



ANTI-DUMPING NOTICE NO 2024/065

Public notice under section 269TC(4) of the *Customs Act 1901*

Tomatoes, prepared or preserved

Exported from the Italian Republic

**Initiation of Investigation No 654 into
alleged dumping and subsidisation**

*Customs Act 1901 – Part XVB*¹

I, Isolde Lueckenhausen, the Acting Commissioner of the Anti-Dumping Commission (the Commissioner),² have initiated an investigation following an application lodged by SPC Operations Pty Ltd (the Applicant), a manufacturer of tomatoes, prepared or preserved (the goods) in Australia.

The application seeks the publication of a dumping notice and countervailing duty notice in respect of the goods exported to Australia from the Italian Republic (Italy).

The application alleges that the goods have been exported to Australia at prices less than their normal value and were in receipt of countervailable subsidies, and that the dumping and subsidisation have caused material injury to the Australian industry producing like goods 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 return on investment
- reduced capacity utilisation

¹ All legislative references in this notice are to the *Customs Act 1901* (Cth) unless otherwise specified.

² References in this document to individuals holding positions within the Anti-Dumping Commission (commission) are references to whoever occupies the position at the time. This includes when the position is held in an acting capacity.

- reduced employment
- reduced hours worked.

The non-confidential version of the application, which contains the basis of the alleged dumping, subsidisation and injury, is available on the public record. The application is available on the electronic public record (EPR) for this case.³ The EPR can be found on the commission's website at www.adcommission.gov.au.

The reasons for the decision to initiate this investigation are in *Anti-Dumping Commission Consideration Report No 654* (CON 654), which is available on the public record.⁴ CON 654 outlines the basis upon which the dumping and subsidisation are alleged to have occurred. Additionally, the factors upon which the allegation of material injury caused by the dumping to the Australian industry are also summarised in the report.

In accordance with section 269ZI(3), a copy of this notice and accompanying reasons will be provided to the country whose exporters are affected by the decision to not reject the application.

The date of initiation of this investigation is the date of publication of this notice.

Particulars of the goods

The goods, being the subject of the application (the goods) are:

Tomatoes (peeled or unpeeled) prepared or preserved otherwise than by vinegar or acetic acid, either whole or in pieces (including diced, chopped, or crushed) with or without other ingredients (including vegetables, herbs, or spices), in packs not exceeding 1.14 litres in volume (prepared or preserved tomatoes), exported from Italy.

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 x 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.

³ EPR 654, document number 2

⁴ EPR 654, document number 3

Exclusions:

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

- *pastes*
- *purees*
- *sauces*
- *pasta sauces*
- *juices*
- *sundried tomatoes.*

Tariff classification

The goods are generally, but not exclusively, classified to the following tariff classification in Schedule 3 to the *Customs Tariff Act 1995*:

- 2002.10.00 (statistical code 60).

This tariff classification and statistical code may include goods that are both subject and not subject to this investigation. The listing of this tariff classification and statistical code is for convenience or reference only and does not form part of the goods description set out above. Please refer to the goods description for authoritative detail regarding the particulars of the goods, the subject of this investigation.

Investigation process

The investigation period is 1 October 2023 to 30 September 2024. I will examine exports to Australia of the goods during this period to determine whether dumping and subsidisation have occurred.

I will examine details of the Australian market from 1 October 2020 for the purposes of injury analysis.

Where the Minister for Industry and Science (the Minister) is satisfied, as to goods of any kind, that:⁵

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

the Minister may, by public notice, impose interim dumping duties.

⁵ In accordance with section 269TG.

Where the Minister is satisfied, as to goods of any kind, that:

- (a) a countervailable subsidy has been received in respect of the goods that have been exported to Australia, and (if applicable) may be received in respect of like goods that may be exported to Australia in the future, and
- (b) because of that, material injury to an Australian industry producing like goods has been or is being caused or is threatened, or the establishment of an Australian industry producing like goods has been or may be materially hindered.

the Minister may, by public notice, impose interim countervailing duties.⁶

Where there are grounds for the Minister to publish a dumping and/or countervailing duty notice in respect of the goods, I will examine whether the trade in the dumped or subsidised goods give rise to retrospective notices being published pursuant to section 269TN and make recommendations to the Minister accordingly.⁷

Proposed model control code structure

The Commission undertakes model matching using a Model Control Code (MCC) structure to identify key characteristics that will be used to compare the goods exported to Australia and the like goods sold domestically in the country of export.⁸

The table below outlines the Commission's proposed MCC structure for this investigation.

Category	Sub-category	Identifier	Sales data	Cost data
Total container size in net weight (grams)	< 400	3	Mandatory	Mandatory
	400 – 425	4		
	> 425 – < 800	5		
	800 – 850	8		
	> 850 – 1,400	9		
Packing medium	Juice	J	Mandatory	Mandatory
	Juice/paste/sauce	JP		
	Other	O		
Value add (e.g. herbs and spices)	Value-added	VA	Mandatory	Mandatory
	Non-value added	NVA		

⁶ In accordance with section 269TJ.

⁷ In accordance with sections 269TG (1) and TJ (1).

⁸ Guidance on the Commission's approach to model matching is in the Dumping and Subsidy Manual, available at: www.adcommission.gov.au.

Category	Sub-category	Identifier	Sales data	Cost data
Tomato cut	Crushed	CR	Mandatory	Mandatory
	Diced	DC		
	Whole	WH		
	Other	O		
Quality	Prime	P	Mandatory	Optional
	Non – prime (e.g. damaged can)	N		
Container type	Tin can – lacquered	TCL	Mandatory	Optional
	Tin can – not lacquered	TCN		
	Other	O		

Proposals to modify the proposed MCC structure should be raised as soon as is practicable, but no later than **21 November 2024**.

Interested parties are encouraged to make a submission on whether any proposed modifications to the MCC structure should be accepted by the commission. Any changes to the MCC structure will be considered by the commission and reported in verification reports or in the statement of essential facts (SEF).

Public record

I must maintain a public record of each investigation. Documents included in the public record are available at www.adcommission.gov.au.

The public record will contain, among other things, a copy of the application, *Anti-Dumping Commission Consideration Report No 654* and copies of all non-confidential submissions from interested parties. Letters and electronic mail are generally regarded as submissions if they contain information relevant to the investigation.

Lodgement of submissions

Interested parties, as defined by section 269T(1), are invited to lodge submissions concerning the publication of the dumping and countervailing duty notices sought in the application, no later than the close of business on **21 November 2024**, addressed to:

The Director
Investigations
GPO Box 2013
Canberra ACT 2601
Australia

or by email to Investigations@adcommission.gov.au.

Interested parties wishing to participate in the investigation must ensure that submissions are lodged by the due date. Interested parties should note that I am not obliged to have regard to a submission received after the date above if to do so would, in my opinion, prevent the timely placement of the SEF on the public record.

Interested parties should also note that I am directed to consider the matters set out in the *Customs (Extensions of Time and Non-cooperation) Direction 2015* in certain circumstances.⁹ This is available at: www.legislation.gov.au.

Interested parties may reply to matters raised by other parties during the course of the investigation and in response to the SEF.

Interested parties claiming that information contained in their submission is confidential, or that the publication of the information would adversely affect their business or commercial interests, must:

- (i) provide a summary containing sufficient detail to allow a reasonable understanding of the substance of the information that does not breach that confidentiality or adversely affect those interests, or
- (ii) satisfy me that there is no way such a summary can be given to allow a reasonable understanding of the substance of the information.

Submissions containing confidential information must be clearly marked "OFFICIAL: Sensitive".

Interested parties must lodge a non-confidential version or a summary of their submission in accordance with the requirement above (clearly marked "PUBLIC RECORD").

Lodgement of Preliminary Information Requests (PIR)

Exporters of the goods to Australia are invited to participate in this investigation by completing the PIR and the associated spreadsheets by **29 October 2024**.

The PIR and the associated spreadsheets are available on the EPR case information page for case number 654 (which can be found under 'current cases and the electronic public record' on the commission website at: www.adcommission.gov.au).

Alternatively, exporters can email investigations@adcommission.gov.au and the commission will forward the PIR and spreadsheets for completion.

The case team will use responses to the PIR to determine whether sampling is required pursuant to section 269TACAA due to the large number of exporters of the

⁹ Certain powers and functions under the *Customs (Extensions of Time and Non-cooperation) Direction 2015* have been delegated to the Anti-Dumping Commission's Deputy Commissioners (Anti-Dumping Notice No. 2017/10, available at: www.adcommission.gov.au refers).

goods such that it is not practicable to examine the exports of all those exporters. If an exporter submits a PIR, the commission may select your company for further examination, including an invitation to complete an exporter questionnaire and verification of the submitted information (see ADN 2016/30).¹⁰

If an exporter does not respond to the PIR, the commission may not examine its situation and may consider that the exporter did not cooperate with the investigation.

Provisional measures

Pursuant to section 269TD, I will make a preliminary affirmative determination (PAD) provided I am satisfied that there appears to be sufficient grounds for the publication of a dumping and countervailing duty notice or there appears that there will be sufficient grounds for the publication of a dumping and countervailing duty notice subsequent to the importation of the goods into Australia. This can occur no earlier than day 60 of an investigation.

In accordance with section 269TD, the Commonwealth may apply provisional measures, including the taking of securities under section 42, in respect of interim dumping and countervailing duty that may become payable on the goods, where: a PAD has been made; and the Commissioner is satisfied that it is necessary to do so to prevent material injury to an Australian industry occurring while the investigation continues.

Where a PAD is not made 60 days after initiation of the investigation, the *Customs (Preliminary Affirmative Determinations) Direction 2015* (the PAD Direction) directs me to publish a status report providing reasons why a PAD was not made. The PAD Direction is available on the Federal Register of Legislation website at: www.legislation.gov.au.

Statement of Essential Facts

The dates specified in this notice for lodging submissions must be observed to enable me to report to the Minister within the legislative timeframe. In accordance with section 269TDAA of the Act, a SEF will be placed on the public record by **3 February 2025**,¹¹ or by such later date as allowed in accordance with section 269ZHI.¹² The SEF will set out the essential facts on which I propose to base my recommendations to the Minister. Interested parties are invited to lodge submissions in response to the SEF within 20 days of it being placed on the public record.

Submissions received in response to the SEF within 20 days of that statement being placed on the public record will be taken into account in completing the report and recommendation to the Minister.

¹⁰ Please refer to [ADN2016/30](http://www.legislation.gov.au).

¹¹ As 2 February 2025 is a Sunday, the due date becomes the next business day (3 February 2025).

¹² On 14 January 2017, certain powers, and functions of the Minister under section 269ZHI were delegated to the Commissioner of the Anti-Dumping Commission. Refer to ADN No. 2017/10 for further information.

Report to the Minister

A recommendation to the Minister will be made in a report on or before **19 March 2025** (or such later date as allowed under section 269ZHI), on the basis of the examination of exportations of the goods to Australia during the investigation period, unless I terminate the investigation.

The Minister must make a declaration within 30 days after receiving the report, or such longer period as the Minister considers appropriate.

Anti-Dumping Review Panel

Certain persons will have the right to seek review with the Anti-Dumping Review Panel in accordance with Division 9 of Part XVB in relation to a decision by me to terminate the investigation or a decision of the Minister to publish or not to publish a dumping duty notice and a countervailing duty notice after considering my report.

Interested party list

Throughout the investigation, the commission will maintain an internal list of interested parties. Updates on the investigation will be sent to parties on this list. If you would like to be added to the interested party list, please email Investigations@adcommission.gov.au.

Anti-Dumping Commission contact

Enquiries about this notice may be directed to client support on telephone number 02 6243 6000 or via clientsupport@adcommission.gov.au.

Isolde Lueckenhausen
Acting Commissioner
Anti-Dumping Commission

15 October 2024