ul style="list-style-type: none"> <li>• The submission by the EU acknowledges that VCS may under certain conditions be provided to specific agricultural sectors and CIS may be similarly provided.</li> <li>• Italy's CAP Strategic Plan 2023-2027<sup>40</sup> on page 3 notes that certain sectors (including industrial tomatoes) will receive funds.</li> <li>• <i>Sostegno accoppiato al reddito per superficie – Pomodoro da trasformazione</i><sup>41</sup>, referred to in the application, provides information related to support coupled to income by area (tomato transformation) and outlines explicit requirements.</li> <li>• The Canadian sugar case found that VCS from the 2014–2022 CAP to be a countervailable subsidy, as it was a final contribution involving the direct transfer of funds, limited to certain agricultural sectors.</li> <li>• Regulation (EU) 2021/2115 of the European Parliament and of the Council, Chapter II, ("Intervention in the Form of Direct Payments") states CIS:             <ul style="list-style-type: none"> <li>• is a coupled direct payment<sup>42</sup></li> <li>• can be granted to active farmers under certain conditions and as specified in CAP Strategic Plans<sup>43</sup></li> <li>• shall take the form of an annual payment per hectare<sup>44</sup></li> <li>• shall only be granted to listed sectors and productions or specific types of farming ('fruit and vegetables' is included in the list)<sup>45</sup></li> </ul> </li> </ul> <p>Based on the information in the application and other relevant information, VCS and CIS payments appear to be a financial contribution by the Italian government involving a direct transfer of funds to Italian tomato producers which confer a benefit indirectly to Italian producers of the goods to Australia.<sup>46</sup> The VCS and CIS payments therefore appear to be a subsidy as defined under section 269T and section 269T(2AA).</p> <p>Further, based on the information currently before the commission, the subsidy appears to be specific under section 269TAAC(2) because the payments appear to be explicitly limited to particular enterprises and eligibility does not appear to be automatic. It is noted that a premium is granted per hectare.</p> <p>The commission will seek further information from relevant parties (including the EU and GOI) during the investigation on this alleged subsidy program.</p>

<sup>40</sup> Directorate-General for Agriculture and Rural Development, [At a Glance: Italy's CAP Strategic Plan](#), European Commission website, n.d., last accessed 23 September 2024.

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Program source	Assessment of reasonable grounds
<p>EU/GOI programs listed in the US Countervailing Reviews on Certain Pasta from Italy<sup>47</sup></p>	<p>The applicant provided a list of 58 subsidy programs offered by the EU and/or the GOI that were sourced from 2 US pasta cases. The commission considered information contained in the application, submissions made by the EU and GOI and other research. On the basis of the information available, the commission preliminarily assessed that 15 programs appear to have been terminated or to not have been current or available during the period of investigation. Of the remaining 43 programs, there appears to be reasonable grounds that 33 programs:</p> <ul style="list-style-type: none"> <li>• could have involved a financial contribution by a public body that conferred a benefit</li> <li>• could have benefited a producer of the goods</li> <li>• could have been specific, for example, to a sector, region or company involved in the production of the goods.</li> </ul> <p>The commission will seek further information from relevant parties (including the EU and GOI) during the investigation on each of the subsidy programs alleged.</p>
<p>EU/Italy WTO Subsidy Notificatio</p>	<p>The applicant alleged that the EU/Italy WTO subsidy notifications of July and August 2023 likely contained subsidy programs that could have been received by producers of the goods. The commission considered information contained in the application, submissions made by the EU and GOI and other research. Of the 13 programs contained in the notifications, the CAP and 3 other programs that were also included in the list of programs from the US pasta cases had already been considered. Of the remaining 9 programs, on the basis of information available, the commission preliminarily assessed that 1 program appeared to not have been current or available during the period of investigation. Of the remaining 8 programs, there appears to be reasonable grounds that 4 programs:</p> <ul style="list-style-type: none"> <li>• could have involved a financial contribution by a public body that conferred a benefit</li> <li>• could have benefited a producer of the goods</li> <li>• could have been specific, for example, to a sector, region or company involved in the production of the goods.</li> </ul> <p>The commission will seek further information from relevant parties (including the EU and GOI) during the investigation on each of the subsidy programs contained in the 2023 EU/Italy WTO Subsidy Notifications.</p>

<sup>41</sup> Ministero dell'agricoltura della sovranità alimentare e delle foreste, [Piano Strategico PAC 2023-2027](#), IL PSP website, n.d., last accessed 23 September 2024.

<sup>42</sup> Regulation (EU) 2021/2115 of the European Parliament and of the Council, Chapter II, Section 1, Article 16, Paragraph 3

<sup>43</sup> Regulation (EU) 2021/2115 of the European Parliament and of the Council, Chapter II, Section 3, Subsection 1, Article 32, Paragraph 1

<sup>44</sup> Regulation (EU) 2021/2115 of the European Parliament and of the Council, Chapter II, Section 3, Subsection 1, Article 32, Paragraph 3

<sup>45</sup> Regulation (EU) 2021/2115 of the European Parliament and of the Council, Chapter II, Section 3, Subsection 1, Article 32, Paragraph 3

<sup>46</sup> The applicant alleges that this subsidy results in producers receiving raw tomato inputs at less than adequate remuneration. However, it appears that this subsidy may involve a financial contribution (a direct transfer of funds from the GOI) that confers a benefit (indirectly) to Italian producers of the goods.

<sup>47</sup> Application, pp. 63–65.

Program source	Assessment of reasonable grounds
Electricity and gas subsidies	The information relied on by the applicant was published by Mutti S.p.A. as part of the 2022 financial results. Given that the publication is recent, it is reasonable to consider that the programs are likely to continue to be in operation during the investigation period. Due to the limited information available, the commission considers that we are unable to assess the other aspects of these programs. However, the commission will seek further information from relevant parties (including the EU and GOI) during the investigation on these alleged programs.
Programs identified by the commission	<p>The commission also had regard to other relevant information, in accordance with the provisions of section 269TC, including the results of independent research. The commission identified a minimum of 14 additional programs<sup>48</sup> that producers of the goods may have been eligible to receive during the period of investigation. Specifically, this included the program State Aid SA.101691 which the commission used to calculate a preliminary subsidy margin for a single exporter – see section 4.4.3.</p> <p>The commission will seek further information from relevant parties (including the EU and GOI) on these programs during the investigation.</p>

**Table 15: The commission’s assessment of claimed subsidy programs.**

## **4.4 Amount and volume of countervailable subsidy**

### **4.4.1 Legislative framework**

Subsidy margins are determined under section 269TACD. The amount of the countervailable subsidisation and the volume of subsidised goods cannot be negligible. Whether the amount of countervailable subsidisation and the volume of subsidised goods are negligible is assessed under section 269TDA.

Sections 269TDA(7) and (8) provide that an investigation into whether there are countervailing subsidies must be terminated if the total volume of goods exported to Australia over the relevant investigation period that may be subsidised is negligible. A negligible volume of goods is less than 3% of the total Australian import volume.

### **4.4.2 The applicant’s claims and the commission’s assessment**

In assessing whether there appear to be reasonable grounds to support the claims that the **amount** of the estimated subsidy margin for exports from Italy is greater than 1% and therefore is not negligible, the commission considered the reasonableness of the claims made by the applicant, the limitations of the information available to it, guidance provided by Article 11.2 of the SCM Agreement<sup>49</sup> and other information.

In assessing whether there appear to be reasonable grounds to support the claims that the **volume** of goods from Italy that appear to have been subsidised is greater than 3% of the total Australian import volume of goods and therefore is not negligible, the commission estimated the volumes of the goods imported from Italy during the investigation period using ABF import data.

Table 16 provides a summary of the commission’s assessment of the amount and volume of the subsidy programs alleged by source.

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<sup>48</sup> The commission also identified 2 websites containing databases with information about state (EU and GOI) support available in Italy that will be referenced in the questionnaires.

<sup>49</sup> Article 11.2 of the SCM Agreement, unlike the existence of a subsidy, states that the ‘amount’ of a subsidy is only required to be evidenced ‘if possible’ and when ‘such information is reasonably available to the applicant’.

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Program source	Details of the applicant's claim	Assessment of reasonable grounds	
		Negligible amount?	Negligible volume?
The EU's CAP	While SPC concedes that the CAP is not paid directly to producers of the goods, it provided evidence that it is paid to Italian producers of raw tomatoes, the main input ingredient for the goods. The subsidy is paid at a rate of EU\$179.91 per hectare. SPC also referred to the methodology used in INV276 to calculate how much of the amount provided to producers of raw tomatoes would likely pass through to producers of the goods.	No. The commission considers that the indicative amounts provided by the applicant are reasonable given the information the applicant has available to it.	No. The commission considers that each of the programs assessed as relevant in Table 15 are potentially applicable to all Italian producers of the goods.
EU/GOI programs listed in the US Countervailing Reviews on Certain Pasta from Italy <sup>50</sup>	SPC noted that the subsidy margins calculated in the US pasta cases for specific cooperating exporters ranged between 8.83% and 14.3%.	The commission considers that it would not be possible for the applicant to calculate more accurate amounts for the subsidies received by producers of the goods imported to Australia.	
EU/Italy WTO Subsidy Notifications	SPC did not provide any estimate of the amount of subsidy provided to exporters of the goods to Australia, but the notifications contain information relating to the amount of funds available under each program.		
Electricity and gas subsidies	SPC was not able to provide any information relating to the amount of these subsidies.		
Commission identified programs	The commission identified these programs, not the applicant.		

**Table 16: The applicant's claims and the commission's assessment of amount and volume of subsidies.**

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<sup>50</sup> Application, pp. 63–65.

#### 4.4.3 The commission's preliminary subsidy margin calculation for one specific program and exporter

The commission acknowledges that the assessments made in Table 16 on each type of subsidy program alleged are estimates. To meet the relevant legislative requirements of section 269T and section 269TAAC of Part XVB to the Act, the case team conducted independent research and identified the top 3 exporters from the investigation period and ascertained their import volumes from ABF import data. Each of the top 3 exporters were found to have imported well above the 3% threshold. The commission was also able to identify evidence, through public sources, to show that at least one of these exporters, Mutti S.p.A., received a specific amount of subsidy under program State Aid SA. 101691<sup>51</sup> (Italy Development Contract Mutti S.p.A.) that, with reasonable assumptions made during calculations regarding instalments of the subsidy, the useful life of assets and the value of the Euro over time, resulted in an estimated subsidy margin greater than 1%.

This particular subsidy appears to fall within the definition of a countervailable subsidy for the purposes of section 269T and section 269TAAC of Part XVB to the Act because:

- It is a financial contribution by the government of the country of export (GOI) to the exporter (Mutti S.p.A.).
- The financial contribution by the government of the country of export (GOI) involved the direct transfer of funds to the exporter (Mutti S.p.A.).
- The aid measure is explicitly limited to this exporter (Mutti S.p.A.) from the government of the country of export (GOI), giving the *appearance* of specificity.

These calculations can be found in **Confidential Attachment 3**.

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<sup>51</sup> European Commission, [Development Contract – MUTTI SPA](#), Competition Case Search, 2022, last accessed 23 September 2024

## 5. Reasonable grounds – injury to the Australian industry

### 5.1 Findings

Pursuant to section 269TC(1)(c), having regard to the matters contained in the application, and to other information considered relevant, the commission considers that there appear to be reasonable grounds to support the claims that the Australian industry has experienced injury during the investigation period.

Specifically, the commission found that the evidence provided in the application supported the applicant's claim of injury in the form of:

- loss of sales volume
- lost market share
- price suppression
- price depression
- loss of profits
- loss of profitability
- reduced (lower) revenue
- higher finished goods inventories.

However, the commission found that the evidence provided by the applicant did not support the claim that the Australian industry has suffered injury in the form of:

- reduced return on investment (ROI)
- reduced capacity utilisation
- reduced employment
- reduced hours worked.

The commission will examine all claimed grounds of injury further during the investigation.

### 5.2 Legislative framework

Under sections 269TG and 269TJ of the Act, one of the matters that the Minister must be satisfied of to publish a dumping duty and a countervailing duty notice is that the Australian industry has experienced material injury. This issue is considered in the following sections.

### 5.3 The applicant's claims

SPC claims that the Australian industry has been injured through:

- loss of sales volume
- lost market share
- price depression
- price suppression
- loss of profits
- loss of profitability
- reduced (lower) revenue
- higher finished goods inventories
- reduced ROI
- reduced capacity utilisation
- reduced employment
- reduced hours worked.

SPC alleges in its application that the material injury commenced from April 2020.

## 5.4 Approach to injury analysis

### 5.4.1 Legislative framework

The matters that may be considered in determining whether the industry has suffered material injury are set out in section 269TAE.

### 5.4.2 The commission's approach

The commission has analysed the economic condition of the Australian market and assessed whether there appears to be reasonable grounds to support the applicant's claim that the Australian industry has suffered material injury. The commission has relied on data provided by SPC in its application and data from the ABF import database. For the purposes of assessing injury, the commission has examined the period between 1 April 2020 and 31 March 2024 (the injury analysis period). The commission's assessment of the economic condition of the Australian industry is located at **Confidential Attachment 4**.

## 5.5 Volume effects

The applicant has claimed injury in the form of lost sales volume and reduced market share over the whole proposed injury analysis period (April 2020 to March 2024)<sup>52</sup>.

### 5.5.1 Finding

The Commissioner considers that there appear to be reasonable grounds to support the claim that the Australian industry has suffered injury in the forms of lost sales volumes and reduced market share.

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<sup>52</sup> Note again that, as per section 3.2 of *The Anti-Dumping Commission Dumping and Subsidy Manual (December 2021)*, the investigation period is generally the 12 months preceding the initiation date and ending on the most recently completed quarter or month. On initiation of this investigation, the commission will request an additional quarter of information from the applicant. For the purposes of this report that details the commission's consideration of the application, the commission has assessed an injury analysis period of 1 April 2020 to 31 March 2024. For the purposes of the investigation, the commission proposes an injury analysis period from 1 October 2020. Upon initiation of the investigation, the commission will request additional information from SPC.



### 5.5.2 Sales volume

Figure 2 charts SPC's total sales volume (kg) over the injury analysis period. SPC's sales volumes are at a consistent level from YE March 2021 to YE March 2023 but decline significantly in YE March 2024.

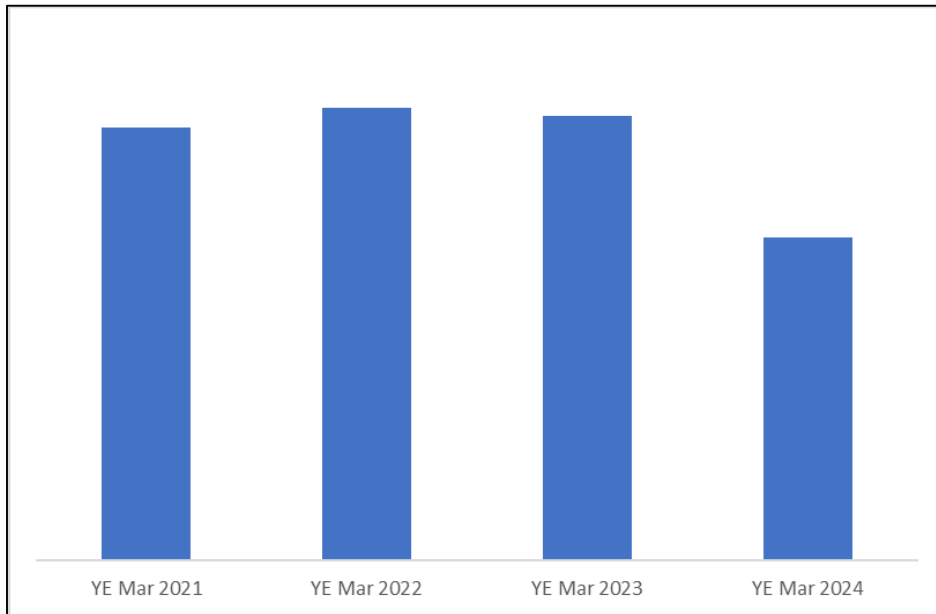


Figure 2: Australian industry sales volumes (kg) over the injury analysis period.

### 5.5.3 Market share

Figure 3 demonstrates the Australian market share of the goods according to whether the goods are produced in Australia or imported from Italy or other countries.

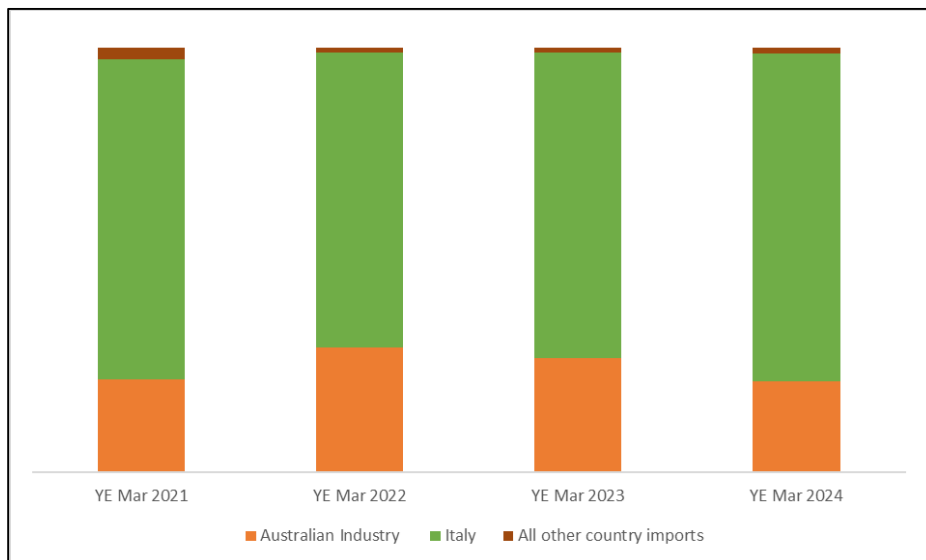


Figure 3: Australian market share (%) of the goods in the injury analysis period.

Figure 3 shows that:

- In all years examined, goods imported from Italy account for the largest share of the Australian market, followed by the Australian produced goods,

with goods imported from other countries accounting for an immaterial share of the market.

- While there was an increase to the market share of the Australian industry in YE March 2022, the market share of the Australian industry decreased consistently after that peak.
- Reductions in the size of the Australian industry market share correspond with the increases in the market share of goods imported from Italy.

#### 5.5.4 Conclusion – volume effects

Based on the analysis in section 5.5, the commission is satisfied there appears to be reasonable grounds to conclude that Australian industry has suffered injury in the form of reduced market share and loss of sales volume.

### 5.6 Price effects

The applicant claimed injury in the forms of price suppression and price depression.

#### 5.6.1 Findings

The Commissioner considers that there appears to be reasonable grounds to conclude that the Australian industry has suffered injury in the form of price suppression.

#### 5.6.2 Analysis of price depression and price suppression

Price depression occurs when a company, for some reason, lowers its prices. Price suppression occurs when price increases, which otherwise would have occurred, have been prevented. An indicator of price suppression may be a reduced margin between prices and costs. An indicator of price depression is where prices decrease.

SPC alleges that price depression and price suppression have occurred due to price undercutting by the allegedly dumped imports from Italy.

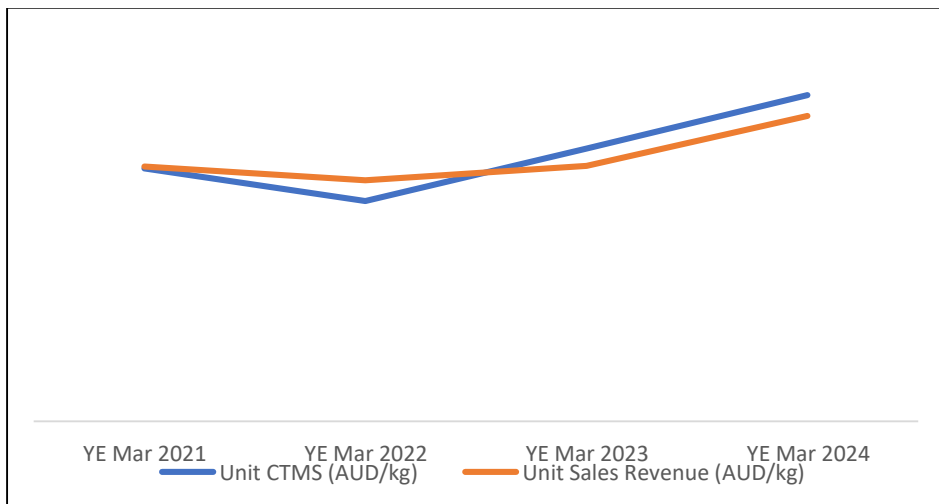


Figure 4: Unit CTMS and Unit Sales Revenue (AUD/KG) in the injury analysis period.

Figure 4 shows that Australian industry's sales of the goods:

- In YE 2021 were marginally unprofitable.
- Became profitable in YE March 2022. It was observed that this profitability was driven by a larger reduction in the CTMS of the goods compared to a

small reduction in unit revenue during the same period. This demonstrates a short-term price depression that was not sustained over the following 2 years and into the investigation period.

- During YE March 2023 and 2024, as the unit CTMS increased at a faster rate than unit revenue, sales became unprofitable. The fact that the unit revenue did not keep pace with the increase in unit CTMS suggests SPC was unable to increase unit sales revenue in line with increasing unit CTMS in the last 2 years of the injury analysis period. This supports the applicant’s claim of price suppression.

**5.6.3 Conclusion – price effects**

Based on the analysis of CTMS and unit prices in the injury analysis period, the commission concludes that:

- there appears to be reasonable grounds to support the claim that the Australian industry has suffered injury in the form of price suppression.
- there appears to be reasonable grounds to support the claim that the Australian industry has suffered injury in the form of price depression in one period examined.

**5.7 Profit and profitability effects**

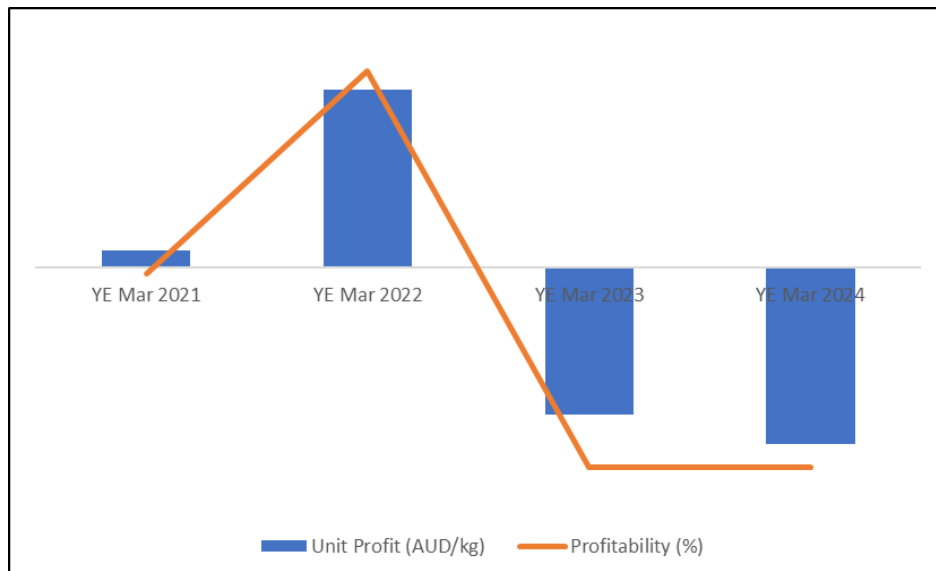
SPC claimed injury in the form of loss of profits and reduced profitability.

**5.7.1 Findings**

The Commissioner considers that there appears to be reasonable grounds to conclude that the Australian industry has suffered injury in the forms of loss of profits and reduced profitability during the injury analysis period.

**5.7.2 Profit and profitability effects**

Figure 5 shows the unit profit and profitability of SPC’s sales over the injury analysis period.



**Figure 5: Unit profit (AUD/kg) and profitability over the injury analysis period.**

Figure 5 shows SPC recorded losses in the YE March 2023 and YE March 2024. The decline of performance depicted in Figure 5 aligns to changes observed with large increases of unit CTMS in YE Mar 2024.

### 5.7.3 Conclusion – profit and profitability effects

The commission’s preliminary analysis indicates that there appears to be reasonable grounds to conclude that Australian Industry has suffered injury in the form of loss of profits and reduced profitability.

## 5.8 Other injury factors

SPC claimed injury in the form of:

- reduced revenue
- higher finished goods inventories
- reduced ROI
- reduced capacity utilisation
- reduced employment
- reduced hours worked.

### 5.8.1 Findings

The Commissioner considers that there appear to be reasonable grounds to conclude that the Australian industry has suffered injury in the form of:

- reduced revenue
- higher finished goods inventories.

However, the Commissioner has found that there do not appear to be reasonable grounds to conclude that the Australian industry has suffered injury in the form of:

- reduced ROI
- reduced capacity utilisation
- reduced employment
- reduced hours worked.

### 5.8.2 Reduced revenue

Figure 6 indicates that SPC’s revenue was consistent over the injury analysis period from YE March 2021 to YE March 2023 before declining in YE March 2024. This supports the applicant’s claim of reduced revenue.

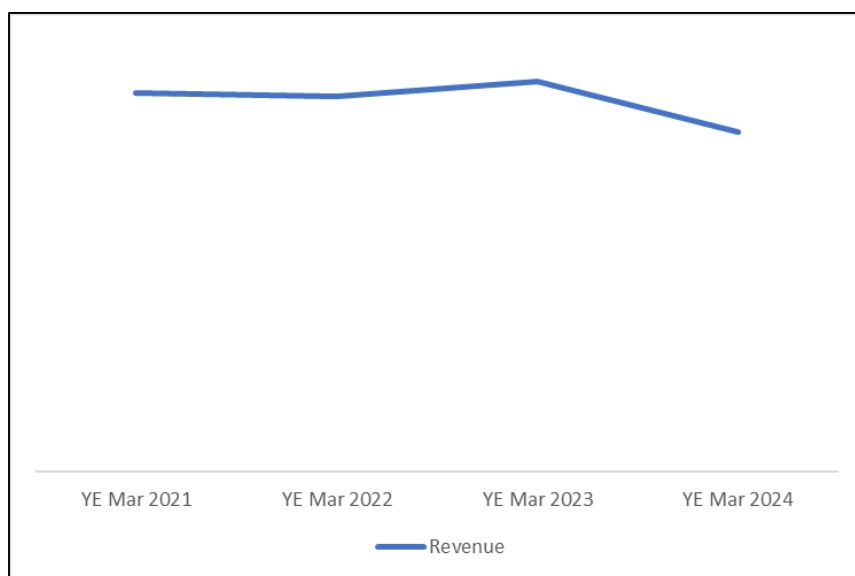


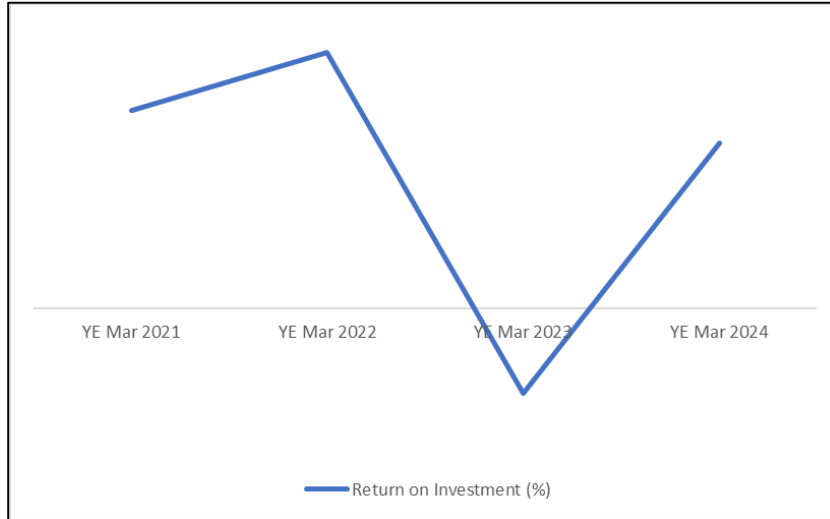
Figure 6: Revenue over the injury analysis period.

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The commission finds that there are reasonable grounds to conclude that SPC suffered injury in the form of lost or reduced revenue over the injury analysis period.

**5.8.3 Reduced ROI**

SPC claimed injury in the form of reduced ROI.

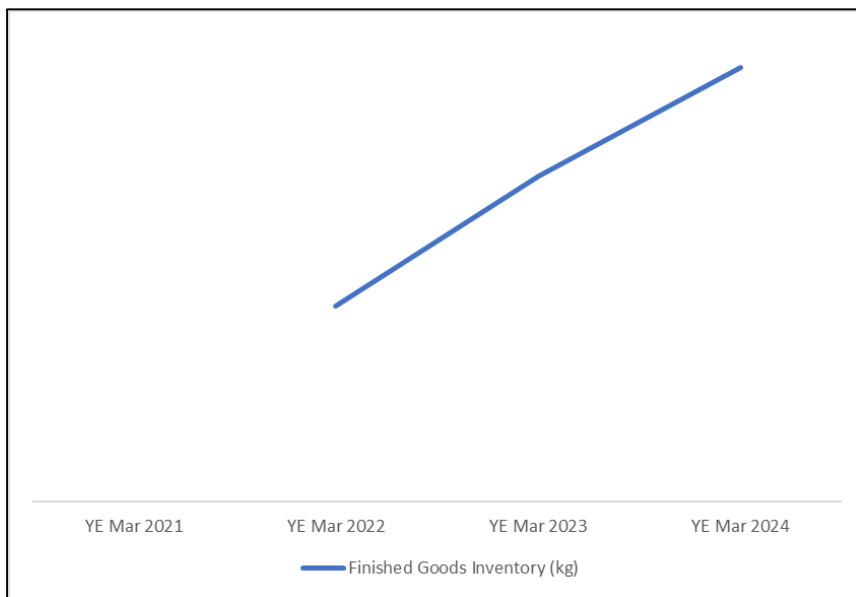


**Figure 7: ROI (%) over injury analysis period.**

Figure 7 shows how SPC's ROI for the goods fluctuated throughout the injury analysis period, increasing from YE March 2021 to YE March 2022 before a strong decline to negative ROI in YE March 2023 and return to positive ROI in YE March 2024. As there is an increase in ROI during the investigation period, the applicant's claim is not supported.

**5.8.4 Increased finished goods inventory of like goods**

SPC claimed injury in the form of increased finished goods inventory of like goods in the injury analysis period. SPC claimed the increase of finished goods inventory is the result of sales volumes declining over the injury analysis period. Figure 8 shows the finished goods inventory of like goods over the injury analysis period.



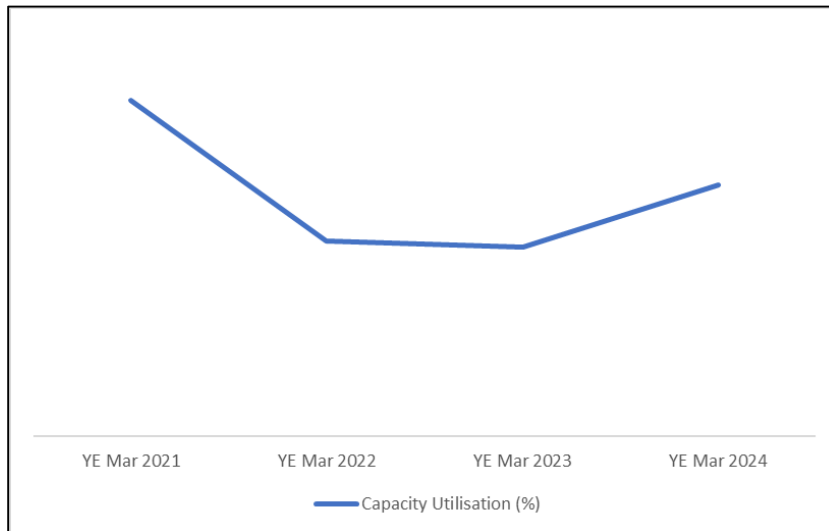
**Figure 8: Finished goods inventory of like goods over the injury analysis period.**

Figure 8 shows SPC’s finished goods inventory increased year on year starting from YE March 2022 to YE March 2024 during the injury analysis period (note: SPC did not provide volume of finished goods inventory in YE March 2021).

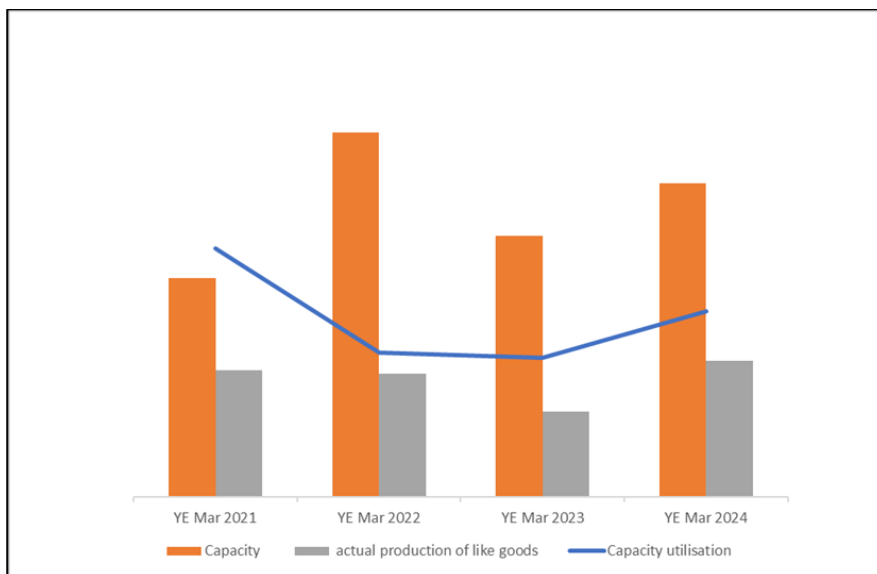
The commission’s preliminary finding is that there appears to be sufficient grounds to support SPC’s claims that it had suffered injury in the form of increased finished goods inventory balances. The commission will seek further data from the applicant during the investigation.

**5.8.5 Reduced capacity utilisation**

SPC claimed reduced capacity utilisation in the injury analysis period. Figure 9 shows capacity utilisation over the injury analysis period. SPC’s capacity utilisation appeared to decrease from YE March 2021 to YE March 2023 before increasing in YE March 2024 (but not recovering to its former peak).



**Figure 9: Capacity utilisation of like goods over the injury analysis period.**



**Figure 10: Capacity (kg) and capacity utilisation (%) over the injury period.**

Figure 10 shows Australian industry’s capacity to produce like goods and capacity utilisation (%) of like goods production over the injury period. The chart indicates that there was a significant decrease in capacity utilisation in YE March 2022 and that this

decrease was driven by a corresponding increase in capacity. The commission notes that the capacity and production data fluctuated during the injury analysis period. Capacity utilisation must be considered against the fluctuating production capacity. The commission concludes that, based on the information supplied, there appears to be insufficient grounds to conclude that the Australian industry has suffered injury in the form of reduced capacity utilisation during the injury analysis period. The commission will however investigate this claim further during the course of the investigation in conjunction with the factors driving the change in capacity.

**5.8.6 Reduced employment**

SPC claims it has experienced injury in the form of reduced employment in the injury analysis period and investigation period. Figure 11 charts how the number of persons employed declined from YE March 2021 to YE March 2022 before increasing in YE March 2023 and decreasing again in YE March 2024.

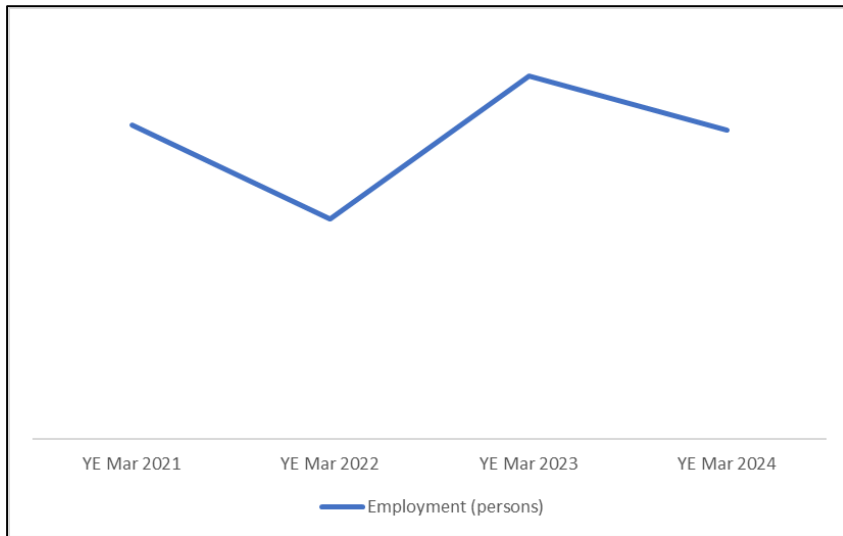


Figure 11: Employment (number of persons) in the injury analysis period.

SPC claims it experienced stagnation in the number of employee hours worked over the period and would have experienced higher numbers of employee hours worked if the alleged dumping and subsidy activity had not occurred.

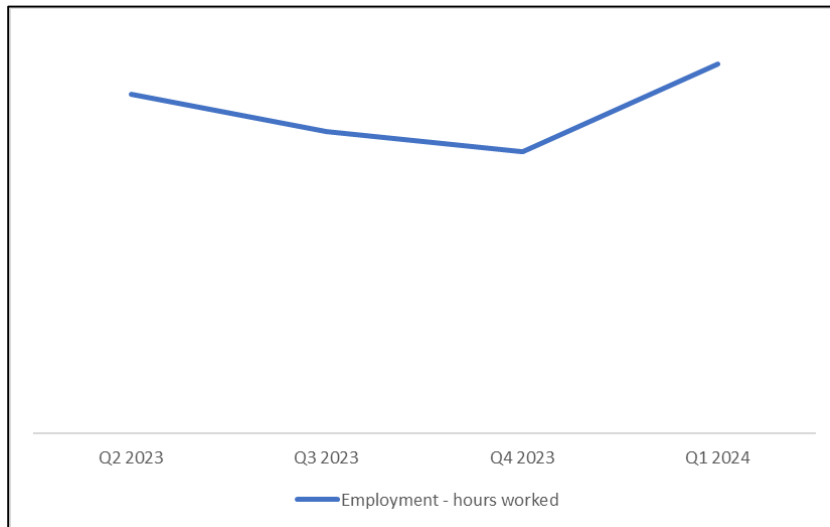


Figure 12: Employment (hours worked) in YE March 2024.

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The commission has analysed these claims, shown in Figure 11 and Figure 12, and considers that there does not appear to be reasonable grounds to conclude that Australian industry suffered injury in the form of reduced employment. The commission's assessment of the injury to the Australian industry forms **Confidential Attachment 4**.



## 6. Reasonable grounds – causation factors

### 6.1 Findings

Having regard to the matters contained in the application, and to other information considered relevant, the commission considers that there appears to be reasonable grounds to support the claims that the Australian industry has suffered injury caused by dumping and/or subsidisation, and that the injury is material.

### 6.2 Cause of injury to the Australian industry

#### 6.2.1 Legislative framework

Under section 269TG and 269TJ of the Act, one of the matters that the Minister must be satisfied of to publish a dumping duty and a countervailing duty notice is that the material injury suffered by the Australian industry was caused by dumping and/or subsidisation. This issue is considered in the following sections. Matters that may be considered in determining whether the Australian industry has suffered material injury caused by dumped or subsidised goods are set out in section 269TAE.

### 6.3 The applicant's claims

Table 17 summarises the causation claims of the applicant.

<b>Injury caused by dumping and subsidisation</b>
<p><b>Volume effects</b></p> <ul style="list-style-type: none"> <li>• SPC states in its application that the Australian market for tomatoes is dominated by its manufactured goods and imports from Italy, and that there is a direct correlation between the ongoing presence and increase in volumes of tomatoes imported from Italy and the Australian industry's annual sales volume and market share for the like goods.</li> <li>• SPC claims that the total volume of the Australian market decreased in the injury assessment period. SPC claims that during this period, the Australian industry has suffered material loss in sales volumes and market share while imports from Italy have maintained and even increased its presence in the market. SPC based these claims on scan data.</li> </ul>
<p><b>Price effects</b></p> <ul style="list-style-type: none"> <li>• SPC claims that the presence of dumped and subsidised imports has forced it to suppress prices, particularly in the proposed investigation period. SPC provided injury case studies of annual reviews with the 2 major customers, describing where contract prices were negotiated to a lower price than desired, or contracts were lost altogether. The applicant attributes this to increased purchases from Italian exporters.</li> <li>• The applicant also claims it has incurred a significant increase in marketing and trade spend due to dumped and subsidised goods, leading to material injury.</li> <li>• SPC claims, based on scan data, that its products were undercut by Italian brands. Supermarket data also shows Italian ranges, including private label and Mutti brand, were heavily discounted and promoted in 2023.</li> </ul>
<p><b>Profit and profitability</b></p> <ul style="list-style-type: none"> <li>• SPC states that it has suffered reduced profits and profitability due to price suppression and loss of volume. SPC states the declining prices that it can achieve for its products and the decline in sales volume have detrimentally impacted its profits and profitability over the proposed injury assessment period and the investigation period.</li> </ul>

<b>Injury caused by other factors</b>
<ul style="list-style-type: none"> <li>• SPC notes that imports from Italy constitute the single largest source of imports to Australia to a material degree, and therefore should not be attributed to other imports.</li> <li>• SPC is not aware of any material changes in patterns of consumption in the investigation period.</li> <li>• SPC is not aware of any developments in technology that would explain any aspect of the material injury experienced by the Australian industry.</li> <li>• Given the minor proportion of SPC's export sales, it cannot be a factor causing injury.</li> </ul>

**Table 17: Summary of injury claims.**

## **6.4 The commission's assessment**

The commission has considered the information provided by the applicant in conjunction with ABF import data and other data as specified in assessing SPC's causation and materiality claims. Sections 6.4.1 to 6.4.6 of this report summarise the commission's assessment of each of the specific grounds of injury claimed by the applicant in the context of causation. The commission considers materiality of injury caused by dumping in section 6.4.7.

### **6.4.1 Dumping margin and countervailable subsidy size**

Under section 269TAE(1)(aa) the Minister may have regard to the size of the dumping margins worked out in respect of the goods exported to Australia. As set out in section 3.5, there appears to be reasonable grounds for concluding that the goods exported from Italy were dumped and that the dumping margins, at 47%, were not negligible.

Under section 269TAE(1)(ab) the Minister may have regard to the particulars of any countervailable subsidy received in respect of the goods exported to Australia. As set out in section 4.5, there appears to be reasonable grounds to conclude that the goods exported from Italy were subsidised and that the subsidy margins, with at least one example program's margin being greater than 1%, were not negligible.

The size of the estimated dumping margin (see section 3.5) and one subsidy margin (of potentially many; see section 4.5 and Non-Confidential Appendix 1) and the estimated degree of undercutting (see section 6.4.3) indicate that exporters from Italy have obtained a material price advantage, enabling them to undercut Australian industry prices.

### **6.4.2 Volume effects**

As the commission noted in chapter 5 of this report, the applicant has experienced injury in the form of loss of sales volume and market share in YE March 2024 (see section 5.5.3). The commission notes that the size of the Australian market fluctuated during the injury analysis period but, consistent with Australian industry's claims, there appears to be reasonable grounds to link Australian industry's loss of sales volume and market share in YE March 2024 to the increased imports from Italy. The commission's price undercutting analysis in this report (see section 6.4.3) demonstrates how Italian imports undercut Australian industry in each month except one in the YE March 2024. The commission notes that imports from countries other than Italy are in low volumes and have little presence in the Australian market. The commission notes in Figure 13 that the imports from Italy recorded a slight increase in actual terms in the contracting market.

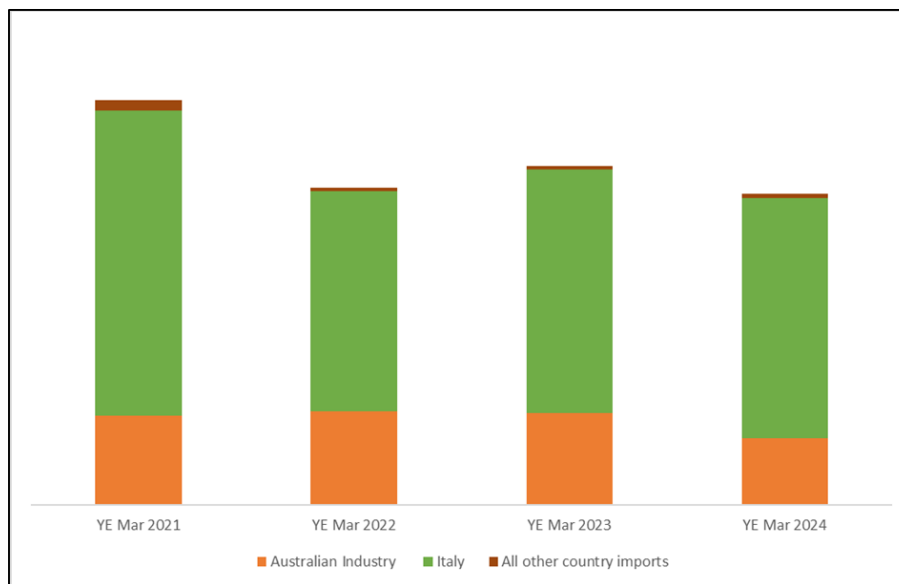


Figure 13: Australian market by volume over the injury analysis period.

It should be noted that the commission’s analysis is based on SPC’s sales data and import data extracted from ABF imports database and covers the entire market at the wholesale level of trade.

SPC provided scan data from Coles and Woolworths with its application that indicates that Italian imports have increased in market share at the retail level and, correspondingly, goods manufactured by SPC have lost sales volumes. This is relevant since Coles and Woolworths make up most of the Australian retail market for the goods.

### 6.4.3 Price effects

As noted in chapter 5 of this report, the commission has found that there are reasonable grounds to support SPC’s claims that the Australian industry has experienced injury in the form of price suppression in the YE March 2024.

The commission has analysed SPC’s claims that the price injury was caused by allegedly dumped imports from Italy and found that there appear to be reasonable grounds to indicate that the price injury experienced by Australian industry is linked to increased imports from Italy. The commission’s analysis is outlined below and is based on the nature of competition in the Australian market and prices in the Australian market.

#### Nature of competition in the Australian market

The commission notes that the Australian market is supplied by the Australian industry and imports. The commission notes that most imports originate from Italy and are therefore subject to this application.

SPC claims that SPC’s tomato products and the comparable imported goods are both demanded by consumers for household meal preparation, and that the market comprises 2 major segments:

- Sales to major supermarkets, namely Coles and Woolworths
- Sales to convenience stores and smaller food stores.

Marketing arrangements differ according to each segment. The major supermarkets may require SPC to accept various marketing conditions for the sale of the product, such as trade promotions.

Prices in the Australian market

The applicant claimed that the influence of the imports from Italy applied downwards pressure on its prices and, in effect, its ability to sell sufficient volumes to maintain profitability. SPC provided examples of how its supply offers to the main supermarkets had been negotiated down or rejected. SPC claims that the supermarkets had increased their purchases of Italian imported goods in the same period.

To assess SPC's claims, the commission examined pricing in the Australian market between April 2023 and March 2024. The commission compared SPC's free into store (FIS) prices with constructed FIS import prices from Italy. The commission calculated FIS prices for import sources using value of taxable importation (VOTI) prices extracted from the ABF import database.<sup>53</sup> The commission uplifted the VOTI prices for post importation costs, including port charges and cartage fees.

Since a proportion of the imports was on-sold to retailers by distributors, the commission uplifted this proportion for selling general and administrative (SG&A) and profit. The commission obtained WA importer SG&A and profit extracted from verified importers cooperating with Investigation 628 relating to Pineapple fruit, FSI exported from the Kingdom of Thailand. The commission selected this data because Investigation 628 is a contemporaneous matter concerning a similar good – preserved pineapple – that is traded and sold by stakeholders that also import other food products.

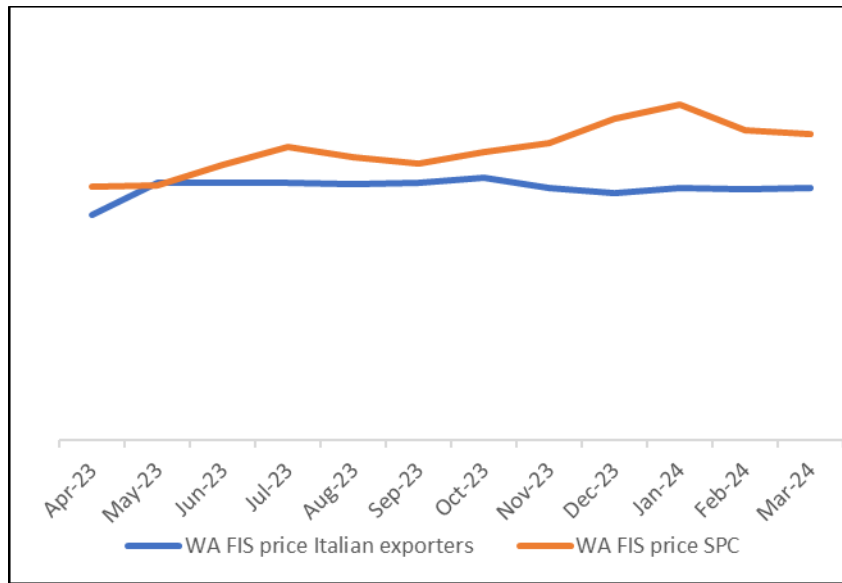


Figure 14:3 FIS price (AUD/kg) by Australian industry and Italian exporters.

The commission notes in Figure 14 that Italian imports undercut Australian industry in all months of the period except May 2023. The commission also found that the gap widened in November 2023 and remained wider due to a combination of lower WA import prices and higher selling prices from SPC. The commission considers that there appears to be reasonable grounds to establish evidence of price undercutting for the imported goods from Italy.

During the investigation, the commission will ask importers to provide responses to the importer questionnaire. The commission will use verified information from these

<sup>53</sup> VOTI is the sum of the customs value, duty, transport and insurance, and the wine equalisation tax (if applicable).

questionnaire responses to further analyse pricing and the nature of competition in the Australian market for the goods.

#### **6.4.4 Profit and profitability effects**

As outlined in sections 6.4.2 and 6.4.3 of this report, the commission considers that there appears to be reasonable grounds to support SPC's claim that the dumped goods exported from Italy have caused injury to the Australian industry in the form of price injury and loss of sales volumes.

Both sales volume and sales price can impact profit and profitability. Consequently, the commission considers that there appears to be reasonable grounds to support the claim that the dumped goods have also caused injury to the Australian industry in the form of reduced profit and profitability. These and other possible impacts on Australian industry's profit and profitability will be further examined during the investigation.

#### **6.4.5 Other injury**

As outlined in section 5.8.1 of this report, the Commissioner considers that there appear to be reasonable grounds to conclude that the Australian industry has suffered injury in the form of reduced revenue and higher finished goods inventories.

Given that these injury factors relate to sales volume and price, the commission considers that there appears to be reasonable grounds to support the applicant's claim that the dumped goods have also caused, or contributed to, injury in the form of reduced revenue and higher finished goods inventories.

#### **6.4.6 Injury caused by factors other than dumping**

The applicant claimed that injury caused by factors other than dumping were either immaterial or not relevant. The commission examined the applicant's claim that any injury from other import sources was immaterial compared to Italy. The commission's preliminary market analysis (section 5.5.3) indicates that there are grounds to support the applicant's assertion that other import sources were immaterial.

The commission notes that major supermarket chains account for the most significant share of SPC's sales of like goods and that SPC must accept various marketing conditions for sale of like goods. During the investigation, the commission will consider whether these conditions may have contributed to injury during the injury analysis period.

#### **6.4.7 Materiality of injury**

The commission's preliminary assessment of the claimed injury by Australian industry indicates that the injury caused by reduced sales volume, price suppression and reduced profit and profitability was material. The commission will further consider the materiality of injury during the investigation.

### **6.5 Conclusion – material injury caused by dumping and subsidisation**

The commission considers there appears to be reasonable grounds to support SPC's claims that the exports of the goods from Italy at dumped and subsidised prices have caused material injury to the Australian industry. The commission's assessment of material injury caused by dumping and subsidisation forms **Confidential Attachment 5**. This finding is based on:

- The preliminary assessment of price undercutting by imports from Italy
- The size of preliminary dumping margins assessed by the commission
- The size of preliminary subsidy margins assessed by the commission

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- The increase in market share and import volume from Italy
- The nature of competition in the Australian market
- The preliminary assessment of materiality of the Australian industry's reduced sales volume, price suppression, and reduced profit and profitability.

## 7. Attachments and appendices

Attachment number	Title
Confidential Attachment 1	Australian Market Size
Confidential Attachment 2	Dumping Margin & Export Price
Confidential Attachment 3	Subsidisation
Confidential Attachment 4	Injury to Australian Industry
Confidential Attachment 5	Material Injury

Appendix number	Title
Non-confidential Appendix 1	Subsidy programs alleged
Non-confidential Appendix 2	Written submissions from representatives of the European Union
Non-confidential Appendix 3	Written submissions from representatives of the Italian Republic

## Non-confidential appendix 1

A list of all programs claimed by SPC to be countervailable subsidy programs.

No.	Source	Program name	Type
1	Anti-Dumping Commission Investigations 217 and 276	Common Agricultural Policy (CAP)	The CAP is a European Commission strategic policy with a range of programs, including grants and other support
2	United States Department of Commerce (US DOC)'s 2024 Decision Memorandums for the Results of the Fifth Sunset – Existing Programs	Local income tax (ILOR) exemptions	Tax exemptions
3		Industrial Development Grants Under Law 64/86	Grants
4		Industrial Development Loans Under Law 64/86	Preferential loans
5		Export Marketing Grants Under Law 304/90	Grants
6		Social Security Reductions and Exemptions (Sgravi Benefits), including: * Law 1089/68, * Law 407/09, * Law 448/01, Article 44, * Law 863/84, * Fiscalizzazione benefits, * Law 337/90.	Social security reductions/ exemptions
7		European Regional Development Fund <sup>54</sup>	Grants
8		European Social Fund <sup>55</sup>	Grants
9		Export Restitution Payments	Exemption from duties
10		Lump-Sum Interest Payment Under the Sabatini Law for Companies in Southern Italy (Nuova Sabatini) <sup>56</sup>	Deferral of interest payments
11		Remission of Taxes on Export Credit Insurance Under Article 33 of Law 227/77	Remission of tax
12	US DOC's 2024 Decision Memorandums for the Results of the Fifth Sunset – New Programs	Grant Received Pursuant to the Community Initiative Concerning the Preparation of Enterprises for the Single Market (PRISMA)	Grants
13		Industrial Development Grants under Law 488/92	Grant and loans
14		Industrial Development Grants under Law 183/76	Grants and social security reductions
15		Law 598/94 Interest Subsidies	Interest contributions
16		Law 236/93 Training Grants	Grants
17		Law 341/95 Interest Contributions on Debt Consolidation Loans	Interest contributions
18		Regional Tax on Income of Productive Activities Deduction in Accordance with Article 11 of Law 446/1997 (IRAP)	Tax deduction

<sup>54</sup> Also alleged as part of the EU/Italy WTO notifications of July 2023.

<sup>55</sup> Also alleged as part of the EU/Italy WTO notifications of July 2023.

<sup>56</sup> Also alleged as part of the EU/Italy WTO notifications of August 2023.



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No.	Source	Program name	Type
19	US DOC's 2024 Decision Memorandums for the Results of the Fifth Sunset – New Programs	Duty Free Import Rights	Reduced duties
20		Corporate Income Tax (IRPEG) Exemptions	Tax exemptions
21		Development Grants under Law 30 of 1984	Grants
22		Law 908/55 Revolving Fund for Economic Initiatives Loan	Reduced interest
23		Social Security Reductions and Exemptions – Sgravi – Article 44 of Law 448/01 – <b>see also Program 6</b>	Social security reductions/ exemptions
24		Law 289/02, Article 62, Investment in Disadvantaged Areas	Tax credit
25		Law 289/02, Article 63, Increase in Employment	Tax credit
26		Law 662/96, Article 2, Paragraph 203, letter d – Patti Territoriali	Grants
27		Law 196/97	Social security reductions/ exemptions
28		European Regional Development Fund – Programma Operativo Plurifondo – <b>see also Program 7</b>	Grants
29		Law 223/91 Article 8, Paragraph 2	Social security reductions/ exemptions
30		Law 223/91 Article 8, Paragraph 4	Social security reductions/ exemptions
31		Legislative Decree 276/03	Social security reductions/ exemptions
32		Law 662/96, Article 2, Paragraph 203, letter e (Contratto di Programma)	Grants
33		Interest Contributions Under Law 488/92	Interest contributions
34		Law 46/1982, Article 14 loans (Fondo Innovazione Tecnologica)	Preferential loans
35		Law 46/1982 Article 14 grants (Fondo Innovazione Tecnologica)	Grants
36		Regional Law 34/1988	Interest contributions
37		Measure 3.14 of the POR Sicilia 2000/2006	Grants
38		Tax Credits under Article 280 of Law 296/2006	Tax credit
39		Article 23 of Legislative Decree 38/2000	Grants and interest free loans
40		Tremonti Ter – Tremonti Law 383/01	Tax deduction
41		PO FESR Measure 4.1.1.1 – <b>see Prog 7</b>	Grants
42		Law 167/2011	Social security reductions/ exemptions
43		Article 42 of Law 78/2010	Tax deferral
44		Article 1 of Law 296/06	Tax credit
45		POR FESR Molise 2007/2013	Grants
46		Law 223/91, Article 25, Paragraph 9	Social security reductions/ exemptions

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No.	Source	Program name	Type
47	US DOC's 2024 Decision Memorandums for the Results of the Fifth Sunset – New Programs	Ministerial Decrees of July 23, 2009 and August 6, 2010 (Berlusconi Grant)	Grants
48		Ministerial Decrees of July 23, 2009 and August 6, 2010, (Berlusconi Loan)	Preferential loans
49	Administrative Review of the Countervailing Duty Order on Certain Pasta from Italy	Sgravi – Art 1 par 161 and 168 Law 178/2020	Social security reductions and exemptions
50		Regional Tax on Income of Productive Activities Deduction in Accordance with Article 11 of Legislative Decree n. 446/1997 (IRAP) – <b>see also program 18</b>	Tax deduction
51		Preferential Financing for Export Promotion Under Law 394/81	Grant or preferential loan
52		Sgravi Benefits – Article 1, paragraph 773 of Law No. 296/2006	Social security reductions and exemptions
53		Sgravi Benefits – Article 1, paragraph 100 of Law No. 160/2019	Social security reductions and exemptions
54		Research, Development, and Innovation 2020–2022 (Nuova Sabatini) – <b>see also program 10</b>	Preferential loans and interest contributions
55		Measure 123 (part of European Agricultural Fund for Rural Development)	Grants
56		Article 1 par. 200, 201 and 202 law 27 December 2019, n. 160	Tax credit
57		Article 1, paragraphs 1051–1063 of Law No. 178/2020	Tax credit
58		Tax Credit under Article 15 Law Decree n. 4, 27 January 2022	Tax credit
59	Article 5 of the Law Decree n. 17 dated 1 March 2022	Tax credit	
60	EU/Italy WTO Subsidy Notifications – July 2023	Connecting Europe Facility (2021–2027)	Grants and other support
61		The European Cohesion Fund (2021–2027)	Grants and other support
62		The Just Transition Fund	Preferential loans
63		European Maritime, Fisheries and Aquaculture Fund	Grants
64		Horizon Europe	Grants
65	EU/Italy WTO Subsidy Notifications – August 2023	Extraordinary Intervention in the South of Italy	Grants
66		Contratti di Sviluppo	Grants, preferential loans, and interest contributions
67		SIMEST – Fondo 394/82	Preferential loans
68		SIMEST – Direct Grants Supporting the Uncovered Fixed Cost of the Italian Trade Fair System	Grants

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<b>No.</b>	<b>Source</b>	<b>Program name</b>	<b>Type</b>
69	Mutti 2022 Financial Results	Electricity subsidies	Grant or tax credit
70		Gas subsidies	Grant or tax credit

## Non-confidential appendix 2

Written submissions from representatives of the European Union were received on 19 September 2024.



EUROPEAN COMMISSION  
Directorate-General for Trade  
Directorate-General for Agriculture and Rural Development

Brussels, 18 September 2024

### APPLICATION FOR THE IMPOSITION OF DUMPING AND COUNTERVAILING DUTY NOTICES IN RESPECT OF PREPARED OR PRESERVED TOMATO PRODUCTS EXPORTED TO AUSTRALIA FROM ITALY

#### Submission by the European Commission following the pre-initiation consultations held on 17 September 2024

#### 1. INTRODUCTION

European Commission thanks the Australian Anti-Dumping Commission for the opportunity of holding pre-initiation consultations pursuant to Article 13 of the WTO Agreement on Subsidies and Countervailing Measures (ASCM) on 17 September 2024.

Unfortunately, this is not the first time that the Australian authorities target canned tomatoes from Italy in a trade defence investigation. The first measures date back from 1992.

At the outset, the European Commission would like to point out that the recent application for an AD/AS investigation, lodged by the Australian industry, is rather weak with regards to evidence showing the existence of countervailable subsidisation, as it will be explained below.

Moreover, EU decoupled support to agriculture qualifies as "Green Box" compatible, i.e. fully in line with the relevant criteria of Annex 2, paragraph 1 of the WTO Agreement on Agriculture. EU decoupled support is thus **not trade distorting** under WTO rules. It is available to all EU farmers and therefore it is **not specific** in the sense of the WTO ASCM.

#### 2. WEAK EVIDENCE AT INITIATION

Indeed, evidence at initiation concerning subsidisation is rather weak. Most of the evidence is taken from previous antidumping investigations and is outdated. The data from 2013 and 2015 **is too far in time and cannot be used as evidence in an eventual investigation in 2024.**

In a decade, the market situation has changed considerably, and the EU Common Agricultural Policy (CAP) has undergone several profound reforms.

Furthermore, the Anti-Dumping Commission already assessed in 2016, based on the same evidence recently submitted, whether the EU decoupled payments to farmers had an effect on tomato prices in Italy. After a determination that tomato prices in Italy were found not to be “competitive market costs”<sup>57</sup> for EU processors (or otherwise distorting) due to subsidisation, the Anti-Dumping Commission adjusted the normal values of Italian exporters to reflect EU subsidies and increasing the dumping margins. After this decision was contested by Italy, the **Australian Anti-Dumping Review Panel (ADRP)** reversed the finding.

Moreover, there was evidence showing that prices of tomatoes in Italy were the highest in Europe and one of the highest worldwide, hence no price distortions due to CAP decoupled payments could be demonstrated. This continues to be the case, with current prices of tomatoes paid by tomato processors to farmers in Europe being the highest worldwide (estimation of 141USD/t vs. worldwide average 122 USD/t in 2024)<sup>58</sup>.

If the Anti-Dumping Commission initiates an anti-subsidy investigation, it will have to demonstrate that any payments to farmers have been **passed-through** to processors of canned tomatoes and that **prices of tomatoes paid by processors are below market prices due to subsidies**. In this regard, the **Anti-Dumping Commission cannot ignore the evidence that European tomato prices are amongst the highest in the world, and hence any CAP payments are not reflected in the price of tomatoes**.

As regards the extensive reference made in the application to alleged US findings of subsidies in the context of the review on pasta, the EU fails to see the relevance of these elements for the present case considering that prepared or preserved tomatoes and pasta are two different products with different marketing and value chains. Moreover, a criterion to countervail subsidies is that the payments are specific. However, CAP payments are totally decoupled from production and the type of product.

### 3. CAP PAYMENTS

As the reference period covers the previous programming period (2014-2022) of the Common Agricultural Policy (CAP) as well as the current one (2023-2027), the European Commission would like to recall that the EU notified to the WTO on 7 August 2023 the essential elements of the reformed direct support schemes, rural development, sectoral interventions, and common market organisation policies under the 2023-2027 CAP (see DS:2 Notification **G/AG/N/EU/88**). The European Commission refers to this notification in relation to the allegations contained in the application.

It is also important to underline that, as acknowledged in the application itself, neither of the Australian investigations INV 217 and INV 276 concluded that the payments under various domestic support programs, which were the object of the past investigations, **operated in a manner which would have distorted competitive market conditions and would have led the Commission to consider that it could not use normal values**. The Commission recalls that payments made under the EU’s Common Agricultural Policy (CAP) – notably SPS payments at that time and support granted to fruit and vegetables producer organisations through their operational programmes – formed the main component of this assessment in both past investigations.

The EU would like to recall that the CAP underwent major reforms in 2003 (introduction of the Single Payment Scheme -SPS) and 2013 (introduction of the Basic Payment scheme – BPS). Compatibility with WTO rules was among the key objectives of these reforms. Farmers’ payments were decoupled from the agricultural commodity produced and the volume of production to make farmers more market-oriented, reduce distortions in

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<sup>57</sup> Customs International Obligations Regulation 2015 – Subsection 43 (2)

<sup>58</sup> <https://www.tomatonews.com/en/the-2024-season-processing-tomato-prices-down-11-2-2348.html>

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agricultural production and trade, and at the same time guarantee income stability by using “green box” instruments.

The BPS was complemented by a series of other decoupled support schemes targeting specific objectives, among which the ‘green’ direct payment for agricultural practices beneficial for the climate and the environment (“the Greening Program”). A farmer entitled to BPS payments was automatically eligible under the Greening Program if he/she applied “green” agricultural practices (regardless of whether or not the permanent crop is harvested).

Moreover, Member States could introduce, irrespective of eligibility for the BPS, coupled support payment in certain sectors, which was however marginal for the product concerned.

The current **CAP (2023-2027)** came into force in January 2023 and covers farmers' applications introduced as of 2023. Under the new policy, each EU Member State designed a national CAP Strategic Plan, combining funding for income support, rural development, and sectoral interventions.

The new **Basic Income Support for Sustainability (BISS)** is an annual decoupled payment per hectare, granted with no requirement to produce, with no link to any type or volume of production, and not related to price support. Member States can implement it as a uniform amount per hectare (currently 18 Member States do so) or based on payment entitlements established previously under the decoupled direct payments scheme. Eligibility for the BISS is a precondition for the complementary income support payments under the decoupled income scheme: Complementary redistributive income support for sustainability and Complementary income support for young farmers. Payments under the BISS and the top-ups comply with paragraph 1 of Annex 2 to the Agreement on Agriculture (“Green Box”) as well as with the relevant criteria of paragraph 5 or 6 depending on whether implementation is based on payment entitlements (par. 6) or not (par. 5). Hence, they cannot be trade distorting.

Member States set up **eco-schemes** in their CAP Strategic Plans. These are voluntary for farmers. They can take form of a payment granted either for, and remunerating, the provision of public goods by agricultural practices beneficial to the environment and climate (additional to the BISS payment), or as compensation for carrying out those practices. Payments under the schemes for the climate, the environment and animal welfare are not related to price support and are granted with **no requirement to produce and with no link to any type or volume of production**. If they are additional payments to the BISS, the eco-schemes are likewise Green-Box compatible, and hence not trade distortive, for the reasons explained in the BISS section.

Article 10 of Regulation (EU) 2021/2115 explicitly stipulates that the BISS and the top-up payments as well as the eco-schemes shall qualify under specific criteria of the Green Box as indicated in Annex II to this Regulation for those interventions. This makes their non trade-distortive design obvious.

Moreover, under the terms of the WTO ASCM, a subsidy would need to be *specific* to be actionable. The application has failed to address this point in a convincing way, which constitutes a serious shortcoming on one of the key requirements of the WTO rules for such investigations.

Decoupled payments under the BPS and BISS schemes **are available to all EU farmers**, irrespective of whether they produce or not, and regardless of type and volume of agriculture production. Moreover, in accordance with Article 2.1 (b) of the ASCM, Regulation (EU) No 1307/2013 and Regulation (EU) No 2021/2115 establish **objective criteria governing the eligibility for, and the amount of**, direct payments under BPS and BISS. Those conditions and criteria have been strictly adhered to by the granting authority. The **eligibility has been automatic** since every EU farmer who complies with the criteria is entitled to receive payments under the BPS and the BISS schemes. **For this reason, these payments are not specific to tomato production or any other sector in the EU.**

The EU would like to recall that in the context of the review of **Anti-Dumping and Countervailing duties on refined sugar by Canada**, the Canadian authorities acknowledged that, due to the general availability of decoupled payments to all agricultural producers, decoupled support to farmers under the CAP is not specific (to sugar or any other sector) and is not actionable and therefore no countervailing duties can be applied on this basis.

Similarly, the WTO Panel report in the case DS 577 on **olives from Spain** found that the US had erroneously concluded that the EU BPS subsidies were specific and targeted to olives producers.

As regards **Voluntary Coupled Support (VCS)**, a limited budget may, when duly justified and under certain conditions, be provided as coupled support to specific agricultural sectors. VCS, a production-limiting scheme, could be granted under the 2014-2022 CAP to specific types of farming or specific agricultural sectors that were particularly important for economic, social or environmental reasons, when undergoing difficulties. Coupled income support (CIS) under the CAP 2023-2027 may be similarly provided to address the difficulties encountered by certain agricultural sectors or specific types of farming, thereby improving competitiveness, sustainability or quality, where the supported sectors are important for socio-economic or environmental reasons. The support is subject to various important conditions and strict limits to mitigate the risk of market distortion. Tomato production for processing in Italy has a lower profitability than other sectors, and the support is not expected to increase the production.

As regards **sectoral interventions** in the fruit and vegetables sector regulated under Regulation (EU) 2021/2115, they meet the criteria laid out in paragraphs 1 and 2 of Annex 2 to the WTO Agreement on Agriculture (Green Box) as specified in Article 10 and in Annex II of that Regulation. Additionally, payments cover only costs incurred/income forgone under the relevant paragraph 12 of WTO Annex 2.

On **pass-through**, the Commission would like to recall that, if a benefit is granted to a recipient other than the producer of the product concerned, such as the supplier of an upstream input product, the investigating authority must undertake a pass-through analysis. The requirement for a pass-through analysis flows from GATT Article VI:3 and Articles 10 and 32.1 of the ASCM and requires to demonstrate that any benefit was passed down to the producer of the product concerned. As already mentioned, the Commission considers that the elements contained in the application in this respect satisfy the standard set by the GATT and the ASCM.

In this context, the EU would like to recall that in the US/ripe olives WTO dispute, the Panel concluded that the US failed to demonstrate that EU CAP subsidies were ‘passed through’ to processors.

#### **4. INJURY AND CAUSAL LINK**

While the European Commission understands that the main purpose of the consultations under Article 13 of the WTO ASCM is to provide information on the subsidy schemes challenged, we nevertheless wish to make some additional comments.

On the basis of the complaint, the European Commission has difficulties in identifying the existence of a **causal link between imports from Italy and injury suffered by the complainant**.

Imports from Italy decreased in line with depressed demand in Australia since 2022. SPC claims that it has lost market share, but their sales remained stable, or even increased at some point during the investigation period, while demand declined. **SPC sales only decreased sharply in the last year of the investigation period**, but this is caused by other factors and not by imports from Italy.

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Moreover, based on EU export statistics, **the unit value of exports from Italy to Australia increased and also to the rest of the world**, in line with increasing input costs (essentially raw tomatoes). Prices of SPC have also increased but at a lower rate than prices of Italian origin exported to Australia (19.88% vs. 45% in the period April 2021 to March 2024).

Similarly, the applicant claims that the negative impact on profitability is directly attributable to imports from Italy. **In fact, SPC was already operating at a loss in 2021 and Italian imports decreased by 22%** between 2021 and 2024, while losses increased (index of profitability from -100 to -29.922 over the same period).

This clearly shows that any difficulties the domestic industry is experiencing is due to **other factors**, in particular:

- The **Australian market of processed tomatoes has decreased around 23%** in the investigation period (2021-2024). Consequently, both SPC and Italian sales volumes declined.
- It appears that in October 2023, according to SPC **“Goulburn Valley was hit with bad flooding days before our harvest. Unfortunately, this led to a significant loss of tomatoes”**. This appears to be the likely reason why SPC’s sales decreased sharply in 2024, while sales slightly increase between 2021 and 2023.

In this regard, injury caused by other factors may not be attributed to imports.

Based on the above, the European Commission considers that the claim of material injury as a result of imports is unfounded.

### 5. CONCLUSION

For the reasons stated above, the application **does not contain sufficient evidence according to Article 11.2 of the WTO ASCM** to justify the initiation of an anti-subsidy investigation in respect of prepared or preserved tomato products from Italy, exported to Australia. The arguments presented are flawed and do not support the request presented in the application.

We would also like to highlight that a number of European agricultural products, namely brandy, pork and dairy products are currently subject to highly dubious investigations by China. These investigations are clearly retaliatory in nature, aiming to blackmail the EU to not impose duties on our electric vehicles case. Such abusive, retaliatory use of trade defence by China is not unknown to Australia. These investigations are creating significant political tension in several EU Member States, and the initiation of further investigations targeting EU agricultural products, especially on the basis of questionable evidence, would be very badly perceived.

**The European Commission therefore urges Australia not to accept this application.**



## Non-confidential appendix 3

Written submissions from representatives of the Italian Republic were received on 19 September 2024.

### Application for the imposition of dumping and countervailing duty in respect of prepared or preserved tomato products exported to Australia from Italy

- The Government of Italy respectfully finds petitioners' allegations unwarranted and unsubstantiated. In the framework of the application, petitioners use among their main sources the United States Department of Commerce's 2024 Decision Memorandums for the Results of the Fifth Sunset Review and the Preliminary Results of an Administrative Review of the Countervailing on Certain Pasta from Italy. The use of these sources is unjustified for the following reasons:
  - A. Petitioners refer to a different proceeding in which the US Department of Commerce assessed the countervailability of certain programmes administered by the Italian Government in light of the specific rules applicable under the US legal framework. Relying on the conclusions reached in the US is therefore ungrounded due to the difference between the US and the Australian legal systems.
  - B. Petitioners refer to proceedings targeting certain types of pasta, which is a product unrelated to the product targeted by the petition filed with the Australian Anti-dumping Commission (prepared and preserved tomato products). The two sectors, despite having some interactions in specific cases, are totally distinct and based on different business models. In particular, the companies that were involved in the US proceedings do not export tomato products to Australia.
  - C. Petitioners refer to programmes that are not sector, nor company-specific, as clarified by the Government of Italy on several occasions vis à vis the Department of Commerce. The Government of Italy strongly reaffirms the non-countervailability of these programs.
  - Therefore, the mere existence of CVD measures imposed by the US on certain types of pasta from Italy cannot substantiate the initiation of an investigation by the Australian Anti-Dumping Commission, especially in consideration of the difference between the products and sectors concerned, as well as the Australian and US legal systems. This would create a critical and potentially harmful precedent for trade defence investigation targeting Italian companies.
- Furthermore, the complaint submitted by the company should be grounded on the alleged growth in sales of Italian products in Australia. Nevertheless, looking at the data reported by the Italian National Statistic Agency (ISTAT), it appears that between 2022 and 2023 there has been a 11% reduction in Italian exports to Australia in volume terms, and a 12% increase in value terms.
- For the reasons expressed above, the Government of Italy calls the Australian authorities to disregard petitioners' allegations and reject petitioners' application.