



*CUSTOMS ACT 1901 - PART XVB*

**REPORT  
NO 654**

**ALLEGED DUMPING OF TOMATOES, PREPARED OR  
PRESERVED  
EXPORTED FROM ITALY  
AND  
ALLEGED SUBSIDISATION OF TOMATOES, PREPARED OR  
PRESERVED  
EXPORTED FROM ITALY**

27 January 2026

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## ABBREVIATIONS

\$	Australian dollars
ABF	Australian Border Force
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
ANICAV	Associazione Nazionale Industriali Conserve Alimentari Vegetali (Association of Italian Vegetable Processors)
the applicant	SPC Operations Pty Ltd
Calispa	Calispa S.p.A
CAP	Common Agricultural Policy
COGS	Cost of goods sold
the commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CON 488	Continuation 488
CON 632	Continuation 632
CON 654	Consideration Report 654
CTM	Cost to make
CTMS	Cost to make & sell
the Customs Direction	<i>Customs (Extensions of Time and Non-cooperation) Direction 2015</i>
De Clemente	De Clemente Conserve S.p.A
EPR	electronic public record
EU	European Union
EXW	ex-works
the European Commission	the Delegation for the European Union
FOB	free-on-board
g	grams
GAAP	Generally accepted accounting principles
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
GOI	Government of Italy
ICD	interim countervailing duty
IDD	interim dumping duty
IMCA	IMCA S.p.A
initiation notice	Anti-Dumping Notice 2024/065
injury period	From 1 October 2020



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INV 217	Investigation 217
INV 276	Investigation 276
the investigation	Investigation 654
investigation period	1 October 2023 to 30 September 2024
Italy	the Italian Republic
L	litre
La Doria	La Doria S.p.A
La Molisana	La Molisana S.p.A
Material Injury Direction	Ministerial Direction on Material Injury 2012
MCC	model control code
the Minister	Minister for Industry and Innovation and Minister for Science
Mutti	Mutti S.p.A
OCOT	ordinary course of trade
PIR	preliminary information request
REQ	response to exporter questionnaire
REV 508	Review 508
RGQ	response to government questionnaire
RIQ	response to importer questionnaire
sampling report	Anti-Dumping Notice 2024/089
SEF	Statement of Essential Facts
USP	Unsuppressed Selling Price
WTO	World Trade Organization

# 1 SUMMARY AND RECOMMENDATIONS

## 1.1 Introduction

This report (**REP 654**) follows Investigation 654 (**the investigation**) by the Commissioner of the Anti-Dumping Commission (**the Commissioner**) into the alleged dumping and subsidisation of prepared or preserved tomatoes (**the goods**) exported to Australia from the Italian Republic (**Italy**).

The Commissioner initiated the investigation on 15 October 2024 following an application from SPC Operations Pty Ltd (**SPC**, or **the applicant**). SPC is an Australian manufacturer of prepared or preserved tomatoes and represents the Australian industry for the goods.<sup>1</sup>

This REP 654 sets out the Commissioner's recommendations to the Minister for Industry and Innovation and Minister for Science (**the Minister**) concerning the investigation, the material findings of fact on which those recommendations are based and provides particulars of the evidence relied on to support those findings, pursuant to section 269TEA(1) of the *Customs Act 1901* (Cth) (**the Act**).<sup>2</sup>

REP 654 follows the publication of the Statement of Essential Facts No 654 (**SEF 654**) for the investigation on 12 November 2025.<sup>3</sup>

As set out in chapter 1.2, the Commissioner is not satisfied that dumping and/or subsidisation has caused material injury to the Australian industry. The Commissioner therefore recommends that the Minister not impose anti-dumping measures prepared or preserved tomatoes (**the goods**) on goods exported to Australia from the Italian Republic (**Italy**).

As set out in chapter 1.4, the Commissioner has also terminated the dumping investigation in respect of La Doria S.p.A (**La Doria**) and the subsidy investigation in respect of all exporters except non-cooperative entities; see *Termination Report 654* (**TER 654**) published on 27 January 2026.

## 1.2 Recommendations (chapter 10)

The Commissioner found that certain exporters from Italy exported the goods to Australia at dumped and/or subsidised prices during the investigation period, which is the period of 1 October 2023 to 30 September 2024 (**the investigation period**).

The Commissioner is not satisfied that exports of the goods at dumped and/or subsidised prices from Italy caused material injury to the Australian industry.

Therefore, the Commissioner recommends that the Minister **does not** impose either a dumping duty notice, or a countervailing duty notice in respect of goods exported from Italy, because the requirements of section 269TG or section 269TJ are not satisfied. Specifically, the requirement that material injury to an Australian industry producing like goods has been, is being, or is threatened because of dumped and/or subsidised exports from Italy.

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<sup>1</sup> See chapter 4.3.

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

<sup>3</sup> EPR 654, Item 37

If the Minister accepts the Commissioner's recommendation and decides not to impose a dumping duty notice or countervailing duty notice in respect of the goods, the Minister must give public notice to that effect under section 269TL. The publication of a notice under section 269TL ends the dumping and countervailing investigation.

The Commissioner is not satisfied that the injury to the Australian industry caused by goods exported to Australia from Italy is negligible. Therefore, the Commissioner cannot terminate the dumping and subsidy investigations in relation to Italy generally as the requirements to do so under sections 269TDA(13) and 269TDA(14) are not met.

### **1.3 Findings**

The Commissioner is satisfied that De Clemente Conserve S.p.A (**De Clemente**), IMCA S.p.A (**IMCA**), Mutti S.p.A (**Mutti**), residual and uncooperative exporters exported dumped goods to Australia during the investigation period.

The Commissioner considers that, based on the evidence before the Commissioner and having assessed other factors in the Australian market for prepared or preserved tomatoes in which the Australian industry competes, imports of dumped and/or subsidised goods from Italy have had an effect on SPC's economic condition; however, those imports have not caused material injury to the Australian industry.

The Commissioner is not satisfied that the injury to the Australian industry caused by goods exported to Australia from Italy is negligible, and therefore the requirements of sections 269TDA(13) and (14) have not been met.

#### **1.3.1 The goods, like goods and the Australian industry (chapters 3 and 4)**

The Commissioner finds that:

- locally produced goods are 'like' to the goods the subject of the application
- there is an Australian industry, comprised of SPC, Simplot Australia Pty Ltd (**Simplot**) and Safcol Australia Pty Ltd (**Safcol**) producing like goods
- the like goods are wholly manufactured in Australia.

The commission identified SPC as the largest producer of like goods in Australia and for this reason the commission considers that data submitted by SPC is a key indicator of the performance of the entire Australian industry.

#### **1.3.2 Australian market (chapter 5)**

The Australian industry and imports from Italy supply the vast majority of the Australian market for prepared or preserved tomatoes. A small volume of the market is supplied by imports from countries other than Italy.

Australian supermarkets are the primary customers for prepared or preserved tomatoes. The purchasing decisions of the supermarkets are shaped by considerations of price and supply reliability, as well as the preferences of consumers (i.e. supermarket customers).

Consumer preferences are driven by a combination of price, flavour preferences and origin.

The Australian market is then further segmented into:

- low, mid and premium product tiers
- proprietary and own brand or private label products

- Australian and Italian tomatoes.

Notwithstanding the range of prepared or preserved tomatoes, the commission considers like goods produced by the Australian industry and goods imported from Italy are substitutable, with identical end-uses.

### **1.3.3 Dumping investigation (chapter 6)**

The Commissioner is satisfied that, during the investigation period:

- De Clemente, IMCA, Mutti, residual and uncooperative exporters exported dumped goods to Australia
- the level of dumping in respect of those goods was not negligible
- the volume of those dumped goods exported to Australia from Italy was not negligible
- La Doria did not export dumped goods to Australia.

The commission calculated dumping margins in respect of the goods exported to Australia from Italy during the investigation period for each exporter, at the rates set out in the table below:

<b>Exporter</b>	<b>Dumping margin</b>
De Clemente	<b>5.5%</b>
IMCA S.p.A	<b>3.0%</b>
La Doria S.p.A	<b>Negative 8.8%</b>
Mutti S.p.A	<b>2.2%</b>
Residual exporters	<b>3.6%</b>
Uncooperative exporters	<b>11.1%</b>

**Table 1: Summary of dumping margins**

### **1.3.4 Subsidy investigation (chapter 7)**

The Commissioner is satisfied that, during the investigation period:

- countervailable subsidies were received in respect of the goods exported to Australia from Italy
- for De Clemente, IMCA, La Doria, Mutti and residual exporters, the level of subsidisation in respect of those goods was negligible
- for non-cooperative entities, the level of subsidisation in respect of those goods was not negligible
- the volume of those subsidised goods exported to Australia from Italy was not negligible.

The commission calculated subsidy margins in respect of the goods exported to Australia from Italy during the investigation period for each exporter, at the rates set out in the table below.

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Entity	Subsidy margin
De Clemente	0.8%
IMCA	0.8%
La Doria	0.3%
Mutti	0.1%
Residual exporters	0.5%
Non-cooperative entities	1.6%

Table 2: Summary of subsidy margins

### 1.3.5 Economic condition of the Australian industry (chapter 8)

The Commissioner assessed the economic condition of the Australian industry from 1 October 2020 (**injury period**) to analyse trends in the market for prepared or preserved tomatoes and to assess potential injury factors.

The commission found that SPC, who is the applicant and largest member of the Australian industry, has experienced injury during the investigation period in the form of:

- volume injury, by way of lost sales volume and lost market share
- price injury, by way of price suppression and price depression
- loss of profits and profitability
- lower revenue
- reduced return on investment (**ROI**)
- reduced capacity utilisation.

The commission did not have sufficient data to determine specific injury experienced by other Australian industry members. However, overall Australian industry sales volumes fell over the injury period, and were 13% lower in the year prior to the investigation period, and 20% lower in the investigation period, compared to the beginning of the injury period, indicating volume related injury for the entire Australian industry.

The commission also found that dumped and/or subsidised goods undercut Australian industry prices in every quarter of the investigation period, indicating that price related injury correlates with lower priced goods imported from Italy (chapter 8.7).

The commission considers the level of competition between Italian suppliers pushes down prices amongst themselves, in some instances lowering prices to the point where those prices are at dumped levels. If the prices of the goods exported by an exporter who is not dumping were lowered to compete with its Italian competitors, it would likely also result in those goods being at dumped prices.

This dynamic is further exacerbated by the procurement practices of major Australian supermarkets, which incentivise exporters to offer the lowest possible prices to secure supply contracts. The supermarkets conduct tender-based procurement processes that prioritise cost minimisation, placing pressure on exporters to undercut competitors, even at the risk of pricing below normal value.

The commission, therefore, considers that the lower (and therefore dumped) prices offered by Italian suppliers are less a result of competing against Australian industry

prices, but from competing with each other. This competition between Italian suppliers does however impact Australian industry.

### 1.3.6 Material injury from dumping and subsidisation (chapter 9)

The Commissioner is not satisfied dumping and subsidisation have been causing or are the cause of material injury to the Australian industry. The Commissioner has made this finding following an assessment of factors other than the dumped and subsidised goods, namely:

- the competitive advantage of Italian imports over Australian produced like goods, even after accounting for dumping and/or subsidisation
- an increase in raw material costs and higher production costs for the Australian industry
- an increase in domestic Australian competition
- a preference by some consumers for Italian products over Australian products, based on flavour preferences and origin.

Under sections 269TG, 269TJ and 269TJA, before imposing anti-dumping measures, the Minister must be satisfied that the dumped and subsidised goods have caused or are causing material injury to the Australian industry. The *Ministerial Direction on Material Injury 2012 (Material Injury Direction)* provides that dumped or subsidised goods need not be the sole cause of the injury, but the injury they cause must be material in degree.

While injury in the investigation period has coincided with the export of dumped and/or subsidised goods from Italy, the Commissioner is not satisfied that this dumping and/or subsidisation has caused material injury to the Australian industry. In coming to this position, the Commissioner noted that the dumping margins for the selected exporters ranged from negative 8.8% to 5.5% and subsidy margins were negligible for all exporters except non-cooperative entities. These imports significantly undercut Australian industry prices by between 13% and 24% (see chapter 8.7), even when the dumping and/or subsidisation is remedied (see chapter 9.9). These lower prices provide Italian goods with a competitive advantage over the Australian industry's like goods.

Based on observations by the commission during verification, the Commissioner considers that Italian producers benefit from economies of scale, processing 5.3 million tonnes of tomatoes in 2024 (although not all is used for producing the goods)<sup>4</sup>, compared to 438 thousand tonnes processed in Australia.<sup>5</sup> This allows Italian producers to spread fixed costs across a greater volume and variety of products. Italian producers can then produce prepared or preserved tomatoes at lower costs and sell the goods at a lower price compared to Australian producers, thereby providing them with a competitive advantage over the Australian industry.

Further, the Commissioner considers that customers purchase higher volumes of imported Italian goods over Australian produced like goods because of consumer preference for prepared or preserved tomatoes of Italian origin and flavour. Increased competition between Australian industry, particularly with the introduction of Simplot into the market, has also affected the economic condition of the Australian industry.

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<sup>4</sup> The Italian tomato processing industry: Ismea 2024 report, <https://tomatonews.com/the-italian-tomato-processing-industry-ismea-2024-report-part-1/>

<sup>5</sup> Confidential attachment 32 – ABARES tomato data.

Noting the submissions from the Delegation for the European Union (the **European Commission**)<sup>6</sup> and the Association of Italian Vegetable Processors (**ANICAV**) regarding termination of the investigation, the Commissioner has considered whether the requirements for terminating the investigation in relation to Italy generally have been met, in accordance with sections 269TDA(13) and 269TDA(14) i.e. where the Commissioner is satisfied that the injury caused by the exports are negligible.

The Commissioner is not satisfied that the injury to the Australian industry caused by goods exported to Australia from Italy is negligible. Therefore, the Commissioner cannot terminate the dumping and subsidy investigations in relation to Italy generally as the requirements to do so under sections 269TDA(13) and 269TDA(14) are not met.

#### **1.4 Termination of part of the investigation**

Based on the findings in TER 654, the Commissioner terminated:

- both the dumping and subsidy investigation in relation to La Doria, on the basis that there was no dumping by La Doria in the investigation period and the subsidisation received by La Doria in the investigation period was negligible, in accordance with sections 269TDA(1) and 269TDA(2)
- the subsidy investigation in relation to De Clemente, IMCA, Mutti and residual exporters<sup>7</sup>, on the basis that the level of subsidisation received by these exporters was negligible, in accordance with section 269TDA(2).

TER 654 and the related termination notice, ADN 2026/019 are on the public record.

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<sup>6</sup> The Delegation for the European Union coordinated responses on behalf of the European Commission's Directorate-General for Agriculture and Rural Development and Directorate-General for Trade.

<sup>7</sup> See chapter 2.4.3 and chapter 6.8.



## 2 BACKGROUND

### 2.1 Legislative framework

#### 2.1.1 Legislative test

Division 2 of Part XVB sets out, among other things, the procedures to be followed and matters to be considered by the Commissioner in conducting investigations in relation to goods covered by applications for the publication of dumping and countervailing duty notices, for the purpose of making a report to the Minister.

Under section 269TEA(1), in the report to the Minister, the Commissioner must recommend whether the Minister ought to be satisfied as to the grounds for publishing a dumping duty notice and/or countervailing duty notice under sections 269TG, 269TJ or 269TJA.<sup>8</sup>

Under sections 269TG, 269TJ and 269TJA, in order to publish a dumping duty and/or countervailing duty notice, the Minister must be satisfied that, because of dumping and/or subsidisation, the Australian industry has experienced material injury.

Under section 269TL, where the Minister receives a recommendation from the Commissioner, and after having regard to that recommendation (which may include a recommendation not to impose measures), the Minister decides not to impose measures<sup>9</sup>, the Minister must give public notice to that effect.

Section 269TDA sets out certain circumstances in which the Commissioner must terminate an investigation. Relevantly, the Commissioner must terminate if satisfied that dumping margins or countervailable subsidies of an exporter are negligible (sections 269TDA(1) and (2)). If the Commissioner is satisfied that the injury, if any, to an Australian industry, that has been, or may be, caused by goods exported to Australia from a particular country of export, is negligible, then the Commissioner must terminate the investigation in relation to that country:

- in relation to an application for a dumping duty notice, pursuant to section 269TDA(13)
- in relation to an application for a countervailing duty notice, pursuant to section 269TDA(14).

#### *Material injury and negligible injury*

The Act does not define material injury or negligible injury. However, the Material Injury Direction provides guidance to the Commissioner on material injury.

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<sup>8</sup> Section 269TJA relates to concurrent dumping and countervailable subsidisation. The provision provides that, where goods are both dumped and subsidised, and because of the combined effects of the dumping and the amount of countervailable subsidy received in respect of the goods, material injury to an Australian industry producing like goods has been or is being caused, the Minister may publish a notice under either sections 269TG(1), 269TG(2), 269TJ(1) or 269TJ(2) or notices under such sections at the same time. Section 269TJA is relevant in the investigation due to the combined dumping and subsidisation in relation to goods exported to Australia from Italy by certain exporters.

<sup>9</sup> By declaring the goods to be goods to which section 8, 9, 10 or 11, as the case requires, of the *Customs Tariff (Anti-Dumping) Act 1975* applies.



The Material Injury Direction provides that dumped or subsidised goods need not be the sole cause of the injury, but the injury they cause must be material in degree. It also includes the following key points:

- material injury is injury which is not immaterial, insubstantial or insignificant
- the injury must be greater than that likely to occur in the normal ebb and flow of business
- identifying material injury will depend on the circumstances of each case
- injury caused by other factors must not be attributed to dumping or subsidisation, however dumping or subsidisation need not be the sole cause of injury to the industry
- it is important to consider regional dumping, the greater impact of injury during periods of economic downturn and reduced rates of growth as an element of injury.

The Act and the Material Injury Direction do not define negligible injury. The Commissioner considered negligible injury to be injury that exists, but at a level which is otherwise insignificant.

### **2.1.2 Statement of essential facts**

Section 269TDAA(1) requires the Commissioner to publish a statement of the facts on which they propose to base their recommendations to the Minister in relation to the application. This is referred to as the SEF.

Section 269TDAA(2) requires the Commissioner, in formulating the SEF, to have regard to the application and any submissions received within 37 days of the initiation of the investigation. Under section 269TDAA(3), the Commissioner is not obliged to have regard to a submission received by the Commissioner after the 37 days if to do so would, in the Commissioner's opinion, prevent the timely placement of SEF 654 on the Electronic Public Record (**EPR**).<sup>10</sup>

The Commissioner may also have regard to any other matters they consider relevant.

The Commissioner was originally due to publish SEF 654 on the EPR by 3 February 2025. The Commissioner extended this date to 12 November 2025, which is when the Commissioner published SEF 654.<sup>11</sup>

### **2.1.3 Final report**

Section 269TEA(1) requires the Commissioner, after conducting an investigation in respect of the application, to give the Minister a report which recommends (among other things) whether a dumping duty notice, or countervailing duty notice (as relevant), should be published and the extent of any duties that are, or should be, payable because of that notice.

Section 269TEA(3) requires the Commissioner, in deciding on the recommendations to be made to the Minister in the report, to have regard to:

- the application

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<sup>10</sup> The EPR contains non-confidential submissions by interested parties, the non-confidential versions of the commission's visit reports and other publicly available documents. It is available online at [www.adcommission.gov.au](http://www.adcommission.gov.au).

<sup>11</sup> EPR 654, Items 16, 29 and 35

- any submissions to which the Commissioner had regard to in formulating SEF 654
- SEF 654
- any submission made in response to SEF 654 received within 20 days of the publication of SEF 654
- any other matters the Commissioner considers relevant.

Under section 269TEA(4), the Commissioner is not obliged to have regard to a submission received by the Commissioner after the 20 days if to do so would, in the Commissioner's opinion, prevent the timely placement of the report to the Minister.

The Commissioner's report to the Minister was originally due on, or before 19 March 2025. The Commissioner extended this date to 28 January 2026. The Commission provided this report to the Minister on 27 January 2026.<sup>12</sup>

## **2.2 Application and Initiation**

On 4 September 2024, SPC lodged an application with the Commissioner under section 269TB(1) alleging that the Australian industry for the goods has experienced material injury caused by the goods being exported to Australia from Italy at dumped and subsidised prices. A non-confidential version of the application is available on the EPR.<sup>13</sup>

Having considered the application, the Commissioner decided not to reject the application and initiated the investigation on 15 October 2024.

Anti-Dumping Notice (**ADN**) 2024/065 (**initiation notice**) and *Consideration Report 654 (CON 654)* provide further details on Commissioner's consideration of the application and the initiation of the investigation.<sup>14</sup>

## **2.3 Previous cases**

On 16 April 2014, the then Parliamentary Secretary to the then Minister for Industry imposed anti-dumping measures in the form of a dumping duty notice on prepared or preserved tomatoes following consideration of *Investigation 217 (INV 217)*.

Since INV 217, the commission conducted several other cases relating to prepared or preserved tomatoes, most recently *Continuation 488 (CON 488)* and *Review 508 (REV 508)*, completed in April and October 2019 respectively. CON 488 and REV 508 ended the measures then applying to prepared or preserved tomatoes. Since then, there have been no measures in place relating to tomatoes.

Table 3 below summarises previous major cases on prepared or preserved tomatoes.

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<sup>12</sup> Ibid.

<sup>13</sup> EPR 654, Item 2, Application

<sup>14</sup> EPR 654, Items 1 and 3, ADN 2024/065 and *Consideration Report 654*

## PUBLIC RECORD

Case	ADN	Date	Outcome
INV 217	2014/32	16 April 2014	Measures imposed on all but 2 Italian exporters
Exemptions (various) <sup>15</sup>	2015/100	14 August 2015	No exemptions granted
Investigation 276 (INV 276)	2016/13	10 February 2016	Measures imposed on remaining Italian exporters
Reinvestigation 360 <sup>16</sup>	Section 269ZZM(4) Notice <sup>17</sup>	31 March 2017	Overturned INV 276. Measures removed for one exporter and revised for the other
Review 349	2017/47	4 May 2017	Margins revised for several exporters
Review 354	2017/46	4 May 2017	Margin revised for one exporter
Reinvestigation Re: Reviews 349 and 354 <sup>18</sup>	Section 269ZZM(4) Notice <sup>19</sup>	9 February 2018	Overturned some of the findings from Reviews 349 and 354. Margins revised for 2 exporters
CON 488	2019/31	9 April 2019	Measures allowed to expire on all exporters except one <sup>20</sup>
Review 508	2019/110	2 October 2019	Measures revoked on remaining exporter subject to measures

**Table 3: Summary of major tomato cases**

There have been no previous cases of alleged subsidisation of prepared or preserved tomatoes exported from Italy to Australia.

## 2.4 Conduct of the investigation

### 2.4.1 Investigation period and injury period

As specified in the initiation notice, the Commissioner set an investigation period of 1 October 2023 to 30 September 2024.

The Commissioner also set an injury period from 1 October 2020 to assess the economic condition of the Australia industry and assess potential injury factors.

### 2.4.2 Australian industry

The commissioner used information provided by SPC in its application to assess the Australian industry for like goods. It collected and verified further information from SPC

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<sup>15</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>16</sup> See also Anti-Dumping Review Panel (ADRP) Report No 35.

<sup>17</sup> Available [here](#).

<sup>18</sup> See also ADRP Report No 56.

<sup>19</sup> Available [here](#).

<sup>20</sup> All existing measures at the time related to INV 217, except for one exporter, which related to INV 276.

during the investigation as well as information relating to Australian industry members Simplot and Safcol.

Chapter 4.3 discusses further the composition of the Australian industry.

### **2.4.3 Exporters**

#### Preliminary Information Request

In the initiation notice, the Commissioner invited Italian exporters of the goods to Australia to participate in the investigation by completing a Preliminary Information Request (**PIR**). The initiation notice stated that if an exporter:

- submits a completed PIR, the commission may select it for further examination, including inviting it to complete an exporter questionnaire and have its information verified
- 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.

The commission received completed PIRs from the following entities:

- Attianese S.p.A
- Bioagriworld S.r.l Uninominale
- Calispa S.p.A (**Calispa**)
- Compagnia Mercantile D'Oltremare S.r.l.
- Conditalia S.p.A
- Conserve Italia Soc.Coop.Agricola
- Conserve Manfuso S.r.l
- Davia S.p.A
- De Clemente Conserve S.p.A
- Di Leo Nobile S.p.A
- Feger Di Gerardo Ferraioli S.p.A
- Felice Conserve S.r.l
- Giaguaro S.p.A
- IMCA S.p.A
- Italia Meal S.r.l.
- La Doria S.p.A
- Le Specialità Italiane S.r.l
- Mutti S.p.A
- Pancrazio S.p.A
- Perano Enrico & Figli S.p.A
- Princes Limited
- Princes Italia S.p.A<sup>21</sup>
- Rispoli Luigi & C. S.r.l
- Rodolfi Mansueto S.p.A
- Salvati Mario & C. S.p.A

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<sup>21</sup> ADN 2024/089 sets out the Commissioner's application of the sampling provisions of section 269TACAA to the investigation. It includes a list of entities who provided a PIR. Princes Italia S.p.A was not originally included on the list. It is now included following clarification of the Princes Group company structure.

- Solana S.p.A.

#### Selected exporters

On 15 November 2024, the commission published ADN 2024/089 (**sampling report**).<sup>22</sup> The sampling report stated that due to the large number of entities who provided a PIR response, the Commissioner considered it not practicable to examine the exports of all exporters who provided a PIR. Accordingly, the commission would carry out the investigation based on information obtained from an examination of a selected number of exporters who are responsible for the largest volume of exports to Australia that can reasonably be examined.

The Commissioner stated in the sampling report that they intended to select the following exporters for examination (**selected exporter**):

- De Clemente
- La Doria
- IMCA
- Mutti.

According to the ABF database, the selected exporters appear to represent almost 70% of the volume of the goods (measured by statistical quantity reported in kilograms) exported to Australia from Italy during the investigation period.

Following the publication of the sampling report, the commission sent a 'selected exporter questionnaire' to each selected exporter.

The sampling report stated that if an exporter, other than a selected exporter, wishes to complete an exporter questionnaire, the exporter questionnaire is available on the commission's website. If information is submitted by an exporter that is not named as a selected exporter, the investigation must extend to that exporter unless to do so would prevent the timely completion of the investigation. No response to the exporter questionnaire (**REQ**) was received from a non-selected exporter by the due date of 6 January 2025.

Each selected exporter provided the commission with an REQ, as listed in Table 4. Each selected exporter requested, and was granted, an extension to submit their REQ. Non-confidential versions of the REQs are available on the commission's website.

Exporter	REQ EPR reference	Date REQ received
De Clemente	23	14 March 2025
IMCA	21	3 March 2025
La Doria	22	11 March 2025
Mutti	20	3 March 2025

**Table 4: Responses to selected exporter questionnaire<sup>23</sup>**

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<sup>22</sup> EPR 654, Item 9, Sampling Report

<sup>23</sup> The commission granted each selected exporter an extension to submit a response to the exporter questionnaire.

## PUBLIC RECORD

The commission conducted verification visits to the premises of De Clemente, IMCA and Mutti in Italy in May and June 2025. The resulting verification reports are available on the EPR.<sup>24</sup>

The commission verified the information in La Doria's REQ by comparing it to other relevant information, including the verified information provided by the other selected exporters. The resulting file note is available on the EPR.<sup>25</sup>

### Residual exporters

The sampling report stated that the Commissioner will regard those exporters of the goods from Italy who completed the PIR, other than the selected exporters, as 'residual exporters' for the purposes of the investigation if their exports are not examined as part of the investigation and they are not an uncooperative exporter or non-cooperative entity in relation to the investigation.

The sampling report further stated that in assessing the variable factors for residual exporters, the commission will not calculate:

- export prices that are less than the weighted average of export prices for cooperative exporters and
- normal values that exceed the weighted average of normal values for cooperative exporters.

The commission will determine subsidy margins for the residual exporters having regard to countervailable subsidies received by the selected exporters.

### Uncooperative exporters and non-cooperative entities

Where an exporter or entity did not give the Commissioner information the Commissioner considered to be relevant to the investigation within a period the Commissioner considered to be reasonable, or the Commissioner is satisfied that the exporter or entity significantly impeded the case:

- section 269T(1) provides that, in relation to a dumping duty notice, such an exporter is an 'uncooperative exporter'
- section 269TAACA(1) provides that, in determining whether a countervailable subsidy has been received in respect of particular goods, the Commissioner may act on the basis of all the facts available and may make such assumptions as they find reasonable. Such an entity is a 'non-cooperative entity.'

The *Customs (Extensions of Time and Non-cooperation) Direction 2015* (**the Customs Direction**) states respectively at sections 8 and 9 that the Commissioner must determine an exporter to be an uncooperative exporter, or an entity to be a non-cooperative entity, on the basis that no relevant information was provided in a reasonable period, if that exporter or entity:

- fails to provide a response or
- fails to request a longer period to provide a response within the legislated period.

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<sup>24</sup> EPR 654, Items 31, 33 and 34.

<sup>25</sup> EPR 654, Item 36.

#### 2.4.4 Foreign governments

##### Consultation and submissions

The commission invited the Government of Italy (**GOI**) and European Commission for consultation during the Commissioner's consideration of the application, prior to the initiation of the investigation. Both advised the commission that they wished to participate in pre-initiation consultations.

The commission met with representatives from the GOI and the European Commission on 17 September 2024. The GOI and the European Commission provided written submissions on the issues raised during consultation on 19 September 2024.

Following initiation of the investigation, the commission again met with representatives from the GOI and the European Commission on 31 October 2024. Both parties provided written submissions in the week following the meeting.

The European Commission made a further submission to the investigation on 21 November 2024.

Each submission from the GOI and the European Commission is available on the EPR. Chapter 2.5 discusses the submissions in further detail.

##### Government questionnaire

On 15 October 2024, the commission sent questionnaires to the GOI and the European Commission asking for information about any subsidies that might have been received in respect of the goods exported to Australia from Italy in the investigation period.

The GOI and the European Commission both provided a response to the questionnaire (**RGQ**) which the Commissioner has considered in making the findings in SEF 654 and this report. Each RGQ is available on the EPR.<sup>26</sup>

The commission met with representatives of the GOI and European Commission in Rome, Italy in May 2025. The resulting visit report is available on the EPR.<sup>27</sup>

#### 2.4.5 Importers

The commission identified the 10 largest importers of prepared or preserved tomatoes from Italy, as reported in the ABF import database. These importers collectively accounted for almost 100% of import volumes of the goods from Italy in the investigation period. The commission contacted and invited these importers to participate in the investigation by providing a response to the importer questionnaire (**RIQ**).

The commission also placed a copy of the importer questionnaire on its website for completion by other importers whom the commission did not contact directly.

The commission received completed RIQs from the following companies:

- ALDI Stores (A Limited Partnership) (**ALDI**)
- Grocery Holdings Pty Ltd and Coles Supermarkets Australia Pty Ltd (collectively, **Coles**)

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<sup>26</sup> EPR 654, Items 18 and 19.

<sup>27</sup> EPR 654, Item 30, GOI visit report



## PUBLIC RECORD

- Woolworths Group Limited (**Woolworths**).

Several importers also provided partial responses to the questionnaire.

The commission conducted onsite verifications of the data provided by Coles and Woolworths. A copy of each importer verification report is available on the EPR.<sup>28</sup>

### 2.5 Submissions by interested parties

The commission received 19 submissions during the course of the investigation which the Commissioner considered in preparing this report, including 7 received in response to SEF 654.

Table 5 lists all public submissions received during the investigation, along with reference to where this report discusses each submission. The non-confidential versions of each submission are available on the EPR.

EPR no.	Date published	Interested party	Issues raised <sup>29</sup>	Reference
4	25 October 2024	European Commission	Initiation evidence	2.5.1
6	6 November 2024		Common Agriculture Policy	2.5.1 Appendix A3 Appendix A5.1 Appendix A5.2
10	21 November 2024		Injury and causal link	2.5.1 Chapters 8 and 9
			Termination	2.5.1 9.10.2
			Confidential information	2.5.1
5	25 October 2024	GOI	Number of subsidy programs	2.5.3
7	6 November 2024		Subsidy programs from other investigations	2.5.3
			Italian exports	2.5.3 Chapter 5 Chapters 8 and 9
11	25 November 2024	La Doria	MCC <sup>30</sup> structure	2.5.4

<sup>28</sup> EPR 654, Items 18 and 19.

<sup>29</sup> Where multiple submissions have been received from an interested party, the issues listed in this column may reflect concerns raised across more than one submission and do not necessarily correspond to the date shown in the 'Date published' column.

<sup>30</sup> Model control code



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12	25 November 2024	Mutti	MCC structure	
13	2 December 2024	IMCA	MCC structure	
15	11 December 2024	ANICAV	Lack of evidence in the application and CON 654 of dumping, subsidisation, injury, causation and termination	2.5.5 9.10.2
24	4 April 2025	SPC	Exporter questionnaires responses	2.5.6
27	12 May 2025	La Doria	Response to SPC submission of 4 April 2025	2.5.8
N/A <sup>31</sup>	12 August 2025	IMCA	Profit calculation	2.5.10 6.5.2
38	3 December 2025	Calispa	Domestic competition	2.5.13 9.8.3
			Consumer preferences	2.5.13 9.8.4
39	3 December 2025	SPC	Material Injury Direction	2.5.8
			Precedent and Commission practice	2.5.8
			SEF 654 establishes substantial injury from dumping	2.5.8 9.9
			Factors other than dumping causing injury	2.5.8 9.8
			Undercutting margins and remedied price analysis	2.5.8 9.8.4
40	3 December 2025	ANICAV	Undercutting analysis	2.5.6 9.9.2 8.7
			Causal link analysis and termination of the investigation	2.5.6 9.8 9.10.2
			Form of measures	2.5.6

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<sup>31</sup> IMCA made its submission in an email in response to a review of its exporter verification report. The commission decided to publish the submission directly in SEF 654.

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41	3 December 2025	Mutti	Profit calculation	2.5.12 6.7.2 6.7.3
			Form of measures	2.5.6 2.5.12
42	3 December 2025	European Commission	Initiation evidence	2.5.2
			Confidential information	2.5.2
			Australian industry	2.5.2 4.3
			No dumping and negligible subsidisation	2.5.2
			Common Agriculture Policy	2.5.2
			Material injury	2.5.2
			Causal link analysis	2.5.2
			Repeated applications	2.5.2
43	3 December 2025	IMCA	Form of measures	2.5.11
44	3 December 2025	De Clemente	Cost allocations	2.5.14
			Surrogate models	6.4.1
			Economies of scale	2.5.2 2.5.2

**Table 5: Submissions received**

The Commissioner has had regard to these submissions in making the findings outlined in this report.

### 2.5.1 Pre-SEF 654 submissions by the European Commission

The European Commission made multiple submissions prior to SEF 654:

- on 19 September 2025, following consultation with the commission on 17 September 2024 prior to initiation of the investigation
- on 4 November 2024, following a second consultation with the commission on 31 October 2024
- on 21 November 2024.

Across the submissions, the European Commission made the following key comments:

- there is weak evidence for the initiation of a subsidy investigation
- the European Union (EU) Common Agricultural Policy (CAP) has undergone major reforms
- it is difficult to identify the causal link between Italian imports of the goods and injury experienced by Australian industry
- the non-confidential version of the application does not allow for a reasonable understanding of its substance.

The European Commission also raised concerns with the government questionnaire.

Government questionnaire

On the initiation of the investigation, the commission sent the European Commission a questionnaire regarding subsidy programs alleged in the application and further identified by the commission during the consideration of the application. In its submission of 4 November 2024, following consultations with the commission, the European Commission raised concerns with the number of programs listed and asked the commission to limit the investigation to only those programs where there is evidence on their existence and are relevant to the investigation.

The European Commission also requested that the commission undertake the investigation on a sample of Italian exporters, avoiding the burden of having 99 companies providing information.

*Commission assessment*

On 15 November 2024, the commission advised the European Commission (and the GOI) that it had selected exporters for examination. This is discussed in chapter 2.4.3. The commission also informed the European Commission that certain questions within the questionnaire only need to be answered with respect to the selected exporters, and if there is information confirming that a program is no longer in force, the European Commission should provide that information and it would not then need to complete remaining questions in respect of that program.

Evidence to initiate a subsidy investigation

The European Commission criticised the use of data from previous investigations into prepared or preserved tomatoes by the commission from 2013 and 2015. Evidence from this time is outdated and since then, the CAP has undergone major reform (discussed further below).

The European Commission submitted that the commission must demonstrate any subsidy payments to farmers have been passed through to processors of canned tomatoes, and that the price paid by the processors are below market costs due to these subsidies. The European Commission notes that European tomato prices are some of the highest in the world, indicating that any subsidy payments are not reflected in their price.

The European Commission also questions the reliance of subsidy programs identified from investigations by the United States into pasta products.

The European Commission referred to initiation requirements in the WTO (**World Trade Organization**) Anti-Dumping Agreement and the WTO Subsidies and Countervailing Measures Agreement (**SCM**) and claims that the commission has disregarded many of the requirements.

*Commission assessment*

The commission is satisfied the requirements for initiation of the investigation were met, as set out in CON 654 and ADN 2024/065.

The commission has discussed pass-through as part of its subsidy assessment in Appendix A5.2.

## PUBLIC RECORD

The commission disagrees with the European Commission's comments relating to reference to subsidy programs identified in the United States pasta investigation. Subsidy programs can be countervailable if limited to certain enterprises within designated geographical regions or contingent on export performance or use of domestic goods. That such a program is identified in respect of a different good to that being investigated does not result in that program being irrelevant to the investigation. Nonetheless, the commission has assessed each alleged subsidy program on the evidence relevant to the investigation; that a program was identified as countervailable in another investigation by the commission (or by another investigation authority in a different jurisdiction) does not predetermine any findings by the commission in a different investigation.

### Common Agricultural Policy

The European Commission submitted that payments under the CAP are not countervailable.

The European Commission referred to previous commission findings in INV 217 and INV 276 where the commission concluded that CAP payments did not result in distorted market conditions.

The European Commission set out a summary of the reforms to the CAP starting in 2003, including the introduction of decoupled payments and the use of 'green box' instruments. The current version of the CAP, covering 2023 to 2027, came into force at the beginning of 2023. Under the new policy, each EU Member State puts in place a national CAP Strategic Plan, that provides funding for income support, rural development, and sectoral interventions.

The European Commission provided an overview of:

- the Basic Income Support for Sustainability (**BISS**), which is a decoupled annual payment based on hectareage not based on production
- eco-schemes, which are linked to environment and climate activity and are also not based on production
- Voluntary Coupled Support (**VCS**), which applied under the 2014-2022 CAP, which provided coupled payments to specific agricultural sectors.

The European Commission referred to WTO case DS 577 on olives from Spain, and stated that in that case, the United States erroneously concluded that the BPS subsidies were specific and targeted to olives producers, and that the United States also failed to demonstrate that CAP subsidies were passed through to producers.

The European Commission also referred to findings by Canada, stating that Canada acknowledged in a review of Anti-Dumping and Countervailing duties on refined sugar that decoupled payments under the BPS and BISS schemes are not specific.

### *Commission assessment*

The commission's examination of subsidy payments under the CAP, including coupled and uncoupled payments, is set out in Appendix A3, Appendix A5.1 and Appendix A5.2. The commission has also considered the European Commission's comments on the use of 'green box' instruments in Appendix A3.1.

*Injury and causal link*

The European Commission noted exports of the goods from Italy to Australia decreased in 2022 in line with a decrease in demand. It submits that SPC's sales remained stable or increased, other than in the investigation period, which was caused by factors other than Italian imports. It submits the following factors are relevant:

- Increased costs
- capacity and capacity utilisation versus demand and production
- climate change affecting crop yields, including flooding in the Goulburn Valley in October 2023
- competition from other domestic producers.

The unit value of exports from Italy to Australia has increased, reflecting increases in fresh tomato costs. SPC prices have also increased, but at a slower rate. The European Commission also questioned the commission's findings on price injury in CON 654.

The European Commission submitted that SPC was operating at a loss in 2021, and that since 2021, Italian imports decreased by 22%, while losses increased. At the same time, the Australian market for the goods has decreased around 23% between 2021 and 2024, with both SPC and Italian import volumes falling. The European Commission claims this undermines SPC's claim in its submission that the impact on SPC's profitability is due to Italian imports.

*Commission assessment*

The commission's assessment of injury and causation, which considers the issues raised by the European Commission, is in chapters 8 and 9.

*Termination*

The European Commission concluded its submission of 21 November 2024 by stating that the claim of material injury caused by imports from Italy is 'unfounded' and it urged Australia to terminate the investigation.

*Commission assessment*

The Commissioner terminated both the dumping and subsidy investigation in relation to La Doria, and the subsidy investigation in relation to De Clemente, IMCA, Mutti and the residual exporters. See TER 654 which is available on the EPR.

*Treatment of confidential information*

The European Commission criticised the level of disclosure in the non-confidential version of SPC's application, submitting that critical information was redacted or missing, thereby not allowing a reasonable understanding of the substance of the application. Interested parties cannot therefore exercise their right of defence.

The application covers the period April 2023 to March 2024, whereas the investigation period is October 2023 to September 2024. The European Commission submits that data for the period March 2024 to September 2024 should be presented. It also notes that the commission stated it would request data only to June 2024.

The European Commission requested that the necessary data be made available on the public record as soon as possible.

*Commission assessment*

The commission considers that the non-confidential version of SPC's application provided summaries of redacted information containing enough detail to allow a sufficient understanding of the information.

In addition, the commission published a verification report for SPC on the EPR on 16 April 2025. This report provided indexed data on SPC's economic performance for the investigation period. The commission did not receive any submissions in relation to this updated data.

**2.5.2 Post-SEF 654 submission by the European Commission**

In its submission in response to SEF 654, the European Commission reiterated its concerns from its earlier submissions regarding the weakness of the evidence to initiate the investigation and noted several deficiencies in SEF 654, including shortcomings in the causation analysis and non-disclosure of certain information.

*Evidence to initiate a subsidy investigation*

The commission notes the European Commission's comments regarding the initiation of the investigation, which reiterate its pre-SEF 654 submissions. The commission refers to chapter 2.5.1 where it responded to those submissions regarding initiation. In response to the European Commission's call for the investigation to now be terminated, the commission notes it has terminated the subsidy investigation (see TER 654) and the Commissioner does not recommend the Minister impose anti-dumping measures.

*Treatment of confidential information*

The European Commission criticised the level of disclosure in SEF 654. It claims that the level of disclosure is deficient in respect of:

- the commission's analysis of Australian industry production volumes
- dumping margin calculations for the selected exporters
- the commission's assessment of injury.

The European Commission claims that the commission has violated various WTO rules undermining the rights of defence of interested parties and calls for publication of this information.

*Commission assessment*

The commission disagrees with the European Commission on the level of disclosure of information in its reports. The Act provides for the non-disclosure of confidential information. Accordingly, where certain information is confidential, the commission has provided a summary of such information in sufficient detail for interested parties to have a reasonable understanding of the substance of the information.

*Australian industry*

The European Commission states that the commission's reliance on SPC as the primary indicator of the economic condition of the Australian industry raises significant methodological concerns, particularly as '...the ADC acknowledges that it lacks complete

industry-wide information on costs, profitability, capacity utilisation, and other core economic indicators for Simplot and Safcol.’<sup>32</sup>

The European Commission says that the non-participation by Simplot and partial participation of Safcol raises substantial transparency and verification issues. The lack of a non-confidential version of the data, despite SEF 654 relying on the Simplot and Safcol data, raises a material risk of distortion in the injury assessment.

#### *Commission assessment*

The European Commission’s submission appears to rely on an assumption that SPC represents only 25% of the Australian industry. The commission acknowledges that SEF 654 lacks some detail on the relative production volumes of Australian industry members, with only Figure 26 on page 104 of SEF 654 providing such an indication. This REP 654 includes greater detail in chapter 4.3 of the proportion of Australian sales made up by each Australian industry member. In each year of the injury period, SPC’s sales make up more than 80% of like goods sold by Australian industry. Accordingly, the commission considers it reasonable to focus on the economic condition of SPC in making findings that are relevant to the whole of the Australian industry.

#### *No dumping and negligible subsidisation*

The European Commission states that SEF 654 show ‘...that the examined Italian exporters did not engage in dumping and that any countervailable subsidies were below negligible levels.’ It then goes on to state ‘*Although dumping margins in the range of 2.3-5.5% exceed the 2% de minimis threshold under Article 5.8 of the WTO ADA and therefore cannot be formally treated as negligible, such margins remain modest in absolute terms. A margin only marginally above the de minimis level, such as 2.3%, may simply reflect ordinary commercial price variation rather than a persistent pattern of injurious dumping*’ and that where margins are small, any finding of injury must be supported by clear evidence.’<sup>33</sup>

#### *Commission assessment*

The Commissioner is not satisfied that dumping and/or subsidisation has caused material injury to the Australian industry. The Commissioner has terminated the subsidy investigation (see TER 654) and recommends that the Minister not impose anti-dumping measures on goods exported from Italy.

#### *Common Agriculture Policy*

The European Commission acknowledged the Commissioner’s finding that the subsidy programs under the CAP examined in the investigation were not countervailable.

#### *Material injury*

The European Commission questioned whether the increase in Italian imports was due to dumped imports. It states that ‘*The ADC states only that it has examined the volume of imports from Italy that are not dumped, and that these non-dumped imports account for 9% of the Australian market. In the absence of further detail on the composition of total*

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<sup>32</sup> EPR 654, Item 42, European Commission submission to SEF 654, p3.

<sup>33</sup> Ibid, pp4-5



*Italian import volumes, it remains unclear how much of the observed increase could be attributed to dumped imports.'*<sup>34</sup>

The European Commission refers to findings in SEF 654 that:

- the increase in Italian import volumes was driven predominantly by consumer preferences
- SPC's competitive position deteriorated due to higher raw material and production costs
- SPC's sales volumes declined because of domestic competition.

The European Commission concludes that the evidence does not support a finding that allegedly dumped imports from Italy caused material injury.

#### *Commission assessment*

SEF 654 and this report examine the composition of Italian imports, in particular chapter 9.3 (91% of imports were dumped, with 64% dumped by De Clemente, IMCA and Mutti) and chapter 9.5 (70% of the Australian market is made up of dumped goods from Italy). Figure 24 shows that between September 2023 and September 2024, the proportion of dumped goods increased, to the detriment of both Australian industry and undumped Italian imports.

Nonetheless, the Commissioner agrees with the European Commission's view, and is not satisfied that dumping and/or subsidisation has caused material injury to the Australian industry.

#### Causal link analysis

The European Commission refers to the Commissioner's preliminary findings in SEF 654 that factors other than dumping and/or subsidisation are the cause of injury to the Australian industry. This report discusses these other causes of injury to Australian industry in chapter 9.8.

#### Repeated applications

The European Commission refers to past applications by SPC for anti-dumping measures on the goods exported from Italy.

This includes a comment that '*The insistence on a methodology that departed from recognised anti-dumping principles further illustrates a determination by SPC and the ADC to secure duties irrespective of the factual or legal evidence.*'<sup>35</sup>

#### *Commission assessment*

The commission disagrees with the European Commission's submission that the commission seeks to secure duties irrespective of the evidence.

### **2.5.3 Pre-SEF 654 submissions by the Government of Italy**

The GOI made 2 submissions to the commission prior to SEF 654:

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<sup>34</sup> Ibid, p6

<sup>35</sup> Ibid, p10



## PUBLIC RECORD

- on 19 September 2025, following consultation with the commission on 17 September 2024 prior to initiation of the investigation
- on 6 November 2024, following a second consultation with the commission on 31 October 2024.

The GOI made the following key comments:

- concerns with the number of subsidy programs identified for investigation
- the reliance of subsidy programs identified from other investigations
- there has been a reduction of 11% in Italian export volume of the goods to Australia between 2022 and 2023, accompanied by a 12% increase in value.

### Number of identified subsidy programs

Similar to the European Commission's concerns in respect of the questionnaire, discussed in chapter 2.5.1, the GOI raised concerns with the level of information required in respect of the subsidy programs identified by the commission in CON 654 and the GOI questionnaire. The GOI requested the commission reduce the scope of the information sought.

### *Commission assessment*

See the commission assessment in chapter 2.5.1, under 'Government questionnaire'.

### Reliance of subsidy programs identified from other investigations

The GOI submitted that a substantial part of the investigation appears to be based on programs that have been found countervailable in different legal systems and relate to distinct sectors and products, including the United States investigation into pasta products.

### *Commission assessment*

As stated in response to the European Commission's similar concerns (see 'Evidence to initiate a subsidy investigation' in chapter 2.5.1), the commission has assessed each alleged subsidy program on the evidence relevant to the investigation. The identification of a possible countervailable subsidy by reference to investigations into other goods in other jurisdictions does not predetermine any findings by the commission, which are conducted in accordance with its own rules and procedures.

### Italian exports

The GOI observed that there has been a reduction of 11% in Italian export volume of the goods to Australia between 2022 and 2023, accompanied by a 12% increase in value.

### *Commission assessment*

The commission has examined imports of the goods and market trends, in both volume and price, as part of its examination of the Australian market and in its analysis of injury and causation.

Chapter 5 discusses the Australian market in more detail. Chapters 8 and 9 discuss the commission's injury and causation analysis.

#### **2.5.4 Pre-SEF 654 submissions on the MCC structure**

The initiation notice advised that proposals to modify the MCC structure should be raised with the commission as soon as practicable. The commission received 3 submissions on the MCC structure from La Doria, Mutti and IMCA.<sup>36</sup>

The commission has addressed these submissions in chapter 3.5.1.

#### **2.5.5 Pre-SEF 654 submission by ANICAV**

The commission received a submission from ANICAV dated 6 December 2024. ANICAV states it represents a majority of Italian tomato processors.

ANICAV submits that SPC's application and CON 654 do not 'contain evidence relating to dumping, injury, and the causal link between the 2, but rather a mere assertion.' ANICAV further submits 'the analysis of injury is insufficient, and no causality analysis is provided to indicate a link between the allegedly dumped or subsidized imports and the injury suffered by SPC.'

ANICAV notes that Australian imports of canned tomatoes from Italy and other countries decreased over the period 2021 to 2024, and export prices of preserved tomatoes from Italy have increased as a result of increasing raw material and energy costs in Italy.

ANICAV says it's 'difficult to understand how the prices of preserved tomatoes from Italy have depressed the prices of SPC, causing material injury due to imports from Italy.'

It also notes that 'the investigation does not identify any specific subsidy as required under Article 2 of the WTO ASCM.'

ANICAV concludes its submission that it does not believe the Australian industry is suffering material injury from imports from Italy and requests submits that the commission terminate the investigation.

#### *Commission assessment*

In respect of ANICAV's comments regarding CON 654 and the application, CON 654 sets out the Commissioner's consideration of whether the legislative requirements for initiation of a dumping and subsidy investigation were met. This included consideration of whether there were reasonable grounds:

- to support a claim of dumping of the goods exported from Italy at a dumping margin and volumes that are not negligible (see CON 654, chapter 3)
- to support a claim of subsidisation of the goods exported from Italy at a dumping margin and volumes that are not negligible (see CON 654, chapter 4)
- that Australian industry has experienced injury during the investigation period (see CON 654, chapter 5)
- that the Australian industry has suffered injury caused by dumping and/or subsidisation, and that the injury is material (see CON 654, chapter 6).

CON 654 states, after considering the evidence contained in SPC's application, together with other relevant information from the commission's research, the Commissioner was satisfied there appeared to be reasonable grounds for the publication of dumping and

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<sup>36</sup> EPR 654, Items 11, 12 and 13 respectively.

countervailing duty notices in respect of the goods. On this basis, the Commissioner initiated the investigation.

Following the initiation of the investigation, the commission has examined additional evidence to that considered by the Commissioner in the preparation of CON 654.

Chapters 6, 8 and 9 discuss the Commissioner's findings relating to dumping, injury and causal link respectively, including volumes of Australian imports of the goods and export prices of the goods sold by Italian exporters.

Chapter 7 discusses the Commissioner's findings relating to subsidies, including whether any identified programs are specific.

Chapter 9.10.2 discusses ANICAV's submission that the Commissioner terminate the investigation.

### **2.5.6 Post-SEF 654 submission by ANICAV**

In its submission to SEF 654, ANICAV welcomed the Commissioner's proposed termination of the subsidy investigation. ANICAV also made submissions that:

- the commission's undercutting analysis is based on incorrect premises
- injury, if any, has been caused by factors other than dumped imports of the goods
- the commission's causation analysis is contradictory and ill-founded
- if measures are imposed, they should be in the form of an *ad valorem* duty.

#### Undercutting analysis

ANICAV submitted that the market segmentation analysis undertaken by the commission is flawed and that SEF 654 does not explain the criteria the commission applied in allocating products within tiers, and that it appears to be based wholly on price.

This report discusses this issue in chapter 8.7.

#### Other injury factors and causal link analysis

ANICAV refers to the Commissioner's preliminary findings in SEF 654 that factors other than dumping and/or subsidisation are the cause of injury to the Australian industry. This report considers ANICAV's comments and discusses these other causes of injury to Australian industry in chapter 9.8, including 'SPC's structural fragility', which is an additional possible cause alleged by ANICAV.

It then notes that '...despite these considerations, the Commission took the contradictory preliminary decision not to terminate the investigation.'<sup>37</sup>

ANICAV also refers to the Commissioner's preliminary findings in SEF 654 the dumped and subsidised goods have not been causing or are not the cause of material injury to the Australian industry, and again submits that the commission should terminate the investigation.

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<sup>37</sup> Ibid, p6.

This report addresses the issue of termination of the investigation at chapter 9.10.2.

### Form of measures

ANICAV (as well as Mutti and IMCA) submitted that, should measures be imposed, they should be in the form of an *ad valorem* duty, rather than through a combination duty. Mutti submitted that the Australian market for the goods is incompatible with the combination method, as Italian producers export a wide range of different models and that grouping these under a single floor price would lead to distortions, particularly by inflating duty on lower-priced product lines. Mutti further submitted that the volatility of fresh tomatoes used in the production of the goods leads to significant cost variations, and notes that the commission's *Guidelines on the Application of Forms of Dumping Duty (Guidelines)*<sup>38</sup> warns that in such circumstances, an ascertained export price 'can easily become out-of-date. By contrast, the *ad valorem* method would overcome these issues. Mutti states that the Guidelines identify *ad valorem* as 'the simplest and easiest form of duty' which 'shows the most stability over time' and adjusts naturally to the value of each product type.

As the Commissioner is not recommending the imposition of anti-dumping measures, this report has not addressed comments on the preferred form of measures.

### **2.5.7 Pre-SEF 654 submission by SPC**

On 4 April 2025, SPC provided a submission identifying a range of issues in the selected exporter REQs, summarised below:

#### De Clemente

SPC referred to the commission's findings in INV 217, where both a downward adjustment to De Clemente's normal value for domestic packing costs and an upward adjustment for export packing costs were made. SPC highlighted that this finding contrasts with De Clemente's current REQ response, which states there are no significant differences in packaging costs between domestic and export sales. SPC submits that the commission should assess De Clemente's current packing cost claims in light of the findings in INV 217.

#### IMCA

SPC questioned the sufficiency of IMCA's domestic sales, noting that sales are limited to private consumers and a few small businesses. SPC requested the commission to assess sufficiency of domestic sales.

SPC observed differences in packaging between domestic and export sales, suggesting that additional packaging costs may be incurred on exports to Australia. SPC referenced past adjustments made in INV 217 as potentially relevant to the current investigation.

SPC also raised concerns on IMCA's lack of a full cost accounting system and its inability to distinguish between cost of goods sold (**COGS**) and selling, general, and administrative expenses (**SG&A**).

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<sup>38</sup> Available on the [commission's website](#).

### La Doria

SPC referred to past investigations, INV 217 and INV 276, and suggested that adjustments may be warranted to La Doria's normal value, particularly in relation to inland transport, commissions, trade credit, packaging, and other cost elements.

SPC raised concerns about related-party transactions, noting that La Doria sources raw materials from its subsidiary, Eugea Mediterranea S.p.A (**Eugea**). SPC requested that the commission assess whether these transactions are conducted at arm's length, given their significance to La Doria's cost structure.

### Mutti

SPC raised concerns about the reliability of Mutti's cost accounting, noting discrepancies between internal records and audited financial statements.

SPC questioned Mutti's claim that packaging is the same for domestic and export sales, referencing past findings in INV 217 where the commission made packaging cost adjustments for another exporter.

SPC also challenged Mutti's explanation of its VAT credit position and sought clarification on related-party transactions with Fiordagosto S.r.l., which may indicate internal sourcing.

### *Commission assessment*

The commission has considered each of SPC's claims in respect of the selected exporters as part of its verification process. All relevant sales data, adjustments and arms length findings are detailed in the respective verification reports, available on the EPR, and where relevant, have been discussed by the commission in chapter 6 of this report.

### **2.5.8 Post-SEF 654 submission by SPC**

SPC made a number of submissions in response to the SEF 654, challenging the Commissioner's preliminary findings on injury, causation, and submits the Commissioner should revise its preliminary findings and recommend the Minister impose anti-dumping and countervailing measures.

SPC's key points are:

- *'there is substantial evidence of injury: the SEF comprehensively documents volume injury (material decline in sales), price injury (suppression and depression), and profit injury across multiple metrics.*
- *dumping has caused material injury: even where remedied prices continue to undercut Australian prices, this does not negate causation – it confirms the extent of price-driven injury, with dumping contributing materially to that injury.*
- *"Other factors" are unsupported: the Commission's findings on competitive advantage, raw material costs, domestic competition, and consumer preferences are either unsupported by evidence, legally irrelevant, or factually incorrect.*

- *Australia's legal framework supports imposition of measures: The Direction explicitly provides that dumping need not be the sole cause of injury – only that injury from dumping be material in degree.'*<sup>39</sup>

This report discusses each of SPC's submissions in support of these points below.

Material Injury Direction

SPC refers to the Material Injury Direction and submits that the direction contemplates a scenario where an Australian industry in a weakened state caused by other factors, may experience material injury where there are even modest dumping margins.

Chapter 9.9.2 discusses this submission.

Prior Commission practice

SPC submitted that the commission's findings depart from several previous cases in which measures were imposed despite modest dumping margins or the presence of other contributing factors (see sections 3.3 and 3.5 of SPC's post-SEF 654 submission).

Commission assessment

The commission acknowledges SPC's reference to prior cases, including Investigation 217, where measures were imposed despite modest dumping margins or the presence of other contributing factors. Chapter 2.3 discusses previous cases involving the goods.

Nonetheless, every investigation must be assessed on its own facts and prevailing market conditions. The circumstances of the investigation differ from earlier cases. In particular:

- the current market exhibits structural changes, including the growth of own-brand products and intensified domestic competition from new entrants such as Simplot
- significant price undercutting persists even after accounting for adjustments for dumping and subsidisation, indicating that factors beyond dumping are influencing price dynamics
- other causal factors, such as an increase in raw material costs, an increase in domestic Australian competition and consumer preference patterns, explain the cause of injury to Australian industry.

SEF 654 establishes Substantial Injury from dumping

SPC summarises several findings from SEF 654 relating to price undercutting and injury experienced by SPC. SPC submits that these findings establish causation and refers to chapters 8.7 and 9.4.3 of SEF 654, where the Commission explicitly links undercutting to injury:

*The commission, therefore, considers that the lower (and therefore dumped) prices offered by Italian suppliers are less a result of competing against Australian industry*

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<sup>39</sup> EPR 654, Item 39, SPC submission to SEF 654, p3.



*prices, but from competing with each other. This competition between Italian suppliers **does however impact Australian industry**.*<sup>40</sup>

...

*Undercutting evident at both the wholesale and retail **level has placed the Australian industry under pressure** to accept reduced prices from their customers.... in an attempt to maintain sales volume and market share.*<sup>41</sup>

SPC concludes that SEF 654 therefore established substantial and convincing grounds of material injury from dumping.

#### *Commission assessment*

The commission confirms the findings referred to by SPC in SEF 654, noting that there are some changes to volumes findings as a result of updated data for Simplot, which the commission considers support its injury and causation findings from SEF 654. See chapter 2.5.13 for discussion concerning the updated data.

Where the commission differs from SPC's assessment is that the Commissioner considers that the level of undercutting, even once remedied, indicates that factors other than the levels of dumping and subsidisation are factors causing injury to the Australian industry. Chapter 9.9 discusses this analysis further.

#### *Factors other than dumping causing injury*

SPC submitted that the commission's reliance on other factors is unsupported by evidence or is legally irrelevant. The commission has addressed each of SPC's submissions on these factors in the following chapters of this report:

- competitive advantage of Italian producers – chapter 9.8.1
- increase in raw material costs – chapter 9.8.2
- increase in domestic competition – chapter 9.8.3
- consumer preferences for Italian origin and flavour – chapter 9.8.4.

#### *Undercutting margins and remedied price analysis*

SPC submitted that the Commission's remedied price analysis in chapter 9.9.1, while appropriate, is inconsistent with law and practice, arguing that measures need only address the unfair price effects attributable to dumping.

Chapter 9.9.2 discusses this submission.

### **2.5.9 Pre-SEF 654 submission by La Doria**

In its 7 May 2025 submission, La Doria responded to SPC's claims concerning its REQ.

La Doria addressed SPC's request for upward adjustments to its normal value, which were based on findings from REP 276.

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<sup>40</sup> Ibid, p7. SPC emphasis

<sup>41</sup> Ibid, p8. SPC emphasis

- La Doria rejected SPC's reliance on REP 276, arguing that the report is over a decade old and not relevant to the current investigation.
- It emphasised that the conclusions drawn in REP 276 involved different entities, such as De Clemente and Feger di Gerardo Ferraioli S.p.A, with distinct operational structures and therefore cannot be applied to La Doria.
- La Doria asserted that SPC failed to provide any supporting evidence or justification for the proposed adjustments.
- It maintained that the adjustments submitted are accurate and reflective of the current investigation period.
- On this basis, La Doria requested that SPC's claims be dismissed due to a lack of factual and legal foundation.

La Doria objects to SPC's request that the commission assess the arms length nature of transactions between La Doria and its subsidiary Eugea, on the basis that an arms length assessment is not applicable.

- It noted that detailed cost data for Eugea had been transparently disclosed in its REQ, accurately reflecting the internal cost structure of the group.
- The submitted figures were described as complete, verifiable, and based on actual production costs.

#### *Commission assessment*

As discussed in response to SPC's submission in chapter 2.5.6, the commission has assessed the issues raised in La Doria's verification report and in chapter 6.

#### **2.5.10 Pre-SEF 654 submission by IMCA**

IMCA was provided a draft version of its verification report prior to publication to check for any calculation errors or accidental inclusion of confidential information. On 12 August 2025 in response to the draft verification report, IMCA provided the following submission by email to the commission for publication:

*We consider that the profit calculation in Appendix 3 is incorrect. The profit margin of [CONFIDENTIAL BUSINESS INFORMATION] was obtained by comparing the net invoice value of Italian sales (inclusive of direct selling expenses) with a CTMS net of (i.e., without) direct selling expenses. In fact, the SG&A ratio of [CONFIDENTIAL BUSINESS INFORMATION] used to calculate the CTMS is net of direct selling expenses. This unbalanced comparison artificially inflates the profit margin. If we carry out an apple-to-apple comparison, i.e. we compare the net invoice value (inclusive of direct selling expenses) of Italian sales with the corresponding CTMS inclusive of direct selling expenses (SG&A rate [CONFIDENTIAL BUSINESS INFORMATION]), we obtain a profit margin of [CONFIDENTIAL BUSINESS INFORMATION], and a dumping margin of 1.5%. We attach the revised calculation [CONFIDENTIAL BUSINESS INFORMATION]*

A copy of IMCA's submission is published in a file note on the EPR.

#### *Commission assessment*

The commission has assessed the issues raised in IMCA's submission in chapter 6.5.2.



### 2.5.11 Post-SEF 654 submission by IMCA

In its submission to SEF 654, IMCA welcomed the Commissioner's proposed termination of the anti-subsidy investigation in respect of IMCA.

#### Injury and causation

IMCA referred to ANICAV's submission (discussed at chapter 2.5.6) in respect of the Commissioner's assessment of injury and causation, and supports ANICAV's position that injury to the Australian industry cannot be attributed to imports of Italian prepared or preserved tomatoes. IMCA requested that the Commissioner terminate the anti-dumping investigation accordingly.

#### Form of measures

IMCA also submitted that, should measures be imposed, they should be in the form of an *ad valorem* duty, rather than through a combination duty. IMCA's submission matched the submission by ANICAV on this issue. This report accordingly discusses the form of measures under ANICAV's submissions at chapter 2.5.6.

### 2.5.12 Post-SEF 654 submission by Mutti

In its submission to SEF 654, Mutti welcomed the Commissioner's proposed termination of the anti-subsidy investigation in respect of Mutti.

#### Injury and causation

Mutti referred to ANICAV's submission (discussed at chapter 2.5.6) in respect of the Commissioner's assessment of injury and causation, and supports ANICAV's position that injury to the Australian industry cannot be attributed to imports of Italian prepared or preserved tomatoes. Mutti requested that the Commissioner terminate the anti-dumping investigation accordingly.

#### Form of measures

Mutti also submitted that, should measures be imposed, they should be in the form of an *ad valorem* duty, rather than through a combination duty. Mutti's submission matched the submission by ANICAV on this issue. This report accordingly discusses the form of measures under ANICAV's submissions at chapter 2.5.6.

#### Calculation of Mutti's dumping margin

Mutti made 2 submissions on the commission's calculation of its dumping margin:

- The commission's profit ratio calculation in Appendix 3 (which is relevant to the calculation of its normal value) is not correct. The profit margin was calculated using a net invoice value for domestic sales, inclusive of various direct selling expenses, and a CTMS which did not include these same direct selling expenses. Mutti submits this leads to an unbalanced comparison, with a 'full price' compared with a CTMS from which certain expenses were deducted. This accordingly results in an inflated profit margin.
- The commission should have calculated its specification adjustments for MCCs with unrepresentative quantities (i.e. below 5% of the Australian export sales volume) using the profit margin from the surrogate MCCs instead of a weighted average profit margin of all domestic sales.

The commission has considered Mutti's submissions on the calculation of its dumping margin in chapters 6.7.2, 6.7.3 and 6.7.4, which discuss Mutti's normal value calculation.

### **2.5.13 Post-SEF 654 submission by Calispa**

#### **Increase in domestic competition**

Calispa submits that the Commissioner's preliminary findings in respect of injury and causation do not take into account the increase in domestic competition arising from Simplot's entry into the Australian market.

This report addresses this issue in chapter 9.8.3.

#### **Consumer preferences**

Calispa notes the Commissioner's finding in SEF 654 that 'consumer preferences are driven by a combination of price, flavour preferences and origin' (SEF 654, chapter 5.4.4). Calispa submits that Australian consumers exhibit a strong preference for Italian-sourced prepared or preserved tomatoes, and that this preference is not price sensitive. Accordingly, SPC is unable to compete for sales within this market segment, and that the only contestable part of the market is consumers who are indifferent to origin or prefer Australian made, and that these consumers are driven by price.

This report addresses this issue in 9.8.4.

### **2.5.14 Post-SEF 654 submission by De Clemente**

De Clemente submits that the commission substantially modified the accounting and cost data originally provided by De Clemente and 'replacing them with reconstructed values based on its own methodology'.<sup>42</sup>

Chapter 6.4.1 discusses the issues raised in De Clemente's submission.

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<sup>42</sup> EPR 654, Item 44, De Clemente submission to SEF 654, p1.

### 3 THE GOODS AND LIKE GOODS

#### 3.1 Finding

The Commissioner finds that:

- locally manufactured goods are 'like' to the goods the subject of the application
- there is an Australian industry, comprised of SPC, Simplot and Safcol producing like goods
- the like goods are wholly manufactured in Australia.

The commission identified SPC as the largest producer of like goods in Australia and for this reason the commission considers that data submitted by SPC is a key indicator of the performance of the entire Australian industry.

#### 3.2 Legislative framework

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

In making this assessment, the Commissioner must firstly determine that the goods produced by the Australian industry are 'like' to the imported goods. Section 269T(1) defines like goods as:

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

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

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

- physical likeness
- commercial likeness
- functional likeness
- production likeness.

The Commissioner must also consider whether the Australian industry manufactures 'like' goods in Australia. Section 269T(2) specifies that for goods to be regarded as being produced in Australia, they must be either wholly or partly manufactured in Australia. Under section 269T(3), to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

#### 3.3 The goods

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 to 850 grams (g), however, all container sizes, up to and including 1.14 litres (L) are included in the goods description. The 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 considered as 3 single packs. Prepared or preserved tomatoes may be labelled with a generic, house brand/private retailer label, or with a proprietary label. The goods include all prepared or preserved tomatoes, regardless of how labelled.*

The following tomato products are not the goods: pastes, purees, sauces, pasta sauces, juices, sundried tomatoes.

### 3.4 Tariff classification

The goods are generally classified to the following tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995*:

Tariff Subheading	Statistical Code	Description
2002		TOMATOES PREPARED OR PRESERVED OTHERWISE THAN BY VINEGAR OR ACETIC ACID
2002.10.00	60	Tomatoes, whole or in pieces, in packs not exceeding 1.14 L.

**Table 6: General tariff classification for the goods**

These tariff classifications and statistical codes may include goods that are both subject and not subject to the investigation. The listing of these tariff classifications and statistical codes is for convenience or reference only and does not form part of the goods description. Please refer to the goods description for authoritative detail about goods subject to the investigation.

### 3.5 Model control code

The commission undertakes model matching using a MCC structure to identify key characteristics used to compare models of the goods exported to Australia and the like goods sold domestically in the country of export.

#### 3.5.1 Submissions on the MCC structure

After initiation of the investigation, the commission received several submissions on proposed amendments to the MCC structure.

La Doria, in its submission of 20 November 2024<sup>43</sup>, submitted that the MCC categories were ‘overly generic and do not adequately account for variations in product characteristics that result in differing cost structures’, such as organic products and specialty varieties of tomatoes.

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<sup>43</sup> EPR 654, Item 11

IMCA and Mutti made identical submissions, on 21 November 2024 and 25 November 2025 respectively<sup>44</sup>, calling for the inclusion of 2 new categories within the MCC structure, 'Tomato type' and 'Organic'. The submissions suggested that the provision of sales data and cost data for both categories would be optional.

### 3.5.2 Amendment to the MCC structure

After considering the submissions made by the 3 exporters, the commission published a file note<sup>45</sup> amending the MCC structure from that originally included in the initiation notice. The commission amended the MCC to include 2 new optional categories, 'Tomato type' and 'Organic'.

### 3.5.3 MCC structure used in the investigation

The commission has used the MCC structure in Table 7 in the 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		
Tomato type	Round	R	Optional	Optional
	Long	L		
	Cherry	C		
	Datterino	D		
	San Marzano	SM		
	Other	O		
Organic	No	N	Optional	Optional
	Yes	Y		
Tomato cut	Crushed	CR	Mandatory	Mandatory
	Diced	DC		
	Whole	WH		

<sup>44</sup> EPR 654, Items 12 and 13

<sup>45</sup> EPR 654, Item 14

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Category	Sub-category	Identifier	Sales data	Cost data
	Other	O		
Quality	Prime	P	Mandatory	Optional
	Non – prime (e.g. damaged can)	N		
Container type	Tin can – lacquered	TCL	Mandatory	Optional

**Table 7: MCC structure**

### 3.6 Like goods

The Commissioner is satisfied that the domestically produced goods are like to the goods because the following characteristics of each closely resemble each other:

- physical likeness
- commercial likeness
- functional likeness and
- production likeness.

The following analysis outlines the commission’s assessment of whether the domestically produced goods are identical to, or closely resemble, the goods the subject of the application and are therefore like goods.

#### 3.6.1 Physical likeness

The primary physical characteristics of the goods and Australian-produced goods are similar, with both available in similar sized packaging. Both are available in the same cuts (either chopped, diced, crushed, whole), packed with similar compositions and liquids, and come plain or with various valued added additions, such as herbs and spices.

#### 3.6.2 Commercial likeness

The goods and those produced by Australian industry are sold in supermarkets, and food service and wholesale channels and directly compete. Consumers readily switch between them with pricing as a key determinant.

#### 3.6.3 Functional likeness

The goods and Australian-produced goods offer a convenient, versatile and long shelf-life alternative to fresh tomatoes. They have identical end-uses, characterised by the preparation of a wide-range of cuisines and are interchangeable without impacting the outcome of the intended use.

#### 3.6.4 Production likeness

The goods and Australian-produced goods are produced using similar equipment and processes, with fresh tomatoes the key ingredient.

## 4 THE AUSTRALIAN INDUSTRY

### 4.1 Finding

The Commissioner is satisfied that:

- at least one substantial process of manufacture of the like goods is carried out in Australia
- the like goods are wholly or partly manufactured in Australia
- there is an Australian industry, consisting of SPC, Simplot and Safcol, producing like goods to the goods exported to Australia.

### 4.2 Legislative framework

The Commissioner must be satisfied that the 'like' goods are in fact produced in Australia. Sections 269T(2) and 269T(3) specify that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. In order for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

### 4.3 Australian industry

The Australian industry comprises of SPC, Simplot and Safcol.

Figure 1 provides a breakdown of the proportion of Australian sales in each year of the injury period made up by each Australian industry member.

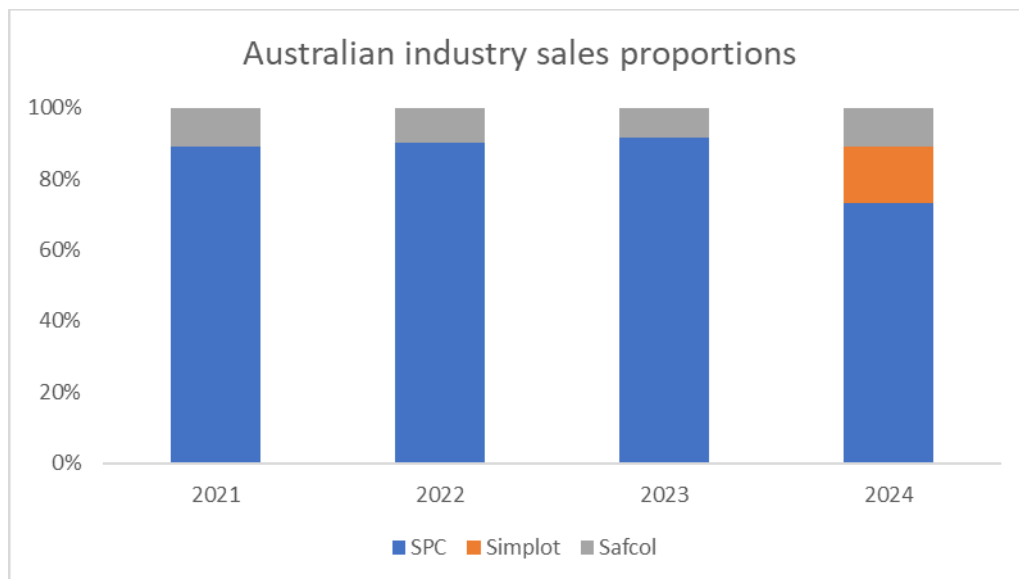


Figure 1: Proportion of sales of Australian produced like goods over the injury period

The commission's analysis of Australian industry production volume is in **Confidential Attachment 1 – Australian market**.

#### 4.3.1 SPC

SPC is a food manufacturer, particularly large fruit processing and packing. SPC markets a range of products under various brands such as SPC, Ardmona and Goulburn Valley. In addition to like goods, SPC processes fruit such as stone fruits, mango and pear. Its

product range includes baked beans and canned spaghetti. SPC manufactures like goods under 'SPC' and 'Ardmona' brands, in which there are various product offerings.

The commission conducted a verification visit to SPC's premises in February 2025. The resulting verification report is available on the EPR.<sup>46</sup>

*Standing requirements under section 269TB(6)*

The Commissioner is satisfied that SPC represents a sufficient part of the Australian industry producing like goods to the goods the subject of the application. SPC production of like goods accounts for:

- 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<sup>47</sup>, and
- not less than 25% of the total production of like goods in Australia.

#### **4.3.2 Simplot**

Simplot is an Australian producer of like goods, selling like goods under the 'Leggo's' brand. Simplot is a diversified business that manufactures vegetables, seafood, and sauces for both retail and food service customers. Its portfolio includes brands such as Birds Eye, I&J, John West, Edgell, as well as Leggo's.<sup>48</sup> Under the Leggo's label, Simplot produces a range of tomato-based products including pasta sauces and tomato paste as well as like goods.<sup>49</sup>

In its application, SPC stated that there were no other Australian producers of like goods during its proposed investigation period (which was April 2023 to March 2024) but that a new Australian manufacturer of like goods had entered the Australian market in May 2024. The commission identified this manufacturer as Simplot. On initiation of the investigation, the commission sent Simplot an Australia Industry questionnaire to complete. However, Simplot did not complete the questionnaire or participate in the investigation.

In SEF 654, the commission has estimated sales for the investigation period based on a sample of weekly sales data it obtained during the investigation from alternative sources. Following the publication of SEF 654, Calispa provided with its submission sales data for Simplot covering the investigation period. The commission has updated its market analysis based on this updated data. Chapter 9.8.3 discusses this in further detail.

#### **4.3.3 Safcol**

During the investigation, the commission identified Safcol as a third manufacturer of like goods. The commission sent Safcol an Australia Industry questionnaire to complete. Safcol did not complete the questionnaire, but provided confidential volume, sales and costs data in respect of its production and sale of like goods.

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<sup>46</sup> EPR 654, Item 25, SPC verification report

<sup>47</sup> SPC accounts for 100% of total production of like goods by Australian industry that expressed either support for, or opposition to, the application.

<sup>48</sup> <https://simplot.com.au/our-story>

<sup>49</sup> <https://leggos.com.au/our-range/canned-and-paste/tomato-cans#sort=%40weightage%20ascending>



Safcol primarily produces a range of seafood products.<sup>50</sup> It operates across the retail, food service, and wholesale markets.<sup>51</sup> Safcol does not sell like goods under its own name but instead manufactures for other parties to sell as ‘own brand’ products.

The commission has used volume, sales and costs data provided by Safcol in respect of its production and sale of like goods in the investigation, specifically in determining:

- Australian industry production volumes
- the size of the Australian market
- assessing the cause of injury to SPC and Australian industry.

Safcol’s data is in **Confidential Attachment 3 – Safcol volume, sales and cost data**.

#### **4.3.4 Kagome**

Kagome Australia is a processed fruit and vegetable company and is one of Australia’s largest tomato processors.<sup>52</sup> It grows and processes tomatoes in the Echuca region in Victoria. The commission met with Kagome and confirmed that, while it manufactures diced and crushed tomato products, it does not produce like goods in the sizes that fall within the goods description.

Kagome does not sell directly to consumers, but produces and supplies in bulk quantities, starting from 200kg drums and is also a significant supplier of tomato paste.

### **4.4 Production process**

The following outlines the SPC’s production process for the goods:

- Fresh tomatoes are delivered directly to SPC’s production facility by local independent growers on the same day they are harvested. Harvesting takes place over 12-weeks between February and April each year. This differs to the harvest season in Italy, which takes place from July to September.
- Upon arrival, tomatoes are immediately transferred to the processing line where they are washed and graded.
- Higher quality tomatoes are steam-peeled, while lower quality tomatoes are allocated for juice production—either as a filler in the canning process or evaporated for concentrates and paste.
- Peeled tomatoes undergo a second grading. Premium-grade tomatoes are processed as whole tomato products, while others are graded a third time for diced, chopped, or crushed profiles.
- Processed tomatoes are packed into cans or 1400kg ‘goodpacks’ for off-season use. Each can contains a standardised ratio of tomatoes to juice derived earlier in the process. Products are sorted by can size and cut profile. Some cans are enhanced with herbs, spices, or other flavourings to create ‘value-added’ products.
- Cans are sealed and pasteurised, then cooled to ambient temperature. Once cooled, unlabelled cans (referred to as ‘brite stock’) are stored. SPC aims to complete this process within 24 hours of tomato delivery.
- Brite stock is labelled as needed prior to distribution.

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<sup>50</sup> <https://www.safcol.com.au/>

<sup>51</sup> <https://interfishmarket.com/en/company.aspx?id=21750>

<sup>52</sup> <https://kagome.com.au/about-us/>

## 5 AUSTRALIAN MARKET

### 5.1 Finding

The Australian industry and imports from Italy supply the vast majority of the Australian market for prepared or preserved tomatoes. A small volume of the market is supplied by imports from countries other than Italy.

Australian supermarkets are the primary customers for prepared or preserved tomatoes. The purchasing decisions of the supermarkets are shaped by considerations of price and supply reliability, as well as the preferences of consumers (i.e. supermarket customers).

Consumer preferences are driven by a combination of price, flavour preferences and origin.

The Australian market is then further segmented into:

- low, mid and premium product tiers
- proprietary and own brand or private label products
- Australian and Italian tomatoes.

Notwithstanding the range of prepared or preserved tomatoes, the commission considers like goods produced by the Australian industry and goods imported from Italy are substitutable, with identical end-uses.

### 5.2 Approach to analysis

To establish the size of the Australian market, the commission has used information provided by SPC, Safcol, importers, exporters, and information from the ABF import database.

The commission's assessment of the Australian market is at **Confidential Attachment 1 – Australian market** and **Confidential Attachment 4 – Australian market brand analysis**.

### 5.3 Australian market background

Prepared or preserved tomato products are a staple item, widely used by consumers in the preparation of meals. The Australian market is characterised by strong demand from both retail consumers and the food services industry, driven by the product's versatility, long shelf life, and use across a wide range of cuisines. As such, these goods are a common ingredient found in Australian households and restaurants, as well as catering and hospitality businesses, schools, aged care facilities, hospitals, and correctional institutions.

Generally, the food service industry purchases prepared or preserved tomatoes in pack sizes exceeding 1.14 litres, which are outside of the goods description. Pack sizes below 1.14 litres, which are the goods, are typically purchased for household use, although commercial kitchens may also procure these smaller pack sizes.

## 5.4 Market structure

### 5.4.1 Role of Australian supermarkets

The major Australian supermarkets, Coles, Woolworths, Aldi and Metcash (IGA), made up 86% of the Australian market for prepared or preserved tomatoes during the investigation period. The remainder of the market is made up of smaller supermarkets and Costco and other institutional consumers who purchase in bulk, such as catering, hospitals, etc. Very few other consumers, i.e. Australian households and restaurants, purchase goods and like goods directly from manufacturers.

#### *Customers and consumers*

While supermarkets are the primary customers for prepared or preserved tomatoes, their purchasing decisions are shaped by the preferences of their own customers (which the commission refers to as ‘consumers’ in this report), as well as considerations of price and supply reliability.<sup>53</sup> This is particularly evident for own brand products, which are sourced from multiple suppliers,<sup>54</sup> but have no discernible difference to consumers.

Supermarkets also influence consumer purchasing decisions through shelf placement, promotions, and discounts. Recent findings in an Australian Competition and Consumer Commission inquiry into Australian supermarkets found promotional funding from suppliers directly contributes to supermarket margins, and supermarkets use their bargaining power to extract such funding, especially when negotiating cost price increases.<sup>55</sup> This reflects the broader power imbalance in supplier relationships, where suppliers may feel pressured to accept unfavourable terms to maintain or access shelf presence.<sup>56</sup>

### 5.4.2 Market Segmentation

The commission considers that prepared or preserved tomatoes are segmented into:

- low, mid and premium product tiers
- proprietary and own brand or private label products
- Australian and Italian tomatoes.

#### *Price tiers*

The low-price tier is generally occupied by the supermarkets’ own brand offerings, marketed as a cost-saving budget alternative for consumers.<sup>57</sup>

The mid-price tier offers the largest product range. In this tier, there is a wide range of proprietary labels offering both Italian and Australian varieties of the product. Supermarket own brands also offer a choice of Australian and Italian varieties of the product in this tier.

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<sup>53</sup> Confidential Attachment 34 – Australian supermarket evidence

<sup>54</sup> Ibid

<sup>55</sup> Australian Competition and Consumer Commission (ACCC) 2025, *Supermarkets Inquiry: Final Report*, Commonwealth of Australia, Canberra, pp. 393-394.

<sup>56</sup> Ibid., p. 286-288

<sup>57</sup> See Figure 2 and Confidential Attachment 34 – Australian supermarket evidence

The premium price tier is occupied by Italian and Australian proprietary labels and selected supermarket own brands. This tier features San Marzano, baby Roma and cherry tomato varieties, along with organic, polpa or 'rich and thick' products, with value-added options such as additional seasoning with garlic, basil or oregano.

*Submission by ANICAV*

In its post-SEF 654, ANICAV submitted that the commission's approach to tiering, which the commission used in its undercutting analysis, was flawed. The commission has discussed this issue in chapter 8.7.

*Proprietary and own brand*

Prepared or preserved tomatoes are either sold under the producer's own branding (proprietary label) or under customer branding (own brand).

Some of the more common proprietary brands in the Australian market include:

- SPC and Ardmona, made by SPC
- Leggo's, made by Simplot
- Mutti.

Out of the selected exporters, Mutti sells exclusively proprietary products in Australia, La Doria sells a mix of proprietary and own brand labels, and the other selected exporters sell exclusively own brand labelled products.

*Australian and Italian tomatoes*

While there are minor imports of the goods from other countries,<sup>58</sup> the Australian market primarily consists of Australian produced prepared or preserved tomatoes, or prepared or preserved tomatoes imported from Italy.

*Commission assessment*

Figure 2 sets out the commission's assessment of where each major brand in the Australia market sits in each market segment.

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<sup>58</sup> Confidential attachment 1, 'Australian market'

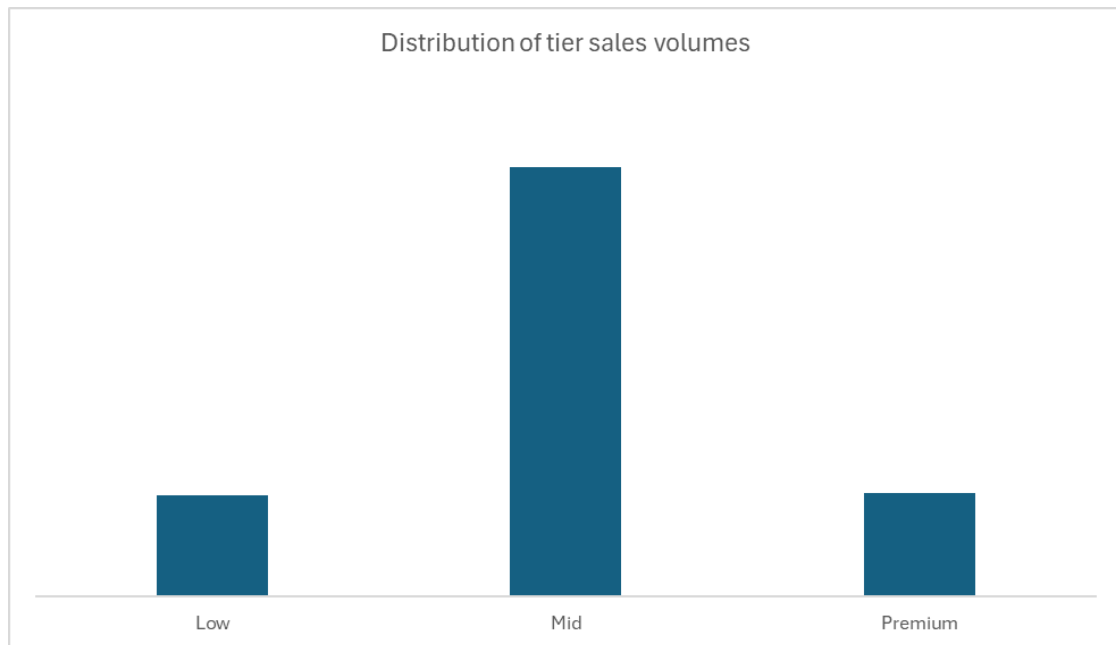
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Proprietary		Own brand	
Low-tier			
		Australian (5%)	Italian (8%)
		ALDI (Australian)	ALDI (Italian)
		Woolworths (Australian)	Coles Simply (Italian) Woolworths Essentials (Italian)
Mid-tier			
Australian (16%)	Italian (9%)	Australian (0%)	Italian (31%)
Ardmona Leggos SPC	Annalise / Napolina Cucina La Gina	Coles (Australian)	ALDI (organic and cherry) Coles (Italian) Coles organic (Italian) Woolworths (Italian) Woolworths Macro (Italian)
Premium tier			
Australian (1%)	Italian (12%)		
Ardmona 'Rich and Thick'	Mutti		

**Figure 2: Analysis of brands in the Australian market<sup>59</sup>**

Figure 2 shows that most brands are in the mid-tier of the market, and most are Italian. Each of the Australian industry producers have a proprietary brand, but Australian tomatoes are also available as own brands. There are only 2 premium tier brands, both proprietary, one offered by SPC (Ardmona Rich and Thick) and the other by Mutti.

Figure 3 below shows the relative size of sales volumes in each tier, with most sales sitting in the mid-tier range.



**Figure 3: Sales volumes by tier<sup>60</sup>**

<sup>59</sup> Does not add to 100% because residual exporter volumes and discrepancies between exporter and importer data. Volume of Australian own brand products sold at the mid-tier level is 0%, rounded to the nearest whole number.

<sup>60</sup> Confidential attachment 4 – Australian market brand analysis

### 5.4.3 Supply

The Australian market for the goods is supplied primarily by Australian producers of like goods and imports from Italy, with a small volume coming from other countries. Figure 4 shows the share of the Australian market by source since 2021.

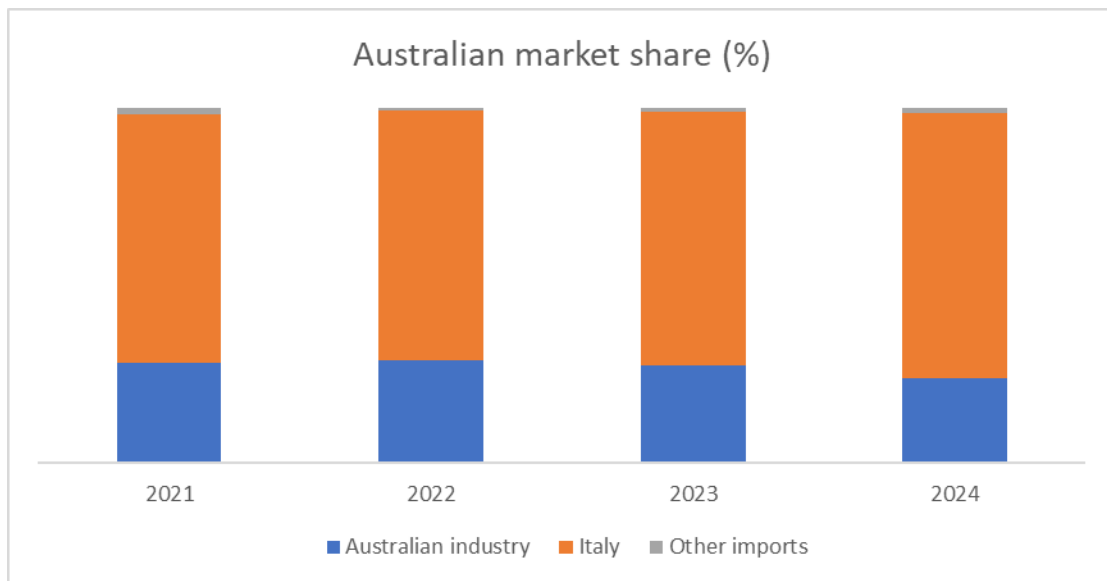


Figure 4: Australian market share<sup>61</sup>

Broadly, the Australian market for prepared or preserved tomato products is supplied by wholesale sales to the following customers:

- Major Australian supermarkets – Coles, Woolworths, ALDI, and Metcash (IGA).
- Smaller supermarket chains and convenience stores.

Downstream consumers then purchase prepared or preserved tomatoes from these retailers.

Some of the Australian supermarkets submitted that the Australian industry does not supply enough volume to meet Australian market demand, due to capacity constraints and inefficiency in production compared to Italian producers. Some supermarkets submitted that SPC in particular produces volumes exclusively for its own branded products and does not supply product for own brand (private label) production.<sup>62</sup> However, the commission notes SPC previously supplied own brand (i.e. supermarket branded) products to customers, with this option ceasing due to its customers changing their sourcing to other suppliers, despite attempts by SPC to offer SPC proposal for new product lines.<sup>63</sup> Other Australian industry members continue to supply like goods for own brand labels.

<sup>61</sup> Year ending 30 September

<sup>62</sup> Confidential Attachment 34 – Australian supermarket evidence

<sup>63</sup> SPC verification report, Confidential attachment 1, work program

Based on information gathered during verification of SPC and Australian supermarkets, the commission considers that the Australian supply can be volatile, and is more prone to weather and flooding compared to Italian growers, which impacts supply volumes.

To meet the need for additional supply, and to mitigate supply risk, Australian supermarkets source supply from overseas (i.e. Italy).

Chapter 9.8 discusses these issues further, as part of the commission's consideration of other factors causing injury to Australian industry.

#### **5.4.4 Demand**

SPC submitted in its application that demand for prepared or preserved tomatoes as a whole has been relatively stable.

Table 8 shows changes in the size of the Australian market from October 2020 to the end of the investigation period. The market has remained stable over this period, with a noticeable drop in the year ending September 2023 (discussed further in chapter 5.6).

	Oct 2020 - Sept 2021	Oct 2021 - Sept 2022	Oct 2022 - Sept 2023	Oct 2023 - Sept 2024
<b>Volume</b>	100	102	89	103

**Table 8: Index of the size of the Australian market, compared to Oct 2020 – September 2021**

The commission considers that customer demand, is driven by 3 main factors:

- price
- flavour preferences
- origin.

#### *Price*

SPC stated that price is the primary differentiator between product tiers, more so than any other factor, and asserts that there is no substantive difference in quality between Australian and Italian products. SPC further stated that any perception of the superior quality of Italian products is attributed to consumer perceptions shaped by marketing.

Both SPC and Australian supermarkets<sup>64</sup> agreed that the Australian market for the goods is sensitive to price. Consumers will switch between products depending on price. Both SPC and Australian supermarkets<sup>65</sup> observed that over the investigation period, within increased cost-of-living pressures, consumers are making more purchases at lower tiers. On the other side<sup>66</sup>, consumers will purchase greater volumes of higher tiered products where they are discounted or on promotion.

Australian supermarkets also noted that that most suppliers produce the standard 400g product, with quality consistent across suppliers for this size.<sup>67</sup> As a result, cost-

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<sup>64</sup> For example, see EPR 654, Item 25, SPC verification report; Confidential Attachment 34 – Australian supermarket evidence

<sup>65</sup> Confidential Attachment 34 – Australian supermarket evidence

<sup>66</sup> Ibid

<sup>67</sup> Ibid



effectiveness becomes the key differentiator. Customers evaluate which supplier can deliver the product at the lowest total cost without compromising quality.

Customers observed that price increases can lead to a decrease in sales volumes to consumers.

#### *Flavour*

Australian supermarkets stated that there are genuine differences in quality and taste between Australian and Italian-grown produce used in the products. Australian supermarkets stated that Italian tomatoes have a fuller-bodied, sweeter taste and a deeper red colour compared to Australian-grown tomatoes. They noted that the superior flavour is illustrated by the higher Brix ratings<sup>68</sup> of Italian tomatoes, an indicator of sweeter flavour. Australian supermarkets stated it is the quality and taste of Italian products that make them a popular preference for Australian consumers.

Australian industry cannot produce premium Italian varieties of prepared or preserved tomatoes such as San Marzano, but it does supply a mid-tier product using the Roma tomatoes.<sup>69</sup>

#### *Origin*

SPC submitted there is little geographic segmentation for prepared or preserved tomatoes given the wide customer base across all demographics within Australia, with Australian and imported products competing predominantly on price, given that they are essentially the same product and have identical end-uses.<sup>70</sup>

The Australian supermarkets stated that consumers generally prefer Italian tomatoes, attributed to differences in taste and quality (noting that the lower price point is likely also relevant). They acknowledge there is also a segment of the Australian market who prefer Australian made like goods. Australian supermarkets stated they ensure they have supply originating from both Australia and Italy to satisfy this demand. As part of their labelling and marketing processes, Australian supermarkets advised they will clearly label if a product has a single-origin ingredient source, in this case, to distinguish between Italian and Australian products.<sup>71</sup>

Australian supermarkets also diversify their sources of supply to minimise the risk of interruption to supply. This includes sourcing from multiple producers across Australia and Italy.<sup>72</sup>

#### *Commission assessment*

After considering the evidence provided during the investigation, the commission considers customer purchasing decisions are influenced by consumer preferences, which are in turn driven by price, flavour preferences and origin. These factors all interact and tie in with the market segmentation observed by the commission:

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<sup>68</sup> Brix is a measure of the sugar content. A higher Brix indicates a higher level of sugar and therefore sweetness.

<sup>69</sup> EPR 654, Item 25, SPC verification report, Confidential attachment – SPC verification work program

<sup>70</sup> EPR 654, Item 25, SPC verification report, chapter 3.2.4

<sup>71</sup> Confidential Attachment 34 – Australian supermarket evidence

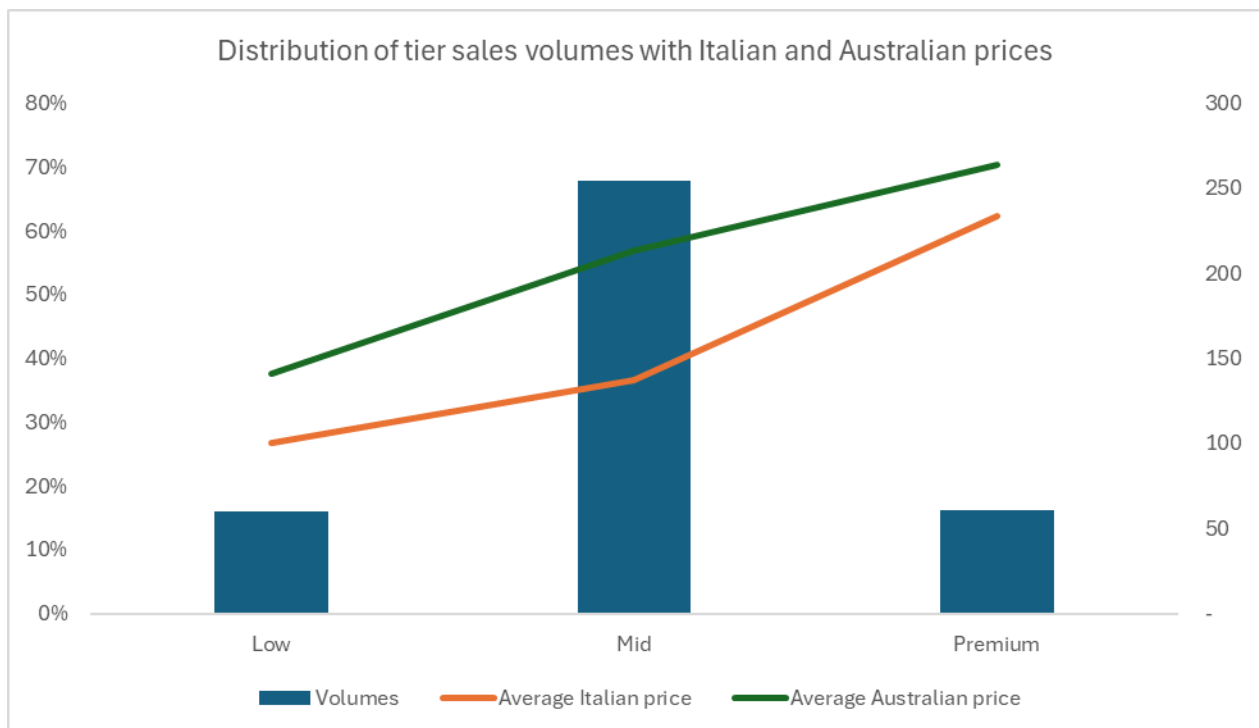
<sup>72</sup> Ibid

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- Higher priced products sit in the premium tier, with budget products in the low-tier and mid-priced products sitting in the mid-tier. Proprietary brands are in the mid-tier and premium tier, with own brand products in the low and mid-tier range.
- Consumers consider premium products to be of a superior flavour and quality.
- Some consumers prefer to 'buy local' or products of Australian origin over imported products. However, other consumers prefer products of Italian origin, on the perception that Italian products are of a higher quality with a sweeter flavour.

While price is an important factor, it is not the only factor upon which purchasing decisions are made. Consumers will balance their non-price preferences (flavour and origin) against the price on which products are offered, to determine whether a given product provides 'value' to that consumer, i.e. a brand that meets their preferred flavour and origin preferences at an affordable price. Prepared or preserved tomatoes are substitutable with demand elastic, meaning that the price premium that might be achieved by preferred goods is not infinite: consumers will shift to less preferred goods if they offer better value through a lower price that overcomes these consumer preferences.

Were price the only factor, low-tier products would dominate the market. If flavour were the most important, then premium products would represent the greatest volume. But it is a balance of these factors that drives sales. This is depicted in Figure 5 below, which shows that most sales are in the mid-tier range.



**Figure 5: Distribution of sales volumes by tier, compared to Italian and Australian prices**

Consistent with Figure 5, Australian supermarkets reported several examples of their more popular products belonging to the mid-tier range.

Figure 5 also shows that prices rise in line with increase in tiers, with Italian products having a lower weighted average price in each tier.

Australian supermarkets submitted that they look to satisfy consumer preferences for premium imported products, while also offering mid-tier Australian products that support local industry and meet diverse price points.

While consumer preference for Italian tomatoes is often attributed to taste and origin, the commission considers the lower price point of the Italian product compared to the Australian equivalent is also a significant factor influencing purchasing decisions.

## **5.5 Market pricing**

Negotiations between the Australian industry and Coles, Woolworths, ALDI and Metcash (who together make up most sales volume for the Australian industry) are covered by the Food and Grocery Code of Conduct.

SPC regularly negotiates with its major customers (the major supermarkets) on pricing, volumes, product range and possible promotions as part of a 'range review' process. Once agreement has been reached, prices are set until the next range review, usually on an annual basis.

Supermarkets will then set their own prices for consumers, based on their own business requirements. Prices at the retail (consumer) level are highly transparent, but wholesale prices (between manufacturers and the supermarkets) are not.

### **5.5.1 Discounting and promotions**

Net unit selling prices are determined by both the set price suppliers negotiate with their Australian customers and any promotions run on their products throughout the year.

For SPC, during promotional activity, SPC arranges with the supermarkets to apply a discount to the sales price offered by the supermarkets to consumers. At the end of the promotional activity, SPC then compensates the supermarket an amount equal to the total discount on all discounted products sold during the promotion. Italian exporters of proprietary brands have a similar arrangement with supermarkets.

The commission does not have detailed data of the impact of short-term promotions and discounts on sales. However, its examination of net invoice sales across quarters enabled the commission to gain a macro understanding of their impact.

The commission notes that discounting and promotions affect the market in terms of changes in price, rather than as a separate influence on the Australian market.

The commission has further examined the effect of promotional activity on the price for like goods as part of its price undercutting analysis in chapter 8.7.

### **5.5.2 Pricing negotiation**

SPC submitted during the investigation that the presence of Italian imports of the goods influence its pricing negotiations with customers, who are cognisant of the availability and price of Italian imports.

The Australian supermarkets advised the commission that price is an important consideration when making their purchasing decisions, but it is not the only factor. In addition to price, as discussed in chapters 5.4.3 and 5.4.4, supermarkets will consider:

- **Reliability of supply:** Australian supermarkets want to ensure that consumer demand is met. This requires that there is sufficient and reliable supply.

Supermarkets will source from multiple suppliers, as individual suppliers (especially in Australia) cannot meet Australian market volume demands. Historical performance helps guide assessments of reliability. Having multiple suppliers limits volatility, as adverse weather conditions, both in Australia and Italy, can affect the ability of suppliers to meet demand.

- **Consumer preferences:** consumer demand drives supermarket purchase decisions.

Negotiations for supply of own brand products versus proprietary brands are separate (a requirement of the Food and Grocery Code of Conduct). The Australian supermarkets submitted that as a result, prices obtained for supply of Italian goods, which are mostly used in their own brand products (with the notable exception of Mutti), do not influence negotiations with SPC and other Australian industry proprietary brands.

For their own brand range, Australian supermarkets will seek tenders from market, usually on a geographical basis with specified criteria for a 12-month period, in line with that discussed above. This means they tender for a supply of Australian own brand tomatoes, and a supply of Italian own brand tomatoes. Suppliers put in responses to the tender, with product offerings and proposed prices, based on their costs to produce and general market conditions. Tenders will usually commence at the beginning of the harvest season for the relevant source (February for Australia and July for Italy).

The commission understands that while the tenders for Australian and Italian tomatoes are separate, as are purchasing decisions for Australian and Italian proprietary brands, negotiations take place in a context where parties are aware of the presence of alternative products in the markets, meaning that suppliers compete with each other on price. The price at which suppliers are able to offer their products will influence the volume purchased, with lower prices generally leading to greater volumes purchases. In other words, Italian and Australian producers are not competing for the same tenders, but if an Italian exporter secures a higher volume sale because of its lower price, the customers will reduce the volume they purchase from other suppliers as a result of the Australian tender. This is discussed further in chapter 9.5.

## **5.6 Market size**

The commission has used the sales data provided by the Australian industry and import data from the ABF import database to determine the size of the Australian market for the goods and like goods.

When previous measures were imposed on the goods, SPC market share increased, and remained generally steady. See Figure 6 below.

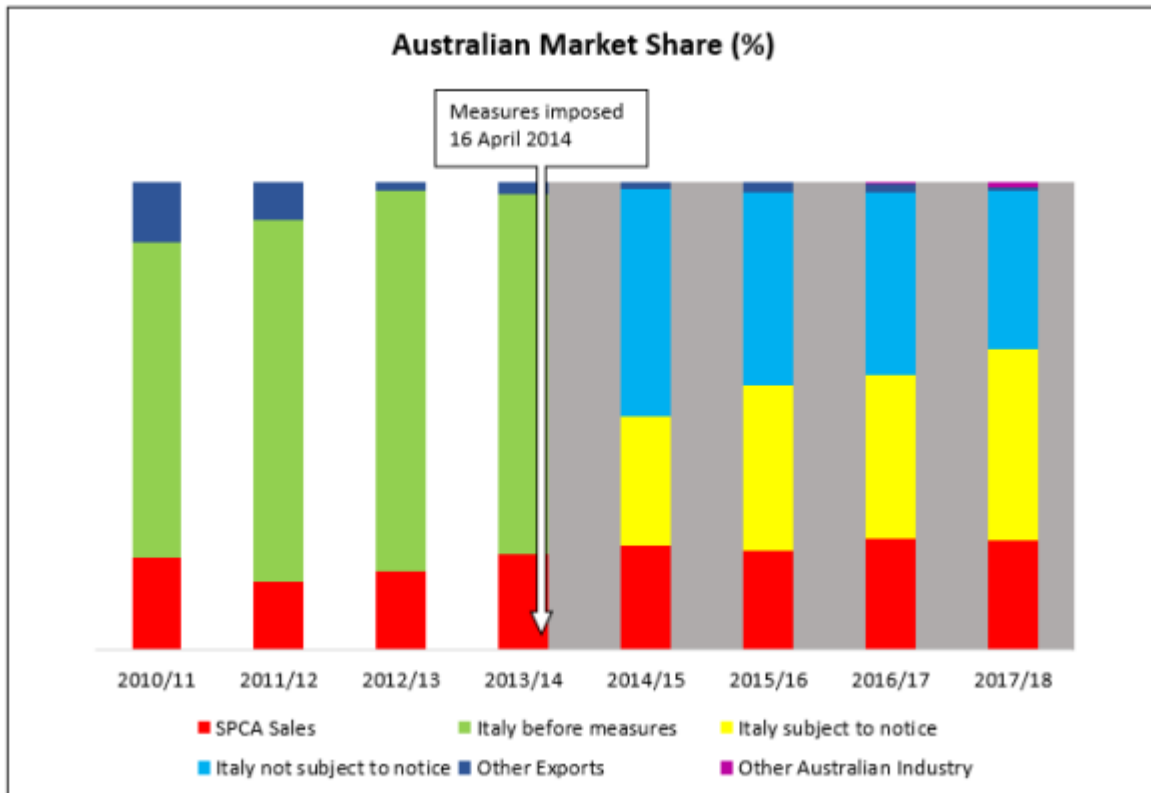
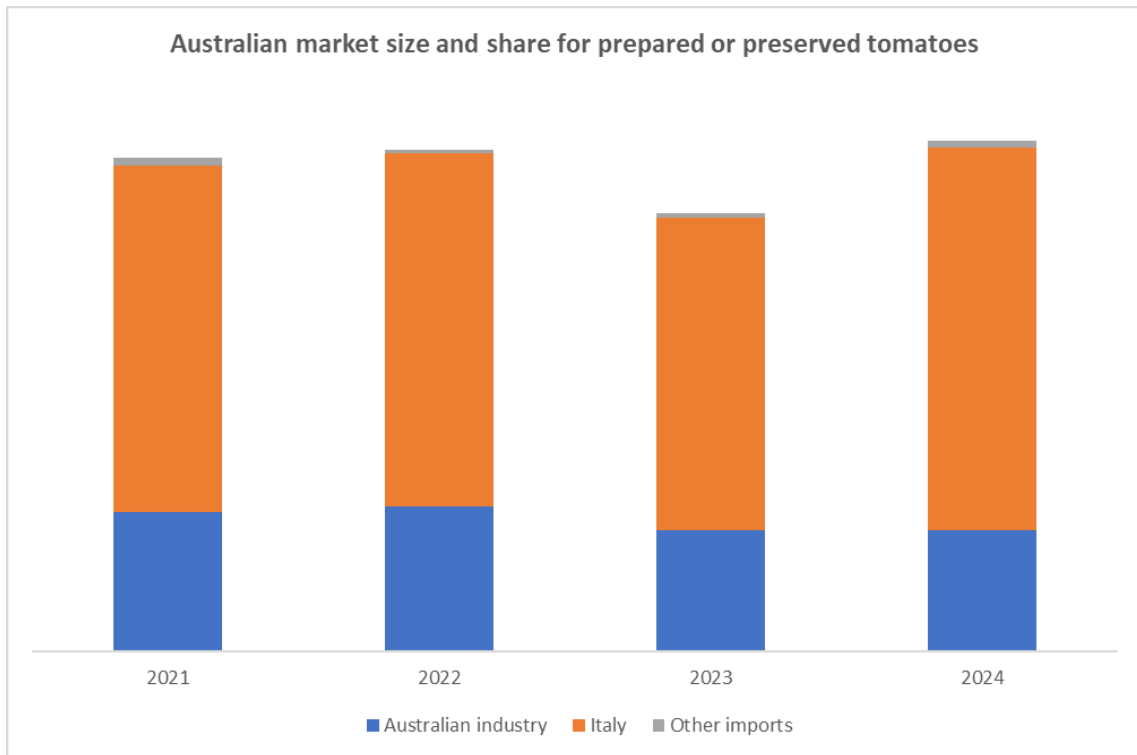


Figure 6: Australian market share – 2010/11 to 2017/18, excerpt from CON 488<sup>73</sup>

Since measures were removed over a decade ago, Australian industry market share has modestly fallen, from 24.5% at the end of 2017/2018, to 22% during the investigation period.

Figure 7 below shows the relative size of the Australian market year-on-year from October 2020 to September 2024 (**injury period**), as well as the share of sales of like goods manufactured by the Australian industry compared with imported goods from Italy and the rest of the world.

<sup>73</sup> CON 488, Final Report, p22



**Figure 7: Australian market size and share, by source. Year ending 30 September.**

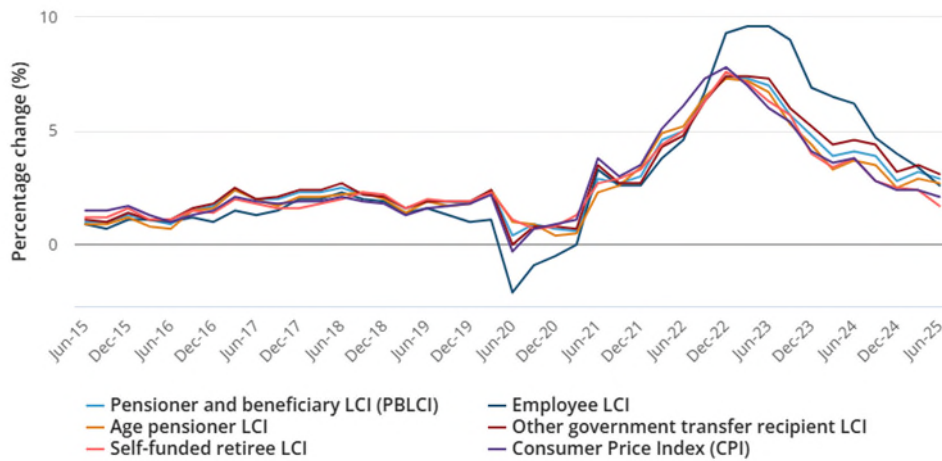
Italian imports of the goods made up most of the Australian market in each year of the injury period, with an increase in both volume and market share between October 2020 and September 2024. The Australian industry's volumes and market share declined in the same period, while the total Australian market has remained relatively stable, other than a decrease in the period October 2022 to September 2023. An index of sales volumes for the Australian industry, Italian importers, along with the size of the market is in Table 9 below.

	Oct 2020 - Sept 2021	Oct 2021 - Sept 2022	Oct 2022 - Sept 2023	Oct 2023 - Sept 2024
<b>Australian market</b>	100	102	89	103
<b>Australian industry</b>	100	104	87	87
<b>Italian imports</b>	100	102	90	110

**Table 9: Index of the size of the Australian market, Australian industry's sales volumes and Italian import volumes, compared to Oct 2020 – September 2021**

The size of the Australian market has remained relatively stable, except for the year ending September 2023, in which there was a noticeable decline, which the commission attributes to increased cost-of-living pressures accompanying a sudden price increase (see Figure 8 and Table 10 below) along with supply shortages due to adverse weather events (see chapter 9.8.11).

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**Figure 8: Selected Living Cost Indexes (LCIs) by household type and Consumer Price Index (CPI), Australia, annual movement (%), Australian Bureau of Statistics, 6 August 2025<sup>74</sup>**

	Oct 2020 - Sept 2021	Oct 2021 - Sept 2022	Oct 2022 - Sept 2023	Oct 2023 - Sept 2024
<b>SPC</b>	100	98	113	121
<b>Italian imports</b>	100	105	129	122

**Table 10: Index of weighted average selling prices over the injury period<sup>75</sup>**

The market returned to trend in the investigation year, but this was to the advantage of Italian imports, with the Australian industry's sales failing to return to pre-September 2023 volumes.

In the investigation period, Italian imports of the goods represented 75% of the Australian market and the Australian industry represented 24%.

<sup>74</sup> Available at <https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/selected-living-cost-indexes-australia/latest-release#annual-living-costs>

<sup>75</sup> Confidential attachment 1 – Australian market



## 6 DUMPING INVESTIGATION

### 6.1 Finding

The Commissioner is satisfied that, during the investigation period:

- De Clemente, IMCA, Mutti, residual and uncooperative exporters exported dumped goods to Australia
- the level of dumping in respect of those goods was not negligible
- the volume of those dumped goods exported to Australia from Italy was not negligible
- La Doria did not export dumped goods to Australia.

The commission has calculated dumping margins in respect goods exported to Australia from Italy during the investigation period for each exporter, at the rates set out in the table below:

Exporter	Dumping margin
De Clemente	5.5%
IMCA	3.0%
La Doria	Negative 8.8%
Mutti	2.2%
Residual exporters	3.6%
Uncooperative exporters	11.1%

Table 11: Summary of dumping margins

### 6.2 Legislative framework

In the report to the Minister under section 269TEA(1), the Commissioner must recommend whether the Minister ought to be satisfied as to the grounds for publishing a dumping duty notice under section 269TG. The Minister also has to be satisfied that exporters exported dumped goods to Australia.

Section 269TDA(1) requires the Commissioner to terminate the investigation, in so far as it relates to an exporter, if satisfied that there has been no dumping by the exporter, or there has been dumping during the investigation period, but the dumping margin is less than 2%.

Dumping occurs when a product from one country is exported to another country at a price less than its normal value.

#### 6.2.1 Export price

Export price is determined under section 269TAB. Section 269TAB(1)(a) provides that the export price of any goods exported to Australia is the price paid or payable for the goods by the importer where the goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter in arms length transactions.

#### 6.2.2 Normal value

Normal value is determined under section 269TAC. Section 269TAC(1) states that the normal value of any goods exported to Australia is the price paid or payable for like goods

sold in the ordinary course of trade (**OCOT**) for home consumption in the country of export in sales that are arms length transactions by the exporter, or, if like goods are not so sold by the exporter, by other sellers of like goods.

### **6.2.3 Dumping margin**

Dumping margins are determined under section 269TACB. For all dumping margins calculated for the purposes of the investigation, the commission compared the weighted average Australian export prices with the corresponding quarterly weighted average normal values for the investigation period in accordance with section 269TACB(2)(a).

## **6.3 Exporter status**

Section 269T(1) provides that, in relation to an investigation, an exporter is a 'cooperative exporter' if the exporter's exports were examined as part of the investigation and the exporter was not an uncooperative exporter. An exporter who is not an 'uncooperative exporter' and whose exports the commission does not examine as part of the investigation is a 'residual exporter.'

### **6.3.1 Cooperative exporters**

The commission examined the exports of each of the selected exporters, who are therefore cooperative exporters.

### **6.3.2 Residual exporters**

Due to the large number of entities who have provided a PIR response (discussed in chapter 2.4.3), the Commissioner considered that it was not practicable to examine the exports of the exporters listed in Table 12 below. These exporters are residual exporters.

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Exporter
Attianese S.p.A
Bioagriworld S.r.l Uninominale
Calispa S.p.A
Compagnia Mercantile D'Oltremare S.r.l.
Conditalia S.p.A
Conserve Italia Soc.Coop.Agricola
Davia S.p.A
Di Leo Nobile S.p.A
Feger Di Gerardo Ferraioli S.p.A
Felice Conserve S.r.l
Giaguaro S.p.A
Le Specialità Italiane S.r.l
Pancrazio S.p.A
Perano Enrico & Figli S.p.A
Princes Italia
Rispoli Luigi & C. S.r.l
Rodolfi Mansueto S.p.A
Salvati Mario & C. S.p.A
Solana S.p.A

Table 12: Residual exporters

### 6.3.3 Uncooperative exporters

After having regard to section 269T(1) and the Customs Direction, the Commissioner has determined that all exporters from Italy that did not provide information requested of them through a PIR are uncooperative exporters for the purposes of the dumping investigation.

### 6.3.4 Other entities

#### Trading entities/Intermediaries

The Manual provides that the commission generally identifies the exporter as a principal in the transaction located in the country of export from where the goods were shipped, who:

- knowingly placed the goods in the hands of a carrier, courier, forwarding company, or their own vehicle for delivery to Australia, or
- owns, or previously owned, the goods, but need not be the owner at the time the goods were shipped.

Where there is no principal in the country of export, the commission will normally consider the exporter to be the person who gave up responsibility for the goods, such as by placing them in the hands of a carrier or forwarding company for delivery to Australia.

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The Manual notes that it is common for traders or other intermediaries to play a role in the exportation of the goods. These parties will typically provide services such as arranging transportation (both land and ocean), arranging port services, arranging loading, conducting price negotiations, arranging contracts with producer and customer alike, conveying the customer's specifications to the producer including quality, marking, and packing requirements, and so forth.

Typically, the manufacturer, as a principal who knowingly sent the goods for export to any destination, will be the exporter.

The commission has determined that, consistent with the Manual, several entities provided PIR responses who were not exporters of the goods during the investigation period, but instead act as a trader or an intermediary for the actual exporter.

Based on the information provided in PIR responses, and where relevant, correspondence between the entities and the commission, the commission has identified that the entities in Table 13 are not exporters of the goods but are traders or intermediaries of the goods on behalf of an exporter.

Entity	Finding
Conserve Manfuso S.r.l	Sells on behalf of an Italian producer of the goods
Italia Meal S.r.l	Sells on behalf of Italian producers of the goods
Princes Limited	Sells on behalf of an Italian producer of the goods

**Table 13: Traders/intermediaries of the goods**

Accordingly, the Commissioner does not consider the above entities to be exporters of the goods during the investigation period.

### La Molisana S.p.A

La Molisana S.p.A (**La Molisana**) provided a PIR response to the commission. After reviewing the response, the commission is satisfied that La Molisana did not export the goods to Australia during the investigation period. La Molisana exported other pasta and tomato products to Australia which are not covered by the goods description.

Accordingly, the Commissioner does not consider La Molisana an exporter of the goods during the investigation period.

The commission's analysis of the status of entities is in **Confidential Attachment 5 – Exporter status analysis**.

## **6.4 Dumping assessment – De Clemente**

### **6.4.1 Submission by De Clemente**

In its submission in response to its verification report and SEF 654, De Clemente raises a number of concerns with the commission's approach in determining normal values for De Clemente's export sales to Australia. De Clemente specifically claims that the commission erred in:

- revising De Clemente's **cost allocations**
- using **surrogate models** as the basis for calculating the normal value for certain models, and

- rejecting De Clemente's **economies of scale** cost adjustment.

In support of its claims, De Clemente submitted revised CTMS, normal value and dumping margin calculation worksheets for 2 'corrective scenarios', which result in lower dumping margins than the margin determined for De Clemente in SEF 654:

- **Corrective Scenario 1:** normal values for models 8-J-NVA-DC-TCL-P-N and 8-J-NVA-DC-TCL-P-Y have been recalculated using a different surrogate model to make the specification adjustment than the surrogate model selected by the commission.
- **Corrective Scenario 2:** in addition to the changes made in corrective scenario 1, normal values have been recalculated using a revised CTM for all models, whereby De Clemente has lowered the CTM for non-organic products and increased the CTM for organic products.

De Clemente further claims in its submission that if 'all economies of scale (internal and sector-specific) that characterize high-volume conventional production were fully taken into account', its dumping margin would be zero. De Clemente did not provide calculations for this third scenario.

The commission has considered De Clemente's claims and responds as follows.

#### *Cost allocations*

The revisions made to De Clemente's cost allocations and CTMS are set out in detail in section 4.2.4 of the verification report<sup>76</sup> at material revisions 4, 5, 7 and 10. All revisions are based on De Clemente's verified information and were made as part of the verification of De Clemente's data.

In making these revisions, the commission was correcting errors in the data. This included in some cases removing expenses that were double counted and therefore such revisions were in De Clemente's favour.

De Clemente has provided no new information or made any specific claims in relation to these revisions in its submission.

#### *Surrogate models*

The commission's use of surrogate models for determining normal values for certain models is set out in section 3.3.5.1 of the verification report and in SEF 654 at Table 15 (Table 15 in this report).

Of the 8 models that De Clemente exported to Australia during the investigation period, 3 required use of a surrogate model to determine normal value; for 2 models there were no domestic sales of those models and for the third export model there was an insufficient volume of domestic sales, i.e. the domestic sales were less than 5% by volume of the export sales to Australia.

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<sup>76</sup> EPR 654, Item 33.

Value-added model

In its submission in response to SEF 654, De Clemente notes the commission used the model with MCC of 4-J-NVA-DC-TCL-P-Y as a surrogate model for 4-J-VA-DC-TCL-P-Y. The only difference between these 2 models is that one is a value added (VA) model with herbs added and the other is non-value added (NVA), which does not include herbs. The commission but did not make a specification adjustment as there was no cost difference between the 2 models. De Clemente claims that this approach ‘ignores objective qualitative differences’ and ‘tends to flatten and underestimate the normal value of products belonging to higher-value market segments’.

The commission has re-examined the cost data provided by De Clemente and confirms that there is no cost difference between the 2 models and notes that this was also the case in the initial CTM data provided by De Clemente in its REQ. Either De Clemente did not account for the additional cost of herbs in its cost allocations, or the additional cost of the herbs is immaterial. De Clemente has not provided an estimate of the claimed cost difference between the 2 models in its submission.

800 gm models

In its submission in response to SEF 654, De Clemente notes the commission used surrogate models for 800 gm models 8-J-NVA-DC-TCL-P-N and 8-J-NVA-DC-TCL-P-Y. As noted in the verification report and SEF 654, the commission selected domestic model 8-J-NVA-WH-TCL-P-N as a surrogate because it was the closest model available as it was the only other model in a lacquered 800 gm can.<sup>77</sup>

De Clemente notes that models 8-J-NVA-DC-TCL-P-N and 8-J-NVA-DC-TCL-P-Y are both diced (DC) products, whereas surrogate model 8-J-NVA-WH-TCL-P-N is a whole-peeled (WH) product, and claims that ‘[i]n the practice of the canning industry, the two processes differ significantly in terms of process, raw material quality, and costs.’ In support of its claims, De Clemente submitted CTMS, normal value and dumping margin calculation worksheets for ‘corrective scenario 1’. In these worksheets, De Clemente has selected the equivalent 400 gm model as a surrogate,<sup>2</sup> and made a specification adjustment by:

- doubling the CTMS of the 400 gm surrogate model
- calculating the difference between that figure and the CTMS of the 800 gm export model, and
- applying the difference to the surrogate model’s normal value multiplied by 2.

This methodology suggested by De Clemente assumes that the cost and price of an 800 gm product is simply double the cost and price of a 400 gm product. De Clemente’s own cost and price data demonstrates that this is not the case.<sup>3</sup> The commission therefore rejects De Clemente’s proposed methodology and is satisfied that the domestic model 8-J-NVA-WH-TCL-P-N is the most appropriate surrogate model, as it is the same can size and type as the export models.

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<sup>77</sup> Can size (400 gm vs 800 gm) and can type (lacquered vs non-lacquered) are key cost components.

### *Economies of scale*

The commission's treatment of De Clemente's claimed cost adjustment for economies of scale is set out in detail in section 4.2.4 of the verification report at material revision 11.

In its REQ, De Clemente claimed a cost adjustment for the 2 models with the largest production volume. De Clemente claimed it costs less to produce these high volume products due to economies of scale. At verification, it was discovered that the costs that were deducted from these 2 models remained unallocated and, if the adjustment was to be accepted, would need to be allocated to other products. De Clemente subsequently submitted a revised CTM, in which it allocated these costs to organic products.

The commission did not accept De Clemente's cost adjustment claim for economies of scale. As noted in the verification report, the raw tomato cost for each model is based on the volume and cost per kg of each different type of tomato consumed in the production of that model. Therefore, the higher purchase price for organic raw tomatoes is already factored into the CTM for organic products. Similarly, the CTM for other products is already based upon the actual volume and lower price of the non-organic tomatoes used in those products.

In its submission in response to SEF 654, De Clemente claims that cost differences for organic and non-organic products are not limited to the raw material, but also derive from other factors of production. In support of its claims, De Clemente submitted CTMS, normal value and dumping margin calculation worksheets for 'corrective scenario 2'. In these worksheets, De Clemente has reduced the CTM for non-organic products and increased the CTM for organic products.

De Clemente has not disclosed the methodology for the cost adjustments submitted and has not provided evidence to support the claim that production costs for organic products are higher than non-organic products. For these reasons the commission has not accepted the claimed cost adjustment for economies of scale.

### **6.4.2 Export price**

The commission considers De Clemente is an exporter of the Australian export goods because this company:

- manufactures the goods in Italy
- knowingly manufactured the goods for export to Australia
- is named as the supplier on key commercial documents, including purchase orders, invoices and sales contracts
- is named as the shipper on the bill of lading
- for goods sold FOB, arranged and paid for inland transport and port handling charges to the port of export.

The commission recommends determining the export price for De Clemente under section 269TAB(1)(a). Under this section, an export price is the price paid by the importer to the exporter less transport and other costs arising after exportation.

To calculate an export price using a consistent delivery term for all sales, the commission adjusted some transactions from ex-works (**EXW**) to free-on-board (**FOB**), using



weighted-average inland transport and port handling costs for FOB sales and applying these values to EXW sales.

#### 6.4.3 Normal value

The commission recommends the normal value for De Clemente be ascertained under section 269TAC(1). The commission found De Clemente had a sufficient volume of domestic sales of like goods in OCOT during the investigation period.

##### Domestic sales in the ordinary course of trade

The following table summarises the figures the commission used to assess if De Clemente's domestic of like goods sales are in the ordinary course of trade in as per the conditions set out in section 269TAAD.

Component	Details
Extended unprofitability period	The investigation period
Reasonable recoverability period	The investigation period
Price	Net invoice price
Cost	Annual cost to make and sell the goods, including the inland transport cost for each transaction.
Weighted average cost	Weighted average cost to make and sell the goods over the investigation period, including the inland transport cost for each transaction. This is the same as the annual cost above.
Date of sale: Australian exports	Invoice date
Date of sale: Domestic	Invoice date

**Table 14: De Clemente ordinary course of trade assessment details**

##### Volume of relevant domestic sales

Under section 269TAC(1), the commission must set a normal value using a sufficient volume of domestic like goods. The volume of sufficient domestic sales for normal value under 269TAC(1) is set by the criteria in section 269TAC(14).

Assessment of De Clemente's domestic sales in the ordinary course of trade were found to be sufficient as the total volume was at least 5% of the Australian export sales volume.

Table 15 below details the commission's findings about domestic sales volumes for each corresponding Australian export sales model.

Export MCC <sup>78</sup>	Is MCC's domestic sales volume 5% or greater the export sales volume?	Treatment of normal value
4-J-NVA-DC-TCL-P-N	Yes	The commission considers domestic sales of same MCC permits a proper comparison to exported goods.

<sup>78</sup> Model control code

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Export MCC <sup>78</sup>	Is MCC's domestic sales volume 5% or greater the export sales volume?	Treatment of normal value
4-J-NVA-DC-TCL-P-Y	Yes	The commission considers domestic sales of same MCC permits a proper comparison to exported goods.
4-J-NVA-DC-TCN-P-N	Yes	The commission considers domestic sales of same MCC permits a proper comparison to exported goods.
4-J-NVA-OTHER-TCL-P-N	Yes	The commission considers domestic sales of same MCC permits a proper comparison to exported goods.
4-J-NVA-WH-TCL-P-N	Yes	The commission considers domestic sales of same MCC permits a proper comparison to exported goods.
4-J-VA-DC-TCL-P-Y	No	No domestic sales. Surrogate domestic model 4-J-NVA-DC-TCL-P-Y used. No specification adjustment required.
8-J-NVA-DC-TCL-P-N	No	Insufficient volume of domestic sales. Surrogate domestic model 8-J-NVA-WH-TCL-P-N used, with specification adjustment under section TAC(8).
8-J-NVA-DC-TCL-P-Y	No	No domestic sales. Surrogate domestic model 8-J-NVA-WH-TCL-P-N used, with specification adjustment under section TAC(8).

**Table 15: De Clemente export models compared to domestic model by volume**

In using domestic sales as a basis for the normal value, the commission considers that certain adjustments, in accordance with section 269TAC(8), are necessary to ensure fair comparison of normal values with export prices detailed in section 6.4.4 below.

#### **6.4.4 Normal value adjustments**

The commission recommends the following adjustments be made under section 269TAC(8) to properly compare the export price of the Australian export goods to the corresponding normal value.

Adjustment description	Deduction/addition
Domestic credit terms	Deduct an amount for credit provided to domestic customers
Domestic inland transport	Deduct an amount for domestic inland transport
Domestic pallet cost	Deduct an amount for domestic pallet costs
Domestic – other expenses	Deduct an amount for other domestic selling expenses
Export packaging	Add an amount for export packaging
Export inland transport	Add an amount for export inland transport
Export port and handling charges	Add an amount for port and handling charges

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Adjustment description	Deduction/addition
Export credit terms	Add an amount for credit provided to Australian customers
Specification adjustment	Add or deduct an amount for specification differences

Table 16: De Clemente summary of adjustments

### Use of surrogate normal value information

For the Australian models that had no corresponding domestic sales, the commission found sufficient domestic sales volumes of surrogate models with the closest physical characteristics under the MCC hierarchy structure.

In relying on surrogate models as a basis for the normal value, the commission considers it necessary to apply specification adjustments to the normal value of the surrogate model under section 269TAC(8).

The commission determined specification adjustments for 2 of the 3 Australian models based on the difference between the cost to make and sell for the surrogate domestic model and the cost to make and sell for the exported Australian model. The third Australian model did not require an adjustment as there was no cost difference between the Australian model and surrogate domestic model.

#### 6.4.5 Dumping margin

The dumping margin for the goods exported to Australia by De Clemente for the investigation period is **5.5%**.

The commission's dumping margin calculations for De Clemente are in **Confidential Attachments 6 to 9**.

### 6.5 Dumping assessment – IMCA

#### 6.5.1 Export price

The commission considers IMCA is an exporter of the Australian export goods because this company:

- manufactures the goods in Italy
- knowingly manufactured the goods for export to Australia
- is named as the supplier on commercial invoices
- is named as consignor on bills of lading
- for goods sold FOB, arranged and paid for inland transport to the port of export
- for goods sold FOB, arranged and paid for port handling charges at the port of export.

The commission recommends determining the export price for IMCA under section 269TAB(1)(a). Under this section, an export price is the price paid by the importer to the exporter less transport and other costs arising after exportation.

To calculate an export price using a consistent delivery term for all sales, the commission adjusted some transactions from EXW to FOB, using weighted-average inland transport and port handling costs for FOB sales and applying these values to EXW sales.

### 6.5.2 Normal value

The commission finds that there is an insufficient volume of domestic sales of like goods sold at arms length and in the ordinary course of trade to set a normal value under section 269TAC(1).

Furthermore, as per section 269TAC(14), the commission finds that sales of like goods were less than 5% of the volume of goods exported to Australia by the exporter therefore the commission is not satisfied that the volume of goods is large enough to permit a proper comparison for the purposes of assessing a dumping margin.

The commission instead recommends calculating a normal value under section 269TAC(2)(c), as permitted by section 269TAC(2)(a)(i). The commission recommends using:

- the cost to make the Australian export goods, based on IMCA's records, in accordance with regulation 43(2) of the *Customs (International Obligations) Regulation 2015 (the Regulation)*<sup>79</sup>
- the cost to sell the Australian export goods if IMCA had instead sold them in the domestic market in the ordinary course of trade based on the cost to sell domestic like goods, in accordance with regulation 44(2)
- the profit margin for sales of the Australian export goods if IMCA had instead sold them in the domestic market, based on the profit margin for domestic like goods in the ordinary course of trade, in accordance with regulation 45(2).

The commission recommends adjusting the normal value to properly compare this value to the export price when measuring the level of dumping, under section 269TAC(9).

#### Submission by IMCA in response to verification report

##### *Profit Calculation*

In its 12 August 2025 submission, IMCA claimed that the commission's profit calculation as set out in IMCA's verification is not correct. IMCA submitted that the commission's profit margin includes a net invoice value inclusive of direct selling expenses, however the SG&A calculation, which is deducted from the net invoice value to calculate profit excludes direct selling expenses. IMCA considers this is an unbalanced comparison and a net invoice value inclusive of direct selling expenses should be comparable to a corresponding CTMS inclusive of direct selling expenses.

#### Commission assessment

##### *Profit Calculation*

The commission notes IMCA's claim that the commission's profit calculation includes a net invoice value inclusive of direct selling expenses. It is the commission's standard practice to only include indirect costs and exclude direct selling expenses from the SG&A calculation because these direct costs are allocated directly to each sale. Therefore, the

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<sup>79</sup> All references in this report to a specific regulation are to a regulation in the *Customs (International Obligations) Regulation 2015*, unless otherwise specified.

commission does not accept IMCA's claim to include direct selling expenses in the SG&A calculation.

However, when reviewing IMCA's submission, the commission identified a calculation error in the Normal value calculation in IMCA's verification report, specifically, direct costs including packaging and commissions were not included in the CTMS. The commission updated the Normal value calculation resulting in a change to the dumping margin. A file note has been published on the EPR regarding this change to dumping margin report in IMCA's verification report.<sup>80</sup>

### 6.5.3 Normal value adjustments

The commission recommends that the following adjustments be made under section 269TAC(8) to properly compare the export price of the Australian export goods to the corresponding normal value. Further details concerning the application of adjustments to account for differences in product specifications, use of surrogate models and accessories are detailed below.

Adjustment description	Deduction/addition
Export packaging	Add an amount for export packaging
Export inland transport	Add an amount for export inland transport
Export port charges	Add an amount for port charges
Export commission	Add an amount for export commission
Export credit terms	Add an amount for export credit terms

Table 17: IMCA summary of adjustments

### 6.5.4 Dumping margin

The dumping margin for the goods exported to Australia by IMCA for the investigation period is **3.0%**.

The commission's dumping margin calculations for IMCA are in **Confidential Attachments 10 to 13**.

## 6.6 Dumping assessment – La Doria

### 6.6.1 Export price

The commission considers La Doria is an exporter of the Australian export goods because this company:

- manufactures the goods in Italy
- knowingly manufactured the goods for export to Australia
- is named as the supplier on commercial invoices
- is named as consignor on bills of lading
- for goods sold FOB, arranged, and paid for inland transport to the port of export
- for goods sold FOB, arranged, and paid for port handling charges at the port of export.

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<sup>80</sup> EPR, item 32. See also section 6.5.2 of SEF 654.

The commission recommends determining the export price for La Doria under section 269TAB(1)(a). Under this section, an export price is the price paid by the importer to the exporter less transport and other costs arising after exportation.

To calculate an export price using a consistent delivery term for all sales, the commission adjusted some transactions from EXW to FOB, using weighted-average inland transport and port handling costs for FOB sales and applying these values to EXW sales.

### **6.6.2 Normal value**

The commission recommends the normal value for La Doria be ascertained under section 269TAC(1). The commission found La Doria had a sufficient volume of domestic sales of like goods in OCOT during the investigation period.

#### Assessment of costs

The commission notes that La Doria has a related party that supplied some of the goods to La Doria during the investigation period. These goods are included in La Doria's cost of production. The commission finds that at the cost of production level La Doria's unit cost is comparable with other selected exporters. Based on this finding, the commission is satisfied that La Doria's production records reflect competitive market costs.

#### Domestic sales in the ordinary course of trade

The following table summarises the figures the commission used to assess if La Doria's domestic of like goods sales are in the ordinary course of trade in as per the conditions set out in section 269TAAD.

<b>Component</b>	<b>Details</b>
Extended unprofitability period	The investigation period
Reasonable recoverability period	The investigation period
Price	Net invoice price
Cost	Annual cost to make and sell the goods, including the inland transport cost for each transaction.
Weighted average cost	Weighted average cost to make and sell the goods over the investigation period, including the inland transport cost for each transaction. This is the same as the annual cost above.
Date of sale: Australian exports	Invoice date
Date of sale: Domestic	Invoice date

**Table 18: La Doria ordinary course of trade assessment details**

#### Volume of relevant domestic sales

Under section 269TAC(1), the commission must set a normal value using a sufficient volume of domestic like goods. The volume of sufficient domestic sales for normal value under 269TAC(1) is set by the criteria in section 269TAC(14).

Assessment of La Doria's domestic sales in the ordinary course of trade were found to be sufficient as the total volume was at least 5% of the Australian export sales volume.

Table 15 below details the commission's findings about domestic sales volumes for each corresponding Australian export sales model.

Export MCC	Is MCC's domestic sales volume 5% or greater the export sales volume?	Treatment of normal value
4-J-NVA-C-N-WH-P-TCL	Yes	The commission considers domestic sales of same MCC permits a proper comparison to exported goods.
4-J-NVA-L-N-WH-P-TCL	Yes	The commission considers domestic sales of same MCC permits a proper comparison to exported goods.
4-J-NVA-R-N-DC-P-TCL	Yes	The commission considers domestic sales of same MCC permits a proper comparison to exported goods.
4-J-NVA-R-N-DC-P-TCN	Yes	The commission considers domestic sales of same MCC permits a proper comparison to exported goods.
4-J-NVA-R-Y-DC-P-TCL	Yes	The commission considers domestic sales of same MCC permits a proper comparison to exported goods.
4-J-VA-R-N-DC-P-TCL	No	No domestic sales of this model. Normal values determined under TAC(1) based on TAC(1) normal values for 4-J-NVA-R-N-DC-P-TCL and adjusted for specification differences.

**Table 19: La Doria export models compared to domestic model by volume**

In using domestic sales as a basis for the normal value, the commission considers that certain adjustments, in accordance with section 269TAC(8), are necessary to ensure fair comparison of normal values with export prices detailed in section 6.5.3 below.

### 6.6.3 Normal value adjustments

The commission recommends that the following adjustments be made under section 269TAC(8) to properly compare the export price of the Australian export goods to the corresponding normal value. Further details concerning the application of adjustments to account for differences in product specifications and use of surrogate models are detailed below.

Adjustment description	Deduction/addition
Domestic credit terms	Deduct an amount for credit provided to domestic customers
Domestic inland transport	Deduct an amount for domestic inland transport
Domestic handling & other	Deduct an amount for domestic pallet costs
Domestic commission	Deduct an amount for other domestic selling expenses
Domestic packaging	Deduct an amount for domestic packaging
Domestic marketing	Deduct an amount for domestic marketing
Export packaging	Add an amount for export packaging
Export inland transport	Add an amount for export inland transport
Export port handling	Add an amount for port and handling charges
Export credit terms	Add an amount for credit provided to Australian customers



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Adjustment description	Deduction/addition
Specification differences	Add or deduct an amount for specification differences

Table 20: La Doria summary of adjustments

### Use of surrogate normal value information

For the one Australian model that had no corresponding domestic sales, the commission found sufficient domestic sales volumes of a surrogate model with the closest physical characteristics under the MCC hierarchy structure.

In relying on a surrogate model as a basis for the normal value, the commission considers it necessary to apply a specification adjustment to the normal value of the surrogate model under section 269TAC(8).

A specification adjustment to account for the physical differences between the export and surrogate model have been performed. The commission determined the value of the adjustment based on the difference between the cost to make and sell for the surrogate domestic model and the cost to make and sell for the exported Australian model.

#### 6.6.4 Dumping margin

The dumping margin for the goods exported to Australia by La Doria for the investigation period is **negative 8.8%**.

Accordingly, the Commissioner terminated the dumping investigation in relation to La Doria in TER 654, on the basis there has been no dumping of the goods by La Doria, pursuant to section 269TDA(1)(b)(i).

The commission's dumping margin calculations for La Doria are in **Confidential Attachments 14 to 17**.

### 6.7 Dumping assessment – Mutti

#### 6.7.1 Export price

The commission considers Mutti is an exporter of the Australian export goods because this company:

- manufactures the goods in Italy
- knowingly manufactured the goods for export to Australia
- is named as the supplier on commercial invoices
- is named as consignor on bills of lading
- for goods sold FOB, arranged, and paid for inland transport to the port of export
- for goods sold FOB, arranged, and paid for port handling charges at the port of export.

The commission recommends determining the export price for Mutti under section 269TAB(1)(a). Under this section, an export price is the price paid by the importer to the exporter less transport and other costs arising after exportation.

To calculate an export price using a consistent delivery term for all sales, the commission adjusted some transactions from EXW to FOB, using weighted-average inland transport and port handling costs for FOB sales and applying these values to EXW sales.

### 6.7.2 Normal value

The commission recommends the normal value for Mutti be ascertained under section 269TAC(1). The commission found Mutti had a sufficient volume of domestic sales of like goods in OCOT during the investigation period.

#### Domestic sales in the ordinary course of trade

The following table summarises the figures the commission used to assess if Mutti's domestic of like goods sales are in the ordinary course of trade in as per the conditions set out in section 269TAAD.

Component	Details
Extended unprofitability period	The investigation period
Reasonable recoverability period	The investigation period
Price	Net invoice price
Cost	Annual cost to make and sell the goods, including the inland transport cost for each transaction.
Weighted average cost	Weighted average cost to make and sell the goods over the investigation period, including the inland transport cost for each transaction. This is the same as the annual cost above.
Date of sale: Australian exports	Invoice date
Date of sale: Domestic	Invoice date

**Table 21: Mutti ordinary course of trade assessment details**

#### Volume of relevant domestic sales

Under section 269TAC(1), the commission must set a normal value using a sufficient volume of domestic like goods. The volume of sufficient domestic sales for normal value under 269TAC(1) is set by the criteria in section 269TAC(14).

Assessment of Mutti's domestic sales in the ordinary course of trade were found to be sufficient as the total volume was at least 5% of the Australian export sales volume.

Table 22 below details the commission's findings about domestic sales volumes for each corresponding Australian export sales model.

Export MCC	Is MCC's domestic sales volume 5% or greater the export sales volume?	Treatment of normal value
3-JP-NVA-CR-TCL-P-N-D	Yes	Domestic sales of the same MCC available for normal value under section 269TAC(1), adjusted as required pursuant to 269TAC(8).
3-JP-NVA-CR-TCL-P-N-R	Yes	Domestic sales of the same MCC available for normal value under section 269TAC(1), adjusted as required pursuant to 269TAC(8).

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Export MCC	Is MCC's domestic sales volume 5% or greater the export sales volume?	Treatment of normal value
4-JP-NVA-CR-TCL-P-N-R	Yes	Domestic sales of the same MCC available for normal value under section 269TAC(1), adjusted as required pursuant to 269TAC(8).
4-JP-NVA-CR-TCL-P-Y-R	No	No domestic sales of this MCC.  Normal values determined under section 269TAC(1) based on TAC(1) normal values for surrogate model 4-JP-NVA-CR-TCL-P-N-R and adjusted for specification differences under section 269TAC(8).
4-JP-NVA-WH-TCL-P-N-C	Yes	Domestic sales of the same MCC available for normal value under section 269TAC(1), adjusted as required pursuant to 269TAC(8).
4-JP-NVA-WH-TCL-P-N-D	No	Insufficient domestic sales of MCC for section 269TAC(1).  Normal values determined under section 269TAC(1) based on TAC(1) normal values for surrogate model 4-JP-NVA-WH-TCL-P-N-L and adjusted for specification differences under section 269TAC(8).
4-JP-NVA-WH-TCL-P-N-L	Yes	Domestic sales of the same MCC available for normal value under section 269TAC(1), adjusted as required pursuant to 269TAC(8).
4-JP-NVA-WH-TCL-P-N-O	Yes	Domestic sales of the same MCC available for normal value under section 269TAC(1), adjusted as required pursuant to 269TAC(8).
4-JP-NVA-WH-TCL-P-N-SM	Yes	Domestic sales of the same MCC available for normal value under section 269TAC(1), adjusted as required pursuant to 269TAC(8).
4-JP-NVA-WH-TCL-P-Y-L	No	No domestic sales of this MCC.  Normal values determined under section 269TAC(1) based on TAC(1) normal values for surrogate model 4-JP-NVA-WH-TCL-P-N-C and adjusted for specification differences under section 269TAC(8).
4-JP-VA-CR-TCL-P-N-R	No	No domestic sales of this MCC.  Normal values determined under section 269TAC(1) based on TAC(1) normal values for surrogate model 4-JP-NVA-CR-TCL-P-N-R and adjusted for specification differences under section 269TAC(8).
5-JP-NVA-CR-O-P-N-R	Yes	Domestic sales of the same MCC available for normal value under section 269TAC(1), adjusted as required pursuant to 269TAC(8).

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Export MCC	Is MCC's domestic sales volume 5% or greater the export sales volume?	Treatment of normal value
5-JP-NVA-CR-TCL-P-N-R	No	Insufficient domestic sales of MCC for section 269TAC(1).  Normal values determined under section 269TAC(1) based on TAC(1) normal values for surrogate model 5-JP-NVA-CR-O-P-N-R and adjusted for specification differences under section 269TAC(8).
5-JP-VA-CR-TCL-P-N-R	No	No domestic sales of this MCC.  Normal values determined under section 269TAC(1) based on TAC(1) normal values for surrogate model 5-JP-NVA-CR-O-P-N-R <sup>81</sup> and adjusted for specification differences under section 269TAC(8).
8-JP-NVA-WH-TCL-P-N-L	Yes	Domestic sales of the same MCC available for normal value under section 269TAC(1), adjusted as required pursuant to 269TAC(8).

**Table 22: Mutti export models compared to domestic model by volume**

In using domestic sales as a basis for the normal value, the commission considers that certain adjustments, in accordance with section 269TAC(8), are necessary to ensure fair comparison of normal values with export prices detailed in chapter 6.7.3 below.

### Submission on Profit calculation – Normal value

In its post-SEF 654 submission, Mutti submitted that the commission's profit ratio calculation in Appendix 3 (which is relevant to the calculation of its normal value) is not correct. The profit margin was calculated using a net invoice value for domestic sales, inclusive of various direct selling expenses, and a CTMS which did not include these same direct selling expenses. Mutti submits this leads to an unbalanced comparison, with a 'full price' compared with a CTMS from which certain expenses were deducted. This accordingly results in an inflated profit margin.

### *Commission assessment*

When reviewing Mutti's submission, the commission identified a calculation error in the Normal value calculation, specifically, direct costs including packaging, commissions and promotional expenses were not included in the CTMS. The commission updated the Normal value calculation resulting in a change to the dumping margin.

### **6.7.3 Normal value adjustments**

The commission recommends that the following adjustments be made under section 269TAC(8) to properly compare the export price of the Australian export goods to the

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<sup>81</sup> SEF 654 determined normal values for model 5-JP-VA-CR-TCL-P-N-R based on normal values for surrogate model 5-JP-NVA-CR-TCL-P-N-R. However, as the normal values for 5-JP-NVA-CR-TCL-P-N-R were also based on a surrogate model, the commission has revised this calculation to use model 5-JP-NVA-CR-O-P-N-R.

corresponding normal value. Further details concerning the application of adjustments to account for differences in product specifications and use of surrogate models are detailed below.

Adjustment description	Deduction/addition
Domestic credit terms	Deduct an amount for domestic credit terms
Domestic packaging	Deduct an amount for domestic inland transport
Domestic inland transport	Deduct an amount for domestic packaging
Domestic commissions	Deduct an amount for domestic commissions
Domestic promotional expense	Deduct an amount for domestic promotional expense
Export packaging	Add an amount for export packaging
Export inland transport	Add an amount for export inland transport
Export commissions	Add an amount for export commissions
Export promotional expenses	Add an amount for export promotional expenses
Export credit terms	Add an amount for export credit terms
Specification adjustment	Either add or deduct

**Table 23: Mutti summary of adjustments**

*Use of surrogate normal value information*

For the Australian models that had no corresponding domestic sales, the commission found sufficient domestic sales volumes of surrogate models with the closest physical characteristics under the MCC hierarchy structure.

In relying on surrogate models as a basis for the normal value, the commission considers it necessary to apply specification adjustments to the normal value of the surrogate model under section 269TAC(8).

A surrogate domestic model has been used as the basis for normal values when exported models had no domestic counterpart. Specification adjustments are necessary to account for the difference in the MCC of the Australian model and domestic surrogate model. The commission determined the specification adjustments for the surrogate MCCs on the difference in the export price between the Australian models and their surrogates.

In SEF 654, the commission determined normal values for model 5-JP-VA-CR-TCL-P-N-R based on normal values for surrogate model 5-JP-NVA-CR-TCL-P-N-R. In reviewing the calculations, the commission identified that the normal values for 5-JP-NVA-CR-TCL-P-N-R were also based on a surrogate model (5-JP-NVA-CR-O-P-N-R). To rectify this 'double surrogate', the commission has revised this calculation to use model 5-JP-NVA-CR-O-P-N-R.

*Submission on Profit calculation – specification adjustments*

In its post-SEF 654 submission, Mutti submitted the commission should have calculated its specification adjustments for MCCs with unrepresentative quantities (i.e. below 5% of the Australian export sales volume) using the profit margin from the surrogate MCCs instead of a weighted average profit margin of all domestic sales.

### *Commission assessment*

The commission uses a surrogate model, with specification adjustments in accordance with section 269TAC(8), where there are no sales or insufficient sales of the same models of the goods exported to Australia that are sold in the ordinary course of trade on the domestic market. It is the commission's long-standing ordinary practice, when making a specification adjustment, to use a profit calculated using all domestic sales made in the ordinary course of trade during the investigation period. The profit calculation for all specification adjustments in the investigation (not only Mutti) is the difference between the CTMS of the target model and the surrogate model, and accordingly considers more than one model.

$$\text{Profit margin} = (\text{Export model unit CTMS} - \text{Surrogate model unit CTMS}) \times \text{All domestic sales OCOT profit}$$

The use of the surrogate model profit, rather than an OCOT profit, would result in a normal value based more on the surrogate model. The commission considers the use of the target model profit is not appropriate, due to the minimal sales volumes (and hence the reason for using a surrogate). In these circumstances, the commission considers the OCOT profit for all domestic sales the more appropriate.

#### **6.7.4 Dumping margin**

As a result of the update to Mutti's normal value calculations, i.e. the inclusion of additional direct selling expenses in the CTMS (see chapter 6.7.2) and change of surrogate model for MCC 5-JP-VA-CR-TCL-P-N-R, the dumping margin for the goods exported to Australia by Mutti for the investigation period changed from 2.3% to **2.2%**.

The commission's dumping margin calculations for Mutti are in **Confidential Attachments 18 to 21**.

### **6.8 Residual exporters**

Chapter 6.3.2 lists all residual exporters.

#### **6.8.1 Export price**

The export price for residual exporters has been calculated in accordance with section 269TACAB(2)(c), which provides that the export price for residual exporters must not be less than the weighted average export price for like goods of cooperative exporters from Italy.

### **6.9 Information considered by the commission**

#### **6.9.1 Information provided by exporters**

The commission has relied upon information provided by cooperating exporters in assessing the alleged subsidy programs. This included information provided by exporters in the REQs as well as information provided by exporters during verification.

#### **6.9.2 Information provided by the European Commission and the GOI**

As discussed in chapter 2.4.4, in accordance with section 269TB(2C), the commission met with both the European Commission and the GOI prior to initiation of the investigation to discuss the claims made by the applicant in relation to countervailable subsidies. The commission again met with the European Commission and the GOI after initiation to further discuss the alleged subsidies.

The European Commission and the GOI provided submissions to the commission following both meetings. These are on the EPR.<sup>82</sup>

On 15 October 2024, the commission sent questionnaires to the European Commission and the GOI requesting information about any subsidies that might have been received in respect of the goods exported to Australia from Italy in the investigation period. The European Commission and the GOI submitted their RGQ on 16 January 2025 and 31 January 2025, respectively. Each RGQ is available on the EPR.<sup>83</sup>

#### *GOI visit*

On 12 and 13 May 2025, the commission met with representatives of the GOI in Rome, Italy to discuss, among other things, the alleged subsidy programs, differences between information in the GOI RGQ and selected exporters REQs, and the supporting information and data provided by the GOI.

A summary of the visit and the issues discussed is on the EPR.<sup>84</sup> The commission has also relied upon information provided by the GOI from the visit in assessing the alleged subsidy programs.

### **6.9.3 Other information**

The commission also considered as part of this assessment:

- information provided in the application
- submissions received in relation to subsidies provided to Italian exporters<sup>85</sup>
- information provided to the WTO by the GOI in August 2023 in the New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures (**SCM Agreement**)
- information provided to the WTO by the European Commission in July 2023 in the New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the SCM.

### **6.9.4 Normal value**

The normal value for residual exporters has been calculated in accordance with section 269TACAB(2)(d), which provides that the normal value must not exceed the weighted average normal value for like goods of cooperative exporters from Italy.

### **6.9.5 Dumping margin**

The dumping margin in respect of the goods exported to Australia by residual exporters for the investigation period is **3.6%**.

The commission's calculations are in **Confidential Attachment 22 – Residual and uncooperative exporters – Dumping Margin calculations**

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<sup>82</sup> EPR 654, Items 4, 5, 6 and 7.

<sup>83</sup> EPR 654, Items 18 and 19.

<sup>84</sup> EPR 654, Item 30.

<sup>85</sup> Chapters 2.5.1 and 2.5.3.



## 6.10 Uncooperative exporters

### 6.10.1 Export price

In accordance with section 269TACAB(1)(d), the commission has determined an export price for uncooperative exporters pursuant to section 269TAB(3), having regard to all relevant information.

Relevant information available to the commission includes the verified export price data for selected exporters and the FOB export prices for Italian exporters who exported to Australia, as reported in the ABF import database.

As uncooperative exporters did not provide data to the commission during the course of the investigation, the commission has had regard to FOB export prices for uncooperative and selected exporters as reported in the ABF import database. The commission observed that with the exception of Mutti, the FOB export prices relating to uncooperative exporters are similar to and comparable to FOB export prices for the other 3 selected exporters.

Mutti's verified export price is substantially higher than the export price of the other 3 selected exporters. The commission considers this is because Mutti supplies a premium product that commands a higher price. The commission considers Mutti's export price is an outlier when compared to other Italian exporters of the goods. It is therefore not appropriate for inclusion in the calculation of an export price for uncooperative exporters.

The commission therefore considers that the most relevant information to use to determine an export price for uncooperative exporters is the lowest export price of the other 3 selected exporters: De Clemente, IMCA and La Doria. This export price demonstrates a price at which uncooperative Italian exporters may export goods to Australia, based on the information before the commission.

### 6.10.2 Normal value

In accordance with section 269TACAB(1)(e), the commission has determined the normal value for uncooperative exporters pursuant to section 269TAC(6), having regard to all relevant information.

For the reasons provided above in chapter 6.10.1 concerning the determination of the export price, in the absence of specific information relating to uncooperative exporters, the commission considers that the most relevant information to use to determine the normal value for uncooperative exporters is the normal values for De Clemente, IMCA and La Doria.

Therefore, the commission considers that the most relevant information to use to determine a normal value is the highest weighted average normal value of the 3 selected exporters other than Mutti: De Clemente, IMCA and La Doria.

### 6.10.3 Dumping margin

The dumping margin in respect of the goods exported to Australia by uncooperative exporters for the investigation period is **11.1%**.

The commission's calculations are in **Confidential Attachment 22 – Residual and uncooperative exporters – Dumping Margin calculations**.

## 6.11 Volume of dumping

Pursuant to section 269TDA(3), the Commissioner must terminate the investigation, in so far as it relates to a country, if satisfied that the total volume of goods that have been or may be dumped is a negligible volume. Section 269TDA(4) defines a negligible volume as less than 3% of the total volume of goods imported into Australia over the investigation period.<sup>86</sup>

Using the ABF import database and having regard to the information collected and verified during the investigation, the commission determined the volume of imports in the Australian market. Based on this information, the Commissioner is satisfied that, when expressed as a percentage of the total Australian import volume of the goods, the volume of goods that have been exported from Italy and dumped was greater than 3% of the total import volume. The volume of dumped goods is therefore not negligible.

The commission's calculations are in **Confidential Attachment 1 – Australian market**.

## 6.12 Level of dumping

Section 269TDA(1) provides that the Commissioner must terminate a dumping investigation, in so far as it relates to an exporter of the goods, if satisfied that:

- there has been no dumping by the exporter of any of those goods, or
- that there has been dumping by the exporter of some or all of those goods, but the dumping margin for the exporter is less than 2%.

The Commissioner is satisfied that there has been dumping by all Italian exporters of the goods during the investigation period at dumping margins greater than 2%, except for La Doria.

Accordingly, the Commissioner is satisfied that the requirements have been met to terminate the dumping investigation in relation to La Doria, on the basis that the level of dumping received by La Doria was negligible in relation to the goods, in accordance with section 269TDA(1).

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<sup>86</sup> Section 269TDA(5) does not apply to the investigation.

## 7 SUBSIDY INVESTIGATION

### 7.1 Finding

The Commissioner is satisfied that, during the investigation period:

- countervailable subsidies were received in respect of the goods exported to Australia from Italy
- for De Clemente, IMCA, La Doria, Mutti and residual exporters, the level of subsidisation in respect of those goods was negligible
- for non-cooperative entities, the level of subsidisation in respect of those goods was not negligible
- the volume of those subsidised goods exported to Australia from Italy was not negligible.

The commission has calculated subsidy margins in respect of the goods exported to Australia from Italy during the investigation period for each exporter, at the rates set out in the table below.

Exporter	Subsidy margin
De Clemente	0.8%
IMCA	0.8%
La Doria	0.3%
Mutti	0.1%
Residual exporters	0.5%
Non-cooperative entities	1.6%

**Table 24: Summary of subsidy margins**

The Commissioner terminated the subsidy investigation in relation to De Clemente, IMCA, La Doria, Mutti and the residual exporters in TER 654, on the basis that the countervailable subsidy received by these exporters in relation to the goods, never at any time during the investigation period, exceeded a negligible level, in accordance with section 269TDA(2)(b)(ii).

The commission found the following programs were countervailable in respect of the goods exported to Australia from Italy during the investigation period:

Program Number <sup>87</sup>	Program Name <sup>88</sup>	Program type
654-3	Regulations for admission to the grants prepared for participation in fairs in Italy and abroad	Grant
654-5	Sustainable Investments 4.0	Grant
654-6	Energy Efficiency Contributions	Grant

<sup>87</sup> For those programs listed in CON 654, the commission has assigned new numbers for those programs relevant to the investigation period.

<sup>88</sup> Program names may not be the official title and instead reflect descriptions of the program.

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Program Number <sup>87</sup>	Program Name <sup>88</sup>	Program type
654-7	Investment programmes in crisis areas of the Campania Region	Grant
654-8	Refund of customs duty (Law No. 639 of 5 July 1964)	Tax
654-9	Campania Rural Development Program	Grant
654-10	Financial Instrument for Productive Investments in Campania	Grant
654-11	Sgravi Benefits – Article 1, C 10-15 of Law No. 178/2020 – Youth Exemption	Tax
654-13	Contratti di Sviluppo (Development Contracts)	Grant / Loan
654-14	SA.103289 - Decontribuzione Sud	Tax

**Table 25: Countervailable programs**

## 7.2 Legislative framework

Subsidisation occurs when a financial contribution or income or price support by a government or public body confers a benefit (whether directly or indirectly) in relation to goods exported to Australia. A subsidy is countervailable if it is specific. The amount of a countervailable subsidy is determined in accordance with section 269TACD.

## 7.3 Investigated programs

### 7.3.1 Introduction

The applicant alleged the existence of 70 programs in relation to exports of the goods from Italy.<sup>89</sup> Non-confidential appendix 1 in CON 654 lists these programs. The commission identified a further 14 programs shortly after the Commissioner initiated the investigation, which it included in the questionnaire sent to the selected exporters, the GOI and the EC. The commission numbered these programs 71 to 84.

The commission identified 13 more programs during the investigation: Programs 654-1 to 654-9 and NP2 to NP5 (renumbered 654-11 to 654-14). The following chapters discuss the commission's findings:

- chapter 7.3.2 discusses those programs listed in CON 654 that the commission found conferred a benefit to exporters during the investigation period
- chapter 7.3.3 discusses those programs not listed in CON 654 that the commission found conferred a benefit to exporters during the investigation period
- chapter 7.3.4 discusses those programs listed either in CON 654 or reported by the selected exporters or the GOI in their questionnaire responses which the commission found did not confer a benefit to exporters during the investigation period.

The commission has renumbered those subsidy programs relevant to the investigation period to more easily differentiate those programs from previously identified programs with the same number from other investigations.

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<sup>89</sup> After removing the double count for 3 programs.

### 7.3.2 Programs listed in CON 654 which conferred a benefit

Table 26 sets out the programs listed in CON 654 that the commission found conferred a benefit in relation to the goods exported to Australia by the selected exporters during the investigation period.

Program Number in CON 654	New Program Number	Program Name <sup>90</sup>	Program type	Countervailable (Yes/No)
52	N/A	Sgravi Benefits – Article 1, paragraph 773 of Law No. 296/2006	Tax	No
53	N/A	Sgravi Benefits - Article 1, paragraph 10, Law No. 160/2019	Tax	No
57	N/A	Article 1, paragraphs 1051–1063 of Law No. 178/2020, aka Tax Credit for Investments in New Capital Goods (Code L3, 2L, 3L)	Tax	No
66	654-15	Contratti di Sviluppo (Development Contracts)	Grant / Loan	Yes
79	654-16	SA.103289 - Decontribuzione Sud	Tax	Yes
80	N/A	Training Grants from Interprofessional Funds	Grant	No
81	N/A	SA.45174 - Disabled incentive - article 13 law 68/1999	Grant	No

**Table 26: Programs listed in CON 654 which conferred a benefit**

The commission's assessment of each subsidy program in Table 26 is in **Appendix A – Subsidy programs assessment**.

### 7.3.3 Programs not listed in CON 654 which conferred a benefit

Table 27 sets out the programs identified by the commission during the course of the investigation which were not listed in CON 654 and which conferred a benefit in relation to the goods exported to Australia by the selected exporters during the investigation period.

Program Number in CON 654	New Program Number	Program Name <sup>91</sup>	Program type	Countervailable (Yes/No)
N/A	654-1	Common Agricultural Policy - Basic Income Support for Sustainability	Grant (upstream)	No
N/A	654-2	Common Agricultural Policy - Coupled direct payments	Grant (upstream)	No
N/A	654-3	Regulations for admission to the grants prepared for participation in fairs in Italy and abroad	Grant	Yes
N/A	654-4	IRES tax credit 2H - Investments in capital goods in the territory	Tax	No

<sup>90</sup> Program names may not be the official title and instead reflect descriptions of the program.

<sup>91</sup> Program names may not be the official title and instead reflect descriptions of the program.

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Program Number in CON 654	New Program Number	Program Name <sup>91</sup>	Program type	Countervailable (Yes/No)
N/A	654-5	Sustainable Investments 4.0	Grant	Yes
N/A	654-6	Energy Efficiency Contributions	Grant	Yes
N/A	654-7	Investment programmes in crisis areas of the Campania Region	Grant	Yes
N/A	654-8	Refund of customs duty (Law No. 639 of 5 July 1964)	Tax	Yes
N/A	654-9	Campania Rural Development Program	Grant	Yes
N/A	654-10	Financial Instrument for Productive Investments in Campania	Grant	Yes
N/A	654-11	NP2 – Sgravi Benefits – Article 1, C 10-15 of Law No. 178/2020 – Youth Exemption	Tax	Yes
N/A	654-12	NP3 – Secondo Conto Energia	Tax	No
N/A	654-13	NP4 – Quarto Conto Energia	Tax	No
N/A	654-14	NP5 – Benefits for energy-intensive companies	Tax	No

**Table 27: Programs not listed in CON 654 which conferred a benefit**

The commission's assessment of each subsidy program in Table 27 is in **Appendix A – Subsidy programs assessment**.

### 7.3.4 Programs which did not confer a benefit

The commission found no evidence the programs in Table 28 below, listed either in CON 654 or reported by the selected exporters or the GOI in their questionnaire responses, conferred a benefit in relation to the goods exported to Australia by the selected exporters during the investigation period:

Program Number in CON 654	Program Name <sup>92</sup>
2	Local income tax (ILOR) exemptions
5	Export Marketing Grants
9	Export Restitution Payments
10*	Lump-Sum Interest Payment under the Sabatini Law for Companies in Southern Italy (Nuova Sabatini)
11*	Remission of Taxes on Export Credit Insurance
12	Grant Received Pursuant to the Community Initiative Concerning the Preparation of Enterprises for the Single Market (PRISMA)
13	Industrial Development Grants (Law 488/92)

<sup>92</sup> Program names may not be the official title and instead reflect descriptions of the program.

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<b>Program Number in CON 654</b>	<b>Program Name<sup>92</sup></b>
14	Industrial Development Grants (Law 183/76)
15	Interest Subsidies
16	Training Grants
17	Interest Contributions on Debt Consolidation Loans
18	Regional Tax on Income of Productive Activities Deduction (IRAP)
19	Duty Free Import Rights
20	Corporate Income Tax (IRPEG) Exemptions
21	Development Grants
22	Revolving Fund for Economic Initiatives Loan
24	Investment in Disadvantaged Areas
25*	Increase in Employment
26	<i>Patti Territoriali</i>
27	Law 196/97
29	Law 223/91 Article 8, Paragraph 2
30	Law 223/91 Article 8, Paragraph 4
31	Legislative Decree 276/03
32	<i>Contratto di Programma</i>
33	Interest Contributions
34	<i>Fondo Innovazione Tecnologica</i> (Technological Innovation Fund) - loans
35	<i>Fondo Innovazione Tecnologica</i> - grants
36	Interest Contributions
37	Measure 3.14 of the POR Sicilia 2000/2006
38	Tax Credits under Article 280 of Law 296/2006
39	Tax Credits under Article 280 of Law 296/2006
40	Tremonti Ter – Tax break
41	PO FESR ( <i>Programma Operativo Fondo Europeo di Sviluppo Regionale</i> ) Measure 4.1.1.1 (falls under ERDF)
42	Law 167/2011
43	Article 42 of Law 78/2010
44	Article 1 of Law 296/06 (commonly referred to as the 2007 Finance Act)
45	POR FESR Molise 2007/2013 (Operational Program ERDF Molise 2007–2013)



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Program Number in CON 654	Program Name <sup>92</sup>
46	Law 223/91, Article 25, Paragraph 9 (Collective Redundancies & Worker Support)
47	Ministerial Decrees of July 23, 2009, and August 6, 2010 (Berlusconi Grant)
48	Ministerial Decrees of July 23, 2009, and August 6, 2010 (Berlusconi Loan)
49*	<i>Sgravi</i> – Art 1 par 161 and 168 Law 178/2020 (Social Security Contribution Relief)
50	Preferential Financing for Export Promotion Under Law 394/81
54	Research, Development, and Innovation 2020–2022 (Nuova Sabatini)
55	Measure 123 (part of European Agricultural Fund for Rural Development).
56	Article 1 par. 200, 201 and 202 of Law 160/2019 (Investment Tax Credit)
58*	Tax Credit under Article 15 Law Decree n. 4, 27 January 2022
59	Article 5 of Law Decree n. 17 dated 1 March 2022
60	Connecting Europe Facility (2021–2027)
61	The European Cohesion Fund (2021–2027)
62	The Just Transition Fund (JTF)
63	European Maritime, Fisheries and Aquaculture Fund
64	Horizon Europe
67	SIMEST – Fondo 394/82 (also known as ‘394 Fund’)
68*	SIMEST – Direct Grants Supporting the Uncovered Fixed Cost of the Italian Trade Fair System
71	SA (State Aid).107569
72	SA. 101691
73	SA.103286
74	SA.107161
75	SA.102896
76	SA.104722
77	SA.105124
78	SA.60795
82	SA.47694
83	SA.50064
84	SA.56963

**Table 28: Programs which did not confer a benefit**

Accordingly, the commission cannot be satisfied that the above programs are a countervailable subsidy in relation to the goods exported to Australia.

*\* The selected exporters reported in their respective REQs receiving a benefit from the programs with an asterisk in Table 28. However, the commission determined these programs conferred a benefit before the investigation period and had no impact beyond the period in which the payment was made.*

## **7.4 Subsidy assessment**

### **7.4.1 De Clemente**

The commission found that De Clemente received a benefit from the following countervailable subsidy programs:

- 654-3 – Regulations for admission to the grants prepared for participation in fairs in Italy and abroad
- 654-5 – Sustainable Investments 4.0
- 654-11 - Sgravi Benefits – Article 1, C 10-15 of Law No. 178/2020 – Youth Exemption
- 654-15 – Contratti di Sviluppo (Development Contracts) - Grant
- 654-15 – Contratti di Sviluppo (Development Contracts) - Loan
- 654-16 – SA.103289 - Decontribuzione Sud

Based on the information available, the commission has calculated a subsidy margin for De Clemente of **0.8%**.

The commission's countervailable subsidy margin calculations for De Clemente are at **Confidential Attachment 23 – De Clemente subsidy margin.**

### **7.4.2 IMCA**

The commission found that IMCA received a benefit from the following countervailable subsidy programs:

- 654-9 – Campania Rural Development Program
- 654-11 – Sgravi Benefits – Article 1, C 10-15 of Law No. 178/2020 – Youth Exemption
- 654-16 – SA.103289 - Decontribuzione Sud

Based on the information available, the commission has calculated a subsidy margin for IMCA of **0.8%**.

The commission's countervailable subsidy margin calculations for IMCA are at **Confidential Attachment 24 – IMCA subsidy margin.**

### **7.4.3 La Doria**

The commission found that La Doria received a benefit from the following countervailable subsidy programs:

- 654-7 – Investment programmes in crisis areas of the Campania Region
- 654-8 – Refund of customs duty (Law No. 639 of 5 July 1964)

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- 654-11 – Sgravi Benefits – Article 1, C 10-15 of Law No. 178/2020 – Youth Exemption
- 654-15 – Contratti di Sviluppo (Development Contracts) - Grant
- 654-16 – SA.103289 - Decontribuzione Sud

Based on the information available, the commission has calculated a subsidy margin for La Doria **0.3%**.

The commission's countervailable subsidy margin calculations for La Doria are at **Confidential Attachment 25 – La Doria subsidy margin**

### 7.4.4 Mutti

The commission found that Mutti received a benefit from the following countervailable subsidy programs:

- 654-6 – Energy Efficiency Contributions
- 654-10 – Financial Instrument for Productive Investments in Campania
- 654-11 – Sgravi Benefits – Article 1, C 10-15 of Law No. 178/2020 – Youth Exemption
- 654-15 – Contratti di Sviluppo (Development Contracts) - Grant

Based on the information available, the commission has calculated a subsidy margin for Mutti of **0.1%**.

The commission's countervailable subsidy margin calculations for Mutti are at **Confidential Attachment 26 – Mutti subsidy margin.**

### 7.4.5 Residual exporters

Chapter 6.3.2 lists all residual exporters.

The commission calculated the subsidy margin for residual exporters by using the weighted average subsidy margin for all selected exporters.

Based on the information available, the commission has calculated a subsidy margin for residual exporters of **0.5%**.

The commission's countervailable subsidy margin calculations for residual exporters are at **Confidential Attachment 27 – Residual and non-cooperative entity subsidy margin.**

### 7.4.6 Non-cooperative entities

After having regard to section 269TAACA(1) and the Customs Direction, the Commissioner has determined that all entities from Italy that did not provide information requested of them through a PIR are non-cooperative entities for the purposes of the investigation. These are the same entities identified in chapter 6.3.3 as uncooperative exporters in the dumping investigation.

The subsidy margin for non-cooperative entities is determined, pursuant to section 269TAACA(1), based on all facts available and having regard to reasonable assumptions.

In determining the countervailable subsidies for those entities, the commission considers it reasonable to base the subsidy margins on the assumption that those entities may have

received the highest level of subsidisation received by the selected exporters under each of the countervailable programs.

The commission has considered whether certain regional programs should be excluded in the calculation of the non-cooperative rate, on the basis that a non-cooperative entity may operate in only one region. However, a particular entity may be covered by more than one region. For example, an entity in Salerno is in the Salerno Region, which is in the Campania Region, which is in the South of Italy. Therefore, a non-cooperative entity may receive countervailable programs from multiple regions. Where a multiple regional subsidies cannot apply to the one entity (for example, a subsidy for the North of Italy and another for the South of Italy), the commission has applied the highest relevant regional subsidy.

The all other and non-cooperative entity subsidy margin is the total of the highest per unit subsidisation amount received by one of the selected cooperative exporters under each subsidy program over the lowest export price for the selected cooperative exporters. The commission has used the lowest export price as it demonstrates a price at which non-cooperative entities may export goods to Australia, based on the information before the commission.

Based on the information available, the commission has calculated a subsidy margin for non-cooperative entities of **1.6%**.

The commission's countervailable subsidy margin calculations for non-cooperative entities are at **Confidential Attachment 27 – Residual and non-cooperative entity subsidy margin**.

## 7.5 Volume of subsidisation

Section 269TDA(7) requires the Commissioner to terminate a countervailing investigation, in so far as it relates to a country, if satisfied that the total volume of goods that has been, or may have been, exported to Australia during a reasonable examination period and in respect of which a countervailable subsidy has been, or may be, received, is negligible.

Pursuant to section 269TDA(8), a negligible volume for Italy is a volume less than 3% of the total volume of goods imported into Australia over a reasonable examination period.<sup>93</sup>

As discussed in chapter 7.6 below, while the levels of subsidisation for the selected and residual exporters is negligible, section 269TDA(12)(a) provides that those exports are still taken into account *'in working out the total volume of goods that have been, or may be, exported from a country of export and in respect of which a countervailable subsidy has been, or may be, payable'*.

The commission has found all Italian exporters received countervailable subsidies in respect of the goods exported to Australia during the investigation period. As discussed in chapter 5.6, Italian imports represent almost all imports of the goods into Australia.

Therefore, the Commissioner is satisfied that, when expressed as a percentage of the total Australian import volume of the goods, the volume of subsidised goods from Italy was greater than 3% of the total Australian import volume and is therefore not negligible.

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<sup>93</sup> Italy is not classed as a Developing Country under Schedule 1 of the Customs Tariff Regulations 2004.

## 7.6 Level of subsidisation

Section 269TDA(2) requires the Commissioner to terminate a countervailing investigation, in so far as it relates to an exporter of the goods, if satisfied either that:

- an exporter did not receive a countervailable subsidy in respect of the goods
- if an exporter did receive a subsidy, the level of the subsidy did not at any time during the investigation period exceed a negligible level.

Pursuant to section 269TDA(16)(b), a countervailable subsidy received in respect of goods exported to Australia from Italy is negligible if, when expressed as a percentage of the export price of the goods, the level of the subsidy is not more than 1%.<sup>94</sup>

Based on the findings into countervailable subsidies provided to Italian exporters of the goods to Australia set out in this chapter, the Commissioner is satisfied that the total level of countervailable subsidies, when expressed as a percentage of the export price of the goods:

- never, at any time during the investigation period, exceeded 1% for De Clemente, IMCA, La Doria, Mutti and residual exporters and is therefore negligible
- for non-cooperative entities, exceeded 1% throughout the investigation period.

Accordingly, the Commissioner is satisfied:

- that the requirements have been met to terminate the subsidy investigation in relation to De Clemente, IMCA, La Doria, Mutti and the residual exporters, on the basis that the level of subsidisation received by these exporters never, at any time during the investigation period, exceeded the negligible level of countervailable subsidy, in accordance with section 269TDA(2)
- countervailable subsidies have been received by non-cooperative Italian entities in respect of the goods exported to Australia, at a margin of **1.6%**.

The Commissioner terminated the subsidy investigation in relation to De Clemente, IMCA, La Doria, Mutti and the residual exporters in TER 654, on the basis that the countervailable subsidy received by these exporters in relation to the goods, never at any time during the investigation period, exceeded a negligible level, in accordance with section 269TDA(2)(b)(ii).

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<sup>94</sup> Ibid

## 8 ECONOMIC CONDITION OF THE INDUSTRY

### 8.1 Finding

The commission found that SPC, who is the applicant and largest member of the Australian industry, has experienced injury during the investigation period in the form of:

- volume injury, by way of lost sales volume and lost market share
- price injury, by way of price suppression and price depression
- loss of profits and profitability
- lower revenue
- reduced ROI
- reduced capacity utilisation.

The commission did not have sufficient data to determine specific injury experienced by other Australian industry members<sup>95</sup>. However, overall Australian industry sales volumes fell over the injury period, and were 13% lower in the year prior to the investigation period, and 20% lower in the investigation period, compared to the beginning of the injury period, indicating volume related injury for the entire Australian industry.

The commission also found that dumped and/or subsidised goods undercut Australian industry prices in every quarter of the investigation period, indicating that price related injury is correlated with lower priced goods imported from Italy.

The commission considers the level of competition between Italian suppliers pushes down prices amongst themselves, in some instances lowering prices to the point where those prices are at dumped levels. If the prices of the goods exported by an exporter who is not dumping were lowered to compete with its Italian competitors, it would likely also result in those goods being at dumped prices.

This dynamic is further exacerbated by the procurement practices of major Australian supermarkets, which incentivise exporters to offer the lowest possible prices to secure supply contracts. The supermarkets conduct tender-based procurement processes that prioritise cost minimisation, placing pressure on exporters to undercut competitors, even at the risk of pricing below normal value.

The commission, therefore, considers that the lower (and therefore dumped) prices offered by Italian suppliers are less a result of competing against Australian industry prices, but from competing with each other. This competition between Italian suppliers does however impact Australian industry.

### 8.2 Approach to injury analysis

This chapter considers the present condition of the Australian industry.

As discussed in chapter 4, the Australian industry for like goods consists of SPC, Safcol and Simplot. The analysis detailed in this chapter is based on verified information

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<sup>95</sup> Calispa in its post-SEF 654 submission provided retail sales data for Simplot applicable to the investigation period. The commission has not verified this data, and notes it relates only to sales by Simplot. The commission is unable to make any conclusions on possible injury to Simplot based on this sales data alone.

provided by SPC. The commission has also used Safcol's volume and sales data, but this information is not as detailed as SPC's data and was not verified by the commission. Nonetheless, the commission considers it relevant for its analysis of broader trends across Australian industry. Simplot did not provide the commission with its sales and production volume data, but the commission has also used sales data relating to Simplot provided by Calispa as part of its post-SEF 654 submission in its Australian industry-wide analysis (chapter 9.8.3 discusses the Calispa-provided data in further data). Accordingly, the commission's analysis focuses on the economic condition of SPC. The commission is satisfied that SPC is the largest Australian industry member and findings based on its information are relevant to the whole of the Australian industry.

The commission has also considered data from the ABF import database as well as verified importer and exporter information, where relevant.

The commission has assessed the economic condition of the Australian industry from 1 October 2020, which is the start of the injury period. Graphs and tables in this chapter depict years ending 30 September, unless otherwise stated.

This assessment is at **Confidential Attachment 28 – Economic condition analysis**.

### 8.3 Volume effects

The commission found SPC has experienced injury in the form of lost sales volume and reduced market share during the investigation period.

#### 8.3.1 Injury claims relating to volume

SPC submitted it has experienced material injury as a result of the ongoing presence and increase in volumes of prepared or preserved tomatoes imported from Italy. In its application, it states that since 2021, imports of prepared or preserved tomatoes from Italy have dominated the Australian market. Over this time, imports from Italy declined, before increasing and stabilising and taking market share from the Australian industry. Critically, the Australian market since 2021 has declined, translating into a material loss of market share for the Australian industry while Italy has maintained or slightly advanced its presence.

#### 8.3.2 Sales volume and market share

Table 29 below depicts an index of SPC's sales volume and the sales volume of Australian industry as a whole over the injury period.

	Oct 2020 - Sept 2021	Oct 2021 - Sept 2022	Oct 2022 - Sept 2023	Oct 2023 - Sept 2024
<b>SPC</b>	100	106	89	72
<b>All Australian industry</b>	100	104	87	87

Table 29: Index of Australian industry sales, compared to Oct 2020 – September 2021

Table 29 below provides an index of SPC and all Australian industry market share.



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	Oct 2020 - Sept 2021	Oct 2021 - Sept 2022	Oct 2022 - Sept 2023	Oct 2023 - Sept 2024
<b>SPC</b>	100	104	101	70
<b>All Australian industry</b>	100	103	98	85

**Table 30: Index of Australian industry market share, compared to Oct 2020 – September 2021**

The commission found that the sales volume and market share of like goods manufactured by both SPC and the Australian industry as a whole has declined over the injury period. Australian industry market share, after remaining steady between October 2020 and September 2023, fell in the investigation period.

Based on this analysis, the commission considers that Australian industry as a whole has experienced injury in the form of loss of sales volume and reduced market share during the investigation period.

### 8.4 Price effects

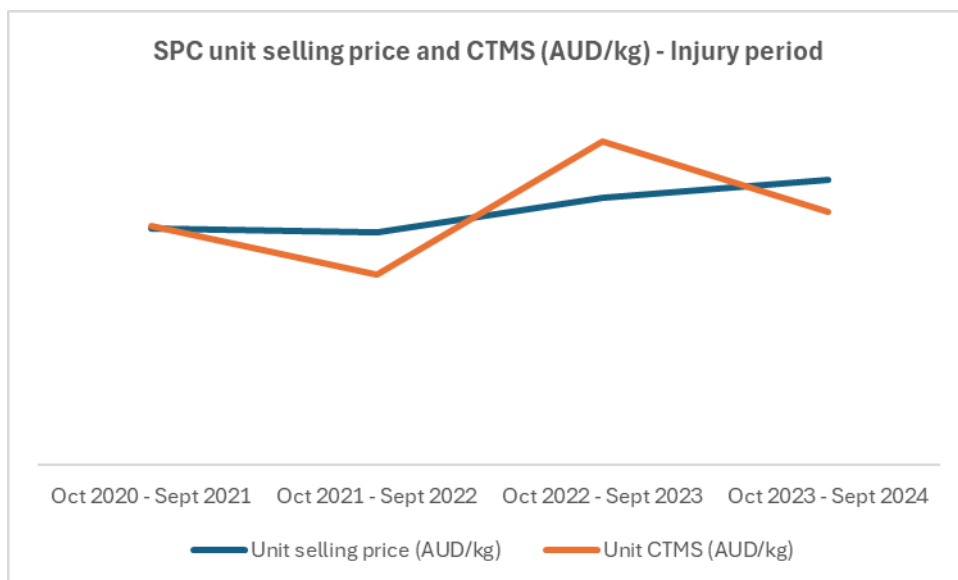
Price depression occurs when a company, for some reason, lowers its prices. Price suppression occurs when price increases, which otherwise would have occurred, have been prevented. An indicator of price suppression may be the margin between prices and costs.

The commission considers that SPC has experienced injury in the form of price suppression and price depression during the investigation period.

#### 8.4.1 Injury claims relating to price

SPC claimed it has experienced both price depression and price suppression.

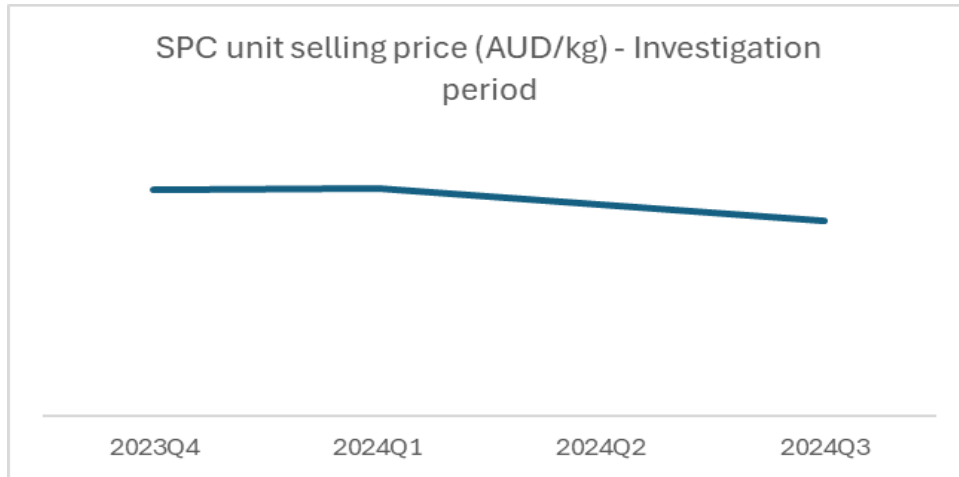
To assess SPC's claims, the commission compared the weighted average selling price of like goods sold by SPC compared to its weighted average CTMS for the like goods for the injury period. Figure 9 below depicts this comparison.



**Figure 9: SPC unit selling price and CTMS (AUD/kg) – Injury period**

#### 8.4.2 Price depression

In terms of price depression, the commission observed an upward trend in SPC's weighted average selling price across the injury period, which is not indicative of price depression. The commission also considered the investigation period alone with the results shown in Figure 10.



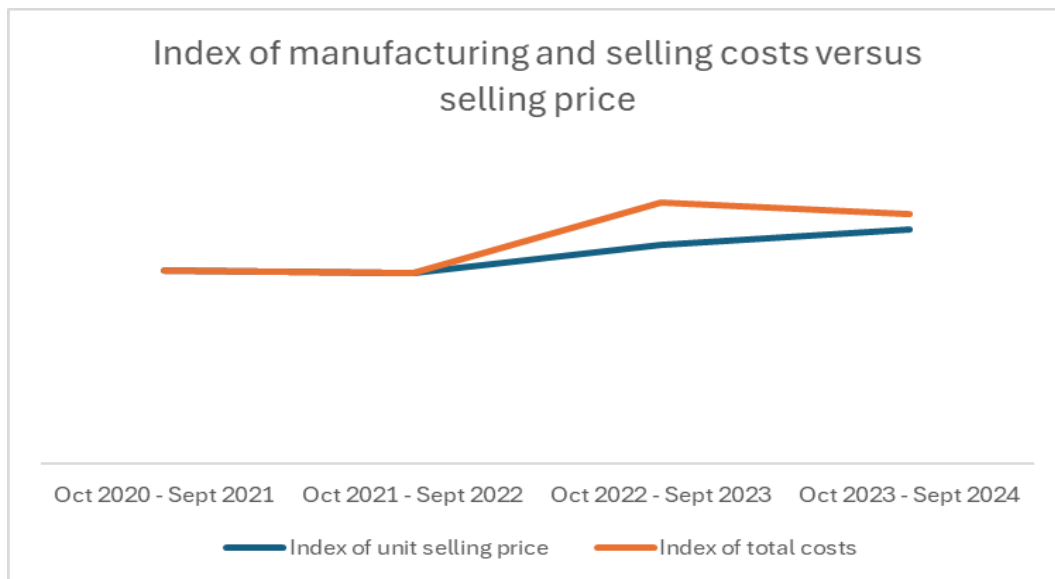
**Figure 10: SPC unit selling price (AUD/kg) – Investigation period**

Figure 10 shows that SPC's selling price was stable across the first quarter of the investigation period, however trended downward for the remainder of the investigation period. This trend is indicative of SPC reducing its prices during the investigation period and is evidence that SPC has experienced price depression, while faced with fixed costs.

#### 8.4.3 Price suppression

In terms of price suppression, the commission noted the significant volatility in annualised CTMS evident in Figure 9. The commission traced this volatility to the material movements in inventory recorded in SPC's cost data. The observed movements in inventory relate to considerable variability in yearly production and sales volumes.

For these reasons the commission considers that the trends presented in Figure 9 are not a reliable indicator of whether price suppression has or has not occurred during the investigation period. To consider the movement of selling prices and costs, the commission has compiled an index table of variances in costs and selling prices across the injury period.



**Figure 11: Index of change in manufacturing and selling costs versus change in selling prices, compared to Oct 2020 – September 2021**

Figure 11 shows that selling prices and costs were stable across the first year of the injury period. Costs increased to a far greater extent during the second year, with SPC unable to increase the selling prices by the same degree to recover these increasing costs. While costs stabilised and began to decline in the investigation period, SPC was not able to increase selling prices sufficiently to recover the increased costs of manufacture and sale that had accrued during the injury period.

Based on this analysis, the commission considers that SPC has experienced price suppression during the investigation period (despite an apparent improvement in the margin between selling prices and costs) because the prices it sought to achieve were not realised. Over the injury period, SPC has gone through 2 periods where its average unit CTMS was higher than its average unit selling price. In the period October 2022 to September 2023, its CTMS rose at a faster rate than its selling price, which is an indicator of price suppression. This is consistent with the evidence provided by SPC in relation to its price negotiation outcomes with its customers during the investigation period.

## 8.5 Profits and profitability

SPC claims ongoing price suppression has impacted negatively on its profits and profitability since October 2020.

The commission notes that due to the effects of inventory movements on CTMS discussed in chapter 8.4 above, the annualised profit and profitability data compiled is not a reliable indicator of SPC's profit and profitability during the investigation period. Noting the commission's findings that SPC has experienced reduced sales volume and market share (chapter 8.3) and experienced price depression and price suppression (chapter 8.4) during the investigation period, the commission considers that SPC has achieved lower profit and profitability than would have been the case had sales volume and prices been maintained.

## 8.6 Other economic factors

### 8.6.1 Revenue

SPC submitted its revenue was lower than it otherwise would be if not for dumped, subsidised imports of the goods from Italy.

	Oct 2020 - Sept 2021	Oct 2021 - Sept 2022	Oct 2022 - Sept 2023	Oct 2023 - Sept 2024
Revenue	100	104	101	87

**Table 31: Index of SPC revenue, compared to Oct 2020 – September 2021**

Table 31 above shows that revenue was relatively steady between October 2020 and September 2023, before falling in the investigation period. Accordingly, the commission considers that Australian industry has experienced injury in the form of lower revenue during the investigation period.

### 8.6.2 Reduced ROI

Table 32 below shows that SPC ROI, calculated by the commission as sales revenue minus CTMS, divided by CTMS (to reflect the return on costs incurred by SPC in the production of the goods) dropped significantly in the October 2022 to September 2023 period, before rising in the investigation period, albeit to levels lower than in October 2020.

	Oct 2020 - Sept 2021	Oct 2021 - Sept 2022	Oct 2022 - Sept 2023	Oct 2023 - Sept 2024
ROI	100	103	-212	-19

**Table 32: Index of SPC ROI, compared to Oct 2020 – September 2021**

Accordingly, the commission considers that Australian industry has experienced injury in the form of reduced ROI during the investigation period.

### 8.6.3 Reduced capacity utilisation

SPC submitted its capacity utilisation declined and stagnated from October 2022. Given that SPC's available capacity remained unchanged, it submitted that capacity utilisation would have otherwise been higher in the absence of the dumped and/or subsidised goods.

	Oct 2020 - Sept 2021	Oct 2021 - Sept 2022	Oct 2022 - Sept 2023	Oct 2023 - Sept 2024
Capacity utilisation	100	104	101	87

**Table 33: Index of SPC capacity utilisation, compared to Oct 2020 – September 2021**

Table 33 shows that SPC's capacity utilisation has fallen since October 2020. Accordingly, the commission considers that Australian industry has experienced injury in the form of reduced capacity utilisation during the investigation period.

## 8.7 Price undercutting

SPC submitted in its application that Australian industry prices have been undercut and that it would have achieved higher prices in the absence of prepared or preserved tomatoes exported from Italy at dumped and/or subsidised prices.

In SEF 654, the commission examined this claim through an undercutting analysis, at both a wholesale and retail level.

Submission on the undercutting analysis

ANICAV submitted in its post-SEF 654 submission that the market segmentation analysis undertaken by the commission is flawed and that SEF 654 does not explain the criteria the commission applied in allocating products within tiers, and that it appears to be based wholly on price.

ANICAV goes on to submit that, if tiers are used to ensure price compatibility, then price cannot be used to determine to which tier a product belongs. ANICAV submitted that the approach taken results in a mid-tier made up of Australian proprietary brands and Italian supermarket branded, and *'It is therefore unsurprising that Australian products exhibit higher prices, as proprietary brands carry greater brand value compared with supermarket own-brand products.'*<sup>96</sup>

ANICAV further submits that the undercutting analysis did not take into account the physical characteristics of the goods and like goods, for example, price differences between standard and organic tomatoes reflect product characteristics rather than competitive dynamics between tiers. ANICAV submits that the commission should have performed the undercutting analysis based on MCC rather than tiers.

*Commission assessment*

While the commission may have found in previous cases (for example, CON 488) that the status of a product as either proprietary or own-brand affects price, the commission does not consider that the Australian market continues to demonstrate this distinction. The commission considers that the Australian market is segmented into proprietary and own brand (see chapter 5.4.2). The entry of organic own-brand products from Australian supermarkets and the Woolworths Macro brand reflects a perceived increase in the quality of own-brand products, with these products now existing within both the low and mid-tier.

The commission has not used price in determining product tiering, but has relied on information provided by the Australian supermarkets<sup>97</sup> and SPC during verification.

The commission also notes that it conducted an undercutting analysis on a 'whole-of-product' level.

Notwithstanding the above, the commission undertook additional undercutting analysis on an MCC-level, using the highest-volume MCC sold by SPC, see Figure 15 in chapter 8.7.1.

**8.7.1 Wholesale prices**

The commission used verified exporter data in its examination of the export price paid by importers for goods exported to Australia from Italy, along with data obtained from importers.

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<sup>96</sup> EPR 654, Item 40, ANICAV submission to SEF 654, p5.

<sup>97</sup> Confidential attachment 34, Australian supermarket evidence

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At a wholesale level, in order to compare Australian industry prices to the price of the dumped and/or subsidised goods, the commission compared the quarterly weighted average free-into-store (**FIS**) selling price of like goods sold by Australian industry against the quarterly weighted average FIS selling price of the dumped and/or subsidised goods imported from Italy. The commission converted the weighted average FOB unit price of Italian imported goods to an FIS level equivalent to the terms of trade that SPC has with its customers.

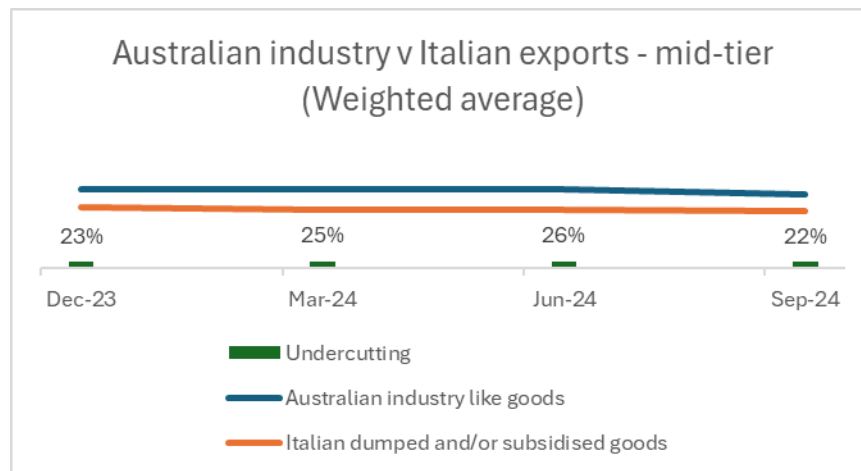
The commission has compared prices at:

- a 'whole-of-product' level, as set out in Figure 12
- a mid-tier level, as set out in Figure 13
- a premium level, as set out in Figure 14
- an MCC level, using SPC's highest volume MCC, as set out in Figure 15.

The commission has not compared wholesale prices at the low-tier due to a lack of sales data (but has done so at a retail level, see chapter 8.7.2 below).

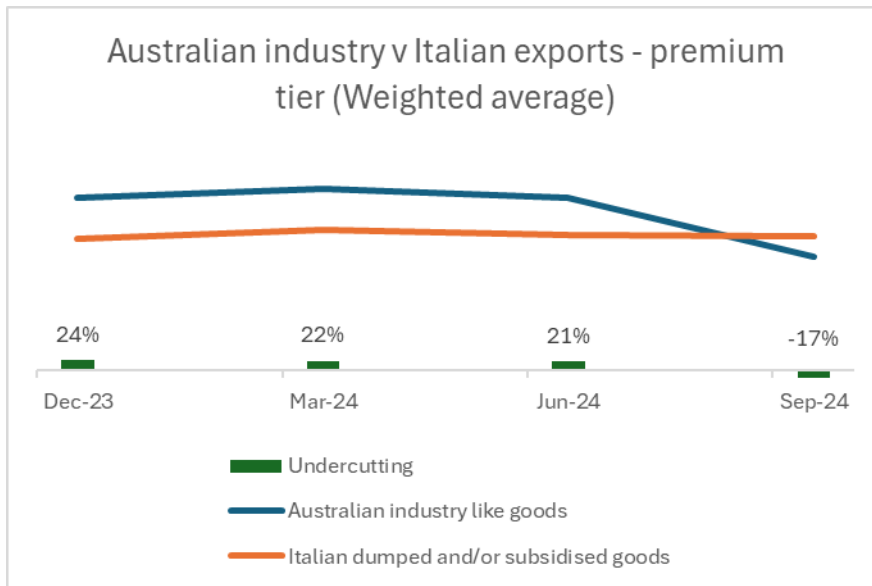


**Figure 12: Comparison of wholesale prices for Australian industry like goods and dumped and/or subsidised goods exported from Italy – all products**

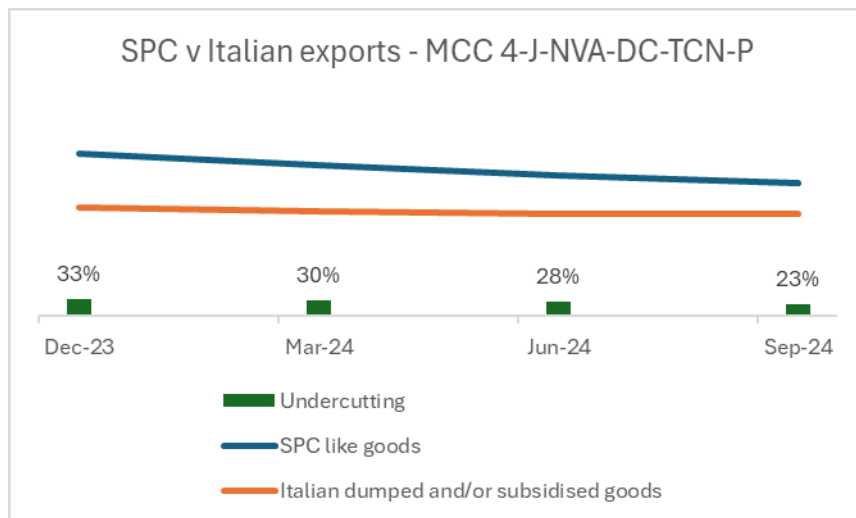


**Figure 13: Comparison of wholesale prices for Australian industry like goods and dumped and/or subsidised goods exported from Italy – mid-tier**

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**Figure 14: Comparison of wholesale prices for Australian industry like goods and dumped and/or subsidised goods exported from Italy – premium tier**



**Figure 15: Comparison of wholesale prices for SPC and the equivalent dumped and/or subsidised MCC exported from Italy – MCC 4-J-NVA-DC-TCN-P**

The commission found that, at an all of product level, dumped and/or subsidised goods undercut Australian industry prices in every quarter of the investigation period.

When broken down into tiers, the commission observed that:

- Italian exporters of mid-tier products (regardless of dumping and/or subsidisation) undercut Australian industry mid-tier products in every quarter of the investigation period, by between 21% and 26%
- Italian exporters of premium products (regardless of dumping and/or subsidisation) undercut Australian industry premium products in 3 of the 4 quarters in the investigation period, by between 21% and 24% (although noting that in the fourth quarter, Australian industry was cheaper).

The commission also compared prices at which SPC sold MCC 4-J-VNA-DC-TCN-P, which was its highest selling MCC during the investigation period, against prices at which



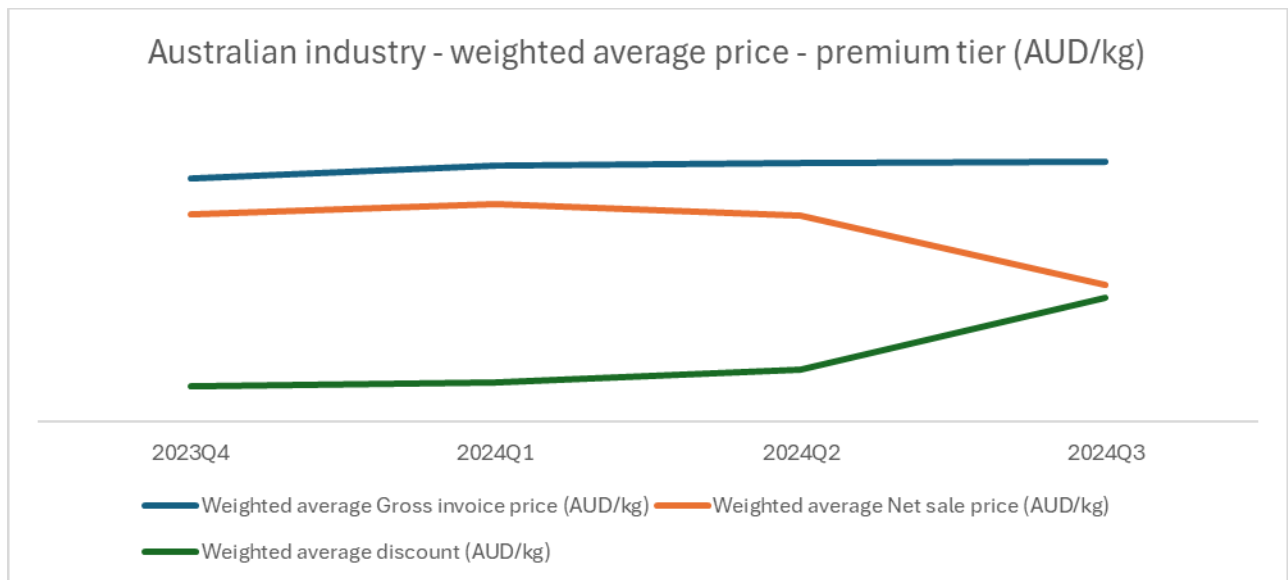
exporters sold the same or equivalent MCC. Dumped and/or subsidised goods undercut SPC prices for this MCC between 23% and 33%.

#### *Promotions and discounts*

SPC net unit selling prices are determined by both the gross price negotiated with its customers and any promotions its runs on its products throughout the year. During promotional activity, SPC arranges with the supermarkets to apply a discount to the sales price offered by the supermarkets to consumers. At the end of the promotional activity, SPC then compensates the supermarket by an amount equal to the total discount on all discounted products sold during the promotion. Accordingly, the net price, which the commission has used in its undercutting analysis, is reduced across the promotional period.

The commission has found that promotional activity has driven the flip in the undercutting findings in respect of premium tiered products observed in Figure 14.

Noting the change in the fourth quarter of the investigation period in respect of premium products, the commission further examined sales data in this quarter. Figure 16 shows Australian industry prices for premium tier products over the investigation period.

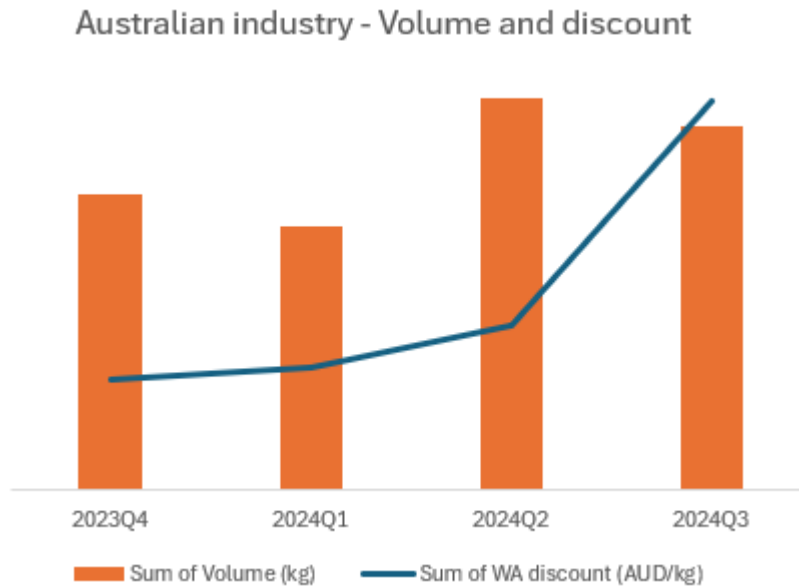


**Figure 16: Price breakdown – Australian industry – premium tier<sup>98</sup>**

Australian industry gross unit prices rose slightly over the investigation period, including during the fourth quarter. However, the unit discount provided by Australian industry increased, which resulted in a decrease in the net unit price, which is the price paid by customers. The increase in the discount is reflected in the price undercutting analysis in Figure 14, resulting in a lower fourth quarter net unit price for Australian industry versus Italian imports.

The commission also notes that sales volumes increased with the increase in the discount. See Figure 17 below.

<sup>98</sup> Confidential Attachment 31 – Price undercutting analysis

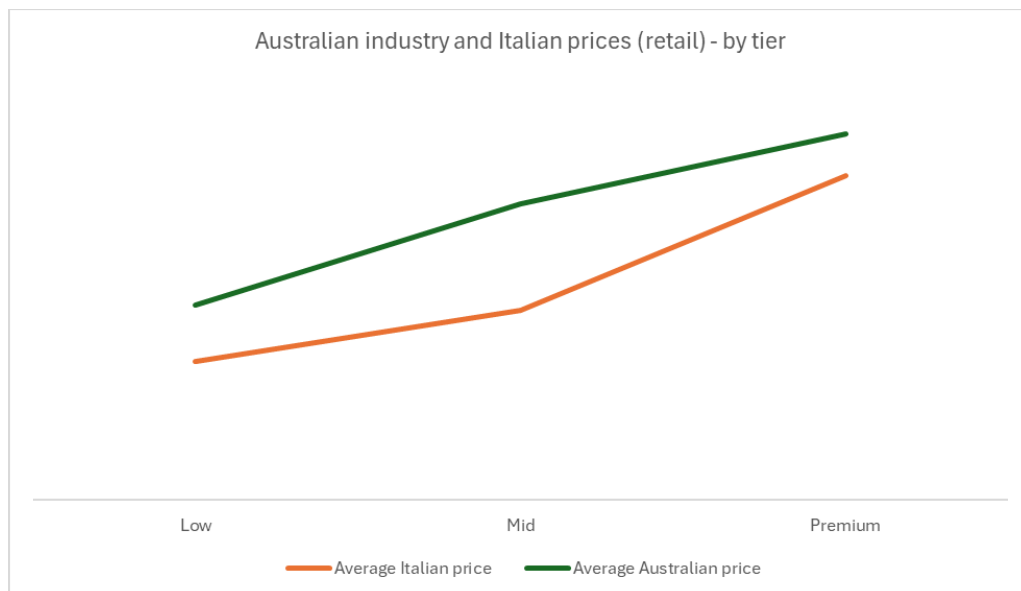


**Figure 17: Australian industry sales volumes and discount – premium tier**

A correlation between an increase in volumes with a decrease in price is consistent with the Australian market being price sensitive.

### 8.7.2 Retail prices

The commission has compared annualised retail prices of like goods produced by Australian industry and goods exported to Australia from Italy. This is depicted in Figure 18, which includes dumped and undumped goods.



**Figure 18: Comparison of retail prices (annualised) for Australian industry like goods and all goods exported from Italy<sup>99</sup>**

<sup>99</sup> Confidential Attachment 4 – Australian market brand analysis

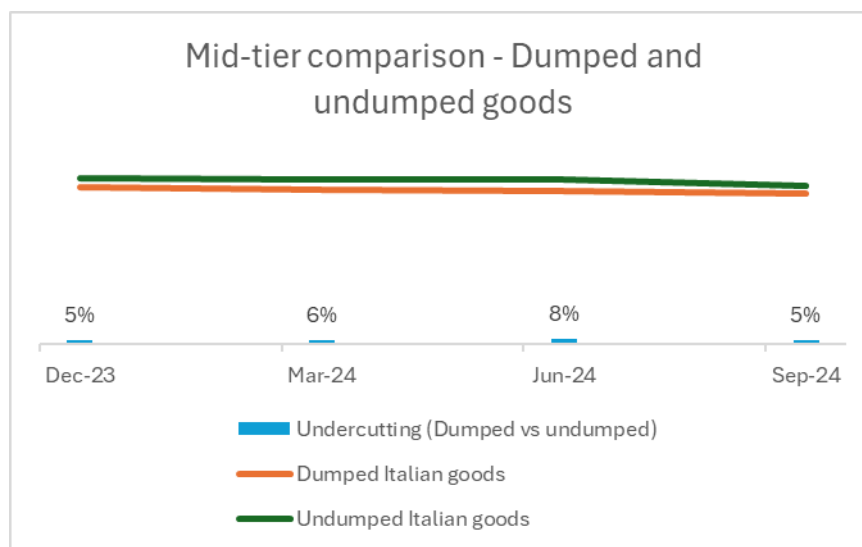
## PUBLIC RECORD

The commission has observed that retail prices for Italian goods consistently undercut Australian industry produced like goods at all market tiers: 29% at the low tier, 36% at the mid-tier, and 11% at the premium tier (not to be confused with the levels of undercutting at the wholesale level, at which customers purchase from Australian industry and importers).

The commission notes that while there is a relatively linear increase in retail price for the Australian produced products from low-tiered to premium, the prices of Italian sourced products are below trend at the mid-tier. Noting that mid-tier is the largest selling market segment, the commission has further examined Italian prices at this tier.

### *Italian pricing competition*

Figure 19 shows a comparison of the prices of dumped mid-tier Italian goods against undumped mid-tier Italian goods.



**Figure 19: Comparison of wholesale prices of undumped and dumped and/or subsidised goods exported from Italy – mid-tier (including like-good prices)**

Figure 19 shows that dumped exports of mid-tier goods from Italy have a price advantage over their undumped counterparts. This advantage over the investigation period ranges from 5% to 8%.

The commission considers the level of competition between Italian suppliers pushes down prices amongst themselves, in some instances lowering prices to the point where those prices are at dumped levels. If the prices of the goods exported by an exporter who is not dumping were lowered to compete with its Italian competitors, it would likely also result in those goods being at dumped prices.

This dynamic is further exacerbated by the procurement practices of major Australian supermarkets, which incentivise exporters to offer the lowest possible prices to secure supply contracts. The supermarkets conduct tender-based procurement processes that

prioritise cost minimisation, placing pressure on exporters to undercut competitors, even at the risk of pricing below normal value.<sup>100</sup>

As noted in the ACCC's Supermarkets Inquiry Report:

*Coles and Woolworths appear to achieve highly favourable outcomes during cost price negotiations with suppliers... The ability for a supermarket to unilaterally accept or reject a cost price increase from a supplier increases the supermarket's bargaining power... Many suppliers also heavily depend on supermarkets in order to sell their goods, placing Coles, Woolworths and to a lesser extent ALDI and Metcash in strong positions when negotiating cost prices with those suppliers.<sup>101</sup>*

The commission, therefore, considers that the lower (and therefore dumped) prices offered by Italian suppliers are less a result of competing against Australian industry prices, but from competing with each other. This competition between Italian suppliers does however impact Australian industry.

There is less competition between Italian suppliers in premium tier, evident in Figure 14 where Australian industry prices undercut Italian prices in one quarter of the investigation period (due to promotional activity in that quarter). However, throughout the remainder of the investigation period, Italian exports of dumped premium goods undercut their Australian equivalent.

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<sup>100</sup> Australian Competition and Consumer Commission (ACCC) 2025, *Supermarkets Inquiry: Final Report*, Commonwealth of Australia, Canberra, pp. 334–338.

<sup>101</sup> *Ibid.*, p. 338.

## 9 MATERIAL INJURY FROM DUMPING AND SUBSIDISATION

### 9.1 Finding

The Commissioner is not satisfied dumping and subsidisation have been causing or are the cause of material injury to the Australian industry. The Commissioner has made this finding following an assessment of factors other than the dumped and subsidised goods, namely:

- the competitive advantage of Italian imports over Australian produced like goods, even after accounting for dumping and/or subsidisation
- an increase in raw material costs and higher production costs for the Australian industry
- an increase in domestic Australian competition  
a preference by some consumers for Italian products over Australian products, based on flavour preferences and origin.

Under sections 269TG, 269TJ and 269TJA, before imposing anti-dumping measures, the Minister must be satisfied that the dumped and subsidised goods have caused or are causing material injury to the Australian industry. The Material Injury Direction provides that dumped or subsidised goods need not be the sole cause of the injury, but the injury they cause must be material in degree.

While injury in the investigation period has coincided with the export of dumped and/or subsidised goods from Italy, the Commissioner is not satisfied that this dumping and/or subsidisation has caused material injury to the Australian industry. In coming to this position, the Commissioner noted that the dumping margins for the selected exporters ranged from negative 8.8% to 5.5% and subsidy margins were negligible for all exporters except non-cooperative entities. These imports significantly undercut Australian industry prices by between 13% and 24% (see chapter 8.7), even when the dumping and/or subsidisation is remedied (see chapter 9.9). These lower prices provide Italian goods with a competitive advantage over Australian industry produced like goods.

Based on observations by the commission during verification, the Commissioner considers that Italian producers benefit from economies of scale, processing 5.3 million tonnes of tomatoes in 2024 (although not all is used for producing the goods)<sup>102</sup>, compared to 438 thousand tonnes processed in Australia.<sup>103</sup> This allows Italian producers to spread fixed costs across a greater volume and variety of products. Italian producers can then produce prepared or preserved tomatoes at lower costs and sell the goods at a lower price compared to Australian producers, thereby providing them with a competitive advantage over the Australian industry.

Further, the Commissioner considers that customers purchase higher volumes of imported Italian goods over Australian produced like goods because of consumer preference for prepared or preserved tomatoes of Italian origin and flavour. Increased competition between Australian industry, particularly with the introduction of Simplot into the market, has also affect the economic condition of the Australian industry.

<sup>102</sup> The Italian tomato processing industry: Ismea 2024 report, <https://tomatonews.com/the-italian-tomato-processing-industry-ismea-2024-report-part-1/>

<sup>103</sup> Confidential attachment 32 – ABARES tomato data.

## 9.2 Legislative framework

Under sections 269TG, 269TJ and 269TJA, one of the matters that the Minister must be satisfied of in order to publish a dumping duty and/or countervailing duty notice is that, because of dumping and/or subsidisation, the Australian industry has experienced material injury.<sup>104</sup>

Section 269TAE outlines the requirements for determining whether material injury to an Australian industry is caused by dumping and/or subsidisation (causation). The Act envisages that causation is examined through the links between the volume and prices of dumped and/or subsidised goods and their effect on prices in the Australian market and the consequent impact on the Australian industry. The Act does not prescribe any particular causation methodology. Rather, causation involves a holistic evaluation of all available evidence.

Section 269TAE(1) outlines a non-exhaustive list of factors that the Minister may take into account when determining whether material injury to an Australian industry has been, or is being, caused or threatened.

Section 269TAE(2A) requires that regard be had to the question as to whether any injury to an industry is being caused by a factor other than the exportation of the goods, and provides examples of such factors.

## 9.3 Size of dumping and subsidy margins

Section 269TAE(1)(aa) provides that regard may be given to the size of each of the dumping margins worked out in respect of the goods exported to Australia.

Section 269TAE(1)(ab) provides that regard may be given to the particulars of any countervailable subsidy received in respect of the goods exported to Australia.

The commission has calculated dumping and subsidy margins at the rates set out in the table below:

Exporter	Dumping margin	Subsidy margin
De Clemente	5.5%	0.8%
IMCA	3.0%	0.8%
La Doria	Negative 8.8%	0.3%
Mutti	2.2%	0.1%
Residual exporters	3.6%	0.5%
Uncooperative exporters/ non-cooperative entities	11.1%	1.6%

**Table 34: Summary of dumping margins**

<sup>104</sup> Section 269TJA relates to concurrent dumping and countervailable subsidisation. This provision provides that, where goods are both dumped and subsidised, and because of the combined effects of the dumping and the amount of countervailable subsidy received in respect of the goods, material injury to an Australian industry producing like goods has been or is being caused, the Minister may publish a notice under either sections 269TG(1), 269TG(2), 269TJ(1) or 269TJ(2) or notices under such sections at the same time. Section 269TJA is relevant in the investigation due to the combined dumping and subsidisation in relation to goods exported to Australia from Italy by uncooperative exporters and non-cooperative entities.

The dumping margins for all exporters, except for La Doria, are above negligible levels. The subsidy margins for all exporters, except non-cooperative exporters, are below negligible levels.

The Commissioner considers that dumping and/or subsidisation by Italian exporters resulted in them providing goods to customers in Australia at prices that were lower than if they were not dumped and/or subsidised. However, the commission notes that if prices of imported goods are adjusted to compensate for the applicable dumping and subsidy margins, i.e. to a 'remedied price', they continue to significantly undercut Australian industry prices. Chapter 9.9.1 discusses remedied pricing further.

De Clemente, IMCA, Mutti – the selected exporters with positive dumping margins – are the 3 largest Italian exporters of the goods to Australia and represented 64% of imports from Italy in the investigation period. Residual and uncooperative exporters – who also have positive dumping margins – made up 9% and 18% of exports respectively. Accordingly, approximately 91% of imports from Italy were dumped during the investigation period, at dumping margins ranging from 2.2% to 11.1%.

All exports from Italy received countervailable subsidies during the investigation period, albeit at negligible levels for all exporters except non-cooperative entities, who had a subsidy margin of 1.6%. Exports to Australia from non-cooperative entities represented 18% of Italian exports of the goods to Australia in the investigation period.

## **9.4 Price effects**

Section 269TAE(1)(d) provides that regard may be given to the export price that has been or is likely to be paid by importers for goods exported to Australia from the country of export.

Section 269TAE(1)(e) provides that regard may be given to the difference between the price paid for like goods produced and sold in Australia to the price paid or likely to be paid for goods exported to Australia from the country of export and sold in Australia.

Section 269TAE(1)(f) provides that regard may be given to the effect that the export of goods in the circumstances relating to their export has had, or is likely to have, on the price paid for the goods or like goods sold in Australia.

Each of these factors examine the 'price effects' of the imported goods. To properly examine price effects, the commission has looked at what role price has in sales and purchases of goods and like goods.

### **9.4.1 Role of price in purchasing**

As detailed in chapter 5.4.4, the commission considers that consumer purchasing decisions, and hence customer (generally supermarket) purchasing decisions, are driven by a combination of the 3 factors of price, flavour preferences and origin. These factors all interact and tie in with the market segmentation observed by the commission.

While price is an important factor, it is not the only factor upon which purchasing decisions are made. Consumers will consider their non-price preferences (preferences relating to flavour and origin) against the price at which products are offered, to determine whether a given product provides 'value' to that consumer, i.e. a brand that meets their preferred flavour and origin preferences at what they consider to be a reasonable price.



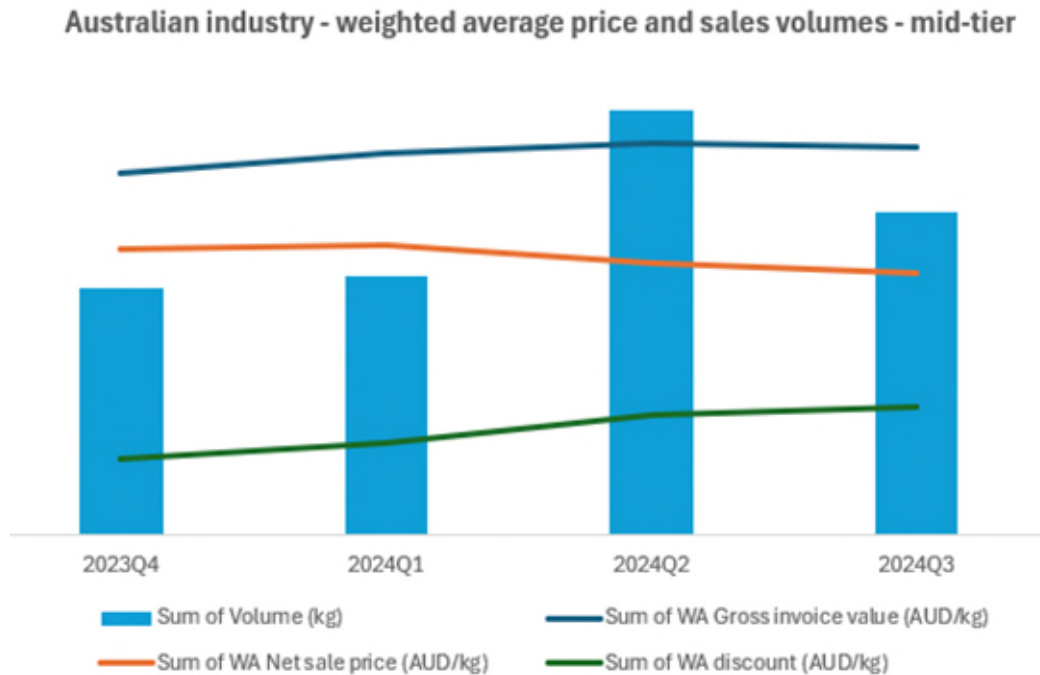
### **9.4.2 Price elasticity**

The concept of price elasticity refers to the degree to which the demand for a product responds to a change in its price. If demand is highly responsive to price changes, it is considered to be highly elastic, whereas it is considered inelastic where demand is not very responsive to price changes.

The commission considers that the goods are a staple item, and as such changes in the price of the goods at a macro level (i.e. across the market as a whole) are unlikely to result in significant changes in the total volume of prepared or preserved tomatoes purchased. In other words, overall demand for goods and like goods is inelastic (as opposed to demand within the market, which is elastic, as discussed below). The commission notes at chapter 5.6 that the Australian market size has been stable (but for a decline in 2023 due to cost-of-living pressures, sudden price increases and supply shortages), indicative of prepared or preserved tomatoes being a staple in consumers' shopping baskets.

Within the general category of prepared or preserved tomatoes, the commission considers that there is price elasticity, although demand is not perfectly elastic. The commission accepts that origin and flavour preferences may result in pricing differentials (i.e. a preparedness on the part of the consumer to pay more or less depending on their desire to satisfy their competing preferences). However, any price advantage that might accrue to preferred goods is not infinite. As discussed in chapter 5.4.4, there is a pricing point for most consumers where demand will switch to less preferred goods if the lower price sufficiently offsets the other factors relevant to the purchasing decision.

At an empirical level, the commission's analysis of pricing and volume at the retail level shows that the volume of sales increased in response to promotional activities where prices were lowered, indicating that consumer behaviour is responsive to price. This was depicted in Figure 17 above in respect of premium tiers, and in Figure 20 below in respect of mid-tier sales.



**Figure 20: Price breakdown and sales volume – Australian industry – mid-tier<sup>105</sup>**

Figure 20 shows that as the discount initially goes up, and the net sales price goes down, there is a significant increase in sales volumes. Volumes remain elevated in the following quarter, but not to the same extent, as customer expectations on the price stabilise. However, they remain above the beginning of the investigation period, when prices were at the highest.

#### **9.4.3 Effect of price undercutting**

As discussed in chapter 8.7, the commission found that the price of the goods exported from Italy, across all tiers at both wholesale and retail levels, undercut Australian industry prices in each quarter of the investigation period (Figure 12). The price of Italian exported goods also undercut Australian industry prices in every quarter in the investigation period at the mid-tier (Figure 13) and in 3 of 4 quarters at the premium tier (Figure 14). Italian goods also undercut SPC's price of its most popular MCC in every quarter in the investigation period (Figure 15).

The commission considers that purchases of Italian imports at lower prices have allowed Australian supermarkets to maintain lower shelf prices and provide a margin of undercutting over Australian like goods.

Both dumped and undumped goods undercut Australian industry prices, however dumped goods undercut Australian industry prices by a greater margin.

The fact that Italian goods exist in the market at a lower price point to Australian industry indicates that those exporters may enjoy greater efficiencies of production and therefore have a competitive advantage relative to Australian industry, which in turn will impact the economic performance of Australian industry. The commission notes, however, the

<sup>105</sup> Confidential Attachment 31 – Price undercutting analysis

greater margins of undercutting observed in relation to dumped exports. Additionally, the commission observed the coincident increase in market share for dumped exports relative to both the Australian industry and undumped exports (see Figure 24 below), and considers that any price advantage enjoyed by Italian producers may be greater for those exporters exporting at dumped prices.

Undercutting evident at both the wholesale and retail level has placed the Australian industry under pressure to accept reduced prices from their customers for their product as well as increasing promotional and marketing campaigns aimed at discounting its prices (thereby lowering its net selling price) in an attempt to maintain sales volume and market share.

SPC's promotional activities during the investigation period have directly impacted on its net unit revenue, as depicted in Figure 21. It shows SPC's unit revenue and unit costs, in respect of prepared or preserved tomatoes for the investigation period.

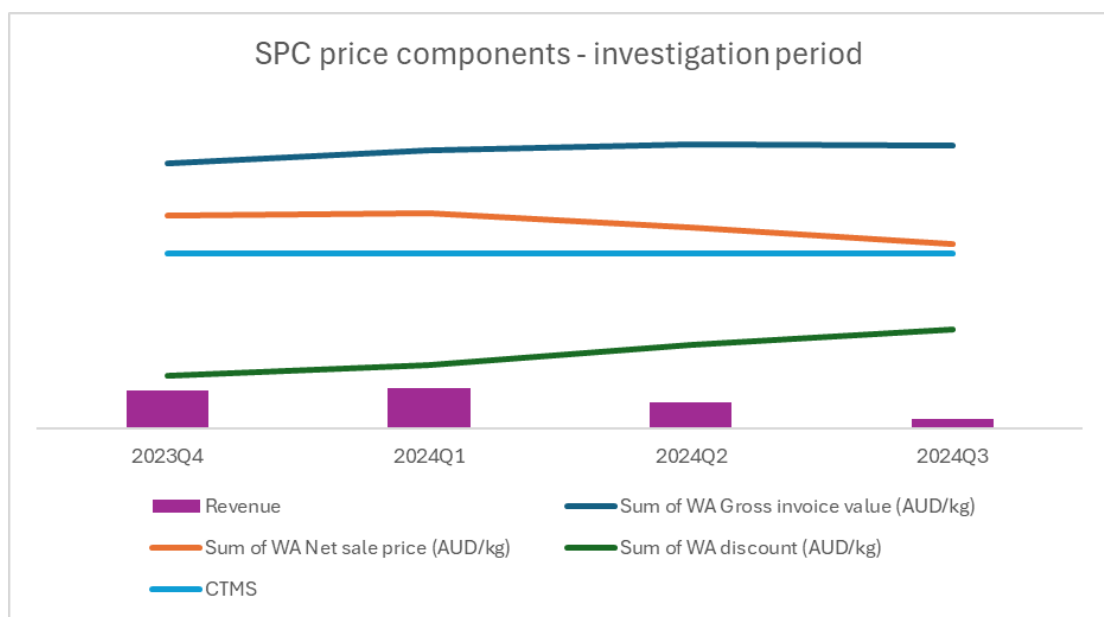


Figure 21: Make-up of SPC unit price for the investigation period<sup>106</sup>

Additionally, the commission considers that, as a counterfactual, if Italian goods did not compete with Australian like goods, because products of different origins were operating in different market segments, Australian industry would have greater bargaining power with its purchasers and would more likely achieve the prices necessary to recover the increasing costs of production that emerged during the injury period, as discussed in chapter 8.4.3. However, the commission has not observed such pricing behaviour. An inference that could be drawn is that customers' access to lower priced imports places downward pressure on the Australian industry's prices in a market where goods are substitutable and the market exhibits price elasticity.

<sup>106</sup> Confidential Attachment 31 – Price undercutting analysis.

## 9.5 Volume effects

As discussed in chapter 8.3, the commission found SPC has experienced injury in the form of lost sales volume and reduced market share during the investigation period.

As noted in chapter 5.6, during the investigation period, Italian imports of the goods represented 76% of the Australian market. Of these, 91% were dumped, meaning that 70% of the Australian market is made up of dumped goods (though, as noted, dumping margins range from 2.2% to 11.1%).

Section 269TAE(1)(b) provides that regard may be given to any increase or likely increase, in the quantity of the goods exported to Australia from the country of export.

Section 269TAE(1)(c) provides that regard may be given to any change or likely change in the proportion of:

- the quantity of goods exported from the country of export and sold in Australia to the total of goods or like goods sold in Australia, or
- the quantity of goods produced and sold in Australia to the total of goods or like goods sold in Australia.

As part of the commission's examination of sections 269TAE(1)(b) and 269TAE(1)(c), the commission has examined the change in the sales volume and market share of SPC, all Australian industry and Italian imports of the goods. See Figure 22 and Figure 23 below.

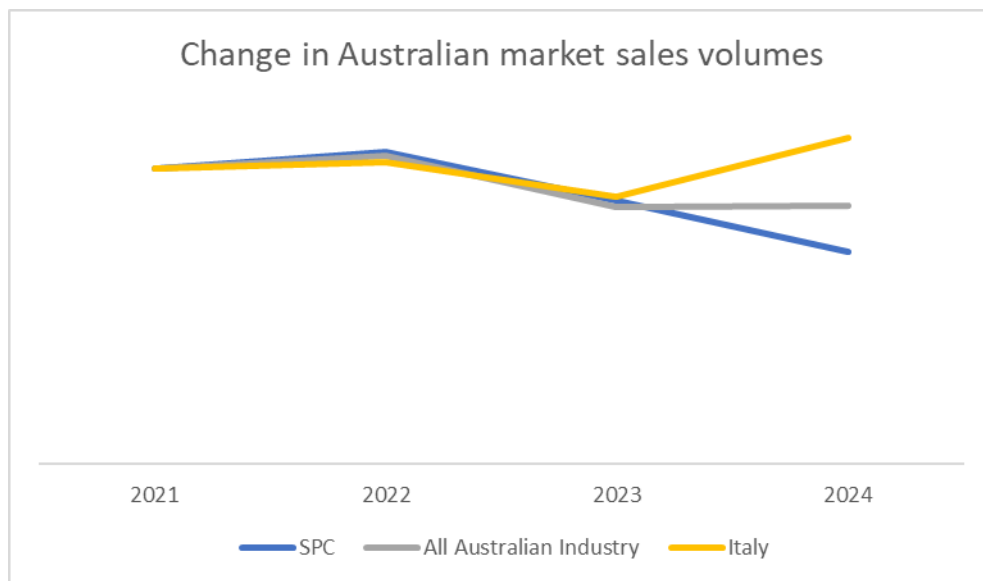
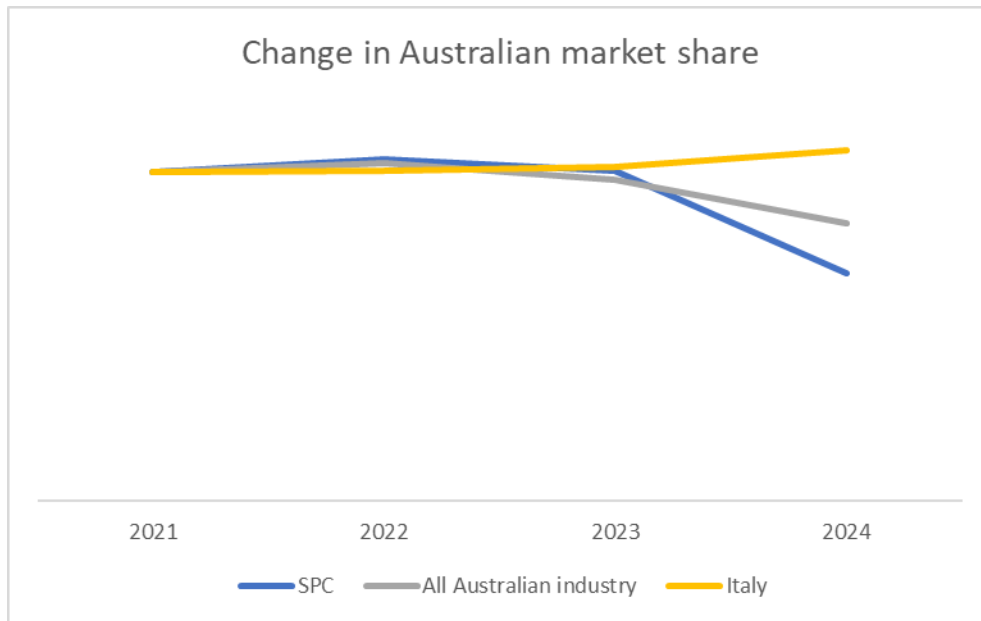


Figure 22: Change in sales volumes, year ending September<sup>107</sup>

<sup>107</sup> Sales volumes by imports from other countries are not included because they represented <2% of the Australian market for prepared or preserved tomatoes throughout the injury period.



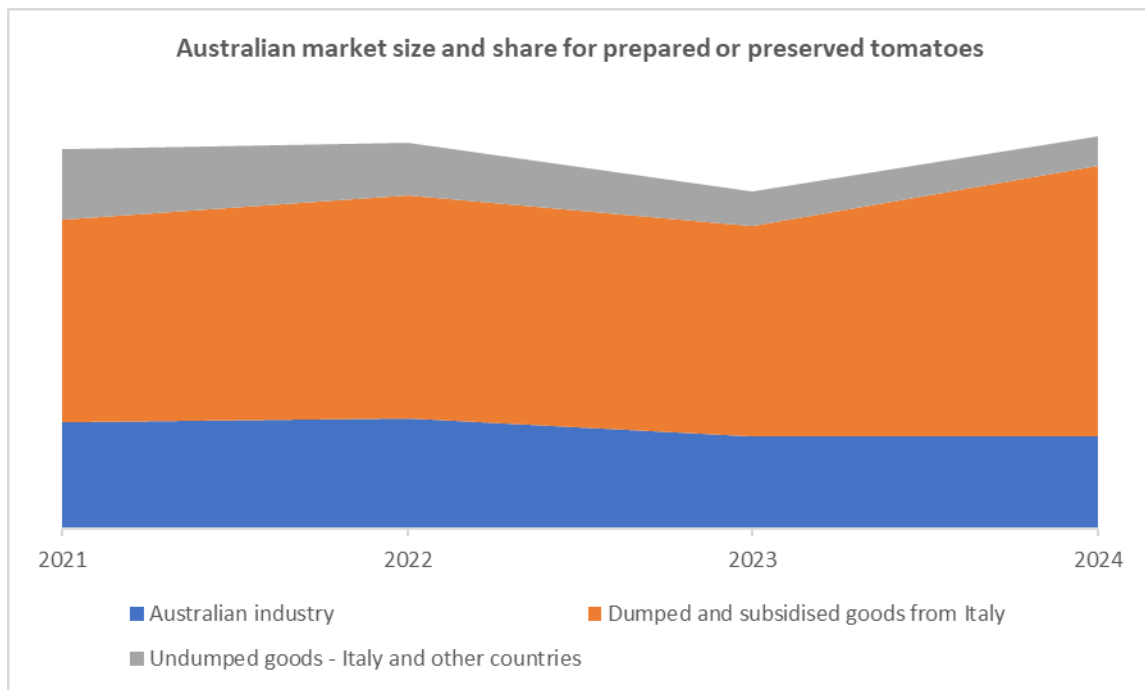
**Figure 23: Change in Australian market share, year ending September<sup>108</sup>**

Since October 2020, SPC sales volume has fallen by 28% and its market share by 30%. The Australian industry as a whole has fallen 13% by volume and 15% by market share. Over the same time period, Italian imports have increased by 10% in volume terms, and 7% by market share. Volume from all sources fell in the year ending September 2023, but while the Australian industry levels did not recover and remained lower in the investigation period, Italian import volumes and market share increased to levels above those in October 2020.

The commission also examined the volume and market share of goods and like goods:

- imported from Italian exporters that were dumped during the investigation period
- imported from all countries, including Italy, that were not dumped
- produced by Australian industry.

<sup>108</sup> Sales volumes by imports from other countries are not included because they represented <2% of the Australian market for prepared or preserved tomatoes throughout the injury period.



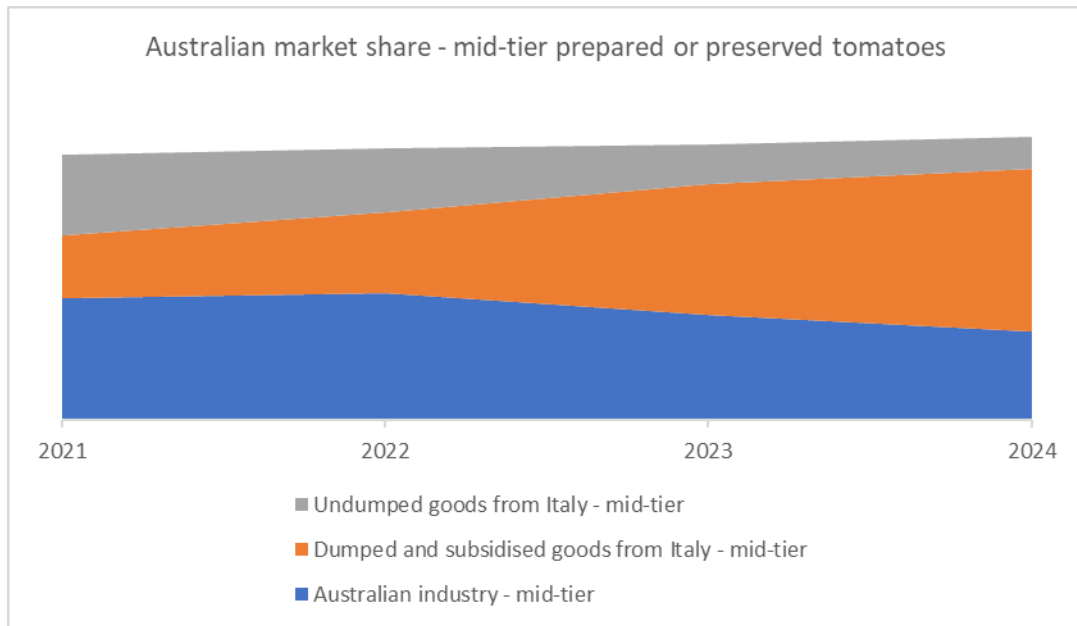
**Figure 24: Australian market size and share for prepared or preserved tomatoes, year ending September**

Figure 24 shows that since October 2020, the volume and market share of both like goods produced by the Australian industry and undumped imported goods has fallen. This share and volume have been replaced by an increase in imports from exporters the commission has found exported dumped and subsidised goods from Italy to Australia during the investigation period.<sup>109</sup>

The commission has also broken this down to the mid-tier level.

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<sup>109</sup> The commission cannot confirm whether goods from these entities were dumped or subsidised prior to the investigation period.



**Figure 25: Australian market size and share for prepared or preserved tomatoes, mid-tier, year ending September**

Between October 2020 and September 2024, the market for mid-tier prepared or preserved tomatoes increased by 14%. Australian industry made up approximately 46% and Italian exports approximately 54% of the total market at the beginning of the period, ending at 35% and 64% respectively in the investigation period. Of this 64%, 54% was dumped, with the remaining 10% of the Australian mid-tier market consisting of undumped goods from Italy.

## 9.6 Profit effects

As discussed in chapter 8.5, the commission considers that SPC has achieved lower profit and profitability than would have been the case had sales volume and prices been maintained due to reduced sales volume and price suppression and depression.

Profit and profitability are products of the margin of the sales price over costs and sales volume. A decrease in either price or volume, or an increase in costs which is unmatched by a price increase, will result in a corresponding decrease in profit and profitability.

The commission is satisfied that sales prices have remained depressed and suppressed over the injury period, while costs have increased (unrelated to Italian imports). The commission is also satisfied that sales volumes for the Australian industry have decreased over the injury period.

## 9.7 Other economic factors

As discussed in chapter 8.5, the Commissioner is satisfied that SPC has experienced injury in the form of:

- lower revenue
- reduced ROI
- reduced capacity utilisation.



### **9.7.1 Revenue**

Revenue is a product of sales volume and sales price. A decrease in either will result in a corresponding decrease in revenue. As discussed in chapters 8.3 and 8.4, sales volumes have dropped while sale prices have slightly risen.

The commission is satisfied that sales volumes for the Australian industry have decreased over the injury period while sale prices have not increased sufficiently to make up lost revenue.

### **9.7.2 Reduced ROI**

The commission has calculated SPC's ROI using sales revenue minus CTMS, divided by CTMS, to reflect the return on costs incurred by SPC in the production of the goods. Accordingly, the fall in revenue over the injury period discussed above will lead to a fall in ROI. The corresponding increase in CTMS over the injury period also acts to reduce ROI.

### **9.7.3 Reduced capacity utilisation**

SPC's production capacity was unchanged over the injury period. The reduction in sales volumes discussed in chapter 9.5 has resulted in a reduction in production volumes and a corresponding reduction in capacity utilisation.

## **9.8 Factors other than dumping causing injury**

Section 269TAE(2A) states that the Minister must consider whether any injury to an industry is being caused or threatened by a factor other than the exportation of the goods. If so, the Minister must not attribute such injury to the exportation of the goods. The section lists the following factors to consider:

- the volume and prices of imported like goods that are not dumped or subsidised
- contractions in demand or changes in patterns of consumption
- restrictive trade practices of, and competition between, foreign and Australian producers of like goods
- developments in technology
- the export performance and productivity of the Australian industry.

The commission has examined these factors and other potential causes of injury to the Australian industry, other than dumped and subsidised goods exported from Italy.

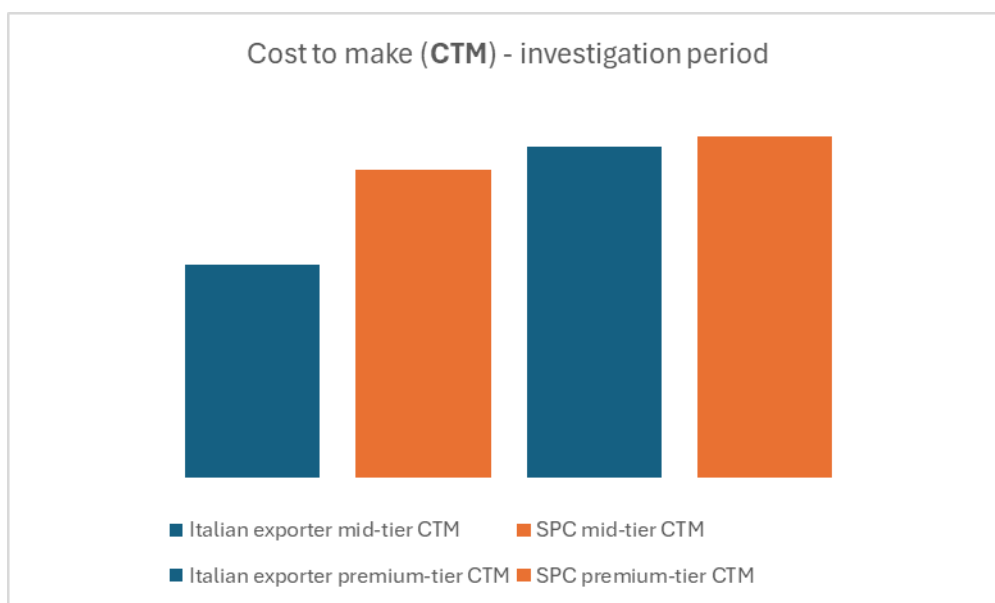
After having regard to these other factors, the Commissioner considers that injury to the Australian industry is caused by:

- the competitive advantage of Italian imports over Australian produced like goods, even after accounting for dumping and/or subsidisation
- an increase in raw material costs and higher production costs for the Australian industry
- an increase in domestic Australian competition
- a preference by some consumers for Italian products over Australian products, based on flavour preferences and origin.

### 9.8.1 Competitive advantage of Italian imports

Based on production volumes observed during verification (and supported by comments provided by Australian supermarkets during verification)<sup>110</sup>, the commission considers that Italian producers benefit from economies of scale, allowing them to spread fixed costs across a greater volume and variety of products. Italian producers can then produce prepared or preserved tomatoes at lower costs and sell the goods at a lower price compared to Australian producers, thereby providing them with a competitive advantage over the Australian industry. The Australian industry in comparison is significantly smaller than the Italian industry.<sup>111</sup>

To test whether Italian producers had a competitive advantage, the commission compared the weighted average cost of mid-range and premium products exported by Italian producers against SPC's verified costs. The commission has not examined CTM at the low-tier due to a lack of Australian industry data at this level.



**Figure 26: Comparison of CTM between Italian imports and Australian industry – mid-tier and premium tier over the investigation period<sup>112</sup>**

Figure 26 shows that the CTM for Italian goods are significantly lower for the mid-tier range, and slightly lower for the premium-tier. These lower production costs mean that Italian exporters can sell their goods at a lower price when compared to the Australian industry and are therefore more competitive in the Australian market, being a price-sensitive market. The commission observed that when these lower prices are adjusted to account for dumping and/or subsidisation (i.e. a 'remedied price', see chapter 9.9.1), they still undercut the Australian industry prices and thereby retain their advantage.

<sup>110</sup> Confidential Attachment 34 – Australian supermarket evidence

<sup>111</sup> Ibid

<sup>112</sup> Confidential Attachment 35 – CTM comparison

SPC submission

In its post-SEF 654 submission, SPC submits that the Commissioner's finding that Italian producers have a competitive advantage over Australian industry does not negate a finding that Italian imports have caused injury, but confirms it. SPC submits the existence of a competitive advantage is legally irrelevant under the Act, it is not a question of whether exporters are more efficient, but whether dumped goods have caused injury.

SPC submits that the commission's findings mean that dumping allows Italian exporters to undercut by greater margins, causing additional injury and that removing dumping would reduce the extent of undercutting. SPC submits that the remedied price analysis in SEF 654 (see chapter 9.9.1) demonstrates that removing dumping and subsidisation would materially reduce undercutting.

SPC notes previous commission practice where it has confirmed material injury despite a competitive advantage. SPC quotes the Commissioner's finding in *Continuation 632 – Railway Wheels exported from China (CON 632)*:

*The Commissioner accepts that overseas manufacturers may enjoy a competitive advantage relative to the Australian industry due to a range of potential factors, including lower costs of labour, higher levels of productivity, greater levels of automation, more efficient business processes and/or the benefits of economies of scale. Noting that overseas manufacturers may enjoy competitive advantages, the Commissioner is nonetheless satisfied that the expiration of the measures applying to railway wheels exported to Australia from China would lead, or would be likely to lead, to a continuation of, or recurrence of dumping and the material injury that the measures are intended to prevent.<sup>113</sup>*

*Commission assessment*

The commission considers that facts specific to the investigation, including that the goods are a processed agricultural product (as opposed to a commodity product like railway wheels) demonstrate that it is the level of competitive advantage of Italian producers over Australian industry, indicated by the levels of undercutting, that contributes to injury experienced by the Australian industry (along with the other factors discussed in chapter 9.8). Chapter 9.9.1 examines this further.

**9.8.2 Increase in raw material costs and higher production costs**

SPC noted that fresh tomato prices in Australia have escalated over the injury period. The escalation in costs has been caused by a range of factors including a reduction in the number of tomato growers, increased demand for fresh tomatoes (leaving less for processing) and increased costs of production for the growers being passed on to the purchasers (notably water prices).

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<sup>113</sup> CON 632, Final report, p76.

Some Australian supermarkets<sup>114</sup> also suggested a lack of investment by SPC in its production facilities has resulted in higher production costs.<sup>115</sup> The commission notes that SPC's production costs are consistent with other Australian industry production costs.

The commission confirmed the increase in fresh tomato prices over the injury period using data from the Australian Bureau of Agricultural and Resource Economics and Sciences.

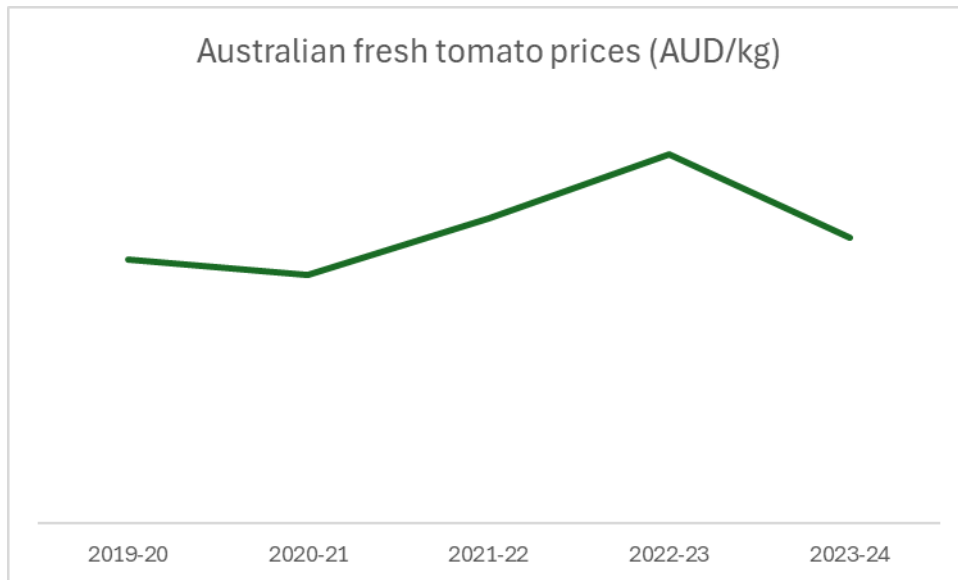


Figure 27: Australian fresh tomato prices<sup>116</sup>

As noted in chapter 8.4.3, while costs were stable across the first year of the injury period, costs rose in the second year, with SPC unable to increase its selling prices to recover these increasing costs. While costs stabilised and began to decline in the investigation period, SPC was not able to increase selling prices sufficiently to recover the increased costs of manufacture and sale that had accrued during the injury period, resulting in price suppression and falling revenue and profitability.

#### SPC submission

In its post-SEF 654 submission, SPC submitted that SEF 654's finding that an increase in raw material costs as a separate cause of injury confuses cause and effect. SPC submits that the increase in costs did not cause injury, but the inability of SPC to pass on these costs caused injury.

#### *Commission assessment*

The commission considers that both the increase of costs and the inability to pass on the increase are related causes of injury. If raw material costs had remained lower, SPC would have been able to maintain a greater margin between its costs and selling price and therefore not have experienced price injury, or not experienced such injury to the same level.

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<sup>114</sup> Confidential Attachment 34 – Australian supermarket evidence

<sup>115</sup> EPR 654, Item 10, European Commission submission, p. 15.

<sup>116</sup> Confidential attachment 32 – ABARES tomato data.

### 9.8.3 Competition between Australian suppliers

In addition to competition with Italian exporters of the goods, SPC competes with other Australian manufacturers of like goods, Simplot and Safcol. All Australian industry members produce like goods primarily in the mid-tier range.

#### ANICAV submission

ANICAV and Calispa referred to the introduction of Simplot into the Australian market during the investigation period.

ANICAV's submission focused on the contrast in capital investment by Simplot versus SPC's lack of investment in the same period – highlighting Simplot's \$100 million investment in NSW.

#### *Commission assessment*

In respect of ANICAV's submission, the commission has not been provided with evidence of an increase in capital investment by Simplot relating to the production of like goods. ANICAV's submission refers to an announcement by Simplot of an increase in investment in the Bathurst region, but neglects to include that this investment is related to corn production, not production of like goods. The commission has therefore not had regard to this evidence.

#### Calispa submission

Calispa's submission was critical of the commission's findings relating to material injury and causation and submits that the commission's analysis has not taken into account the increase in domestic competition brought about by Simplot's entry into the market.

Calispa included with its submission confidential data on Woolworth's weekly sales data, which it claimed were at all times in SPC's possession. Calispa submits that the commission's failure to request this data constitutes a failure to conduct an objective examination.

Calispa concludes its submission with 'The preliminary findings of material injury caused by Italian imports cannot stand'.<sup>117</sup> Calispa appears to have misunderstood the Commissioner's preliminary findings in SEF 654, which stated relevantly:

- *'The Commissioner considers that the dumped and subsidised goods have not been causing or are not the cause of material injury to the Australian industry'*<sup>118</sup> and
- *'...[T]he Commissioner considers that injury to the Australian industry is caused by...an increase in domestic Australian competition'*.<sup>119</sup>

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<sup>117</sup> EPR 654, Item 38, Calispa submission to SEF 654, p6.

<sup>118</sup> SEF 654, opening sentence, chapter 9.1.

<sup>119</sup> SEF 654, chapter 9.8.

## PUBLIC RECORD

Notwithstanding the above, the commission has considered the information provided in Calispa's submission.

In respect of Calispa's comments regarding the failure of the commission to consider Woolworths sales data (which Calispa provided in its submission), the commission requested this data directly from Woolworths, but Woolworths did not provide data on its sales of Australian like goods. The commission also sought to gain access to the data held by SPC, but could not satisfy requirements for its use imposed by the third-party owner of the data.

The commission notes that the data included in Calispa's written submission examined a period mostly outside the investigation period. Simplot entered the Australian market, with its Leggo's brand, in May 2024, whereas the investigation period is October 2024 to September 2025, an overlap of 7-months. The commission notes that Calispa's data is only for sales by Woolworths. It does not include sales of SPC or Leggo's products by other Australian supermarkets.

The commission has examined the evidence referred to by Calispa which it claims shows a strong correlation between a decrease in Leggo's retail prices and a fall in SPC's sales volumes, but limited to the investigation period. This is in Figure 28 below. Calispa's complete figure is on page 2 of its submission to SEF 654.

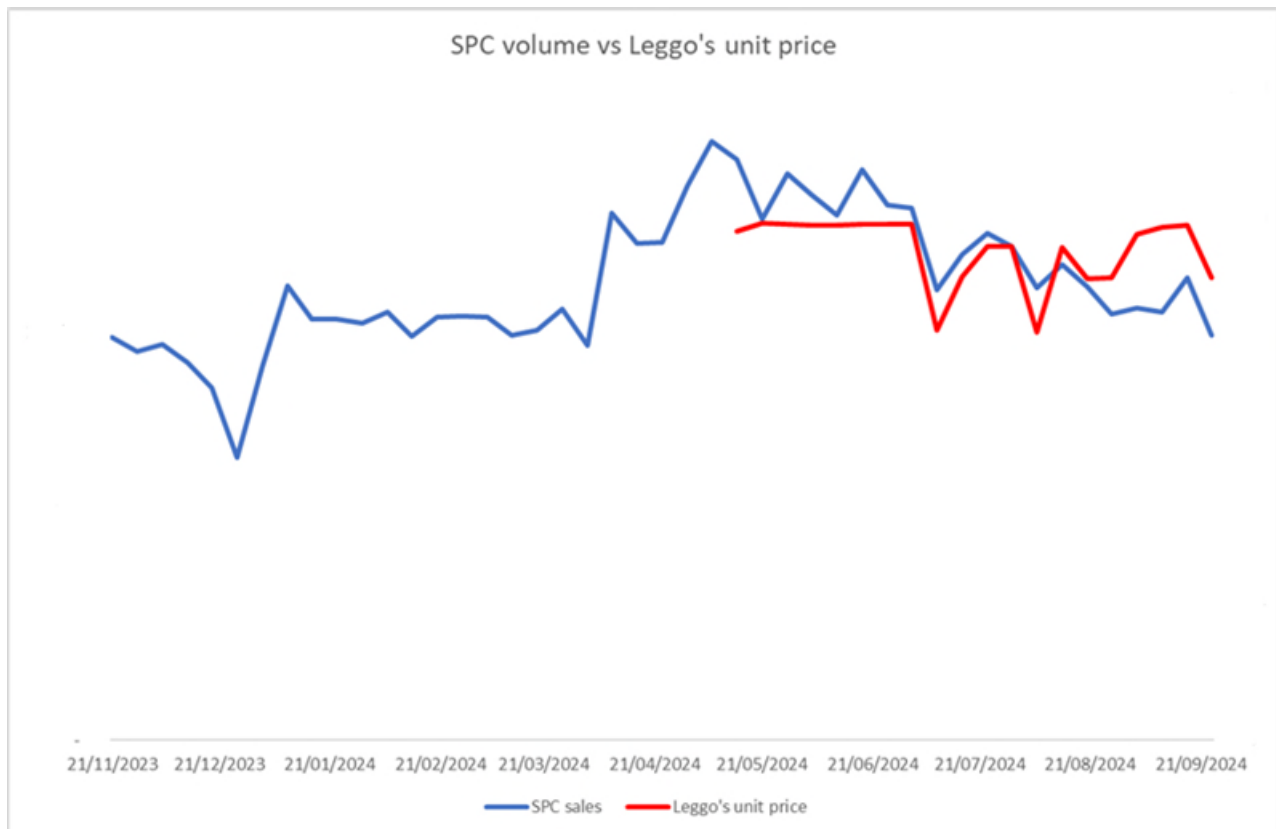
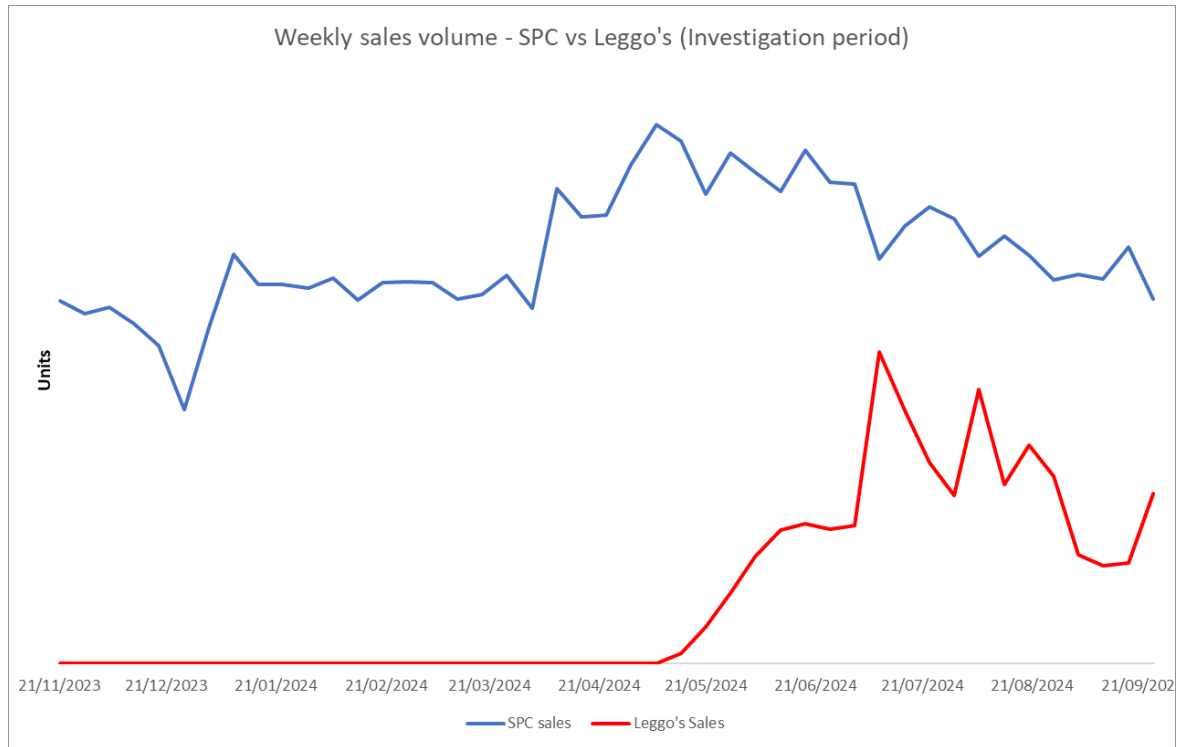


Figure 28: Weekly SPC sales volumes and Leggo's unit price<sup>120</sup>

<sup>120</sup> Based on Woolworths sales data provided by Calispa. See Confidential attachment 2 – SPC and Leggos sales data

During the investigation period, there were 2 instances of falling SPC sales volumes corresponding with discounts in Leggo's unit prices. This correlation breaks down towards the end of the investigation period, with SPC volumes remaining low once Leggo's prices return to their non-discounted level.

Figure 29 shows weekly sales volumes by Woolworths of like goods produced by SPC and Simplot (Leggo's).



**Figure 29: Weekly Woolworths SPC sales volumes for SPC and Leggo's<sup>121</sup>**

Consistent with Calispa's submission, Figure 29 shows that SPC sales volumes at Woolworths fell with the entry of Leggo's.

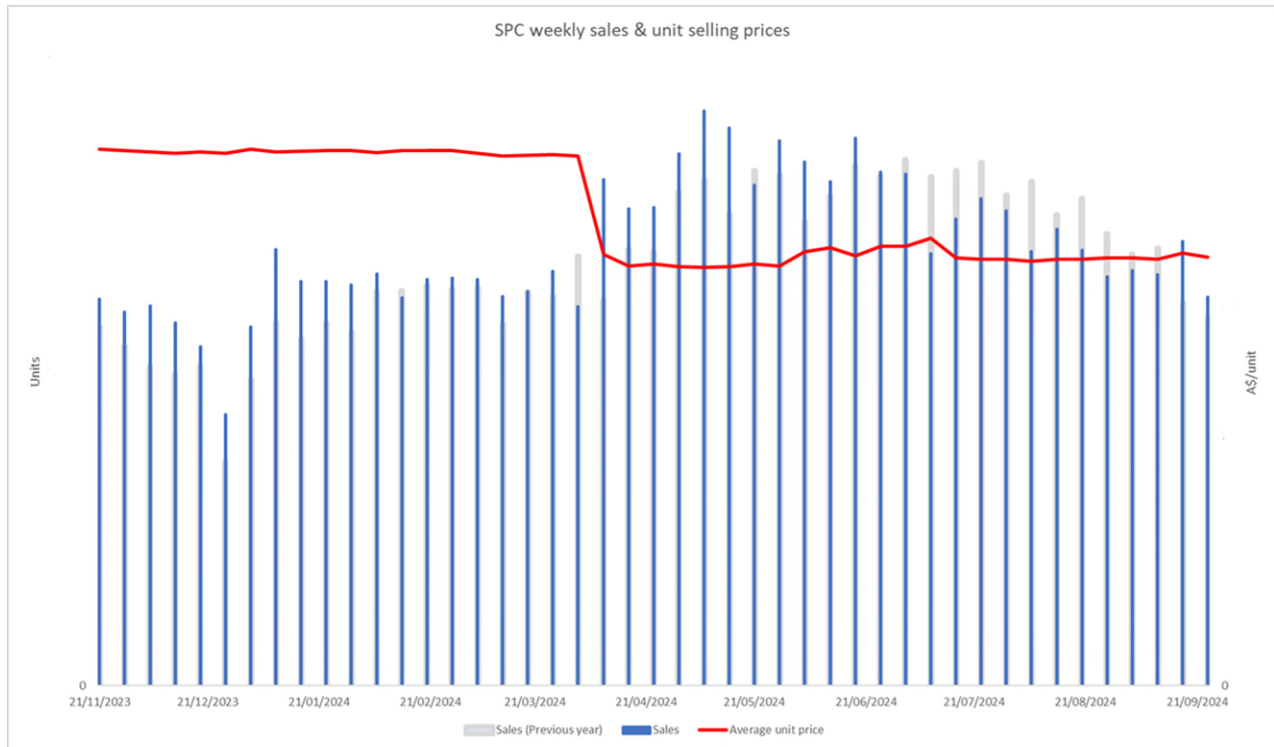
Calispa provided data in its submission on SPC weekly sales volumes at Woolworths from November 2023 to October 2025. Calispa states that in the 26 weeks prior to Leggo's entering the market, SPC sales exceeded the previous year's sales in 25 of those weeks. But in the 19 weeks following the entry of Leggo's, SPC sales fell short in 12 of those weeks.

The commission has examined this data, limited to the investigation period, in Figure 30.

<sup>121</sup> Ibid



## PUBLIC RECORD



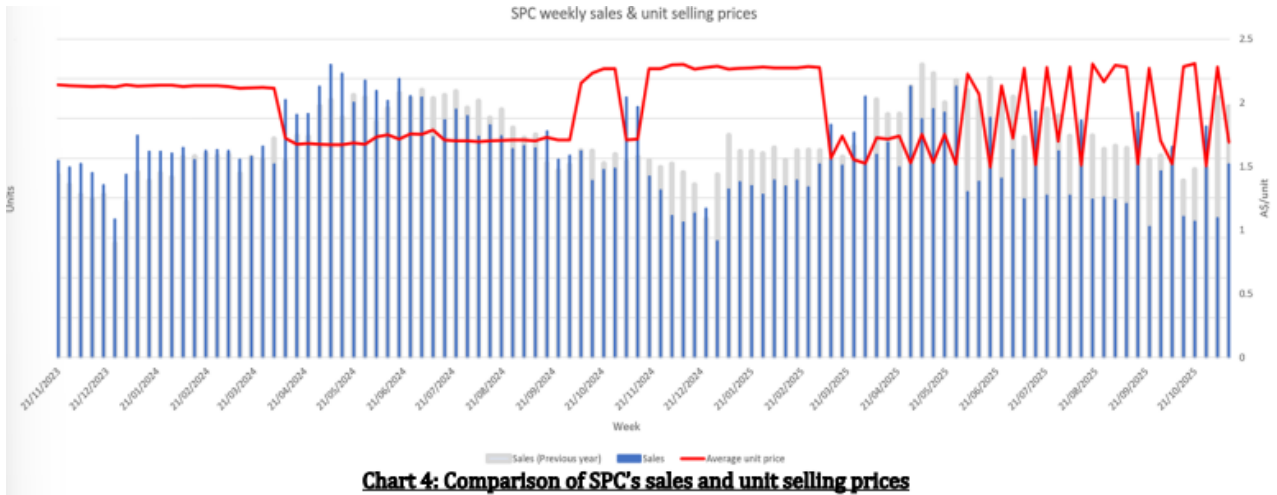
**Figure 30: Weekly Woolworths SPC sales volumes for SPC compared to the previous year<sup>122</sup>**

Figure 30 shows that after the introduction of Leggo's in May 2024, SPC sales volumes at Woolworths fell compared to the same week the previous year, despite a decrease in its per unit sales price.

Calispa observed that after the investigation period, if SPC's weekly sales are overlayed with its unit selling price, '*...it is evidence that in those weeks where SPC sales exceeded the previous years, this was a direct result of discounted selling prices*'. The commission has included Calispa's analysis below.

<sup>122</sup> Ibid

## PUBLIC RECORD



**Figure 31: Extract from Calispa post-SEF 654 submission, p4**

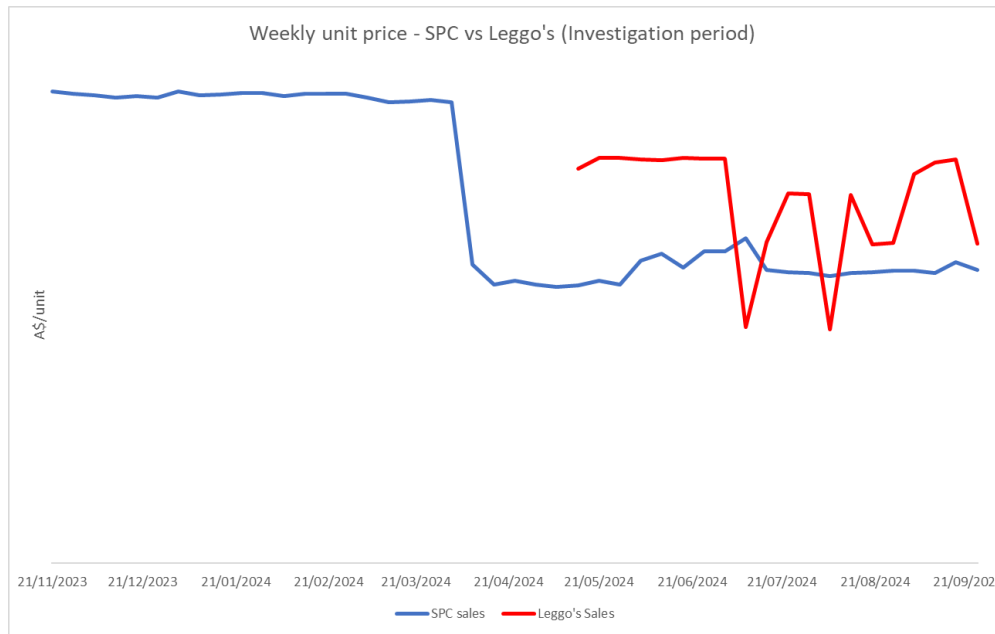
Calispa submits that this confirms that the contestable market segment is price sensitive, with consumers seeing SPC and Leggo's products are interchangeable. This part of their submission is discussed in chapter 9.8.4.

Calispa provided data comparing SPC and Leggo's retail prices at Woolworths. Calispa states that *'...prior to Leggo's entry into the retail market which effectively represents the first half of the investigation period, SPC rarely discounted its retail selling prices. In anticipation of Leggo's entry, SPC heavily discounted its selling prices from \$2.13 per can to \$1.67 per can.'*<sup>123</sup>

Figure 32, which is limited to the investigation period, confirms SPC lowered its prices prior to the entry of Leggo's entering the market.

<sup>123</sup> EPR 654, Item 38, Calispa submission to SEF 654, p4.

## PUBLIC RECORD



**Figure 32: Weekly SPC and Leggo's retail prices<sup>124</sup>**

Calispa concludes that the data and charts provided with its submission demonstrate that even modest price advantages by Leggo's over SPC was sufficient to cause significant volume and price related injury to SPC, independent of imports of goods from Italy.

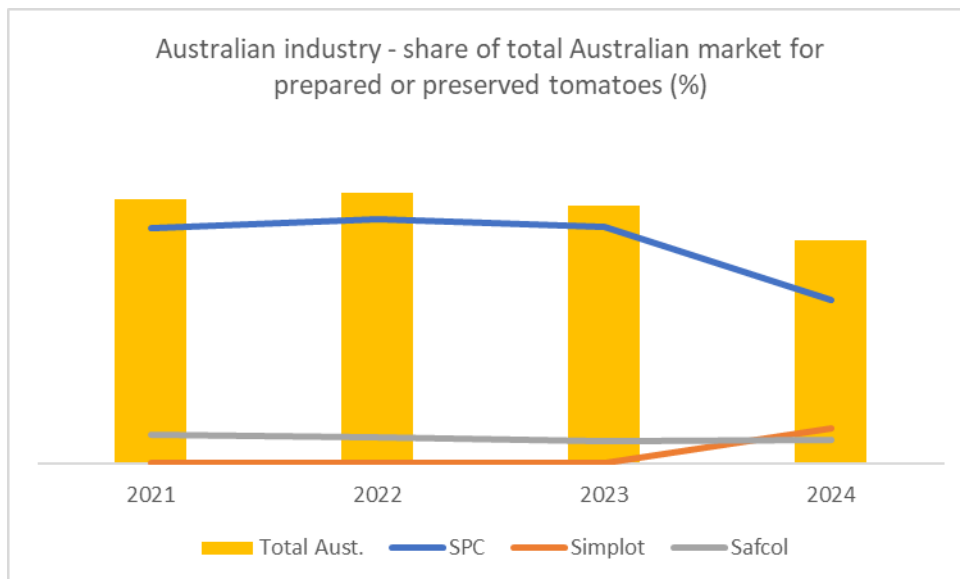
### *Commission assessment*

With the provision of additional data on sales by Calispa, the commission has revised its Australian market volume analysis throughout this report.

Figure 33 shows the share of the Australian market for prepared or preserved tomatoes for each of the Australian industry members, and the Australian industry as a whole.

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<sup>124</sup> Based on Woolworths sales data provided by Calispa. See Confidential attachment 2 – SPC and Leggos sales data



**Figure 33: Share of the Australian market for prepared or preserved tomatoes, by Australian industry member and all the Australian market, year ending September<sup>125</sup>**

The Australian industry's share of the market for prepared or preserved tomatoes fell over the injury period, with both SPC and Safcol selling lower volumes in the investigation period compared to the year ending September 2021.

The entry of Simplot into the market in the investigation period coincided with the fall in market share of SPC and Safcol, and is roughly equal to SPC's fall over the investigation period.

The commission also found that selling prices for Australian industry members for the investigation period were similar, consistent with the submission by Calispa. While the commission was not provided with wholesale price data for Simplot sales (which is the relevant level of trade at which the Australian industry competes), the commission considers retail prices a suitable proxy for wholesale prices.

Based on the similarity in prices between Australian industry members, supported by the additional evidence provided by Calispa, the Commissioner is satisfied there is competition between Australian industry members.

Total Australian sales volumes remained flat between the period October 2023 to September 2024 and the investigation period. Within Australian industry, SPC's sales volume fell 19%, which was broadly taken up by increases in sales by Safcol of 27% (from a much lower base than SPC) and the entry of Simplot, which was starting from zero sales.

This is in the context of an Australian market which increased 16% over the same period, and where Italian imports increased 22%.

In light of the above, the Commissioner is satisfied that the increase in domestic competition with the introduction of Simplot into the Australian market, has contributed to the injury experienced by the Australian industry, with increased competition between

<sup>125</sup> Confidential Attachment 1 – Australian market.

Australian products leading to increased discounting and shifting sales volumes, particularly by SPC, which has lost volume while Simplot has gained.

*SPC submission*

In its post-SEF 654 submission, SPC submitted that the finding in SEF 654 that ‘...SPC competes with other Australian manufacturers of like goods, Simplot and Safcol... The entry of Simplot into the market in the investigation period coincided with the fall in market share of SPC and Safcol’<sup>126</sup> is unsupported by evidence and is factually incorrect.

SPC notes that the commission had no verified data for either Simplot or Safcol, and Simplot was only present in the market for 5-months of the investigation period. SPC notes that in the evidence it provided the commission, SPC did not claim or provide evidence that domestic competition caused injury.

SPC submits that the commission’s findings that domestic competition caused injury to SPC ignore that Italian exporters gained market share over the injury period, that Simplot’s volumes were minimal, and that the Australian industry as a whole lost volume.

*Commission assessment*

As discussed above, the commission received additional evidence provided by Calispa on Simplot’s sales volumes. While this information has not been verified and related to downstream sales to consumers, rather than wholesale sales between the Australian industry and their customers, the commission considers this information can be used as an indication of Australian industry sales within the Australian market. The commission advised Simplot of the provision of this data by Calispa, who did not provide comment on its accuracy.

While Simplot was only competing for 5-months of the investigation period, the commission did not extrapolate its sales data for the full period, but only used in its analysis the volume of sales from those 5-months. If the 5-month volume was extrapolated for the full period, Simplot’s position in the market would have been more significant.

**9.8.4 Consumer preferences**

Several Australian supermarkets<sup>127</sup> stated that consumers prefer Italian tomatoes, because of taste and a perception of superior quality.<sup>128</sup>

The Australian industry submits that prepared or preserved tomatoes are a commoditised product, with price taking great significance. The Australian industry also submitted that the preference of some consumers for Italian tomatoes is balanced by the desire of customers to buy Australian. The Australian supermarkets agreed that price takes great significance in customer purchasing decisions.<sup>129</sup>

Calispa, in its post-SEF 654 submission, submits that there is a material segment of Australian consumers who exhibit ‘strong, non-price-sensitive preferences for Italian origin and flavour’, and that sales to these consumers were ‘never available for SPC to

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<sup>126</sup> EPR 654, Item 39, SPC submission to SEF 654, p13.

<sup>127</sup> Confidential Attachment 34 – Australian supermarket evidence

<sup>128</sup> Ibid

<sup>129</sup> Ibid

achieve'.<sup>130</sup> Calispa concludes that, accordingly, the only part of the Australian market available to SPC are consumers who prefer Australian origin or who are indifferent to origin.

ANICAV, in its post-SEF 654 submission, noted comments by the Australian supermarkets on the differences between Australian and Italian tomato products. It also submitted that Australian industry is unable to supply certain varieties of tomatoes provided by Italian exporters, such as long tomatoes, cherry tomatoes, Datterini tomatoes and San Marzano tomatoes.

ANICAV referred to recent findings by CHOICE<sup>131</sup>, noting that in its recent rankings of diced or chopped tomato products, Italian-origin products, both proprietary and own branded, occupy the top positions.

ANICAV concludes that it is a combination of factors that drive consumer choice, with taste and flavour being the most important, and Italian tomatoes deliver the flavour consumers want.

SPC, in its post-SEF 654 submission, submitted that the commission's findings were '*...speculative, unsupported by evidence, and contradicted by the Commission's own analysis. It provides no consumer surveys, no taste tests or sensory analysis, no market research data, and no quantitative evidence of consumer preferences.*'<sup>132</sup> SPC also submits that submissions from Australian supermarkets relied upon by the commission in determining that flavour is a factor, are incentive to oppose measures. Australian supermarkets can negotiate lower prices from SPC and cannot claim that consumers prefer Italian products for non-price reasons.

SPC refers to findings in SEF 654 on price elasticity, which contradict findings on consumer preference, submitting that the findings show that it is price, not origin or flavour, that drives purchasing decisions.

SPC provided the commission as a confidential attachment to its submission a study from 2023 which found that, for Australian consumers:<sup>133</sup>

- price is the number one driver of product choice when buying canned tomatoes
- other factors such as can size, format and quality follow price;
- brand is of secondary importance, and there is substantial brand and product switching in the category
- only a minority of consumers cite Italian origin as a key driver, and even then, this does not override price in most purchase decisions.

#### *Commission assessment*

As discussed in chapter 5.4.4, the commission considers that consumer purchasing decisions are driven by a combination of price, flavour preferences and origin factors, with price the most significant factor. While consumer preferences likely contribute to lower volumes experienced by the Australian industry, the lower price point of the Italian

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<sup>130</sup> EPR 654, Item 38, Calispa submission to SEF 654, p2.

<sup>131</sup> <https://www.theguardian.com/food/2025/nov/13/choice-tinned-tomato-taste-test-supermarket-coles-woolworths-iga>

<sup>132</sup> EPR 654, Item 39, SPC submission to SEF 654, p15.

<sup>133</sup> Confidential attachment 36 – SPC brand survey

product compared to the Australian equivalent is also significant factor contributing to purchasing decisions and injury experienced by the Australian injury.

While the commission recognises that a certain segment of the consumer market will only buy Italian origin prepared or preserved tomatoes, the commission considers Calispa's submission underplays the significance of price in purchasing decisions and is inconsistent with the fall in market share held by Australian industry. If most customers preferred Italian goods, then the commission would not have observed a significant fall in Australian industry volumes. The magnitude of this fall indicates there is a significant volume of customers who will shift their purchasing decisions based on factors other than origin alone.

The commission disagrees with SPC's submission that the commission's finding that consumer preference is a factor is speculative or unsupported by evidence. SPC submits that Australian supermarkets may be incentivised to provide evidence that their customers prefer the lower priced products, however, the commission considers supermarkets are also incentivised to satisfy their customers' preferences and will be more aware of consumers' preferences, due to their proximity to consumers, compared to producers, and therefore considers such evidence to have probative value.

The commission agrees that price is an important factor. But, as discussed in chapter 5.4.4, the commission considers it is not the only factor upon which purchasing decisions are made. Consumers will balance their non-price preferences against the price on which products are offered, to determine whether a given product provides 'value' to that consumer.

#### **9.8.5 Volume and prices of imported goods that are not dumped or subsidised**

Imports of the goods from countries other than Italy make up approximately 1% of the Australian market. Several countries have export prices lower than the weighted average Italian export price. However, these imports make up only 0.3% of import volume, compared to Italian imports, which make up 98% of import volume. The remaining imports are priced higher than Italian imports.<sup>134</sup>

The commission has examined the volume of imports from Italy which are not dumped (noting that all goods imported from Italy have received countervailable subsidies, albeit at low levels and that dumped goods exported by the selected exporters are at margins between 2.2% and 5.5%). These goods make up 9% of the Australian market. As discussed in chapter 8.7.2, under 'Italian pricing competition', undumped goods are the highest priced Italian sourced goods in the Australian market.

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

As noted in chapter 5.6, the Australian market for prepared or preserved tomatoes has remained stable over the injury period with no change in demand. While there was a fall in the 12-months leading to September 2023, the market recovered the following year, with Italian imports increasing to volumes greater than before the injury period, while Australian industry levels continued to fall.

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<sup>134</sup> Confidential Attachment 1 - Australian market, worksheet 'FOB EP by exporter'.



Both SPC and Australian supermarkets cited the ‘cost-of-living crisis’ which covers a period in which the investigation period falls.<sup>135</sup> They submitted that consumer purchasing habits changed, with consumers moving towards cheaper products.

The commission has observed generally increasing prices for the goods over the injury period, across all tiers; determining whether consumers have moved to cheaper products over the injury period is therefore difficult, as the commission lacks significant tier data outside the investigation period.

#### **9.8.7 Restrictive trade practices of, and competition between, foreign and Australian producers of like goods**

The commission is unaware of any restrictive trade practices or competition between foreign and Australian producers of like goods that would be a cause of injury to the Australian industry, other than the competition between Australian and Italian-sourced tomatoes, as discussed in this report.

#### **9.8.8 Developments in technology**

The commission is unaware of any developments in technology that would be a cause of injury to the Australian industry. As discussed in chapter 3.6.4, the commission did not observe any significant differences between the production facilities used by the Australian industry and that of Italian exporters.

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

SPC exported a small volume of goods (approximately 0.2%) during the investigation period. These goods were sold at very small margins, on an ad-hoc basis. The commission is satisfied that production capacity was unchanged for SPC over the injury period and likely increased across all of the Australian industry with the introduction of new Australian producers.

#### **9.8.10 Insufficient supply**

Some Australian supermarkets stated that the Australian industry’s smaller size means that they produce insufficient volumes to meet the demand for prepared or preserved tomatoes in Australia.<sup>136</sup> They submitted that, in respect of SPC, the volumes it produces are used solely for the production of its branded products, with insufficient supply for customer own brand production (i.e. supermarket own label). These parties claimed SPC had not taken steps to increase its volumes to meet the demand for own brand production, whereas other suppliers (including the Italian exporters) have invested in increased output.

During verification of the selected Italian exporters, the commission observed that tomato processors purchase fresh tomatoes from farmers, through independent cooperatives. Tomato producers purchase tins, the other major raw material cost, from third-party suppliers. The commission did not witness any integration of supply chains in Italy.

The commission disagrees with the claims that the Australian industry is not able to meet supply demands. The Australian industry places orders with tomato growers based on

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<sup>135</sup> Confidential Attachment 34 – Australian supermarket evidence

<sup>136</sup> Ibid

customer orders. The volume of orders by customers has fallen over the injury period, which has resulted in less supply by the Australian industry. It appears to be less demand, rather than less supply, which is resulting in lower volumes. Based on its verification of SPC's data<sup>137</sup>, the commission is satisfied that the Australian industry has capacity to significantly increase its supply if customers placed orders. Australian industry members other than SPC supply own brand products to customers and advised the commission that they have capacity to increase this supply.

Submissions on insufficient supply

ANICAV also submitted in its post-SEF 654 submission that Australian industry is unable to meet demand. It says the commission's conclusion that Australian industry possesses unused capacity is '...irreconcilable with both the factual record and the commission's own analysis' and that '*The assertion that domestic producers could simply have expanded production upon request ignores the extraordinary conditions characterising the injury period and overlooks the clear evidence of structural production limitations in Australia*'.<sup>138</sup>

ANICAV refers to crop losses in Greater Shepparton and an outbreak of tomato brown rugose fruit virus in South Australia.

Commission assessment

The commission disagrees with ANICAV's statement that the evidence indicates SPC and Australian industry did not possess the capacity to increase production. Evidence gathered by the commission confirmed SPC could increase production if demanded. SPC's capacity utilisation dropped over the injury period (see chapter 8.6.3) and Simplot increased production from zero prior to the investigation period.

Chapter 9.8.11 discusses crop losses related to flooding.

SPC did not mention crop losses related to tomato brown rugose fruit virus, and the commission notes SPC sources its fresh tomatoes from the Shepparton region.

**9.8.11 Weather and flooding**

Some Australian supermarkets identified significant weather events as impacting the supply of fresh tomatoes to the Australian industry, which affect their ability to produce like goods.<sup>139</sup>

In October 2022, the Greater Shepparton region experienced record flooding<sup>140</sup> which led to significant losses in tomato crop production.<sup>141</sup> SPC reported it lost 60% of its planned crop. This led to shortfalls in meeting demand by its customers, with those customers in turn increasing their imports from Italy. While crop yields later recovered, customer demand did not return to levels prior to the flooding.

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<sup>137</sup> Chapter 8.6.3

<sup>138</sup> EPR 654, Item 42, ANICAV submission to SEF 654, p8.

<sup>139</sup> Ibid

<sup>140</sup> [https://www.parliament.vic.gov.au/4af8e5/contentassets/b1ee73cacbc844a683ebb25dfda9a3a1/393.1-committee-for-greater-shepparton\\_red.pdf](https://www.parliament.vic.gov.au/4af8e5/contentassets/b1ee73cacbc844a683ebb25dfda9a3a1/393.1-committee-for-greater-shepparton_red.pdf)

<sup>141</sup> <https://aptrc.asn.au/wp-content/uploads/2024/03/Australian-Processing-Tomato-Grower-Magazine-2023.pdf>

Submissions on domestic competition

In its post-SEF 654 submission, ANICAV submits that SEF 654 does not give proper weight to the impact of weather events on crop yields. ANICAV notes that SPC's lowest production and sales outcomes follow closely the flooding during the 2022-2023 growing season. It refers to SPC's 2023 financial statement, *'In late December 2022, Shepparton and the Goulburn Valley was affected by devastating floods and hailstorms only days before harvest. The flood water level was at 1cm higher than that experienced in 1974, peaking at 12.10 meters. These floods led to substantial losses in crop yield or damaged crop in produce such as tomatoes.'*<sup>142</sup> ANICAV provides further corroborating evidence, as well as noting comments by retailers emphasising the need to diversify supply because of the inability of domestic suppliers to meet demand and because of supply reliability.

*Commission assessment*

The commission accepts that Australian tomato production can be volatile, and reliability of supply is a consideration in customer purchasing decisions. The Australian industry has multiple growing regions, across Southern New South Wales and Victoria. The commission considers that customers could reduce volatility by purchasing similar volumes across multiple Australian regions.

The commission is also aware of tomato crop losses from the Goulburn Valley floods in 2022. These crop losses primarily affected sales for the year prior to the investigation period. Despite a recovery in crop yields for production relevant to the investigation period, customers have not sought to purchase like goods at the volumes prior to the 2022/2023 season. As noted in chapter 9.8.10, the Australian industry is capable of producing like goods at greater volumes than that purchased by Australian customers.

**9.8.12 COVID-19**

Some Australian supermarkets referred to the effect of COVID-19 on consumer purchases of prepared or preserved tomatoes. Demand for tinned products significantly increased, including for tomatoes, which created supply problems for Australian supermarkets. As a result, supermarkets brought forward purchasing contracts to stock their shelves and sourced supply wherever available from Australia and Italy. This impacted sourcing patterns for customers as well as consumer purchasing habits, with customers moving between brands.<sup>143</sup>

The effects of COVID-19 can be seen in the commission's analysis of the Australian market size, discussed in chapter 5.6. The Australian market as a whole increased between October 2020 and September 2022, with Australian industry growth outgrowing Italian import growth. But by September 2023, the market fell, with the Australian industry experiencing a greater fall than Italian imports. The Australian industry did not recover in the investigation period, whereas Italian imports grew to a level higher than before the period October 2020 to September 2021.

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<sup>142</sup> EPR 654, Item 42, ANICAV submission to SEF 654, p7.

<sup>143</sup> Confidential Attachment 34 – Australian supermarket evidence

### 9.8.13 SPC merger

Some Australian supermarkets suggested<sup>144</sup> that SPC's recent corporate merger created market uncertainty and transitional disruptions, impacting supply chain dynamics and possibly influencing commercial decisions. The commission does not consider this claim as a likely cause of injury during the investigation period, as it took place after the investigation period and the commission has also not seen any evidence that would suggest the merger impacted its production and sale of prepared or preserved tomatoes.

### 9.8.14 Lack of expansion into new product ranges

Some Australian supermarkets raised with the commission that SPC's limited product range has inhibited its sales.<sup>145</sup> This commission considers that the observed evidence suggests this cause as unlikely, with various suppliers (including in Italy) advising the commission of attempts to offer other product types of the goods to Australian supermarkets without success, indicating that Australian supermarkets are not looking to increase their product offering. The limited range of goods exported to Australia also undermines a limited product range by SPC as a cause of injury.

### 9.8.15 Russian invasion of Ukraine

Some Australian supermarkets raised the Russian invasion of Ukraine as a possible cause of injury to the Australian industry.<sup>146</sup> The commission has seen no evidence that the war has impacted Australian sales or supply of the goods from Italy.

### 9.8.16 SPC's structural fragility

In its post-SEF 654 submission, ANICAV submitted that the other factors listed in SEF 654 were amplified by the 'structural fragility of SPC, which long predates the investigation period'. ANICAV notes that SPC has recorded several successive losses and requested a government bailout in 2014. ANICAV goes on to submit that SPC did not regain competitiveness when previous anti-dumping measures were in place on Italian imports of the goods.<sup>147</sup>

#### *Commission assessment*

The commission notes that SPC has experienced injury, as discussed in chapter 8, which is consistent with ANICAV's comments on SPC's economic condition. The commission considers that SPC's 'structural fragility', to use ANICAV's wording, is a result of the other injury factors, rather than a cause. In this regard, the commission also notes the Material Injury Direction, which states that '*...an industry which at one point in time is healthy and could shrug off the effects of the presence of dumped or subsidised products in the market, could at another time, weakened by other events, suffer material injury from the same amount and degree of dumping or subsidisation.*' The direction is discussed further in chapter 9.9.

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<sup>144</sup> Ibid

<sup>145</sup> Confidential Attachment 34 – Australian supermarket evidence

<sup>146</sup> Ibid

<sup>147</sup> EPR 654, Item 42, ANICAV submission to SEF 654, p12.

## **9.9 Materiality of dumping and subsidisation causing injury**

The Material Injury Direction provides that injury from dumping or subsidisation need not be the sole cause of injury to the industry, where injury caused by dumping or subsidisation is material in degree. It further provides that the Commissioner will judge the materiality of injury caused by a given degree of dumping or subsidisation differently, depending on the economic condition of the Australian industry suffering the injury. In considering the circumstances of each case, the Commissioner must consider whether an industry which at one point in time is healthy and could shrug off the effects of the presence of dumped or subsidised products in the market, could at another time, weakened by other events, suffer material injury from the same amount and degree of dumping or subsidisation.

### **9.9.1 Remedied imports**

The commission found that the price of the goods exported from Italy, weighted across all tiers, undercut Australian industry prices in each quarter of the investigation period (Figure 12).

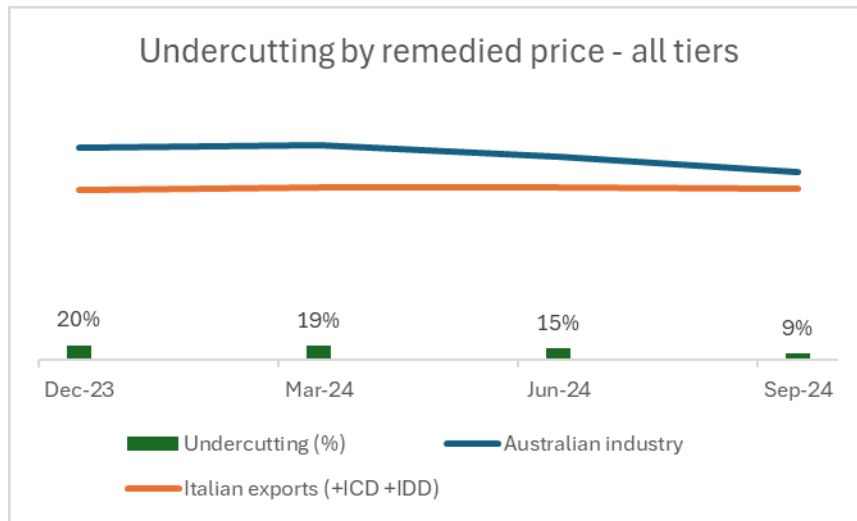
The price of Italian exported goods also undercut Australian industry prices in every quarter in the investigation period at the mid-tier (Figure 13) and in 3 of 4 quarters at the premium tier (Figure 14).

The commission has undertaken the following price undercutting analysis using 'remedied Italian export prices' i.e. including the applicable dumping and subsidy margins:

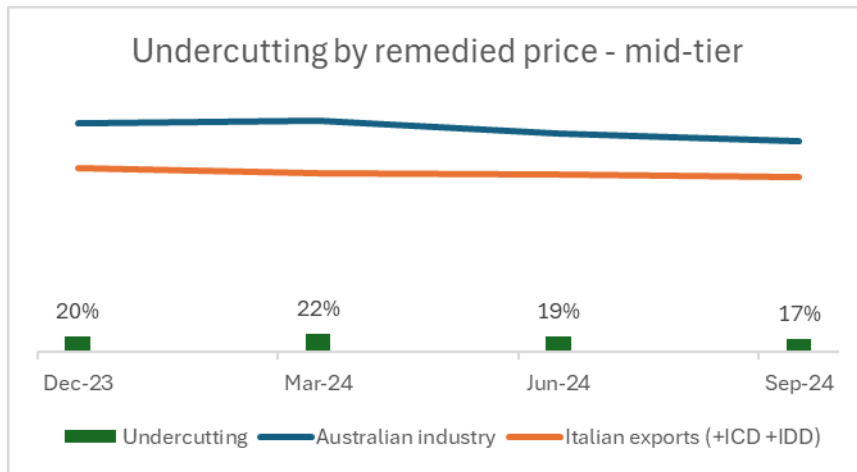
- quarterly weighted average Australian industry prices and remedied Italian export prices, across all tiers (Figure 34)
- quarterly weighted average Australian industry prices and remedied Italian export prices, across the mid-tier (Figure 35)
- the lowest quarterly Australian industry price and the highest remedied Italian export price, across the mid-tier (Figure 36)
- quarterly weighted average Australian industry prices and remedied Italian export prices, across the premium tier (Figure 37).

In calculating a remedied export price, the commission has had regard to the subsidy margin, even though the Commissioner's findings are that this margin is negligible. The commission considers that in determining material injury to the Australian industry under section 269TAE(ab), the Minister is to have regard to the particulars of any countervailable subsidy received in respect of the exported goods. Section 269TDA(2) relating to the termination of a subsidy investigation when the margins are negligible is a separate consideration to the materiality of injury.

## PUBLIC RECORD



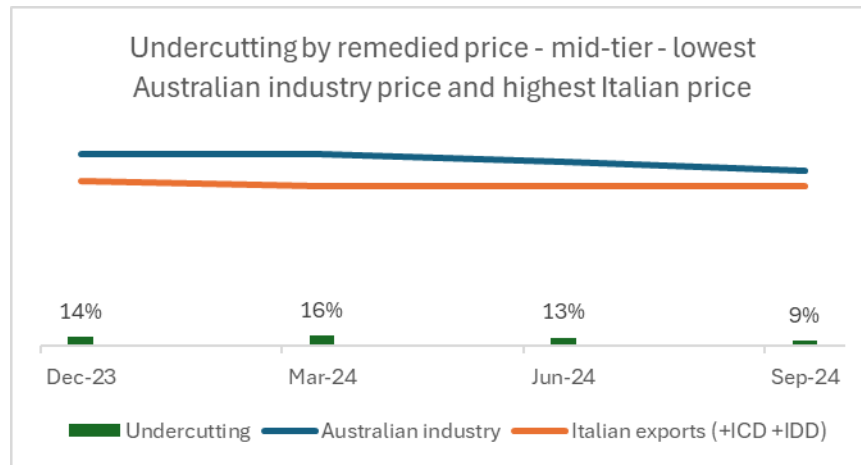
**Figure 34: Price undercutting – Australian industry and remedied Italian price (all tiers)<sup>148</sup>**



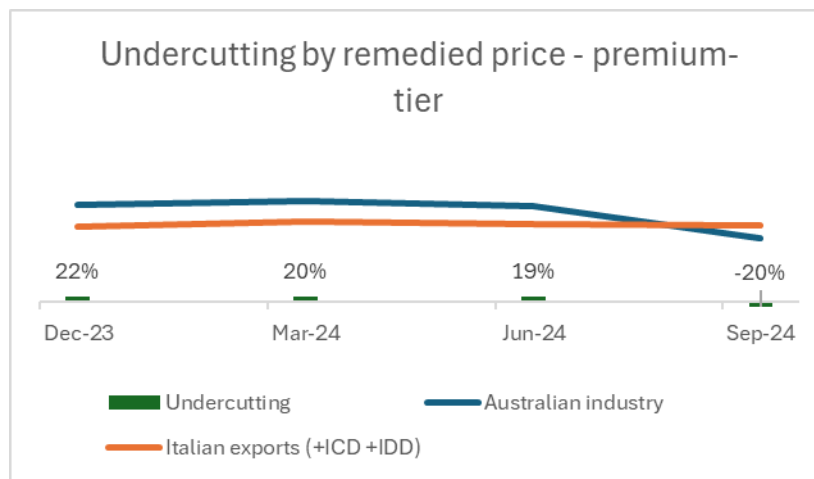
**Figure 35: Price undercutting – Australian industry and remedied Italian price (mid-tier)<sup>149</sup>**

<sup>148</sup> Confidential attachment 31 – Price undercutting analysis

<sup>149</sup> Ibid



**Figure 36: Price undercutting – Lowest Australian industry price and highest remedied Italian price (mid-tier)<sup>150</sup>**



**Figure 37: Price undercutting – Australian industry and remedied Italian price (premium tier)<sup>151</sup>**

In each of the figures above, remedied Italian prices are still below those of the Australian industry (other than the September 2024 quarter for the premium tier), indicating that the undercutting by Italian imports of the goods is largely not a result of dumping and subsidisation.

This trend remains consistent when the lowest priced Australian industry like goods in each quarter at the mid-tier are compared with the highest priced remedied Italian goods; imports of the goods still undercut the Australian industry by 9% to 16%. The commission has performed analysis at this level as it represents the ‘best case’ scenario for the Australian industry during the investigation period, i.e. when Australian prices are at their lowest and Italian prices are at their highest.

The commission considers that the gap between the remedied Italian price and the Australian industry price represents the competitive advantage of Italian goods over Australian goods (as discussed in chapter 9.8.1), along with injury caused to the

<sup>150</sup> Ibid

<sup>151</sup> Ibid



Australian industry by other factors (primarily, chapters 9.8.2 to 9.8.5). The make-up of these injury 'components' is depicted in Figure 38.

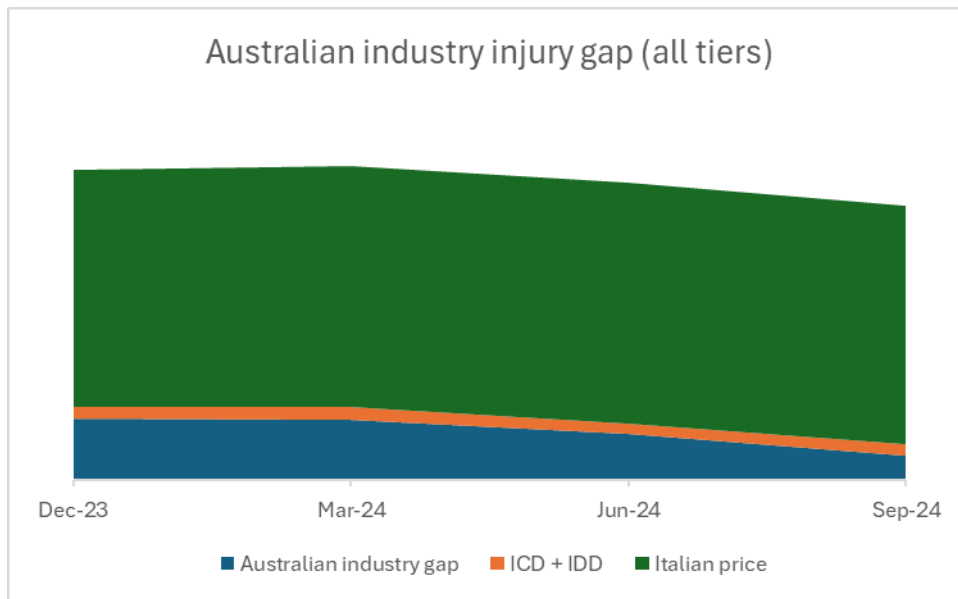


Figure 38: Australian industry injury gap (all tiers)

Across all tiers over the investigation period, Italian export prices are 76% to 78% the price of the Australian industry (i.e. they undercut by between 22% to 24%). The weighted average dumping and subsidy margin adds 4% to the price, leaving a gap of 18% to 20% across the investigation period between the price at which Australian industry sold like goods and the remedied (i.e. undumped and unsubsidised) price of Italian exports.

### 9.9.2 Submission by SPC

In its post-SEF 654 submission, SPC refers to the Material Injury Direction and notes that the requirement for materiality '...does not require that dumping be the predominant or overriding cause of injury; it requires that dumping contribute to injury in a non-trivial, non-negligible way.'<sup>152</sup>

SPC draws the commission's attention to the principle in the Material Injury Direction that an industry which at one point in time is healthy and could shrug off the effects of the presence of dumped or subsidised products in the market, could at another time, weakened by other events, suffer material injury from the same amount and degree of dumping or subsidisation. SPC submits that this principle applies in the present circumstances.

SPC also submitted that the commission's remedied price analysis in chapter 9.9.1, while appropriate, is inconsistent with law and practice, arguing that measures need only address the unfair price effects attributable to dumping. SPC submits that the reasoning in SEF 654 effectively introduces a new legal standard, that measures should only be imposed where they eliminate all instances of undercutting. SPC states that this standard does not appear in the Act. SPC submits that the approach taken in SEF 654 would

<sup>152</sup> EPR 654, Item 39, SPC submission to SEF 654, p3.

incentivise foreign exporters, where ‘...any exporter with a structural cost advantage would be effectively free to dump into the Australian market without consequence.’<sup>153</sup>

SPC refers to Figure 31 in SEF 654 (Figure 38 in this report), and submits that a 4-6% reduction in undercutting is material.

SPC refers to several previous cases where the Commissioner recommended measures where remedied prices continued to undercut Australian industry and submits that if the approach taken in SEF 654 were applied broadly, almost no anti-dumping measures would be imposed. SPC submits that the approach taken in SEF 654 is inconsistent with the purpose and operation of the anti-dumping system.

### 9.9.3 Commissioner’s assessment

#### *Assessment of remedied imports analysis*

The Commissioner considers that if anti-dumping measures were imposed on those Italian exporters found to be dumping during the investigation period (recognising that the subsidy investigation has been terminated for all exporters except non-cooperative entities due to negligible margins), the Australian industry would continue to be undercut and would continue to experience injury. This injury would then be caused by exports of the goods subject to anti-dumping measures (at a remedied price), and exports from La Doria, which would not be subject to measures. Lower priced imported goods at a remedied price would continue to put downward pressure on Australian industry prices, and, given the price sensitivity of prepared or preserved tomatoes in the Australian market, customers would continue to purchase lower priced goods in higher volumes.

Due to the level of undercutting, even once remedied, across all tiers and all quarters (noting one exception at the premium tier level in the September 2024 quarter), the Commissioner cannot be satisfied that dumping and subsidisation are factors causing material injury to the Australian industry.

#### *Counterfactual*

The commission considered whether it could examine a counterfactual situation, to calculate the position of the Australian market and SPC if dumped and/or subsidised imports from Italy did not compete in the Australian market, and hence determine the level of injury caused by such imports. However, given the presence of the other factors in the market causing injury discussed in chapter 9.8, the commission considers any analysis would be only an estimate of little probative value.

#### *Assessment of SPC submission*

In considering SPC’s submission regarding the commission’s assessment of the Material Injury Direction, the commission notes the following extract, also quoted by SPC in its submission:

*Whether dumping or subsidisation is the sole cause of injury or whether there are other contributing factors, I direct that the injury caused by dumping or subsidisation must be material in degree.*

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<sup>153</sup> Ibid, p18.

The Commissioner considers that imports of dumped and/or subsidised goods from Italy have had an effect on SPC's economic condition, but that effect does not amount to material injury to the Australian industry, and that the material injury has been caused by other factors.

In respect of SPC's submission regarding the level of undercutting and the remedied price analysis, the commission notes that the remedied price analysis is used as an analytical tool to assess causation and materiality, not to suggest that dumping must account for all price undercutting. The analysis demonstrates that, even when Italian export prices are adjusted to remove dumping and subsidisation (which are at relatively modest levels), they continue to significantly undercut Australian industry prices across most tiers and quarters of the investigation period. This indicates that a substantial portion of the price gap is attributable to structural cost advantages (i.e. competitive advantage) and other factors, rather than dumping or subsidisation.

## **9.10 Whether injury is negligible**

Noting the submissions from the European Commission and ANICAV regarding termination, the Commissioner has considered whether the requirements for terminating the investigation in relation to Italy generally have been met, in accordance with sections 269TDA(13) and 269TDA(14).

From the evidence before the Commissioner, the Commissioner is not satisfied that the injury to the Australian industry caused by goods exported to Australia from Italy is negligible, and therefore the requirements of sections 269TDA(13) and (14) have not been met.

### **9.10.1 Legislative framework**

Section 269TDA sets out the circumstances in which the Commissioner must terminate a dumping or subsidy investigation in its entirety, or solely in respect of a specific exporter.

Section 269TDA(1) provides, among other things, that in a dumping investigation, if the Commissioner is satisfied that there has been no dumping by an exporter of the goods, the Commissioner must terminate the investigation in so far as it relates to that exporter.

Section 269TDA(2) provides that in a subsidy investigation, the Commissioner must terminate the investigation in so far as it relates to an exporter, if the Commissioner is satisfied that:

- an exporter has not received a countervailable subsidy in respect of goods, or
- if a countervailable subsidy was received in respect of the goods by an exporter, but it never at any time during the investigation period exceeded the negligible level.<sup>154</sup>

If the Commissioner is satisfied that the injury, if any, to an Australian industry, that has been, or may be, caused by goods exported to Australia from a particular country of

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<sup>154</sup> Pursuant to section 269TDA(16)(a), a countervailable subsidy received in respect of goods exported to Australia from Italy is negligible if, when expressed as a percentage of the export price of the goods, the level of the subsidy is not more than 1%.

export, is negligible, then the Commissioner must terminate the investigation in relation to that country:

- in relation to an application for a dumping duty notice, pursuant to section 269TDA(13)
- in relation to an application for a countervailing duty notice, pursuant to section 269TDA(14).

### **9.10.2 Submissions on termination**

Both the European Commission and ANICAV submitted prior to SEF 654 that the Commissioner should terminate the investigation, based primarily on a lack of material injury being caused by imports of the goods from Italy. Both the European Commission and ANICAV reiterated these comments following the Commissioner's publication of SEF 654.

### **9.10.3 Commissioner's assessment**

Noting the submissions from the European Commission and ANICAV regarding termination, the Commissioner has considered whether the requirements for terminating the investigation in relation to Italy generally, under sections 269TDA(13) and 269TDA(14), are met.

Sections 269TDA(13) and (14) require that the Commissioner be satisfied that the injury to the Australian industry caused by goods exported to Australia from Italy is negligible.

As stated in Chapter 9, the Commissioner considers that imports of undumped/unsubsidised and dumped/or subsidised goods from Italy have had an impact on the economic condition of the Australian industry. But the Commissioner is not satisfied that the injury to the Australian industry caused by goods exported to Australia from Italy is negligible, and therefore the requirements of sections 269TDA(13) and (14) have not been met.

In making this decision, the Commissioner considers that the impact of dumped and/or subsidised imports from Italy on the economic condition of Australian industry is not negligible or of no effect, but is nonetheless not material.<sup>155</sup> The Commissioner has taken into consideration that:

- the dumping margins for De Clemente, IMCA, Mutti and the residual exporters were low (ranging from 2.2% to 5.5%), they were not negligible (i.e. less than 2%)
- the subsidy margin for non-cooperative exporters was low (1.6%) but not negligible (i.e. less than 1%)
- the volume of exports by uncooperative exporters was low, relative to the volume of other imports from Italy, but not negligible (i.e. less than 3% of total Australian import volume).

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<sup>155</sup> Refer discussion in chapter 2.1.1 on material injury and negligible injury.

## 10 RECOMMENDATIONS

### 10.1 Finding

The Commissioner is not satisfied that exports of the goods at dumped and/or subsidised prices from Italy caused material injury to the Australian industry.

Therefore, the Commissioner recommends that the Minister **does not** impose either a dumping duty notice, or a countervailing duty notice in respect of goods exported from Italy, because the requirements of section 269TG or section 269TJ are not satisfied. Specifically, the requirement that material injury to an Australian industry producing like goods has been, is being, or is threatened because of dumped and/or subsidised exports from Italy.

A decision by the Minister not to impose a dumping duty notice or countervailing duty notice must be publicly notified under section 269TL.<sup>156</sup> The publication of a notice under section 269TL ends the dumping and countervailing investigation.

The Commissioner is not satisfied that the injury to the Australian industry caused by goods exported to Australia from Italy is negligible. Therefore, the Commissioner cannot terminate the dumping and subsidy investigations in relation to Italy generally as the requirements to do so under sections 269TDA(13) and 269TDA(14) are not met.

### 10.2 Recommendations

The Commissioner recommends the Minister **be satisfied that**:

- in accordance with section 269TAB(3), sufficient information has not been furnished or is available to enable the export price of the goods exported to Australia by exporters in the category of 'uncooperative exporters' to be ascertained under section 269TAB(1)
- in accordance with section 269TAC(6), sufficient information has not been furnished or is available to enable the normal value of the goods exported to Australia by exporters in the category of 'uncooperative exporters' to be ascertained under the preceding sections of section 269TAC (other than section 269TAC(5D))
- in accordance with section 269TAC(2)(a)(ii), the normal value of the goods exported to Australia from Italy by IMCA cannot be ascertained under section 269TAC(1), because of the absence, or low volume, of sales of like goods in Italy that would be relevant for the purpose of determining a price under section 269TAC(1)
- in accordance with section 269TACD(1), countervailable subsidies have been received in respect of goods exported to Australia from Italy by exporters in the category of 'non-cooperative entities'.

The Commissioner recommends the Minister **ought not to be satisfied that**:

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<sup>156</sup> By declaring the goods to be goods to which section 8, 9, 10 or 11, as the case requires, of the *Customs Tariff (Anti-Dumping) Act 1975* applies.

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- in accordance with section 269TG(1), material injury to an Australian industry producing like goods has been or is being caused or is threatened because the export price of the goods exported to Australia from Italy is less than the normal value of those goods
- in accordance with section 269TG(2), material injury to an Australian industry producing like goods has been or is being caused or is threatened because the export price of like goods that have already been exported to Australia from Italy is less than the normal value of those goods
- in accordance with section 269TJ(1), material injury to an Australian industry producing like goods has been or is being caused or is threatened because countervailable subsidies have been received in respect of the goods exported to Australia from Italy
- in accordance with section 269TJ(2), material injury to an Australian industry producing like goods has been or is being caused or is threatened because countervailable subsidies have been received in respect of the goods that have already been exported to Australia from Italy or that material injury to an Australian industry producing like goods is threatened because countervailable subsidies may be received in respect of like goods that may be exported to Australia in the future
- in accordance with section 269TJA(1), material injury to an Australian industry producing like goods has been or is being caused or is threatened because of the combined effect of the export price of the goods exported to Australia from Italy is less than the normal value of those goods and countervailable subsidies have been received in respect of the goods
- in accordance with section 269TJA(2), material injury to an Australian industry producing like goods has been or is being caused or is threatened because of the combined effect of the export price of like goods that have already been exported to Australia from Italy is less than the normal value of those goods and countervailable subsidies have been received in respect of the goods that have already been exported to Australia from Italy.

The Commissioner recommends the Minister **determine**:

- in accordance with section 269TAAD(4), and for the purpose of working out the cost of goods and determining whether the price paid for like goods sold in the country of export in sales that are arms length transactions are taken to have been in the ordinary course of trade, the amounts set out in Confidential Attachments 7, 11 and 19 to be the cost of production or manufacture of goods in the country of export and the administrative, selling and general costs associated with the sale of those goods
- that, being satisfied that section 269TAB(1)(a) applies, the export price of goods exported to Australia by De Clemente, IMCA and Mutti is the price paid or payable for the goods by the importer, other than any part of that price that represents a charge in respect of any other matter arising after exportation, as set out in Confidential Attachments 6, 10 and 18
- in accordance with section 269TAB(3), having regard to all relevant information, that the export price for exporters in the category of 'uncooperative exporters' is as set out in Confidential Attachment 22
- in accordance with section 269TAC(1), being satisfied that like goods are sold in the ordinary course of trade for home consumption in Italy in sales that are arms length transactions by De Clemente and Mutti, that the normal value of the goods



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exported to Australia from Italy by is price paid or payable for like goods as set out in Confidential Attachments 8 and 20

- in accordance with section 269TAC(2)(c), the normal value of the goods exported to Australia from Italy by IMCA cannot be ascertained under section 269TAC(1) because of the absence, or low volume, of sales of like goods in Italy that would be relevant for the purpose of determining a price under section 269TAC(1), that the normal value of the goods exported to Australia by IMCA is as set out in Confidential Attachment 12
- in accordance with section 269TAC(6), having regard to all relevant information, that the normal values for exporters in the category of 'uncooperative exporters' is as set out in Confidential Attachment 22
- having applied section 269TACB(2)(a) and in accordance with sections 269TACB(1) and (4), that the goods exported to Australia from Italy by De Clemente, IMCA, Mutti and exporters in the category of 'residual exporters' or 'uncooperative exporters' are taken to have been dumped, and the dumping margins for all exporters in respect of those goods is the difference between the weighted average export prices of the goods over the investigation period and the weighted average of corresponding normal values over that period as set out in Confidential Attachments 9, 13, 21 and 22
- having regard to all relevant information in accordance with section 269TACC(1) and subject to sections 269TACC(2) and 269TACC(3), that financial contributions provided under programs 654-3, 654-5 to 654-11, 654-15 and 654-16 confer a benefit, as set out in Chapter 7
- in accordance with section 269TAACA, having regard to all the facts available and having made reasonable assumptions, that a countervailable subsidy has been received under programs 654-3, 654-5 to 654-11, 654-15 and 654-16 in respect of the goods exported to Australia Italy by exporters in the category of 'non-cooperative entities' as set out in Chapter 7
- in accordance with section 269TAACA, having regard to all the facts available and having made reasonable assumptions as set out in Chapter 7, the amount of the countervailable subsidy received under programs 654-3, 654-5 to 654-11, 654-15 and 654-16 in respect of the goods exported to Australia Italy by exporters in the category of 'non-cooperative entities', is the amount set out in Confidential Attachment 27.

The Commissioner recommends the Minister **direct**:

- in accordance with section 269TAC(8), that, as the normal value of the goods exported to Australia is the price paid or payable for like goods sold in Italy, the normal value be adjusted for specified differences between like goods sold in Italy and export sales, as set out in Confidential Attachments 8 and 20.



## 11 ATTACHMENTS

<b>Confidential Attachment 1</b>	Australian market
<b>Confidential Attachment 2</b>	SPC and Leggos sales data
<b>Confidential Attachment 3</b>	Safcol volume, sales and cost data
<b>Confidential Attachment 4</b>	Australian market brand analysis
<b>Confidential Attachment 5</b>	Exporter status analysis
<b>Confidential Attachment 6</b>	De Clemente Export price
<b>Confidential Attachment 7</b>	De Clemente CTMS
<b>Confidential Attachment 8</b>	De Clemente Normal value
<b>Confidential Attachment 9</b>	De Clemente Dumping margin
<b>Confidential Attachment 10</b>	IMCA Export price
<b>Confidential Attachment 11</b>	IMCA CTMS
<b>Confidential Attachment 12</b>	IMCA Normal value
<b>Confidential Attachment 13</b>	IMCA Dumping margin
<b>Confidential Attachment 14</b>	La Doria Export price
<b>Confidential Attachment 15</b>	La Doria CTMS
<b>Confidential Attachment 16</b>	La Doria Normal value
<b>Confidential Attachment 17</b>	La Doria Dumping margin
<b>Confidential Attachment 18</b>	Mutti Export price
<b>Confidential Attachment 19</b>	Mutti CTMS
<b>Confidential Attachment 20</b>	Mutti Normal value
<b>Confidential Attachment 21</b>	Mutti Dumping margin
<b>Confidential Attachment 22</b>	Residual and uncooperative exporters – Dumping Margin calculations
<b>Confidential Attachment 23</b>	De Clemente subsidy margin
<b>Confidential Attachment 24</b>	IMCA subsidy margin
<b>Confidential Attachment 25</b>	La Doria subsidy margin
<b>Confidential Attachment 26</b>	Mutti subsidy margin
<b>Confidential Attachment 27</b>	Residual and non-cooperative entity subsidy margin
<b>Confidential Attachment 28</b>	Economic condition analysis
<b>Confidential Attachment 29</b>	Tax credits data analysis
<b>Confidential Attachment 30</b>	Benchmark analysis
<i>Footnotes</i>	
<b>Confidential Attachment 31</b>	Price undercutting analysis
<b>Confidential Attachment 32</b>	ABARES tomato data
<b>Confidential Attachment 33</b>	Interest rate benchmark options
<b>Confidential Attachment 34</b>	Australian supermarket evidence
<b>Confidential Attachment 35</b>	CTM comparison
<b>Confidential Attachment 36</b>	SPC brand survey

## APPENDIX A SUBSIDY PROGRAMS ASSESSMENT

### A1 Definition of Government, public and private bodies

In its assessment of each program, the commission has had regard to the entity responsible for providing the financial contribution (if any) under the relevant program, as part of the test under section 269T(1) for determining whether a financial contribution is a subsidy. Under section 269T(1), for a contribution to be a subsidy, the following must provide the contribution:

- a government of the country of export or country of origin of the goods
- a public body of that country or a public body of which that government is a member
- a private body entrusted or directed by that government or public body to carry out a governmental function.

#### A1.1 Government

As described in section 16.2 of the Manual, the commission considers that the term 'government' includes government at all different levels, including at a national and sub-national level.

#### A1.2 Public bodies

The Act does not define the term 'public body.' Determining whether an entity is a 'public body' requires evaluation of all available evidence of the entity's features and its relationship with government, including the following:

- 1) The objectives and functions performed by the body and whether the entity in question is pursuing public policy objectives. In this regard relevant factors include:
  - legislation and other legal instruments
  - the degree of separation and independence of the entity from a government, including the appointment of directors
  - the contribution that an entity makes to the pursuit of government policies or interests, such as considering national or regional economic interests and the promotion of social objectives.
- 2) The body's ownership and management structure, such as whether the body is wholly or part-owned by the government or has most shares in the body. A finding that a body is a public body may be supported through:
  - the government's ability to make appointments
  - the right of government to review results and determine the body's objectives
  - the government's involvement in investment or business decisions.

The commission considers this approach is consistent with the WTO Appellate Body decision of *United States – Countervailing Measures (China)*.<sup>157</sup> In that case the Appellate body referred to the following 3 indicia which may assist in assessing whether an entity was a public body vested with or exercising government authority:

- where a statute or other legal instrument expressly vests government authority in the entity concerned
- where there is evidence that an entity is, in fact, exercising governmental functions
- where there is evidence that a government exercises meaning control over an entity and exercises governmental authority in the performance of government functions.

The Federal Court of Australia has also previously considered these principles.<sup>158</sup>

### **A1.3 Private bodies**

Where an entity is neither a government nor public body, the commission will consider it a private body, in which case, a government direction to make a financial contribution in respect of the goods must be established for the contribution to be considered a subsidy, as defined by section 269T(1).

Pursuant to section 16.3 of the Manual, in determining the character of an entity that may have provided a financial contribution, the commission will consider whether a private body has been:

- ‘entrusted’ to carry out a government function, which occurs when a government gives responsibility to a private body, or
- ‘directed’ to carry out a government function, which occurs in situations where the government exercises its authority over a private body.

Accordingly, not all government acts are entrusting or directing a private body. Encouragement or mere policy announcements by government of themselves are not sufficient to satisfy this test. However, threats and inducements may be evidence of entrustment or inducements. This test is satisfied where the private body is a proxy by government to give effect to financial contributions.

The Federal Court of Australia has also previously considered these principles.<sup>159</sup>

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<sup>157</sup> DS379 United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China.

<sup>158</sup> See *Panasia Aluminium (China) Limited v Attorney-General of the Commonwealth* [2013] FCA 870, [27] - [70]; *Dalian Steelforce Hi Tech Co Ltd V Minister for Home Affairs* [2015] FCA 885, [50] - [73].

<sup>159</sup> See *Panasia Aluminium (China) Limited v Attorney-General of the Commonwealth* [2013] FCA 870, [27] - [70]; *Dalian Steelforce Hi Tech Co Ltd V Minister for Home Affairs* [2015] FCA 885, [50] - [73].

## **A2 Countervailability of Subsidies**

In assessing whether a subsidy is countervailable, the commission applies the criteria set out in section 269TAAC. A subsidy is countervailable if it is specific, meaning it is limited in availability to certain enterprises, industries, or regions, or is contingent on export performance or the use of domestic goods.

Section 269TAAC(2) provides that a subsidy is specific:

- (a) if, subject to subsection (3), access to the subsidy is explicitly limited to particular enterprises; or
- (b) if, subject to subsection (3), access is limited to certain enterprises to particular enterprises carrying on business within a designated geographical region that is within the jurisdiction of the subsidising authority; or
- (c) if the subsidy is contingent, in fact or in law, and whether solely or as one of several conditions, on export performance; or
- (d) if the subsidy is contingent, whether solely or as one of several conditions, on the use of domestically produced or manufactured goods in preference to imported goods.

Section 269TAAC(3) provides that a subsidy is not specific, subject to section 269TAAC(4), if:

- (a) eligibility for, and the amount of, the subsidy are established by objective criteria or conditions set out in primary or subordinate legislation or other official documents that are capable of verification; and
- (b) eligibility for the subsidy is automatic; and
- (c) those criteria or conditions are neutral, do not favour particular enterprises over others, are economic in nature and are horizontal in application; and
- (d) those criteria or conditions are strictly adhered to in the administration of the subsidy.

Section 269TAAC(4) provides that the Minister may determine that a subsidy is specific, having regard to:

- (a) the fact that the subsidy program benefits a limited number of particular enterprises; or
- (b) the fact that the subsidy program predominantly benefits particular enterprises; or
- (c) the fact that particular enterprises have access to disproportionately large amounts of the subsidy; or
- (d) the manner in which a discretion to grant access to the subsidy has been exercised.

Section 269TAAC(5) further provides that, in making a determination under section 269TAAC(4), the Minister must take account of:

- (a) the extent of diversification of economic activities within the jurisdiction of the subsidising authority; and
- (b) the length of time during which the subsidy program has been in operation.

## **A3 Common Agricultural Policy**

The Common Agricultural Policy (**CAP**) was identified as a subsidy in the application and listed in CON 654 as Program 1.

The commission is satisfied that the CAP itself is not a subsidy, but a policy framework under which various subsidy programs exist.

Launched in 1962, the CAP is a policy that applies across the EU that aims to:

- support farmers and improve agricultural productivity, ensuring a stable supply of affordable food
- safeguard EU farmers to make a reasonable living
- help tackle climate change and the sustainable management of natural resources
- maintain rural areas and landscapes across the EU
- keep the rural economy alive by promoting jobs in farming, agri-food industries and associated sectors.

The CAP is managed and funded at the European level from EU resources. Member states implement the CAP through their own national strategic plans.

Both the CAP and Italy's National Strategic Plan (**CSP**) set out the criteria, conditions, and payment amounts for direct support to Italian farmers, including those who produce raw tomatoes.

The current version of the CAP (2023-2027) came into force in January 2023.

The commission identified 2 relevant payments made under the 2023-2027 CAP in connection with the production of the goods. These payments were provided to farmers who supplied fresh tomatoes as raw material used in the production of the of the goods. These are:

- Basic Income Support for Sustainability (**BISS**) – see Appendix A5.1
- Coupled Income Support (**CIS**) – see Appendix A5.2.

### **A3.1 Submissions by the European Commission**

#### **A3.1.1 Agreement on Agriculture – Green box exemption**

As discussed in chapter 2.5.1, the European Commission submitted that EU Member States are instructed to design the certain CAP measures, including the BISS and CIS, in a way that qualifies them as green box measures under Annex 2 of the WTO Agreement on Agriculture. The European Commission submits that the BISS is available to all EU farmers and eligibility is automatic. Accordingly, the European Commission submits that the BISS is not specific and hence not a countervailable subsidy.

The European Commission submits that the CIS payment is a production-limiting scheme that can be granted to specific types of farming or specific agricultural sectors that are of particular social, environmental or economic reasons, when undergoing difficulties.

The European Commission submits that neither the BISS nor CIS payment can be trade distorting

### *The commission's assessment*

The commission has not made a determination as to whether the BISS or CIS actually satisfy the green box criteria. Nevertheless, the commission does not consider that a subsidy that is green box compliant is prevented from being subject to countervailing duty, subject to the other conditions under the SCM Agreement being met. That is, a green box subsidy may also be a countervailable subsidy pursuant to the SCM Agreement.

## **A4 Tax credits**

Several programs provide a benefit to recipients in the form of a 'tax credit'. These are Programs 56 to 59 and Programs 69 and 70. Each of these programs is discussed in detail in Appendix A3.

Companies claim tax credits as part of their annual tax return documentation. Companies complete these forms themselves, identifying the credits for which they are eligible. Tax returns are processed automatically, and credits accrue without any discretion on the part of GOI to refuse claims for tax credits. However, tax returns may be audited to ensure compliance with relevant requirements.

Once accrued, companies can use the tax credit to meet future tax obligations. Credits may be used in part or in full and can carry over across multiple years. For example, a tax credit recorded in the 2022 tax return may be used to offset tax obligations in 2023. Any unused portion can be applied in 2024, and so on, until fully exhausted. Generally, tax credits do not expire, although some exceptions apply, for instance, credits under Program 58 had to be used by November 2023.

Tax credits are available under different programs, calculated at varying rates. Some programs are only available for specific periods.

## **A5 Assessment of Programs**

### **A5.1 [654-1] Common Agricultural Policy – Basic Income Support for Sustainability**

#### **A5.1.1 Program description**

Previously, known as the Basic Payment Scheme (**BPS**) until 2022, the Basic Income Support for Sustainability (**BISS**) serves as 'a safety net' guaranteeing a minimum level of income to all farmers, regardless of the type and volume of agriculture production.

Payments under the BISS are 'decoupled' from production, aiming to minimise trade distortions. Direct payments are made to farmers who, on their eligible hectares, undertake at least one farming practice per year, either to maintain the land or to engage in agricultural production.

Member States may implement the BISS either as a uniform amount per hectare or based on payment entitlements established under a previous decoupled direct payments scheme.

Italy allocates €1,678,197,055 annually to the BISS to support approximately 10 million hectares of agricultural land. This equates to an average payment of around €168 per eligible hectare, with a maximum payment of €2,000 per farmer.



The *Agenzia per le Erogazioni in Agricoltura* (Agricultural Paying Agency, A5.1.1) is responsible for managing and controlling expenditure under the CAP in Italy. AGEA is supervised by Italian Ministry of Agriculture, Food Sovereignty and Forestry (**MASAF**).

The BISS commenced in January 2023 and is scheduled to run until 2027.

### **A5.1.2 Legal basis**

The relevant legal foundation is Regulation (EU) 2021/2115 of the European Parliament and of the Council, Chapter II, ('Intervention in the Form of Direct Payments')<sup>14</sup> which states that the BISS:

- is an annual area-based decoupled direct payment<sup>160</sup>
- aims to guarantee a minimum level of agricultural income support for all active farmers<sup>161</sup>
- allows Member States to provide additional complementary support for different ranges of hectares, and to differentiate support by region or territory, in addition to the BISS<sup>162</sup>
- requires Member States to design interventions listed in Annex II of the Regulation, in accordance with the definitions and conditions in Article 4, so that they qualify under Annex 2 of the WTO Agreement on Agriculture<sup>163</sup>
- permits Member States to cap the amount of direct payment granted to a farmer in a given calendar year.<sup>164</sup>

Further specific requirements for the BISS are outlined in Part 4 of Italy's CAP Strategic Plan (CSP).<sup>165</sup>

### **A5.1.3 WTO notification**

The BPS is listed in the EU's *New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures*, dated 25 July 2023, as documented in G/SCM/N/401/EU (the latest notification available). Details on programs from 2023, including the BISS, are not listed in the notification.

### **A5.1.4 Eligibility criteria**

'Active farmers', those who carry out at least one farming practice per year to maintain the land or engage in agricultural production, are eligible to receive a per-hectare payment under the BISS for each 'eligible hectare' at their disposal.

An eligible hectare includes agricultural areas cultivated as arable land, land with permanent crops, land lying fallow and permanent grassland and pasture. These areas

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<sup>160</sup> Regulation (EU) 2021/2115 of the European Parliament and of the Council, Chapter II, Section 2, Subsection 2, Article 21.

<sup>161</sup> Regulation (EU) 2021/2115 of the European Parliament and of the Council, Chapter II, Section 2, Subsection 2, Article 21, paragraph 1-2.

<sup>162</sup> Regulation (EU) 2021/2115 of the European Parliament and of the Council, Chapter II, Section 2, Subsection 2, Article 2.

<sup>163</sup> Regulation (EU) 2021/2115 of the European Parliament and of the Council, Chapter II, Section 1, Article 10.

<sup>164</sup> Regulation (EU) 2021/2115 of the European Parliament and of the Council, Chapter II, Section 1, Article 17, Paragraph 1.

<sup>165</sup> See CSP, '1. BISS - Sostegno di base al reddito per la sostenibilità', available at [https://www.referurale.it/PAC\\_2023\\_27/PagamentiDiretti](https://www.referurale.it/PAC_2023_27/PagamentiDiretti)



must be at the farmer's disposal as of 15 May of the application year, based on a legitimate title of management (e.g., ownership, lease).

To access BISS benefits, farmers must submit an application through the National Agricultural Information System, which is administered by AGEA and MASAF.

#### **A5.1.5 Is there a subsidy?**

The direct payment under this program to eligible farmers results in a financial contribution by the GOI involving the direct payment of funds by the GOI, specifically, AGEA.

The financial contribution is not tied to production. However, a recipient who involved in the production, manufacture, or export of their products may apply that contribution towards that production. By subsidising the costs of that production, those costs savings may be then passed on the downstream purchases of the tomatoes, including production of the goods destined for export to Australia.

As the financial contribution under this program is provided by an agency of the GOI, it meets the definition of a subsidy under section 269T.

#### **A5.1.6 Is the subsidy countervailable?**

*Consideration of section 269TAAC(2)*

Eligibility for a subsidy under this program is limited to farmers of eligible land. While the range of possible recipients of a subsidy under this program is broad, not all enterprises are eligible to apply, and it is therefore, explicitly limited to particular enterprises.

*Consideration of sections 269TAAC(3) and 269TAAC(4)*

The commission has examined the eligibility criteria for the program and considers that eligibility is established by objective and verifiable criteria set out in *Regulation (EU) 2021/2115 of the European Parliament and of the Council, Chapter II* and the CSP.

Applications for the subsidy are automatically accepted upon AGEA verifying that eligibility requirements have been met. The commission has no evidence that the eligibility criteria are not strictly adhered to in its administration by AGEA.

The commission understands that one of the goals of BISS is to reduce the income gap per work unit in the agricultural sector compared to the rest of the Italian economy, and is therefore economic in nature. It is also limited to €2,000 per farmer (equivalent to approximately 12 hectares), thereby limiting the possibility of particular enterprises being favoured over others or particular enterprises having access to a disproportionate amount.<sup>166</sup>

The commission considers that the broad scope of the eligibility criteria for this program, with payments made regardless of type of and agricultural production, and limited to €2,000 per farmer, indicates that criteria are neutral, do not favour particular enterprises over others, are economic in nature and are horizontal in application.

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<sup>166</sup> See CSP, '1. BISS - Sostegno di base al reddito per la sostenibilità', available at [https://www.referurale.it/PAC\\_2023\\_27/PagamentiDiretti](https://www.referurale.it/PAC_2023_27/PagamentiDiretti)

Having considered the factors set out in section 269TAAC(4), the commission is satisfied that the requirements of section 269TAAC(3) have been met.

Accordingly, the commission considers a subsidy under this program is not specific and is therefore not countervailable under section 269TAAC.

## **A5.2 [654-2] Common Agricultural Policy – Coupled Income Support**

### **A5.2.1 Program description**

Previously known as Voluntary Coupled Support (**VCS**) until 2022, the Coupled Income Support (**CIS**) aims to address difficulties in specific agricultural sectors or farming types by enhancing competitiveness, sustainability, or quality, particularly where these sectors hold socio-economic or environmental significance.

Payments under the CIS are coupled to production factors, such as the number of hectares cultivated or the number of animals reared. However, payments are not conditional on actual harvesting.

Italy has designated support under this program for the surface area used to grow tomatoes for processing. Payments are made per hectare of tomato area that is sown, cultivated, and maintained under normal conditions until the tomatoes are fully ripe and committed under supply contracts with recognised producers in the tomato processing industry.

Italy allocates € 10,454,000 annually to the processing tomato sector. This provides for an average payment of approximately €174 per eligible hectare (with approximately 60,000 hectares used for growing processing tomatoes in Italy each year).

AGEA is responsible for managing and controlling expenditure for this program.<sup>167</sup>

The CIS commenced in January 2023 and is scheduled to run until 2027.

### **A5.2.2 Legal basis**

The legal basis is Regulation (EU) 2021/2115 of the European Parliament and of the Council, Chapter II, ('Intervention in the Form of Direct Payments')<sup>14</sup> which states that the CIS:

- is a coupled direct payment<sup>168</sup>
- may be granted to active farmers under specific conditions and as specified in CAP Strategic Plans<sup>169</sup>
- takes the form of an annual payment per hectare<sup>170</sup>

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<sup>167</sup> Appendix A5.1.1 further discusses AGEA

<sup>168</sup> Regulation (EU) 2021/2115 of the European Parliament and of the Council, Chapter II, Section 1, Article 16, Paragraph 3

<sup>169</sup> Regulation (EU) 2021/2115 of the European Parliament and of the Council, Chapter II, Section 3, Subsection 1, Article 32, Paragraph 1

<sup>170</sup> Regulation (EU) 2021/2115 of the European Parliament and of the Council, Chapter II, Section 3, Subsection 1, Article 32, Paragraph 3

- is restricted to listed sectors and productions or specific types of farming (including fruit and vegetables, which covers tomatoes).<sup>171</sup>

Further specific requirements are detailed in Part 4 of Italy's CAP Strategic Plan (CSP).<sup>172</sup>

### A5.2.3 WTO notification

The VCS is listed in the EU's *New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures*, dated 25 July 2023, as documented in G/SCM/N/401/EU (the latest notification available). However, details on programs from 2023 onward, including the CIS, are not included in this notification.

### A5.2.4 Eligibility criteria

To be eligible to receive a payment under this program, farmers must grow tomatoes for processing and hold a supply contract with a tomato processing industry, through a recognised producer organisation pursuant to Regulation (EU) No. 1308/2013.

Producer organisations file these supply contracts with the coordinating body (**AGEA**), and farmers must include the relevant contract details in their funding application.

Payments are made per hectare of land covered by a valid supply contract.

### A5.2.5 Is there a subsidy?

The direct payment under this program to eligible farmers results in a financial contribution by the GOI involving the direct payment of funds by the GOI, specifically, AGEA.

The financial contribution is tied to a commitment by recipients to supply tomatoes to a tomato processing industry. The commission considers that this financial contribution is in connection with the production and supply of those tomatoes and therefore constitutes a benefit in relation to those tomatoes.

Part 4 of the CSP states that:

The requirement of supply contracts stipulated through POs<sup>173</sup> promotes organization, production sustainability, and integration, which is a strength of the supply chain and **enables producers to compete with processed products imported from non-EU countries (canned tomatoes)**.<sup>174</sup>

*emphasis added*

It also states:

Maintaining the coupled premium, which was also used by Spain, Portugal, France, and Greece within the single market during the 2014-2020 programming period, appears desirable in the next programming period, also because the entire supply chain faces competition from non-EU

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<sup>171</sup> Regulation (EU) 2021/2115 of the European Parliament and of the Council, Chapter II, Section 3, Subsection 1, Article 32, Paragraph 3

<sup>172</sup> See CSP, '*Sostegno accoppiato al reddito per superficie - Pomodoro da trasformazione*', available at [https://www.reterurale.it/PAC\\_2023\\_27/PagamentiDiretti](https://www.reterurale.it/PAC_2023_27/PagamentiDiretti)

<sup>173</sup> Producer Organisation

<sup>174</sup> Ibid, page 8 (translated to English).

producers. Indeed, a decline in production in Italy would translate into an increase in European imports of canned tomatoes —essentially tomato paste—from China and the United States.<sup>175</sup>

This requirement was also confirmed in the GOI questionnaire response:

The farmer must be engaged, through a recognised producer organisation pursuant to Regulation (EU) No 1308/2013, in supply contracts stipulated with a tomato processing industry.

The aim is to promote the aggregation of the agricultural production supply in tomato producer organizations in order to strengthen the bargaining power of farmers with respect to processing companies, thus improving the remuneration of agricultural producers.

For this reason, in order to receive the support, the farmer must join a producer organization and attach to the aid application a commitment to deliver his harvest to the producer organization of which he is a member, while the contracts for the supply of tomatoes to the processing industry must be signed by the producer organization and not by the individual producer.<sup>176</sup>

Based on the above, the commission considers that the intention behind the program is to subsidise the production of tomatoes used in the production of processed tomatoes, which includes the goods. The support provided is intended to enable tinned tomato producers to compete with imported like products through reducing the raw material cost for tinned tomato producers.

The commission therefore considers that the financial contribution provided to tomato farmers under this program, is also in connection with the production, manufacture, or export of all products of downstream producers of the prepared or preserved tomatoes including producers of goods exported to Australia. This therefore constitutes a benefit in relation to the goods exported to Australia.

#### **A5.2.6 Is the subsidy countervailable?**

##### *Consideration of section 269TAAC(2)*

Eligibility for a subsidy under this program is explicitly limited to farmers who have an agreement to supply tomatoes to a tomato processing industry through a recognised producer organisation.

##### *Consideration of sections 269TAAC(3) and 269TAAC(4)*

The commission has examined the eligibility criteria for the program and considers that eligibility is established by objective and verifiable criteria, as discussed set out in *Regulation (EU) 2021/2115 of the European Parliament and of the Council, Chapter II* and the CSP.

Applications for the subsidy are automatically accepted upon AGEA verifying that eligibility requirements have been met. The commission has no evidence that the eligibility criteria are not strictly adhered to in its administration by AGEA.

The commission has had regard to the fact that the program benefits tomato farmers (and downstream tomato processors). Farmland used to cultivate tomatoes is approximately 60,000 hectares, out of 12.6 million hectares of agricultural area in Italy. This is equal to 0.48% of agricultural land.

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<sup>175</sup> Ibid, page 5

<sup>176</sup> GOI questionnaire response, page 164

Considering the above, the commission considers the program favours particular enterprises over others and is therefore specific.

#### **A5.2.7 Amount of subsidy**

The commission is satisfied that the amount of the subsidy paid under this program to tomato farmers is €174 per hectare.

Noting that the intention of this program is to subsidise the production of tomatoes used in the production of processed tomatoes, the commission considers that prices of raw tomatoes supplied to tomato processors (including exporters of the goods to Australia) reflects the benefit of the subsidy.

The Manual provides that *'Where it is established that the price of the input product reflects the benefit of the subsidy, in whole or in part, received by the upstream supplier, then the downstream purchaser is taken to have received a subsidy.'*<sup>177</sup>

The commission therefore considers that exporters of the goods, as downstream purchases of tomatoes, have received a subsidy under this program.

The Manual provides that, to determine whether the input has been purchased on terms that are more favourable than those available in the market (in this case, by tomato processors), the commission will, in order of priority, compare the purchase price of the subsidised input to the following benchmark prices:

- if there is a comparable and unsubsidised input product (either sourced in the country of export or imported), that actual price (subject to that price being reached under normal market conditions)
- average price data for an unsubsidised input product
- surrogate information - pricing information may be available for a comparable industry where subsidies have not been paid on inputs, and this information may be used to assess the likelihood of a competitive benefit having been provided by the subsidised input in question
- absent any information to enable a price to be established using the options above, the benchmark price shall be such amount having regard to all relevant information.<sup>178</sup>

In 2023, approximately 68,000 hectares of tomatoes were harvested in Italy, yielding approximately 5.4 million tonnes of tomatoes (79 tonnes/hectare). This is the same amount that was delivered to the Italian processing industry in 2023.<sup>179</sup> In 2024, 76,000 hectares were harvested, yielding approximately 5.3 million tonnes (70 tonnes/hectare), which is again approximately the same amount delivered to tomato processors.<sup>180</sup>

As the commission understands that tomatoes used for processing receive payments under the CIS, the above indicates that all cultivated hectareage is subject to this program.

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<sup>177</sup> Manual, page 87

<sup>178</sup> Ibid

<sup>179</sup> *The Italian tomato processing industry: Ismea 2024 report*, <https://tomatonews.com/the-italian-tomato-processing-industry-ismea-2024-report-part-1/>

<sup>180</sup> ISMEA Report 2025, *Italy: Tomato sector overview*, available at: <https://tomatonews.com/italy-ismea-report-2025/>

Accordingly, there is no suitable domestic price in Italy that is unaffected by the subsidy and therefore appropriate for comparison.

Furthermore, the commission does not have import price data at the farmgate level of trade for Italy for the relevant period, limiting the availability of a reliable benchmark.<sup>181</sup>

Available information indicates that while Italy imported a substantial volume of tomatoes during 2023, the prices relate to wholesale transactions, which can exceed farmgate prices by tenfold, and are therefore unsuitable as a benchmark.<sup>182</sup>

The commission does not consider prices from comparable industries (e.g. other fruits or vegetables) to be suitable, due to significant variation in pricing, yields, volumes, and demand across surrogate crops.

Accordingly, the commission has identified alternative fresh tomato farmgate prices from the following countries as a possible benchmark:

- Netherlands
- Portugal
- Spain
- Turkey
- the United States (**US**).

The Commissioner has assessed the suitability of each benchmark for determining the unsubsidised cost of fresh tomatoes in Italy. The following factors were considered in this assessment:

- the size of each country's domestic tomato industry
- the level of economic development, including gross domestic product (**GDP**) per capita, life expectancy, literacy rates, the World Bank Human Capital Index, and the United Nations Human Development classification
- relative labour costs
- the market-based status of each country
- other relevant factors.

The data used in this analysis is summarised in Table 35 of this appendix.

Having considered these factors, the Commissioner finds that domestic prices in the US, particularly those in California, which produces 95% of US processing tomatoes, provide a suitable representative benchmark.<sup>183</sup> Specifically, the Commissioner finds:

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<sup>181</sup> Farmgate prices are the net price paid to the farmers after the deduction of costs to get produce to market, compared to wholesale which is the price paid for goods at the point where they enter the retail distribution sector. The commission considers farmgate prices the correct level of trade, based on observations during verification.

<sup>182</sup> World Bank WITS database, *Trade statistics for tomatoes (HS 070200) exported to Italy in 2023*. Available at:

<https://wits.worldbank.org/trade/comtrade/en/country/All/year/2023/tradeflow/Exports/partner/ITA/product/070200>

<sup>183</sup> California, in 2025, contributed an estimated 9.25 million metric tons of processing tomatoes, accounting for 22.7% of global output. This places California ahead of other major producers such as China (14.7%) and Italy (13.7%) in the processing segment. The selection ensures consistency and comparability across national and subnational data, using the most recent and reliable figures available.



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- the Netherlands, Portugal, and Spain are all EU member states receiving CAP subsidies and are therefore unsuitable for determining an unsubsidised price
- US production volumes are comparable to Italy's: 12.4 million tonnes versus 5–6 million tonnes in Italy
- key economic factors are similar between the United States and Italy (see Table 35)
- US and Italian labour costs are similar
- the US tomato market is characterised by privately owned farms and operates under normal competitive conditions<sup>184</sup>
- both the US and Italy primarily use mechanical harvesting and focus on processing tomato production, with limited imports.<sup>185</sup>

The commission also considered prices from Turkey as a possible substitute. However, key economic indicators for Turkey are lower than those of the United States, labour costs are significantly lower, and harvesting practices differ, with Turkey generally relying on manual harvesting.<sup>186</sup>

The commission did not consider China due to likely market distortions arising from the level of government involvement in the sector.<sup>187</sup>

The commission also excluded India and Egypt, despite being significant producers of tomatoes. India and Egypt were excluded from the benchmarking analysis due to their significantly lower PPP-adjusted labour costs, estimated at \$1.51/hour for India and \$4.32/hour for Egypt.<sup>188</sup> In addition, both countries exhibit structural characteristics typical of developing agricultural economies, including low levels of mechanisation, fragmented supply chains, and limited price transparency.<sup>189</sup> This hinders meaningful comparison with industrialised tomato sectors such as those in Italy and California.

Having established the limitations of using other EU states, China, India and Egypt as benchmarks, the commission turned to a direct comparison of Italian farmgate prices with those of the US. When national-level Italian farmgate prices, and the individual prices paid by the four selected exporters, are compared to U.S. farmgate prices, the commission observes that Italian prices were consistently higher across 2023 and 2024.

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<sup>184</sup> Tomato News. *California Country Overview*, accessed: 29 August 2025, <https://tomatoneews.com/countries/california/>

<sup>185</sup> Tomato News. *Italy Country Overview*, accessed 29 August 2025, <https://tomatoneews.com/countries/italy/>

<sup>186</sup> Tomato News. *Turkey Country Overview*, accessed 29 August 2025, <https://tomatoneews.com/countries/turkey/>

<sup>187</sup> Tomato News. *China Country Overview*, accessed 8 October 2025, <https://tomatoneews.com/countries/china/>

<sup>188</sup> PPP-adjusted hourly labour costs for India and Egypt were derived from statutory gross monthly minimum wage data published by the International Labour Organization (ILOSTAT). The figures reflect minimum wages in effect as of 31 December 2022, converted to U.S. dollars using 2021 purchasing power parities (PPP). To estimate hourly wages, monthly PPP-adjusted wages were divided by 160 working hours per month, a standard assumption for full-time employment. Source: International Labour Organization (ILOSTAT), Earnings Snapshot. Accessed on 3 September 2025 from <https://ilostat.ilo.org/blog/the-true-value-of-a-paycheck-understanding-ppp-adjusted-income-statistics/>

<sup>189</sup> Daum, T. (2022). *Agricultural Mechanization and Sustainable Agrifood System Transformation in the Global South*. FAO Agricultural Development Economics Working Paper 22–11.



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This finding indicates that any subsidisation of Italian fresh tomatoes does not manifest in the farmgate price paid by Italian tomato processors, including the selected exporters. The comparison supports a finding that there has been no pass-through.

Accordingly, the amount of subsidy received by the selected exporters under this program is assessed to be zero.

The commission's benchmark analysis is in **Confidential attachment 30 – Benchmark analysis**.

Indicator	Italy	USA	USA (California)	Turkey	Spain	Portugal	Netherlands
Tomato Production Rank (2023) <sup>190</sup>	6th	4th	1st in USA	3rd	10th	15th	28th
Production <sup>191</sup> (MMT, 2023) <sup>192</sup>	6.02	12.37	11.57 <sup>193</sup>	13.3	3.97	1.82	0.726
GDP per Capita (PPP-adjusted, 2023, USD) <sup>194</sup>	\$53,312	\$74,578	\$74,578 <sup>195</sup>	\$34,610	\$47,142	\$41,755	\$71,447
HDI (2022) <sup>196</sup>	0.906	0.927	0.935 <sup>197</sup>	0.855	0.911	0.874	0.946

<sup>190</sup> Food and Agriculture Organization of the United Nations, *Tomato Production – FAO*, with major processing by Our World in Data, "Production: Crops and Livestock Products," accessed May 5, 2025, <https://ourworldindata.org/grapher/tomato-production>.

<sup>191</sup> "Production (MMT)" is used instead of "Capacity (MMT)" to reflect actual and verifiable output. "Capacity" data was not relied upon due to lack of reliability and verifiability of information.

<sup>192</sup> Food and Agriculture Organization of the United Nations, *Tomato Production – FAO*, with major processing by Our World in Data, "Production: Crops and Livestock Products," accessed May 5, 2025, <https://ourworldindata.org/grapher/tomato-production>.

<sup>193</sup> United States Department of Agriculture, National Agricultural Statistics Service, *2023 California Processing Tomato County Estimates*, released March 8, 2024, accessed August 20, 2025, [https://www.nass.usda.gov/Statistics\\_by\\_State/California/Publications/County\\_Estimates/2024/PTOMCounty\\_0324.pdf](https://www.nass.usda.gov/Statistics_by_State/California/Publications/County_Estimates/2024/PTOMCounty_0324.pdf)

<sup>194</sup> World Bank, *GDP per Capita – World Bank – In Constant International-\$*, with minor processing by Our World in Data, "World Development Indicators," accessed May 5, 2025, <https://ourworldindata.org/grapher/gdp-per-capita-worldbank>.

<sup>195</sup> California's PPP-adjusted GDP per capita for 2023 is estimated at \$74,578 USD. This figure was derived by applying the national purchasing power parity (PPP) adjustment factor, based on the UNDP Human Development Index data, to California's nominal GDP per capita of \$82,854 USD. This approach assumes that California's higher nominal income is offset by its higher cost of living, resulting in a comparable level of purchasing power to the national average.

<sup>196</sup> United Nations Development Programme (UNDP), *Human Development Index – UNDP*, with minor processing by Our World in Data, *Human Development Report 2023–2024*, accessed May 5, 2025, <https://ourworldindata.org/grapher/human-development-index>.

<sup>197</sup> California's HDI for 2022 is reported as 0.935 by the Global Data Lab's Subnational Human Development Index (SHDI), which applies the UNDP methodology to subnational regions. This figure is directly comparable to country-level HDI scores. Source: Global Data Lab, SHDI Table for USA, 2022, accessed August 20, 2025. Retrieved from <https://globaldatalab.org/shdi/table/2022/shdi+healthindex+edindex+incindex/USA/>

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Human Capital Index (2020) <sup>198</sup>	0.73	0.7	0.7 <sup>199</sup>	0.65	0.73	0.78	0.79
Literacy <sup>200</sup> Rate (2021) <sup>201</sup>	99%	99% (2025)	76.9% <sup>202</sup> (2025)	97% (2019)	98%	96.80%	99%
Life Expectancy (2023) <sup>203</sup>	83.7	79.3	78.3 <sup>204</sup>	77.2	83.7	82.4	82.2
Labour Costs (PPP-adjusted USD/hour, 2021 PPP, latest year) <sup>205206</sup>	\$44.28 (2024)	\$43.11 (2023)	Same as USA	\$13.33 (2020)	\$39.11 (2024)	\$29.86 (2024)	\$55.40 (2024)

Table 35: Economic assessment of key tomato growing countries

### A5.3 [Program 52] Sgravi Benefits – Article 1, paragraph 773 of Law No. 296/2006

#### A5.3.1 Program description

This program was identified in the application and listed in CON 654 as Program 52.

<sup>198</sup> World Bank, *Human Capital Index*, processed by Our World in Data, “World Development Indicators,” accessed May 5, 2025, <https://ourworldindata.org/grapher/human-capital-index-in-2018>.

<sup>199</sup> California’s Human Capital Index (HCI) for 2020 is not published separately by the World Bank. As a proxy, the national HCI for the United States has been used. While California likely performs above the national average, subnational HCI data is not available for direct comparison.

<sup>200</sup> Literacy Rate is classified as percentage of the population aged 15 and above who can read and write a short, simple statement on their everyday life.

<sup>201</sup> World Bank and various sources, *Literacy Rate*, processed by Our World in Data, “World Bank Education Statistics (EdStats)” and “Cross-Country Literacy Rates,” accessed May 5, 2025, <https://ourworldindata.org/grapher/cross-country-literacy-rates>.

<sup>202</sup> This figure places California as the lowest-ranked state in the United States for adult literacy. The data is based on assessments compiled by the National Center for Education Statistics and presented by World Population Review, which aggregates state-level literacy performance using standardised metrics. Source: World Population Review. “U.S. Literacy Rates by State.” World Population Review. Accessed August 21, 2025. <https://worldpopulationreview.com/state-rankings/us-literacy-rates-by-state>

<sup>203</sup> UN WPP; Human Mortality Database; Zijdemann et al.; and James C. Riley, *Life Expectancy at Birth – Various Sources – Period Tables*, with minor processing by Our World in Data, accessed May 5, 2025, <https://ourworldindata.org/life-expectancy>.

<sup>204</sup> The life expectancy figure for California is based on the most recent data available from the Centers for Disease Control and Prevention (CDC), specifically from the [California State Health Facts page](#). This figure reflects data from 2021, which is the latest year for which state-level life expectancy estimates have been published by the CDC. It has been chosen due to the absence of more recent (2023) California-specific estimates, and because the CDC is the authoritative source for national and state-level mortality and life expectancy statistics in the United States. Source: Tejada-Vera, B., & Arias, E. (2022). *U.S. State Life Tables, 2021*. National Center for Health Statistics, accessed August 20, 2025: Retrieved from [https://www.cdc.gov/nchs/data-visualization/state-life-expectancy/index\\_2021.htm](https://www.cdc.gov/nchs/data-visualization/state-life-expectancy/index_2021.htm)

<sup>205</sup> International Labour Organization (ILO), *Statistics on Labour Costs*, accessed May 5, 2025, [https://ilostat.ilo.org/topics/labour-costs/#elementor-toc\\_heading-anchor-1](https://ilostat.ilo.org/topics/labour-costs/#elementor-toc_heading-anchor-1).

<sup>206</sup> Data reflects the latest available year per country. All values are adjusted to 2021 PPP international dollars.

The program is intended to incentivise apprenticeships. It provides for a reduction in the social security contributions payable by employers for employees on apprenticeship contracts. The duration of the incentive is linked to the duration of the apprenticeship relationship, generally less than 36 months.

The *Istituto Nazionale della Previdenza Sociale* (National Institute of Social Security, **INPS**), or National Institute of Social Security, administers the program. The INPS is a public entity that manages the payment of pensions and social security and welfare benefits in Italy. It is supervised by the Italian Ministry of Labour and Social Policies.

The program commenced in January 2007 and is ongoing.<sup>207</sup>

This program is also referred to as 'Apprenticeship - article 1 c. 773 law 296/2006'.

#### **A5.3.2 Legal basis**

Article 1, paragraph 773 of Law No. 296/2006.

#### **A5.3.3 WTO notification**

The commission is not aware of any WTO notification of this program.

#### **A5.3.4 Eligibility criteria**

Non-government employers who employ someone on an apprenticeship contract are eligible to receive a benefit under this program. Employers will indicate if an employee is on an apprenticeship contract and that they are entitled to a reduced contribution when lodging monthly social security contributions statements with the INPS.

#### **A5.3.5 Is there a subsidy?**

The reduction in the social security contributions payable by employers under this program results in a financial contribution by the GOI involving the foregoing or non-collection of revenue otherwise payable to the GOI, specifically, the INPS.

The commission considers that this financial contribution relates to a recipient enterprise's labour costs, and is in connection with the production, manufacture, or export of all products of the recipient enterprise, including goods exported to Australia. This therefore constitutes a benefit in relation to the goods exported to Australia.

As the financial contribution under this program is provided by an agency of the GOI, it meets the definition of a subsidy under section 269T.

#### **A5.3.6 Is the subsidy countervailable?**

The eligibility criteria do not limit access to a benefit under this program to particular enterprises or enterprises carrying on business within a designated geographical region. It is not contingent on export performance or upon the use of domestically produced or manufactured goods in preference to imported goods.

The commission has no evidence that the program in fact benefits particular enterprises, or that particular enterprises have access to a disproportionate amount of the subsidy.

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<sup>207</sup> The GOI RGQ states the relevant legislation commenced in 2017. The commission has confirmed the legislation commenced in 2007 and is satisfied that the RGQ date is an error.

Accordingly, the commission considers a subsidy under this program is not specific and is therefore not countervailable under section 269TAAC.

## **A5.4 [Program 53] Sgravi Benefits – Article 1, paragraph 10, Law No. 160/2019**

### **A5.4.1 Program description**

This program was identified in the application and listed in CON 654 as Program 53.

The program is intended to promote youth employment by reducing the cost of hiring for private employers. It provided exemptions from employer social security contributions for:

- New permanent hires, and
- Conversion of fixed-term contracts into permanent ones.

The program applied to people hired between 1 January 2018 and 31 December 2020. The benefits lasted for 36 months from the date the person was hired. The last date on which benefits could be received was 31 December 2023, within the investigation period.

Employers received a 50% discount on social security contributions (up to €3,000 per year) for hiring:

- People aged 30 or younger in 2018
- People aged 35 or younger in 2019 and 2020

Employers received a full (100%) discount on contributions (also up to €3,000 per year) for hiring students who had completed a school-to-work or apprenticeship program with the same employer.

The program was administered by the INPS (discussed under in A5.3.1).

### **A5.4.2 Legal basis**

The program was established under Law No. 205/2017 and extended by Law No. 160/2019.

The program has since been terminated and replaced by a new youth employment incentive under:

- Article 1, paragraphs 10–15 of Law No. 178/2020, and
- Article 1, paragraph 297 of Law No. 197/2022

### **A5.4.3 WTO notification**

The commission is not aware of any WTO notification of this program.

### **A5.4.4 Eligibility criteria**

All private employers operating within Italy, including those in the agricultural sector are eligible to receive a benefit under this program. The program's scope was nationwide, with no restrictions based on geographic location or industry sector.

The program did not impose conditions related to production levels, export performance, or the use of domestic versus imported goods.

The process for accessing the benefit was streamlined: no formal application was required. Eligibility was verified by INPS through the employer's regular monthly contribution statements.

**A5.4.5 Is there a subsidy?**

The reduction in employer social security contributions under this program constitutes a financial contribution by the GOI, through the foregoing of revenue otherwise payable to the INPS.

The commission considers that this financial contribution relates to a recipient enterprise's labour costs, and is in connection with the production, manufacture, or export of all products of the recipient enterprise, including goods exported to Australia. This therefore constitutes a benefit in relation to the goods exported to Australia.

As the financial contribution under this program is provided by an agency of the GOI, it meets the definition of a subsidy under section 269T.

**A5.4.6 Is the subsidy countervailable?**

The eligibility criteria for this program do not limit access to particular enterprises or to enterprises operating within a designated geographical region. The program is not contingent on export performance or on the use of domestically produced goods in preference to imported goods.

The commission has no evidence that the program, in practice, benefits a limited number of enterprises, that it is predominantly used by certain enterprises, or that any enterprise has received a disproportionately large share of the benefits.

Accordingly, the commission considers that the subsidy provided under this program is not specific within the meaning of section 269TAAC and is therefore not countervailable.

**A5.5 [Program 57] Article 1, paragraphs 1051–1063 of Law No. 178/2020, aka Tax Credit for Investments in New Capital Goods (Code L3, 2L, 3L)**

**A5.5.1 Program description**

This program was identified in the application and listed in CON 654 as Program 57.

The program provides tax credits (tax credit codes 2L, 3L and L3) to eligible enterprises for investments in new capital assets. It includes tax credits for investments made under the 'Industry 4.0' plan, which is Italy's national industry digitisation strategy.

The *Agenzia delle Entrate* (Italian Revenue Agency, **ADE**), administers the program. The ADE is responsible for tax collection and enforcement. It is supervised by the Italian Ministry of Economy and Finances (**MEF**).

The program was introduced in 2017 and is due to end on 31 December 2025.

**A5.5.2 Legal basis**

The program was introduced under Article 1, paras 185-197 of Law 160/2019, and is currently scheduled to end 30 June 2021. It was extended under Article 1, paras 1051 – 1063 of Law No 178 of 30 December 2020 (Budget Law 2021) and Article 1, para 44 of Law No 234 of 30 December 2021 (Budget Law 2022) to 30 June 2023.

Eligible investments under the Industry 4.0 plan are set out in Annex A and Annex B of Law No 232 of 11 December 2016 (Budget Law 2017).

**A5.5.3 WTO notification**

The commission is not aware of any WTO notification of this program.

**A5.5.4 Eligibility criteria**

All enterprises in Italy, regardless of their legal structure, size, industry sector and residential status are eligible to apply for a tax credit under this program. Enterprises must comply with any relevant workplace safety requirements and social security obligations.

The credit can be claimed for investments in new capital goods intended for production facilities located in Italy, with minor exceptions.

Enterprises apply for the credit as part of their tax return, which is automatically granted, subject to any subsequent audit.

**A5.5.5 Is there a subsidy?**

The tax credit available under this program is used to reduce the amount of tax payable by an enterprise to the ADE. This results in a financial contribution by the GOI involving the foregoing or non-collection of revenue otherwise payable to the GOI.

The commission considers that this financial contribution is in connection with the production, manufacture, or export of all products of the recipient enterprise, including goods exported to Australia. This therefore constitutes a benefit in relation to the goods exported to Australia.

As the financial contribution under this program is provided by an agency of the GOI, it meets the definition of a subsidy under section 269T.

**A5.5.6 Is the subsidy countervailable?**

The eligibility criteria do not limit access to a benefit under this program to particular enterprises or enterprises carrying on business within a designated geographical region. It is not contingent on export performance or upon the use of domestically produced or manufactured goods in preference to imported goods.

The commission has examined data provided by the GOI on the number of beneficiaries of this tax credit and the amount of credit claimed, broken down industry group (referred to as NACE code) for the 2022 tax year, which is the latest year for which data is available. The commission did not observe that taxpayers classed as Food Manufacturers (NACE code 10), to which the selected exporters belong, had access to a disproportionate amount of the subsidy.

Accordingly, the commission considers a subsidy under this program is not specific and is therefore not countervailable under section 269TAAC.

The commission's analysis is in **Confidential Attachment 29 – Tax credits data analysis**.



## A5.6 [Program 66] Contratti di Sviluppo (Development Contracts)

### A5.6.1 Program description

This program was identified in the application and listed in CON 654 as Program 66. The commission has renamed it Program 654-15.

The program provides incentives for Italian and foreign companies that undertake significant projects in the industrial, agro-industrial, tourism, and environmental protection sectors.

The minimum investment required is €20 million, or €7.5 million for projects under the *Agricultural Products Processing Scheme* (referred to as **TPA**). TPA projects include investments for the processing of agricultural products and for tourism projects located in inland areas of the country, or to those involving the recovery of disused structures.

The program is aimed at implementing:

- industrial development projects, including investment projects in processing and marketing of agricultural products
- development projects for environmental protection
- projects for the development of tourism activities, which may include projects for the development of commercial activities.

Investments may include the financing of research, development and innovation activities relevant to the subsidised projects.

Funding is provided to recipients in the form of grants or loans, or as a combination of the 2. Total funding cannot exceed 75% of total eligible expenses.

The amount of aid provided depends on the type of project (field of activity), the location of the initiative, and the size of the company.

Loans may be provided by Invitalia in combination with a capital grant. Recipients must repay the loan principal within 10 years, and loans are offered at below-market interest rates.

The program is managed by Invitalia, under the authority of the Ministry of Enterprises and Made in Italy (**MIMIT**). Invitalia, officially the National Agency for Investment Attraction and Business Development S.p.A., is an Italian government agency established as a joint-stock company, entirely owned by the MEF.

The program commenced in June 2008 and concluded on 31 December 2022.

### A5.6.2 Legal basis

The program is implemented as part of a broader program called 'Development Contracts', under Article 43 of Decree-Law No. 112 of 25 June 2008 and later amended by Law No. 133 of 6 August 2008, relating to the simplification of investment attraction and business development instruments.

The program is governed by the Ministerial Decree of 9 December 2014 which regulates the 'development contracts' (*Contratti di Sviluppo*) and applies to a much broader range of sectors, such as tourism, industry, environment.



This decree was amended by the Ministerial Decree of 19 April 2023, which introduced updates to the aid scheme for the processing and marketing of agricultural products, aligning it with the new EU framework on state aid.

#### **A5.6.3 WTO notification**

The Contratti di Sviluppo program is listed in the EU's *New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures – Addendum (Italy)*, as documented in G/SCM/N/401/EU/Add.15, dated 29 August 2023.

#### **A5.6.4 Eligibility criteria**

Enterprises seeking funding under this program must apply (which can be made jointly with up to 4 companies) to Invitalia for its approval. In making its decision, Invitalia will undertake an economic-financial analysis of the financial position of the applicant and verify the financial sustainability of the proposed investment.

A proposed project must meet at least 3 of the qualifying conditions:

- Employment impact
  - Recovery and redevelopment of disused or underused structures
  - Creation/consolidation of direct and extended supply chain systems
  - Contribution to technological development
  - Significant company presence in foreign markets
  - Environmental impact
- or
- Project qualifying as an environmental protection project
  - Project proposed by a network of enterprises.

Applications for the TPA must provide additional information on:

- whether an environmental impact assessment is required
- compliance with the environmental requirements of the region in which the project will be located
- whether the project increases production subject to restrictions set out in Common Market Organisations or limitations established in relation to EU support at the level of individual businesses, individual companies or individual processing plants under EU Regulation No. 1308/2013.

Large companies must also describe a counterfactual scenario (if any) of alternative projects or activities that can be implemented in the absence of aid. If this is not available, the business plans of the applicant must show a financing gap of the investment based on an *ex ante* business plan. They must also demonstrate that the funding does not exceed the net additional cost of implementing the investment in the region concerned compared to the absence of aid and, in any case, that it does not exceed the minimum necessary to make the project sufficiently profitable.

Table 36 below summarises the percentage funding contribution available under the program, based on location. Table 37 summarises what investment types are available to companies, based on their size.

## PUBLIC RECORD

Business size	Industrial and tourism investment				Investment Scheme (TPA)	
	Southern Regions: <i>Calabria, Campania, Puglia, Sicily</i>	Southern Regions: <i>Basilicata, Molise, Sardinia</i>	Centre-north Regions: <i>Only specific cities or parts or municipalities<sup>208</sup></i>	Other Areas	Southern Regions: <i>Basilicata, Calabria, Campania, Puglia, Sicily, Sardinia, Molise</i>	Other Areas
Small	60%	50%	30%-45%	20%	60%	50%
Medium	50%	40%	20%-35%	10%	50%	40%
Large	40%	30%	10%-25%		40%	30%

**Table 36: Level of funding contributions available under the program**

Type of eligible investment	Eligible investment by company size		
	Zone A Regions: <i>Basilicata, Calabria, Campania, Puglia, Sicily, Molise</i>	Specific cities (Centre-north)	Other areas (Centre-north)
New production unit	All sizes	All sizes	SMEs only
Production capacity expansion	All sizes	SMEs only <sup>209</sup>	SMEs only
Business reconversion (ATECO diversification)	All sizes	All sizes	SMEs only
Restructuring of production unit (basic change or significant improvement)	All sizes	SMEs only	SMEs only
Acquisition of assets in crisis areas (Not available under TPA)	All sizes	All sizes	SMEs only

**Table 37: Eligible investments, based on company size**

### A5.6.5 Is there a subsidy?

Companies may receive support under this program in the form of a grant, a below-market interest rate loan, or a combination of both.

#### *Grant*

A grant provided under this program is a financial contribution by the GOI involving the direct transfer of funds, specifically by Invitalia.

The commission considers that this financial contribution relates to plant and equipment used by a recipient in connection with the production, manufacture, or export of all products of the recipient enterprise, including goods exported to Australia. This therefore constitutes a benefit in relation to the goods exported to Australia.

As the financial contribution under this program is provided by an agency of the GOI, it meets the definition of a subsidy under section 269T.

<sup>208</sup> The 2022/2027 Regional Aid Map establishes the area-specific intensities, see <https://competition-cases.ec.europa.eu/cases/SA.100380>

<sup>209</sup> Ibid

### *Loan*

In accordance with section 16.3 of the Manual, the commission considers a loan is a direct transfer of funds and therefore a financial contribution, in this case by the GOI through Invitalia.

The commission considers that this financial contribution relates to plant and equipment used by a recipient in connection with the production, manufacture, or export of all products of the recipient enterprise, including goods exported to Australia. This therefore constitutes a benefit in relation to the goods exported to Australia.

Section 269TACC(3)(b) provides that, when determining whether a financial contribution has conferred a benefit, the making of a loan by a government or public body does not confer a benefit unless the loan requires the recipient to repay a lesser amount than would otherwise be payable under a comparable commercial loan.

The commission is satisfied that loans granted under this program by Invitalia are on terms more favourable than the recipient could actually obtain on the market, with the benefit being the amount of the difference between the interest rate paid by the exporter of the goods under this program and the interest rate that would be payable on the market.

Accordingly, the commission is satisfied that a loan provided under this program meets the definition of a subsidy under section 269T.

### **A5.6.6 Is the subsidy countervailable?**

#### *Consideration of section 269TAAC(2)*

The eligibility criteria limit the amount of funding available based on the type of project (field of activity), the location of the project, and the size of the company.

As indicated in Table 36 and Table 37 above, greater levels of funding and more fields of activity for funding are available for companies located in the southern regions of Italy.

The commission considers that the range of eligible investment categories and the higher levels of funding available to companies in the south of Italy limits the access to funding under this program based on geographical location.

Specifically, companies in the south can access more funding for a wider range of activities than what is available to companies outside of the south. Companies in the Centre-north of Italy may also apply for funding, but this is limited only to specific cities or parts or municipalities in these regions. While funding is available for companies in other regions, such access to funding is confined to smaller amounts, in fewer investment categories and to smaller enterprises.

#### *Consideration of sections 269TAAC(3) and 269TAAC(4)*

The commission is not satisfied that the amount of a subsidy available under this program is established by objective criteria or conditions, nor is eligibility automatic. Decisions on funding are made by Invitalia, after making an assessment of information provided by companies in their application, including claims relating to employment impact, contribution to technological development and counterfactuals if funding is not provided. These claims cannot be assessed objectively prior to implementation, with judgement based on the evidence presented in the application.

Based on the above, the commission is satisfied that the program is specific, as access is limited based on the geographical location of companies. The commission does not consider the criteria in section 269TAAC(3) are satisfied by this program and therefore has determined this program is specific and countervailable.

#### A5.6.7 Amount of subsidy

The GOI provided the commission with details of funding provided to the selected exporters under this program. As the program ended in 2022, no new projects were approved during the investigation period. However, payments (as grants) for projects entered into prior to the investigation period continued throughout the period.

The commission also observed that funding provided for the projects resulted in the purchase of capital assets, including plant and equipment, which had a continuing benefit extending beyond the year in which payments were made to the selected exporters, including into the investigation period.

#### Grant

The Manual provides that:

Where the subsidies can be linked to the acquisition of fixed assets or to the long term debt structure of the enterprise, the total value of the subsidy will be spread over a period which reflects the normal depreciation of the assets in the industry concerned.

Therefore, a one-off grant used in this manner, for example, can be spread over the normal period used for the depreciation of assets. Such an approach means that one-off subsidies paid in the past can remain countervailable provided that the benefit carried into the investigation period.<sup>210</sup>

The commission identified several grants paid to the selected exporters for fixed assets prior to the investigation period under this program that are within the depreciation period for those assets.

The Manual provides, that where benefits have to be amortised over the average useful life of assets (i.e. the depreciation period), the formula to use is:

$$A_k = \frac{y/n + [y - (y/n)(k-1)]d}{1 + d}$$

Where:

$A_k$  = the amount of the benefit allocated  
to year  $k$

$y$  = the face value of the subsidy

$n$  = the AUL of assets in the industry being investigated

$d$  = the discount rate

$k$  = the year of allocation where the  
year of receipt = 1 and  $1 \leq k \leq n$ .

The formula calculates the annual benefit amount for each year using the variables: face value of the subsidy, the depreciation period, and the interest rate (represented as the discount rate in the formula).<sup>211</sup>

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<sup>210</sup> Manual, page 69

<sup>211</sup> Manual, page 71

The commission has applied this formula for each selected exporter who received a grant under this program to calculate the amount of subsidy received during the investigation period.

As the grant has been provided in connection with the production, manufacture, or export of all products, the commission has attributed this amount to each unit of the goods based on the value of company turnover during the investigation period, in accordance with section 269TACD(2).

### *Loan*

The Manual provides that:<sup>212</sup>

In the case of a loan from the government (where repayment does take place), the subsidy is the difference between the amount of interest paid on the government loan and the interest normally payable on a comparable commercial loan during the investigation period.

The commission examined information provided by GOI in respect of loans provided under this program, which confirmed that a soft-loan at a below-market rate was provided to one of the selected exporters, with a 10-year repayment period.

The Manual goes on to state:<sup>213</sup>

For long term loans having a concessionary fixed rate of interest, the calculation involves determining a present value of the benefit that has occurred over time. The total interest differential over the life of the loan will be calculated and the present value of that total benefit stream will be calculated and treated like value y in the formula – this amount to be allocated over the life of the loan in line with the calculation methodology set out above under ‘Attributing amortised benefits to each year including the investigation period’.<sup>214</sup>

This formula will be used in the case of:

- government provided loans and the loan to which it is compared – the benchmark loan – have different maturity periods or repayment schedules; or
- government provided loans where the only difference to the benchmark loan is the difference in repayment terms.

The commission considers that the above circumstances have been satisfied: 10-years is long term, and the loans have several repayment schedules due to different initial payment dates.

In determining an appropriate benchmark loan, the commission has considered the following options:<sup>215</sup>

- the European Central Bank short term loan interest rate, used in the calculation of credit term adjustments for several selected exporters
- the European Central Bank Main refinancing operations interest rate
- the Bank of Italy interest rate for loans to non-financial corporations
- the average interest rate paid by a selected exporter for its commercial loans.

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<sup>212</sup> Manual, page 73

<sup>213</sup> Manual, page 74

<sup>214</sup> This is the ‘face value of the subsidy’ described in the formula used to calculate the benefit when a grant is amortised over the average useful life of assets, see above.

<sup>215</sup> See Confidential Attachment 33 – Interest rate benchmark options.

The commission considers that the average rate paid by a selected exporter is the preferable benchmark. It represents an interest rate available in the market payable by an entity engaged in the production and sale of the goods in Italy during the investigation period.

Using this benchmark, the commission has applied the formula discussed above for the calculation of a grant benefit, and in line with the Manual to calculate the amount of subsidy received during the investigation period.

As the loan has been provided in connection with the production, manufacture, or export of all products, the commission has attributed this amount to each unit of the goods based on the value of company turnover during the investigation period, in accordance with section 269TACD(2).

## **A5.7 [Program 79] SA.103289 - Decontribuzione Sud**

### **A5.7.1 Program description**

This program was identified by the commission after initiation and listed as Program 79 in the exporter and government questionnaires. The commission has renamed it Program 654-16.

*Decontribuzione Sud* is a GOI subsidy program intended to support employment in economically disadvantaged regions during periods of crisis, specifically the COVID-19 pandemic and the economic impact of Russia's invasion of Ukraine. The program provided partial exemptions from employer social security contributions for private employers operating in 8 southern regions of Italy: Abruzzo, Basilicata, Calabria, Campania, Molise, Puglia, Sardinia, and Sicily.

The measure was implemented under the EU's Temporary Framework for State Aid Measures (October 2020 to June 2022) and the Temporary Crisis Framework (July 2022 to December 2024). The relief was granted to eligible employers through a reduction in the employer's share of social security contributions, calculated as a fixed percentage of wages paid:

- 30% exemption until 31 December 2025
- 20% exemption for 2026–2027
- 10% exemption for 2028–2029

The benefit was automatically applied via monthly contribution statements submitted to INPS, with no formal application process required.

### **A5.7.2 Legal basis**

The program was established and governed through a combination of national legislation and EU authorisations, reflecting its dual nature as both a domestic employment support measure and a state aid initiative subject to EU oversight.

At the national level, the program was first introduced by Article 27 of Decree-Law No. 104/2020, which was subsequently converted into law by Law No. 126/2020.

The program was further extended and refined through Article 1, paragraphs 161–168 of Law No. 178/2020, which continued the relief for subsequent years and clarified the scope of eligible employers and regions. These laws explicitly excluded agricultural and domestic employers from the benefit.



At the European level, the program operated within the framework of the Temporary Framework for State Aid Measures to Support the Economy in the Current Emergency of COVID-19 and later under the Temporary Crisis Framework following Russia's aggression against Ukraine. These frameworks provided the legal and policy context for the European Commission's authorisation of the program.

The European Commission approved the program through a series of decisions, including:

- C(2020) 6959, C(2020) 9121, and C(2021) 1220 under the COVID-19 Temporary Framework
- C(2022) 171, C(2022) 4499, C(2022) 9191, C(2023) 9018, and C(2024) 4512 under the Ukraine Crisis Framework

#### **A5.7.3 WTO notification**

The commission is not aware of any WTO notification of this program.

#### **A5.7.4 Eligibility criteria**

Eligibility for the program was determined primarily by geographic location and employer classification. The program targeted private employers operating in 8 economically disadvantaged regions of southern Italy: Abruzzo, Basilicata, Calabria, Campania, Molise, Puglia, Sardinia, and Sicily.

These regions were identified based on their per capita gross domestic product and employment rates relative to EU and national averages.

Employers had to maintain employment relationships located within one of the eligible regions to qualify. The program was open to all private sector employers, except for agricultural and domestic employers, who were explicitly excluded from the benefit.

Importantly, the program was designed to be non-discriminatory across industries, meaning that eligibility was not limited to specific sectors or types of business activity. The benefit was not contingent on factors such as production output, export performance, or the use of domestic versus imported goods.

Accessing the benefit did not require a formal application. Instead, eligible employers could apply the contribution reduction directly through their monthly social security contribution statements, using a designated facility code. The INPS was responsible for verifying compliance and administering the program.

The amount of the benefit was determined by law and applied as a fixed percentage reduction to the employer's share of social security contributions, based on wages paid. This structure ensured a consistent and transparent method of calculating relief, with no discretionary adjustments by the administering authority.

#### **A5.7.5 Is there a subsidy?**

The reduction in employer social security contributions under this program constitutes a financial contribution by the GOI, specifically through the foregoing or non-collection of revenue otherwise payable to the INPS.

This commission considers that this financial contribution reduces the labour costs of eligible enterprises and is connected to the production, manufacture, or export of their



goods, including those exported to Australia. This therefore constitutes a benefit in relation to the goods exported to Australia.

As the financial contribution is provided by an agency of the GOI, it satisfies the definition of a subsidy under section 269T.

#### **A5.7.6 Is the subsidy countervailable?**

##### *Consideration of section 269TAAC(2)*

Access to the program is limited to private employers operating within 8 designated regions of southern Italy. This geographic restriction means the subsidy is regionally specific, as defined under section 269TAAC(2)(b).

##### *Consideration of sections 269TAAC(3) and 269TAAC(4)*

The commission has examined the eligibility criteria for the program and considers that eligibility is established by objective and verifiable criteria, as summarised in A5.7.2. Eligibility is automatic, with no discretion in decision making. The commission has no evidence that the eligibility criteria are not strictly adhered to in the administration of the program.

The commission requested in the questionnaire that the GOI provide a list by industry and by region of the companies that have received benefits under this program. The GOI did not provide this information.

The commission notes that this program is limited only to employers in certain regions in Southern Italy. Domestic and agricultural employers are also excluded from receiving a benefit under this program. The program has also only been in operation for a short period, having commenced in 2020.

Noting the limited eligibility criteria and the lack of specific recipient data from the GOI, the commission considers that beneficiaries under this program represent a limited number of particular enterprises.

Having regard to section 269TAAC, in particular section 269TAC(4)(a), the commission considers that the subsidy provided under this program is specific and therefore countervailable.

#### **A5.7.7 Amount of subsidy**

The benefit under this program is the extent to which the social security contributions paid by an enterprise are less than the contributions the enterprise would have paid had the program not existed. The Manual provides that benefit will generally be expensed to the year in which the recipient receives the benefit, and the benefit is then expensed to the investigation period.<sup>216</sup>

The GOI provided the commission with the benefit amount received by each selected exporter that received a benefit under this program during the investigation period.

As the benefit has been provided in connection with the production, manufacture, or export of all products, the commission has attributed this amount to each unit of the

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<sup>216</sup> Manual, page 72

goods based on the value of company turnover during the investigation period, in accordance with section 269TACD(2).

## **A5.8 [Program 80] Training Grants from Interprofessional funds**

### **A5.8.1 Program description**

This program was identified by the commission after initiation and listed as Program 80 in the exporter and government questionnaires.

Interprofessional funds are private bodies. There are 19 interprofessional funds in Italy, each with their own areas of focus. Enterprises choose which fund to contribute to depending on their sectoral needs and priorities.

These funds provide support through 2 main streams:

- A Training Account, which member companies can use to finance customised training plans for their own employees
- A System Account, which operates through a tender and eligibility process, allowing the relevant interprofessional fund to select companies and allocate resources for training initiatives.

Fondirigenti is one such fund identified during the investigation. It is dedicated to the continuous professional development of managers.

Fondimpresa is another interprofessional fund, focused on the professional training of employees. It was established to promote workforce development in support of business competitiveness and employee employability.

All interprofessional funds operate under the same overarching rules and processes.

### **A5.8.2 Legal basis**

Interprofessional funds are governed by Article 118 of Law 388/2000. Funds operate through a mandatory 0.3% levy on employer contributions to INPS.

Training is delivered through 2 funding streams:

- The Training Account operates outside the scope of EU State aid rules
- System Account complies with EU regulations and is notified under State Aid Code SA.40411.

### **A5.8.3 WTO notification**

The commission is not aware of any WTO notification of this program.

### **A5.8.4 Eligibility criteria**

Companies must be registered members of an interprofessional fund to access funding under the training grants program. This requires employers to formally allocate their mandatory 0.3% INPS social security contributions to their chosen fund, in accordance with Italian law. The program is open to companies across all sectors, provided they meet this registration requirement.

Eligibility for each funding round may be restricted based on prior participation. For example, companies that received funding under previous calls, such as *Avviso 1/2024* or

*Avviso 2/2024*, may be excluded from subsequent rounds to ensure equitable access to resources.

Companies may submit either individual or aggregated training plans. These plans must be tailored to strategic business needs and focus specifically on managerial development. The program does not support generic or purely technical training. Instead, it prioritises training in areas such as digital innovation, internationalisation, sustainability, and organisational change.

For *Fondirigenti*, applications must be submitted digitally via the *MyFondirigenti* portal and must be signed by the company's legal representative. Once submitted, plans undergo formal assessment as part of the competitive tender process associated with the System Account stream. Other funds have similar application processes.

If a company does not utilise its allocated Training Account funds within 2 years, the fund will transfer those unused resources to the System Account. These pooled funds are then redistributed to other member companies through competitive tenders.

#### **A5.8.5 Is there a subsidy?**

The commission considers all interprofessional funds private enterprises entrusted and/or directed to carry out a government function, in this case, mandatory training. This direction is set out in Article 118 of Law 388/2000. Noting that funding is sourced from a compulsory levy on INPS social security contributions, the commission is satisfied interprofessional funds are public bodies for the purposes of section 269T(1).

Training to a company's employees funded by from a Training Account uses funding levied on social security contributions paid by that company. While administered by a public body entity, the commission does not consider that funding for this training involves a financial contribution as defined in section 269T(1) because a recipient company uses what is effectively its own funds to provide training.

Unlike funding through the Training Account, the provision of grants under the System Account stream results in a financial contribution by the GOI involving the direct transfer of funds to eligible enterprises. These grants are administered through a competitive selection process and are funded by pooled employer contributions collected via a mandatory levy to INPS.

The commission considers that this financial contribution relates to a recipient enterprise's training and human capital development costs, and is in connection with the production, manufacture, or export of all products of the recipient enterprise, including goods exported to Australia. This therefore constitutes a benefit in relation to the goods exported to Australia.

As the financial contribution under this program is provided by a private body entrusted and/or directed by the GOI to carry out a government function, it meets the definition of a subsidy under section 269T.

#### **A5.8.6 Is the subsidy countervailable?**

The eligibility criteria do not limit access to a benefit under this program to particular enterprises or enterprises carrying on business within a designated geographical region. It is not contingent on export performance or upon the use of domestically produced or manufactured goods in preference to imported goods.

The commission notes that the program is open to all companies registered with an interprofessional fund, across all sectors, provided they comply with the administrative requirements and participate in the competitive tender process. The commission has no evidence that the program in fact benefits particular enterprises or that particular enterprises have access to a disproportionate amount of the subsidy.

Accordingly, the commission considers a subsidy under this program is not specific and is therefore not countervailable under section 269TAAC.

## **A5.9 [Program 81] SA.45174 - Disabled incentive - article 13 law 68/1999**

### **A5.9.1 Program description**

This program was identified by the commission after initiation and listed as Program 81 in the exporter and government questionnaires.

The program is aimed at promoting the employment of individuals with disabilities by offering financial incentives to private employers. The program provides a wage-based contribution relief, the amount and duration of which depend on the nature of the disability and the type of employment contract.

The incentive includes:

- 70% of the gross monthly salary (taxable for social security purposes) for 36 months for workers with a disability level above 79% or classified in the first to third category of war pension regulations.
- 35% of the gross monthly salary for 36 months for workers with a disability level between 67% and 79% or classified in the fourth to sixth category.
- 70% of the gross monthly salary for 60 months for workers with intellectual or mental disabilities with a reduction in working capacity above 45%.

For fixed-term contracts involving workers with intellectual or mental disabilities, the incentive applies for the entire duration of the contract, provided it lasts at least 12 months.

The program is administered by the INPS.

The program does not provide a full exemption from social security contributions, but offers a partial reduction based on a fixed percentage of the gross monthly salary.

### **A5.9.2 Legal basis**

The legal foundation for Program 81 is established through:

- Article 13 of Law No. 68/1999, which introduced employment incentives for individuals with disabilities
- Article 10 of Legislative Decree No. 151/2015, which amended and expanded the provisions of Law 68/1999.

The program is a national measure, not part of an EU-wide initiative, but it operates in compliance with EU state aid rules, particularly Commission Regulation (EC) No. 651/2014, which governs compatibility with the internal market.

### **A5.9.3 WTO notification**

The commission is not aware of any WTO notification of this program.

### **A5.9.4 Eligibility criteria**

Eligibility for this program is open to all private employers operating in Italy, regardless of industry or region. The program is not contingent on production output, export performance, or the use of domestic versus imported goods.

To qualify, employers must hire individuals with certified disabilities that meet specific thresholds:

- A reduction in working capacity above 67%, or
- Intellectual or mental disabilities with a reduction above 45%.

Employers must also meet general compliance requirements, including:

- fulfillment of social security and labour obligations
- adherence to national and collective labour agreements.
- demonstration of a net increase in employment compared to the previous year.

The amount of the benefit is set by law and calculated as a percentage of the gross monthly salary, depending on the worker's disability and the type of contract. Once approved, the incentive is applied through monthly contribution statements. No contractual agreements are required between the government and the employer.

Employers must submit a preliminary application via INPS's online portal. If funds are available, INPS reserves the incentive amount. The employer must then finalise the employment contract and confirm the hire within a set timeframe to activate the benefit. The incentive is then applied through monthly social security contribution statements.

The program has been in force since 1 January 2016 and remains ongoing.

### **A5.9.5 Is there a subsidy?**

The reduction in employer social security contributions under this program constitutes a financial contribution by the GOI, specifically through the foregoing or non-collection of revenue otherwise payable to the INPS.

This commission considers that this financial contribution reduces the labour costs of eligible enterprises and is connected to the production, manufacture, or export of their goods, including those exported to Australia. This therefore constitutes a benefit in relation to the goods exported to Australia.

As the financial contribution is provided by an agency of the GOI, it satisfies the definition of a subsidy under section 269T.

### **A5.9.6 Is the subsidy countervailable?**

The eligibility criteria for this program do not limit access to particular enterprises or to enterprises operating within a designated geographical region. The program is not contingent on export performance or on the use of domestically produced goods in preference to imported goods.

The commission has no evidence that the program, in practice, benefits a limited number of enterprises, that it is predominantly used by certain enterprises, or that any enterprise has received a disproportionately large share of the benefits.

Accordingly, the commission considers that the subsidy provided under this program is not specific within the meaning of section 269TAAC and is therefore not countervailable.

## **A5.10 [Program NP2] Sgravi Benefits – Article 1, C 10-15 of Law No. 178/2020 – Youth Exemption**

### **A5.10.1 Program description**

This program was not included in the application. It was identified by the GOI in its questionnaire response as Program NP2. The commission has renamed it Program 654-11.

The program is intended to promote youth employment by offering full exemptions from employer social security contributions. The program applies to new permanent hires and conversions of fixed-term contracts into permanent contracts made between 1 January 2021 and 31 December 2023 for individuals aged 35 years or younger at the time of hiring.

The exemption covers 100% of employer social security contributions, up to a maximum of:

- €6,000 annually for hires made between 2021 and 2022
- €8,000 annually for hires made in 2023.

The benefit is granted for a maximum duration of 36 months and extended to 48 months for hires made in disadvantaged regions: Abruzzo, Molise, Campania, Basilicata, Sicily, Apulia, Calabria, and Sardinia.

The exemption is calculated monthly, with a cap of €500 per month per employee, and pro-rated for partial months at €16.12 per day. The program is administered by the INPS and is automatically applied via monthly contribution statements. No formal application is required. INPS verifies eligibility based on age and contract type.

While the program provides a total exemption from employer social security charges, it does not include INAIL contributions, severance pay, or Solidarity Fund contributions. The financial burden resulting from the exemption is financed by the state budget, which reimburses INPS for the contribution positions of the workers employed under the program.

The program was implemented under the EU Temporary Framework for State Aid Measures during the COVID-19 emergency and later under the Temporary Crisis Framework following Russia's invasion of Ukraine.

### **A5.10.2 Legal basis**

The Youth Exemption program was originally established under Article 1, paragraphs 10–15 of Law No. 178/2020, with the aim of promoting youth employment through full exemptions from employer social security contributions. It was later extended by Article 1, paragraph 297 of Law No. 197/2022, which increased the annual exemption cap and prolonged the program through 31 December 2023.

The program was implemented in alignment with EU state aid frameworks:



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- Initially under the Temporary Framework for State Aid Measures to Support the Economy in the Current Emergency of COVID-19 (Communication C(2020) 1863),
- And subsequently under the Temporary Crisis Framework following Russia's aggression against Ukraine (Communication C(2022) 1890 and C(2023) 1711).

These frameworks provided the legal and policy context for the European Commission's authorization of the program through the following decisions:

- C(2021) 6827 final (SA.64420)
- C(2022) 171 final (SA.101056)
- C(2023) 4061 final (SA.106009).

The program remains active, having been updated and extended under Article 22 of Decree-Law No. 60/2024 (the 'Cohesion Decree'). The exemption continues to offer 100% relief from employer social security contributions, capped at €500 per month per worker. However, a new condition has been introduced, employers must demonstrate a net increase in employment to access the benefit.

This update aligns the Youth Exemption with broader employment incentive strategies, including the National Programme for Young People, Women and Work 2021–2027, and reflects the European Commission's request for stricter eligibility criteria to ensure compliance with EU state aid rules.

### **A5.10.3 WTO notification**

The commission is not aware of any WTO notification of this program.

### **A5.10.4 Eligibility criteria**

Eligibility for the Youth Exemption program is open to all private employers operating in Italy, including those in the agricultural sector. The program is not contingent on production output, export performance, or the use of domestic versus imported goods.

To qualify, employers must:

- Hire individuals aged 35 years or younger
- Establish a new permanent employment relationship or convert a fixed-term contract into a permanent one
- Ensure the hire occurs between 1 January 2021 and 31 December 2023.

No formal application is required. Employers claim the benefit by adjusting their monthly contribution statements, and INPS verifies eligibility based on the age and contract type of the employee.

The program remains active under Italy's youth employment incentives and has been extended through recent budget laws.

### **A5.10.5 Is there a subsidy?**

The reduction in employer social security contributions under this program constitutes a financial contribution by the GOI, specifically through the foregoing or non-collection of revenue otherwise payable to the INPS.

This commission considers that this financial contribution reduces the labour costs of eligible enterprises and is connected to the production, manufacture, or export of their



goods, including those exported to Australia. This therefore constitutes a benefit in relation to the goods exported to Australia.

As the financial contribution is provided by an agency of the GOI, it satisfies the definition of a subsidy under section 269T.

#### **A5.10.6 Is the subsidy countervailable?**

##### *Consideration of section 269TAAC(2)*

The eligibility criteria for the Youth Exemption program do not limit access to the standard benefit to particular enterprises. The standard exemption applies nationally and is not contingent on export performance or upon the use of domestically produced or manufactured goods in preference to imported goods.

The commission notes that the program provides an extended exemption duration of 48 months exclusively to employers located in 8 designated southern regions: Abruzzo, Molise, Campania, Basilicata, Sicily, Apulia, Calabria, and Sardinia. This additional 12-month extension is geographically restricted and therefore constitutes a regionally specific enhancement.

##### *Consideration of sections 269TAAC(3) and 269TAAC(4)*

The commission has examined the eligibility criteria for the program and considers that eligibility is established by objective and verifiable criteria, as summarised in Appendix A5.10.4. Eligibility is automatic, with no discretion in decision making. The commission has no evidence that the eligibility criteria are not strictly adhered to in the administration of the program.

The commission requested in the questionnaire that the GOI provide a list by industry and by region of the companies that have received benefits under this program. The GOI did not provide this information.

The commission considers that this program restricts access to the extended funding component based on geographical location. Only companies operating in the 8 designated regions in southern Italy qualify for the higher level of funding. Although the GOI did not provide specific recipient-level data, this does not change the commission's view that certain beneficiaries receive increased funding due to their location. This means companies in the south have access up to 33% more funding than those in other regions under the program.

Accordingly, the commission considers that the component of the subsidy providing extended duration to employers in the specified regions is regionally specific and is therefore countervailable under section 269TAAC.

#### **A5.10.7 Amount of subsidy**

The commission has calculated the amount of countervailable subsidy under this program as 25% of the amount reported as received by recipients located in the 8 designated southern regions, representing the additional 12 months (out of a total of 48 months) for which those recipients were eligible to receive funding under this program.

As this amount has been provided in connection with the production, manufacture, or export of all products, the commission has attributed this amount to each unit of the goods based on the value of company turnover during the investigation period, in accordance with section 269TACD(2).

## **A5.11 [Program NP3] Secondo Conto Energia**

### **A5.11.1 Program description**

This program was not included in the application. It was identified by the GOI in its questionnaire response as Program NP3. The commission has renamed it Program 654-12.

The program was a national feed-in tariff initiative launched by the GOI to promote electricity generation from photovoltaic solar energy. Active from 13 April 2007 to 30 June 2011, the program provided financial incentives to producers of solar electricity based on system characteristics such as power class, system type, and commissioning date.

Incentives were granted for a 20-year period and applied to all energy produced by qualifying photovoltaic systems.

Tariff-based compensation was delivered through 2 primary methods:

- **Scheduled Disbursements:** Payments were made monthly or quarterly, based on metered production data submitted by the system owner.
- **Direct Bank Transfers:** Funds were transferred directly to the bank account of the registered photovoltaic system owner.

The program was administered by *Gestore dei Servizi Energetici S.p.A. (GSE)*, a government-owned entity operating under the Ministry of Environment and Energy Security. GSE oversaw the application process, verified compliance, and maintained a comprehensive database of all incentives paid.

The program was funded through a levy on electricity consumption.

### **A5.11.2 Legal basis**

The program's foundation lies in Article 7 of Legislative Decree No. 387, dated 29 December 2003, which implemented the European Directive 2001/77/EC on the promotion of electricity produced from renewable energy sources.

The GOI issued the Ministerial Decree of 19 February 2007, which laid out the specific criteria, procedures, and tariff structures for incentivising photovoltaic electricity production.

### **A5.11.3 WTO notification**

The commission is not aware of any WTO notification of this program.

### **A5.11.4 Eligibility criteria**

Only qualified photovoltaic systems could benefit from the incentives. A photovoltaic system had to meet several key conditions to qualify:

- The system needed to have a nominal power of at least 1 kilowatt (kW), ensuring that only installations of a meaningful scale were eligible.
- The program targeted systems that were either newly constructed, fully renovated, or upgraded, with incentives for upgrades limited to the additional energy generated because of the improvements.

Eligibility was also tied to the operational timeline of the system. Only those photovoltaic installations that entered into service between 1 October 2005 and 30 June 2011 were considered.

Systems had to adhere to the standards outlined in Annex 1 of the Ministerial Decree of 19 February 2007 and fall within one of the 3 system types defined in Article 2 of that decree. Additionally, eligible systems needed to be connected to the national electricity grid or to isolated networks, with a single, dedicated connection point to prevent shared infrastructure complications.

The program excluded systems that had previously received incentives under earlier ministerial decrees issued on 28 July 2005 and 6 February 2006, to avoid duplication of benefits. The program did not impose restrictions based on geographic location, industry type, or company size.

Eligibility was not contingent on export performance or the use of domestic over imported goods, making the program accessible to a wide range of electricity producers across Italy.

Applicants were required to submit documentation within 60 days of system activation. If eligibility criteria were met, incentives were granted automatically. Rejections typically stemmed from technical non-compliance or missing authorisations. In some cases, incentives were later revoked following inspections.

#### **A5.11.5 Is there a subsidy?**

The provision of tariff-based financial incentives to producers of solar electricity under this program results in a financial contribution by the GOI involving the provision of income support through guaranteed payments for electricity generated. These payments are administered by GSE, a government-owned entity, and are made regularly based on metered production.

The commission considers that this financial contribution relates to a recipient enterprise's energy costs, and is in connection with the production, manufacture, or export of all products of the recipient enterprise, including goods exported to Australia. This therefore constitutes a benefit in relation to the goods exported to Australia.

As the financial contribution under this program is provided by an agency of the GOI, it meets the definition of a subsidy under section 269T.

#### **A5.11.6 Is the subsidy countervailable?**

The eligibility criteria do not limit access to a benefit under this program to particular enterprises or enterprises carrying on business within a designated geographical region. It is not contingent on export performance or upon the use of domestically produced or manufactured goods in preference to imported goods.

The commission notes that eligibility is based on objective technical criteria and commissioning dates, and that the program applies nationally to all qualifying photovoltaic systems. The commission has no evidence that the program in fact benefits particular enterprises, or that particular enterprises have access to a disproportionate amount of the subsidy.

Accordingly, the commission considers a subsidy under this program is not specific and is therefore not countervailable under section 269TAAC.

## **A5.12 [Program NP4] Quarto Conto Energia**

### **A5.12.1 Program description**

This program was not included in the application. It was identified by the GOI in its questionnaire response as Program NP4. The commission has renamed it Program 654-13.

Both NP3 (see A5.11) and NP4 were national feed-in tariff programs aimed at promoting electricity generation from photovoltaic solar systems. However, NP4 introduced a more structured and selective approach as it differentiated access based on plant size and commissioning date. While small and early large plants had direct access, later large plants had to register and compete for quotas.

Additionally, NP4 introduced 3 categories of photovoltaic systems (standard, integrated with innovative features, and concentrated systems), expanding the scope beyond NP3's more general photovoltaic system classification.

### **A5.12.2 Legal basis**

NP4 was established under Article 24 of Legislative Decree No. 28 (2011) and the Ministerial Decree of 5 May 2011.

### **A5.12.3 WTO notification**

The commission is not aware of any WTO notification of this program.

### **A5.12.4 Eligibility criteria**

Both NP3 and NP4 programs shared core eligibility requirements such as a minimum system size of 1 kW, grid connection, and use of new components, however NP4 introduced more detailed and segmented criteria:

- NP4 allowed individuals, legal entities, public bodies, and residential condominiums to apply.
- It supported 3 distinct system types, whereas NP3 focused on standard photovoltaic systems.
- NP4 required ranking and quota allocation for large plants commissioned after 31 August 2011, adding complexity and selectivity to the process.

These changes reflect NP4's intent to target more advanced technologies and manage budgetary constraints more tightly than NP3.

### **A5.12.5 Is there a subsidy?**

The provision of feed-in tariff incentives to producers of solar electricity under this program results in a financial contribution by the GOI involving the provision of income support through guaranteed payments for electricity generated. These payments are administered by GSE and funded through a levy on electricity consumption.

The commission considers that this financial contribution relates to a recipient enterprise's energy costs, and is in connection with the production, manufacture, or export of all products of the recipient enterprise, including goods exported to Australia. This therefore constitutes a benefit in relation to the goods exported to Australia.

As the financial contribution under this program is provided by an agency of the GOI, it meets the definition of a subsidy under section 269T.

#### **A5.12.6 Is the subsidy countervailable?**

The eligibility criteria do not limit access to a benefit under this program to particular enterprises or enterprises carrying on business within a designated geographical region. It is not contingent on export performance or upon the use of domestically produced or manufactured goods in preference to imported goods.

The commission notes that while the program introduces ranking and quota allocation for large plants and differentiates system types, it remains national in scope and applies to a wide range of applicants, including individuals, legal entities, public bodies, and residential condominiums. The commission has no evidence that the program in fact benefits particular enterprises or that particular enterprises have access to a disproportionate amount of the subsidy.

Accordingly, the commission considers a subsidy under this program is not specific and is therefore not countervailable under section 269TAAC.

### **A5.13 [Program NP5] Benefits for energy-intensive companies**

#### **A5.13.1 Program description**

This program was not included in the application. It was identified by the GOI in its questionnaire response as Program NP5. The commission has renamed it Program 654-14.

The program is a national support mechanism implemented by the GOI to reduce energy costs for companies with high electricity or natural gas consumption. The program provides financial relief through discounts on system charges, specifically the ASOS component<sup>217</sup> related to renewable energy funding.

Originally introduced in 2013, the program has undergone several reforms to align it with revised EU guidelines and national energy policy objectives. It targets companies in the manufacturing and extractive sectors and later expanded to include gas-intensive companies.

The benefits are administered by *Cassa per i Servizi Energetici e Ambientali* (Energy and Environment Services Fund, **CSEA**) under the supervision of **ARERA** (Regulatory Authority for Energy, Networks, and Environment) and the MEF.

The program is still active.

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<sup>217</sup> The ASOS (componente A-SOS) is a regulated system charge applied to electricity bills in Italy. It specifically funds incentives for renewable energy sources, such as solar, wind, and biomass, and forms part of the broader 'oneri generali di sistema' (general system charges). Under Program NP5, eligible companies receive financial relief through partial or full exemptions from the ASOS charge. This exemption reduces the overall energy costs for enterprises with high electricity or natural gas consumption, thereby enhancing their competitiveness. The measure is temporary and targeted and aligns with Italy's broader energy and industrial policy objectives.

### **A5.13.2 Legal basis**

The program began with the Ministerial Decree of 5 April 2013, and was later updated by the Decree of 21 December 2017, which introduced new eligibility criteria and facilitation classes based on energy consumption and sector risk.

Further expansion followed with the Decree No. 541 of 21 December 2021, which extended benefits to gas-intensive companies.

The most recent reform, introduced under Law No. 131 of 29 September 2023, aligned the program with updated EU relocation risk criteria.

### **A5.13.3 WTO notification**

The commission is not aware of any WTO notification of this program.

### **A5.13.4 Eligibility criteria**

Eligibility for the program is determined by a company's energy consumption profile and its sector of operation.

Initially, companies were required to consume at least 2.4 GWh of electricity annually and operate within the manufacturing or extractive sectors. This threshold was later reduced to 1 GWh per year, broadening access to a larger pool of industrial users.

In addition to consumption levels, companies must meet one or more of the following conditions:

- Operate in sectors identified as high risk of relocation under EU guidelines
- Demonstrate an electro-intensity greater than 20%, meaning electricity costs represent a significant portion of their gross value added
- Have previously qualified under earlier versions of the program and continue to meet legacy criteria.

For gas-intensive companies, eligibility requires an average annual natural gas consumption of at least 1 GWh, and operations must fall within designated industrial sectors.

Applicants must submit a self-certified declaration through CSEA's online portal, including consumption data and financial documentation. CSEA verifies the information, cross-checks with energy distributors, and may request additional records such as financial statements or utility bills. Once validated, eligible companies receive a discount on system charges, applied directly to their energy bills.

### **A5.13.5 Is there a subsidy**

The reduction in system charges payable by energy-intensive companies under this program results in a financial contribution by the GOI involving the foregoing or non-collection of revenue otherwise payable to the GOI, specifically, the ASOS component used to fund renewable energy initiatives.

The commission considers that this financial contribution relates to a recipient enterprise's energy costs, and is in connection with the production, manufacture, or export of all products of the recipient enterprise, including goods exported to Australia. This therefore constitutes a benefit in relation to the goods exported to Australia.



As the financial contribution under this program is provided by agencies of the GOI, including CSEA under the supervision of ARERA and MEF, it meets the definition of a subsidy under section 269T.

#### **A5.13.6 Is the subsidy countervailable?**

The commission has examined the eligibility criteria for the program and considers that eligibility is established by objective and verifiable criteria as set out in A3.12.2.

The commission notes that eligibility is based on objective criteria including energy consumption thresholds, sector classification, and electro-intensity levels, and that the program applies nationally to a broad range of industrial users.

The eligibility criteria do not limit access to a benefit under this program to particular enterprises or enterprises carrying on business within a designated geographical region. It is not contingent on export performance or upon the use of domestically produced or manufactured goods in preference to imported goods. Given the nature of the subsidy as providing a discount for energy costs, the commission considers the criteria are neutral, economic in nature and horizontal in application.

While an application to receive a discount under this program is subject to review by CSEA, the commission has no evidence that the eligibility criteria are not strictly adhered to. The commission has no evidence that the program in fact benefits particular enterprises, or that particular enterprises have access to a disproportionate amount of the subsidy.

Accordingly, the commission considers a subsidy under this program is not specific and is therefore not countervailable under section 269TAAC.

### **A5.14 [Program 654-3] Regulations for admission to the grants prepared for participation in fairs in Italy and abroad**

#### **A5.14.1 Program description**

This program was identified during the De Clemente verification as '*Regulations for admission to the grants prepared for participation in fairs in Italy and abroad*'

The program provides financial contributions to small and medium-sized enterprises (**SMEs**) based in the province of Salerno to support their participation in trade fairs held in Italy and abroad. The goal is to enhance visibility, promote internationalisation, and foster business development.

- Maximum grant: €5,000 per beneficiary enterprise.
- Eligible costs include booth rental, travel, accommodation, promotional materials, and registration fees.
- Applications must be submitted by 15 December of each year

The grants are administered by the Salerno Chamber of Commerce, Industry, Crafts and Agriculture itself. Specifically, the *Giunta Camerale* (Chamber Council) is responsible for approving and overseeing the program, including issuing the official deliberations that define the rules and funding allocations.

#### **A5.14.2 Legal basis**

The primary legal foundation includes:



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- Deliberation No. 17 of 28 March 2023, issued by the *Giunta Camerale* (Chamber Council), which formally establishes the rules and funding parameters for the program.
- Law No. 41 of 21 April 2023, which contains urgent provisions for implementing Italy's National Recovery and Resilience Plan (PNRR), supporting economic revitalization and international competitiveness.
- Law No. 213 of 30 December 2023, the State Budget Law for 2024, which outlines multi-year financial commitments and provides the fiscal framework for public funding initiatives.

These legal instruments collectively authorise the Chamber to allocate non-repayable contributions to eligible businesses, ensuring that the program operates within the bounds of national and EU regulations.

### **A5.14.3 WTO notification**

The commission is not aware of any WTO notification of this program.

### **A5.14.4 Eligibility criteria**

To be eligible for financial support under this program, businesses must demonstrate a strong local presence and a commitment to productive economic activity. The grants are specifically designed to assist individual enterprises, corporate entities, and consortia that are actively engaged in the production of goods and services across a range of sectors, including industrial, artisan, agricultural, and tourism.

A key requirement is that the business must operate within the province of Salerno, ensuring that the economic benefits of international exposure and market expansion directly support the local economy.

Applicants must also meet certain administrative and compliance standards. This includes possessing a valid DURC (*Documento Unico di Regolarità Contributiva*), which certifies that the business is in good standing with social security and insurance obligations. All financial documentation related to the fair, such as invoices and receipts, must include the CUP (*Codice Unico di Progetto*), a unique project code that links the expenses to the approved funding initiative.

### **A5.14.5 Is there a subsidy?**

The provision of grants to small and medium-sized enterprises under this program results in a financial contribution by the Salerno Chamber of Commerce involving the direct transfer of funds to eligible enterprises. These grants are non-repayable and are intended to support participation in trade fairs held in Italy and abroad.

The commission considers that this financial contribution relates to a recipient enterprise's promotional and marketing costs, and is in connection with the production, manufacture, or export of all products of the recipient enterprise, including goods exported to Australia. This therefore constitutes a benefit in relation to the goods exported to Australia.

Chambers of Commerce, Industry, Handicrafts and Agriculture (of which the Salerno Chamber of Commerce belongs) are independent public bodies that, within their

responsible territory, perform 'functions of general interest for the business system, fostering its development within local economies.'<sup>218</sup>

As the financial contribution under this program is provided by a public body, it meets the definition of a subsidy under section 269T.

#### **A5.14.6 Is the subsidy countervailable?**

##### *Consideration of section 269TAAC(2)*

The eligibility criteria limit access to a benefit under this program to enterprises operating within the province of Salerno. While the program is not contingent on export performance or upon the use of domestically produced or manufactured goods in preference to imported goods, it restricts access based on geographic location.

##### *Consideration of sections 269TAAC(3) and 269TAAC(4)*

The commission has examined the eligibility criteria for the program and considers that eligibility is established by objective and verifiable criteria. The commission has no evidence that the eligibility criteria are not strictly adhered to in the administration of the program. Funding under the program is not automatic. Noting the limited geographic eligibility requirements, the commission considers the criteria favours particular enterprises, are not neutral, economic in nature nor horizontal in application.

Accordingly, the commission considers that the subsidy under this program is regionally specific and is therefore countervailable under section 269TAAC.

#### **A5.14.7 Amount of subsidy**

The amount of the subsidy is the amount received by eligible selected exporters under this program during the investigation period.

As this amount has been provided in connection with the production, manufacture, or export of all products, the commission has attributed this amount to each unit of the goods based on the value of company turnover during the investigation period, in accordance with section 269TACD(2).

### **A5.15 [Program 654-4] IRES tax credit 2H - Investments in capital goods in the territory**

#### **A5.15.1 Program description**

This program was identified during the De Clemente verification as '*IREs tax credit 2H*'.

The program provides a tax credit (tax credit code 2H) to eligible enterprises for investment in capital goods. The measure is part of broader efforts to stimulate industrial growth, support technological advancement, and promote reshoring of business activities.

The commission considers this program is an extension of Program 57, which is due to end on 31 December 2025.

The ADE administers the program, supervised by the MEF.

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<sup>218</sup> Legislative Decree February 15, 2010, No. 23, amendments to Law December 29, 1993, No. 580. Source: <https://www.unioncamere.gov.it/chi-siamo/chambers-commerce-0>

### **A5.15.2 Legal basis**

Refer A5.5 in respect of Program 57.

The benefits available under Program 57 were extended to create this program by Legislative Decree No. 192/2024.

### **A5.15.3 WTO notification**

The commission is not aware of any WTO notification of this program.

### **A5.15.4 Eligibility criteria**

All enterprises in Italy, regardless of their legal structure, size, industry sector and residential status are eligible to apply for a tax credit under this program. Enterprises must comply with any relevant workplace safety requirements and social security obligations.

The credit can be claimed for investments in new capital goods intended for production facilities located in Italy, with minor exceptions.

Enterprises apply for the credit as part of their tax return, which is automatically granted, subject to any subsequent audit.

### **A5.15.5 Is there a subsidy? Is the subsidy countervailable?**

Like Program 57, the commission considers the financial contribution under this program meets the definition of a subsidy under section 269T. However, a subsidy under this program is not specific and is therefore not countervailable under section 269TAAC.

## **A5.16 [Program 654-5] Sustainable Investments 4.0**

### **A5.16.1 Program description**

This program was identified during the De Clemente verification.

The Sustainable Investments 4.0 initiative is a national incentive scheme launched in 2023 to support micro, small, and medium-sized enterprises (SMEs) in Italy, particularly those located in the Mezzogiorno regions in Southern Italy, in their transition toward digitalisation, sustainability, and technological innovation.

The program builds on other national strategies such as Industria 4.0 and Transition 4.0, and is aligned with the EU Green Deal, Digital Strategy, and Italy's National Recovery and Resilience Plan.

It provides non-repayable grants to businesses investing in:

- Energy-efficient production processes
- Circular economy models
- Advanced digital technologies
- Environmental certifications and energy diagnostics
- Software and consultancy services related to sustainability and innovation.

The initiative is part of the National Program 'Research, Innovation and Competitiveness for the Green and Digital Transition 2021–2027', co-financed by the European Regional Development Fund (ERDF). It is administered nationally by Invitalia and supported regionally through platforms like 'Invest in Campania', which facilitate access and guidance for local enterprises.

The program remains active as of 2025, with the latest application window having opened on 20 May 2025.

#### **A5.16.2 Legal basis**

The Sustainable Investments 4.0 program is grounded in a series of ministerial decrees and European funding frameworks. It was formally established by the Ministerial Decree of 15 May 2023, which outlined the structure, objectives, and funding mechanisms for the initial call for proposals. This was followed by the Ministerial Decree of 13 September 2024, which expanded the program's budget.

The program operates within the broader legal framework of Italy's 'National Program for Research, Innovation and Competitiveness for the Green and Digital Transition 2021–2027', and is co-financed by the ERDF. It also aligns with national legislation such as Legislative Decree 124/2023, which governs regional development incentives, particularly those targeting Southern Italy.

#### **A5.16.3 WTO notification**

The commission understands this program is included under the 'Nuova Sabatini' programs, listed in the EU's *New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures – Addendum (Italy)*, as documented in G/SCM/N/401/EU/Add.15, dated 29 August 2023.

#### **A5.16.4 Eligibility criteria**

The Italian government targets the Sustainable Investments 4.0 program at SMEs operating in the Mezzogiorno (Southern) regions, specifically Basilicata, Calabria, Campania, Molise, Puglia, Sicily, and Sardinia.

To be eligible, applicants must meet the EU's standard definitions for SME classification. Enterprises must hold legal status and maintain active operations within one of the eligible regions at the time of application.

The program supports projects that contribute to the digital and sustainable transformation of production processes. Eligible investments must align with the objectives of the Transition 4.0 framework and demonstrate measurable contributions to energy efficiency, reduced environmental impact, or technological innovation.

Projects must involve the acquisition or implementation of:

- Machinery, equipment, and software that enable digitalization or reduce environmental impact
- Masonry and construction work, provided it does not exceed 40% of total eligible costs
- Environmental certifications and energy diagnostics, which are capped at 3% of total costs
- Advanced consultancy services, capped at 5%, that support the design or implementation of sustainable and innovative solutions

To ensure timely execution and impact, all approved projects must be completed within 18 months of receiving the grant. The program offers non-repayable grants covering up to 50% of eligible costs for micro and small enterprises, and up to 40% for medium-sized enterprises.

Applications are submitted through the *Invitalia* portal, with regional support platforms such as Invest in Campania providing localised assistance and guidance throughout the process .

#### **A5.16.5 Is there a subsidy?**

The provision of non-repayable grants to eligible enterprises under this program results in a financial contribution by the GOI involving the direct transfer of funds to businesses investing in sustainable and digital transformation projects. These grants are administered by Invitalia and co-financed through the ERDF.

The commission considers that this financial contribution relates to a recipient enterprise's production and operational costs, and is in connection with the production, manufacture, or export of all products of the recipient enterprise, including goods exported to Australia. This therefore constitutes a benefit in relation to the goods exported to Australia.

As the financial contribution under this program is provided by agencies of the GOI and co-financed by the EU, it meets the definition of a subsidy under section 269T.

#### **A5.16.6 Is the subsidy countervailable?**

*Consideration of section 269TAAC(2)*

The eligibility criteria limit access to a benefit under this program to enterprises operating within the southern regions of Italy, specifically Basilicata, Calabria, Campania, Molise, Puglia, Sicily, and Sardinia. While the program is not contingent on export performance or upon the use of domestically produced or manufactured goods in preference to imported goods, it restricts access based on geographic location.

*Consideration of sections 269TAAC(3) and 269TAAC(4)*

Funding under the program is not automatic. Decisions on funding are made by Invitalia, after making an assessment of information provided by companies in their application.

Noting the limited geographic eligibility requirements, the commission considers the criteria favours particular enterprises, are not neutral, economic in nature nor horizontal in application.

Accordingly, the commission considers that the subsidy under this program is regionally specific and is therefore countervailable under section 269TAAC.

#### **A5.16.7 Amount of subsidy**

The amount of the subsidy is the amount received by eligible selected exporters under this program during the investigation period.

As this amount has been provided in connection with the production, manufacture, or export of all products, the commission has attributed this amount to each unit of the goods based on the value of company turnover during the investigation period, in accordance with section 269TACD(2).

### **A5.17 [Program 654-6] Energy Efficiency Contributions**

#### **A5.17.1 Program description**

This program was identified in Mutti's REQ as '*Energy Efficiency Contributions – Directorial Decree of the Campania Region No. 170 of 3 June 2019*', or in Italian, '*Avviso*

*pubblico per la concessione di contributi a favore delle imprese per la realizzazione di investimenti per l'efficienza energetica e l'utilizzo delle fonti di energia rinnovabile' - Decreto Dirigenziale n. 170 del 03/06/2019'.*

The program provides non-repayable contributions to companies operating in the Campania region to undertake investment activities aimed at improving energy efficiency and using renewable energy.

The maximum amount available under the program is 50% of eligible expenses, with a maximum grant of €200,000.

The grants are administered by Regione Campania (the regional government for Campania) and funded under *POR Campania FESR 2014-2020*, which is Regional Operational Program framework under the ERDF.

#### **A5.17.2 Legal basis**

Directorial Decree of the Campania Region No. 170 of 3 June 2019 and Executive decree no. 54 of 27 January 2023.

#### **A5.17.3 WTO notification**

The commission is not aware of any WTO notification of this program.

#### **A5.17.4 Eligibility criteria**

Applicants must be located in Campania.

Applicants must submit an investment plan with a minimum value of €50,000 for activities that:

- enhance energy efficiency in production processes
- installing high-efficiency co-generation plants
- improve energy efficiency in buildings where the production takes place
- install renewable energy systems.

Applications are lodged with the Campania Chamber of Commerce who confirm eligibility and assess the merit of the plan and whether it aligns with the program goals. Following evaluation, successful investment plans are approved, and the corresponding grants are awarded. Applications are evaluated in chronological order of submission, and grants are allocated until the financial resources available for the program are exhausted.

#### **A5.17.5 Is there a subsidy?**

The provision of grants under this program results in a financial contribution by the Regione Campania involving the direct transfer of funds to eligible enterprises.

The commission considers that this financial contribution relates to energy and production costs and is connected to the production, manufacture, or export of their goods, including those exported to Australia. This therefore constitutes a benefit in relation to the goods exported to Australia.

As the financial contribution under this program is provided by a public body, it meets the definition of a subsidy under section 269T.



#### **A5.17.6 Is the subsidy countervailable?**

##### *Consideration of section 269TAAC(2)*

The eligibility criteria limit access to a benefit under this program to enterprises operating within Campania. While the program is not contingent on export performance or upon the use of domestically produced or manufactured goods in preference to imported goods, it restricts access based on geographic location.

##### *Consideration of sections 269TAAC(3) and 269TAAC(4)*

Funding under the program is not automatic. Decisions on funding are made by the Campania Chamber of Commerce after making an assessment of information provided by companies in their application.

Noting the limited geographic eligibility requirements, the commission considers the criteria favours particular enterprises, are not neutral, economic in nature nor horizontal in application.

Accordingly, the commission considers that the subsidy under this program is regionally specific and is therefore countervailable under section 269TAAC.

#### **A5.17.7 Amount of subsidy**

The amount of the subsidy is the amount received by eligible selected exporters under this program during the investigation period.

As this amount has been provided in connection with the production, manufacture, or export of all products, the commission has attributed this amount to each unit of the goods based on the value of company turnover during the investigation period, in accordance with section 269TACD(2).

### **A5.18 [Program 654-7] Investment programmes in crisis areas of the Campania Region**

#### **A5.18.1 Program description**

This program was identified in La Doria's REQ as '*Ministerial Decree 13 February 2014 - Call for innovative investment programmes in crisis areas of the Campania Region*', or in Italian, '*Decreto ministeriale 13 febbraio 2014 - Bando programmi di investimento innovativi nelle aree di crisi della Campania*'.

The program established a targeted investment support program for enterprises operating in designated industrial crisis areas within the Campania Region. The initiative aimed to stimulate economic recovery, promote technological innovation, and generate employment in municipalities facing structural economic challenges.

The program is administered by Invitalia, under the supervision of MIMIT.

The program provides financial support through a combination of non-repayable grants and preferential loans. Eligible enterprises may apply for funding to implement high-impact investment projects. Funding covers capital investments, research and development, and employment-related costs. Disbursement is milestone-based and contingent on compliance with national and EU development objectives.



### **A5.18.2 Legal basis**

The legal foundation for the program is the Ministerial Decree of 13 February 2014, published in the Official Gazette No. 82 on 8 April 2014.

### **A5.18.3 WTO notification**

The commission is not aware of any WTO notification of this program.

### **A5.18.4 Eligibility criteria**

To qualify for support, applicants must be enterprises with production units located in the designated crisis municipalities of Campania. These include areas such as Sarno, Airola, Acerra, Avellino, Castellammare di Stabia, and Caserta. Projects must demonstrate clear potential for technological innovation, competitive improvement, and environmental sustainability.

Applicants must structure their proposals and comply with all procedural and technical requirements set out in the decree. Funding is disbursed based on project milestones and performance indicators.

### **A5.18.5 Is there a subsidy?**

The provision of non-repayable grants and preferential loans to eligible enterprises under this program results in a financial contribution by the GOI involving the direct transfer of funds and the provision of financing on terms more favourable than those available on the market.

The commission considers that this financial contribution relates to a recipient enterprise's capital investment, research and development, and employment costs, and is in connection with the production, manufacture, or export of all products of the recipient enterprise, including goods exported to Australia. This therefore constitutes a benefit in relation to the goods exported to Australia.

As the financial contribution under this program is provided by agencies of the GOI, it meets the definition of a subsidy under section 269T.

### **A5.18.6 Is the subsidy countervailable?**

#### *Consideration of section 269TAAC(2)*

The eligibility criteria limit access to a benefit under this program to enterprises operating within the Campania Region and within designated strategic sectors. While the program is not contingent on export performance or upon the use of domestically produced or manufactured goods in preference to imported goods, it restricts access based on geographic location.

#### *Consideration of sections 269TAAC(3) and 269TAAC(4)*

Funding under the program is not automatic. Decisions on funding are made by the Invitalia after making an assessment of information provided by companies in their application.

Noting the limited geographic eligibility requirements, the commission considers the criteria favours particular enterprises, are not neutral, economic in nature nor horizontal in application.

Accordingly, the commission considers that the subsidy under this program is regionally specific and is therefore countervailable under section 269TAAC.

#### A5.18.7 Amount of subsidy

The commission has identified payment of grants under this program to selected exporters for fixed assets prior to the investigation period that are within the depreciation period for those assets.

The Manual provides, that where benefits have to be amortised over the average useful life of assets (i.e. the depreciation period), the formula to use is:

$$A_k = \frac{y/n + [y - (y/n)(k-1)]d}{1 + d}$$

Where:

$A_k$  = the amount of the benefit allocated  
to year  $k$

$y$  = the face value of the subsidy

$n$  = the AUL of assets in the industry being investigated

$d$  = the discount rate

$k$  = the year of allocation where the  
year of receipt = 1 and  $1 \leq k \leq n$ .

The formula calculates the annual benefit amount for each year using the variables: face value of the subsidy, the depreciation period, and the interest rate (represented as the discount rate in the formula).<sup>219</sup>

The commission has applied this formula for each selected exporter who received a grant under this program to calculate the amount of subsidy received during the investigation period.

As the grant has been provided in connection with the production, manufacture, or export of all products, the commission has attributed this amount to each unit of the goods based on the value of company turnover during the investigation period, in accordance with section 269TACD(2).

The commission did not identify the payment of any preferential loans to the selected exporters during the investigation period.

### A5.19 [Program 654-8] Refund of Customs Duty (Law No. 639 of July 1964)

#### A5.19.1 Program description

This program was identified in IMCA and La Doria's REQ.

The Refund of Customs Duty program, formally titled '*Restituzione dei diritti doganali e delle imposizioni indirette interne diverse dall'imposta generale sull'entrata per taluni prodotti industriali esportati*', was established on 5 July 1964.

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<sup>219</sup> Manual, page 71

The program aims to support Italian industrial exports by reimbursing certain customs duties and internal indirect taxes (excluding general sales tax) incurred during the production of specific goods destined for export.

The refund is calculated per net kilogram of exported product, based on rates listed in a schedule annexed to the law. This mechanism reduces the cost burden on exporters and enhances the international competitiveness of Italian industrial products.

#### **A5.19.2 Legal basis**

The legal basis for the program is Law No. 639 of 5 July 1964. The law remains in force and is administered by the *Agenzia delle Dogane e dei Monopoli* (Italian Customs and Monopolies Agency).

The program operates in conjunction with earlier customs legislation, including:

- Law No. 187/1962, which governs customs procedures
- Royal Decree No. 330/1911, which outlines customs dispute resolution mechanisms.

These laws collectively establish the framework for calculating and administering refunds on eligible exported goods.

#### **A5.19.3 WTO notification**

The commission is not aware of any WTO notification of this program.

#### **A5.19.4 Eligibility criteria**

To qualify for the refund, exporters must ship goods listed in the schedule annexed to the law and indicate the net weight in kilograms on the export invoice. The refund is calculated on a per-kilogram basis, with rates varying by product category. The commission confirmed that exports by the selected exporters satisfied the schedule requirements.

Applications must be submitted to the local Customs and Monopolies Agency within 2 years of export. The refund applies broadly to export sales. Adjustments are made if the exported goods include temporarily imported materials.

#### **A5.19.5 Is there a subsidy?**

The refund of customs duties and internal indirect taxes under this program results in a financial contribution by the GOI involving the foregoing or non-collection of revenue otherwise payable to the GOI. The refunds are administered by the Italian Customs and Monopolies Agency and are calculated based on the net weight of exported products.

The commission considers that this financial contribution relates to a recipient enterprise's export-related costs, and is in connection with the production, manufacture, or export of all products of the recipient enterprise, including goods exported to Australia. This therefore constitutes a benefit in relation to the goods exported to Australia.

As the financial contribution under this program is provided by an agency of the GOI, it meets the definition of a subsidy under section 269T.

#### **A5.19.6 Is the subsidy countervailable?**

Eligibility for a benefit under this program is directly contingent on export performance, as refunds are only available for goods that are exported and listed in the annexed schedule, with the benefit calculated on the volume of exported goods.

Accordingly, the commission considers that the subsidy under this program is export-contingent and is therefore countervailable under section 269TAAC(2)(c).

#### **A5.19.7 Amount of subsidy**

The amount of the subsidy is the amount received by eligible selected exporters under this program during the investigation period.

As this amount has been provided in connection with the production, manufacture, or export of all products, the commission has attributed this amount to each unit of the goods based on the value of company turnover during the investigation period, in accordance with section 269TACD(2).

### **A5.20 [Program 654-9] Campania Rural Development Program**

#### **A5.20.1 Program description**

This program was identified in IMCA's REQ as '*Regional Council Resolution No. 565 of 24 November 2015 (Programma di Sviluppo Rurale 2014-2020 della Regione Campania)*'.

The Campania Rural Development Program is a multi-year development initiative for the Campania region, co-financed by the European Agricultural Fund for Rural Development (**EAFRD**). EU countries implement EAFRD funding through Rural Development Programs.

While the European Commission approves and oversees Rural Development Programs, decisions regarding project selection and payment allocation are made by managing authorities at the national or regional level. The Campania Rural Development Program is managed at the regional level by Regione Campania.

The specific measure relevant to IMCA is *Intervento 4.2.1 – 'Trasformazione, commercializzazione e sviluppo dei prodotti agricoli nelle aziende agroindustriali'*,<sup>220</sup> which supports agro-industrial enterprises investing in the processing, transformation, and marketing of agricultural products.

The *Giunta Regionale della Campania*, which is the executive arm of Regione Campania, granted funding to IMCA on a non-recurring basis under this program.

#### **A5.20.2 Legal basis**

The legal basis for the program is Regional Council Resolution No. 565 of 24 November 2015, which formally adopted the PSR Campania 2014–2020. The program is co-financed through the EAFRD under EU Regulation No. 1305/2013, which governs rural development support across the EU.

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<sup>220</sup> Translation: 'Processing, marketing, and development of agricultural products in agro-industrial enterprises'

### A5.20.3 WTO notification

Programs funded through the EAFRD fall under the ‘Second Pillar’ of the CAP. The CAP and the EAFRD are listed in the EU’s *New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures*, dated 25 July 2023, as documented in G/SCM/N/401/EU (the latest notification available). Details on programs from 2023, including the EAFRD, are not listed in the notification.

### A5.20.4 Eligibility criteria

Eligible applicants include legally established agricultural businesses, agro-industrial companies, cooperatives, and rural SMEs operating within Campania. Projects must focus on processing and marketing agricultural products, primarily those listed in Annex I of the EU Treaty and demonstrate economic viability and alignment with EU and regional development goals. Applicants must submit documentation through the SIAN portal, which is used by Regione Campania to manage rural development applications.<sup>221</sup> SIAN.

The specific measure relevant to IMCA, *Intervento 4.2.1*, supports agro-industrial enterprises engaged in the processing, transformation, and marketing of agricultural products listed in Annex I of the Treaty on the Functioning of the European Union (TFEU). Eligible supply chains include fruit and vegetables, floriculture, wine, olive oil, cereals, meat, dairy, and medicinal plants. Investments may cover construction of new facilities, improvement of existing buildings, purchase of machinery and equipment, and intangible assets. Beneficiaries must submit detailed investment plans, and grants are typically awarded as a 50% contribution to eligible costs. The 50% contribution is a maximum co-financing rate, with actual disbursements varying depending on project scope, compliance, and available budget. Beneficiaries must maintain compliance with EU procurement and environmental standards.

The program remains active, with deadlines for new applications under *Intervento 4.2.1* extended to 25 September 2023.

### A5.20.5 Is there a subsidy?

The provision of non-repayable grants to agro-industrial enterprises under this program results in a financial contribution by the GOI involving the direct transfer of funds to eligible recipients. The grants are administered by the Regione Campania.

The commission considers that this financial contribution relates to a recipient enterprise’s investment and operational costs, and is in connection with the production, manufacture, or export of all products of the recipient enterprise, including goods exported to Australia. This therefore constitutes a benefit in relation to the goods exported to Australia.

As the financial contribution under this program is provided by a public body of the GOI and co-financed by the EU, it meets the definition of a subsidy under section 269T.

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<sup>221</sup> The SIAN portal (Sistema Informativo Agricolo Nazionale) is a national-level agricultural information system used across Italy to manage and process applications related to agricultural and rural development programs. It is not run specifically by Regione Campania, but Regione Campania uses it to administer programs like the Campania Rural Development Program.

#### **A5.20.6 Is the subsidy countervailable?**

##### *Consideration of section 269TAAC(2)*

The eligibility criteria limit access to a benefit under this program to enterprises operating within Campania. While the program is not contingent on export performance or upon the use of domestically produced or manufactured goods in preference to imported goods, it restricts access based on geographic location.

##### *Consideration of sections 269TAAC(3) and 269TAAC(4)*

Funding under the program is not automatic. Decisions on funding are made by the Giunta Regionale della Campania after making an assessment of information provided by companies in their application.

Noting the limited geographic eligibility requirements, the commission considers the criteria favours particular enterprises, are not neutral, economic in nature nor horizontal in application.

Accordingly, the commission considers that the subsidy under this program is regionally specific and is therefore countervailable under section 269TAAC.

#### **A5.20.7 Amount of subsidy**

The amount of the subsidy is the amount received by eligible selected exporters under this program during the investigation period.

As this amount has been provided in connection with the production, manufacture, or export of all products, the commission has attributed this amount to each unit of the goods based on the value of company turnover during the investigation period, in accordance with section 269TACD(2).

### **A5.21 [Program 654-10] Financial Instrument for Productive Investments in Campania (SFIN)**

#### **A5.21.1 Program description**

This program was identified in Mutti's REQ as '*Strumento finanziario per il sostegno agli investimenti produttivi in Campania*' (**SFIN**) or 'Financial Instrument for Productive Investments in Campania' in English.

Regione Campania launched SFIN to stimulate economic growth and enhance competitiveness across certain strategic sectors. SFIN offered a comprehensive package of financial support, including:

- Non-repayable grants
- Subsidised loans
- Market-rate bank loans
- Public guarantees for working capital.

The program targeted businesses operating in key sectors such as aerospace, automotive and shipbuilding, agri-food, fashion, biotechnology and ICT, energy and environment, and tourism. It supported companies undertaking investment projects to establish new production units, expand or diversify existing facilities, upgrade production processes, improve tourism offerings, and boost energy efficiency.



In response to the COVID-19 crisis, SFIN also backed investments in machinery, equipment, and facility adaptations to ensure safety and operational continuity. Eligible projects required expenses between €500,000 and €3 million, with grouped companies (up to 4) each investing at least €250,000. Projects exceeding €3 million had to be co-financed by the applicants. All investments were required to begin after submitting the application and be completed within 30 months of grant approval, and no later than 30 June 2023.

The program's evaluation procedures have concluded, and the application portal was suspended on 15 May 2021, following the exhaustion of allocated funds. Its timeline aligned with the closure of the funding window.

#### **A5.21.2 Legal basis**

Regione Campania established the SFIN program under the framework of the '*Patto per lo Sviluppo della Regione Campania FSC 2014–2020*' (Pact for the Development of the Campania Region), which serves as its primary legal basis. This initiative draws funding from multiple sources, including:

- FSC (Fondo per lo Sviluppo e la Coesione) resources allocated for regional development,
- POR FESR 2014–2020 (European Regional Development Fund – Regional Operational Program), and
- the Regional FRI (Revolving Fund for Enterprises), managed by Cassa Depositi e Prestiti (CDP).

The program was formally published in the Official Journal of the Campania Region (BURC n. 138) on 6 July 2020.

#### **A5.21.3 WTO notification**

The commission is not aware of any WTO notification of this program.

#### **A5.21.4 Eligibility criteria**

To qualify for support under the SFIN program, businesses had to meet a set of strategic and operational criteria designed to ensure alignment with regional development goals.

First, companies needed to operate within one of the program's designated strategic sectors such as aerospace, automotive and shipbuilding, agri-food, fashion, biotechnology and ICT, energy and environment, or tourism. This sectoral focus ensured that funding targeted industries with high growth potential and regional significance.

Second, applicants had to propose investment projects that contributed meaningfully to industrial development. Eligible activities included establishing new production units, expanding or diversifying existing facilities, upgrading production processes, enhancing tourism offerings, or improving energy efficiency. In response to the COVID-19 crisis, the program also allowed investments in machinery, equipment, and facility adaptations to support safe and resilient operations.

Third, eligibility was limited to small, medium, and large enterprises. Companies could apply individually or as part of a consortium of up to 4 firms. Each participant in a grouped application was required to invest at least €250,000 in eligible fixed assets.



Fourth, the investment had to be located within the Campania region. This geographic requirement ensured that the program's benefits directly supported local economic development, particularly in areas facing economic hardship and high unemployment.

Fifth, the financial scope of the proposed investment had to fall within specific thresholds. Projects needed to involve eligible expenses between €500,000 and €3 million. For projects exceeding €3 million, applicants had to co-finance the additional amount using their own resources or external funding.

Finally, applicants had to adhere to strict timing requirements. Investments had to begin after submitting the financing application and be completed within 30 months of grant approval, and no later than 30 June 2023.

#### **A5.21.5 Is there a subsidy?**

The provision of non-repayable grants, subsidised loans, and public guarantees under this program results in a financial contribution by the GOI involving both the direct transfer of funds and the provision of financing and guarantees on terms more favourable than those available on the market.

The commission considers a financial contribution under this program relates to a recipient enterprise's investment and operational costs, and is in connection with the production, manufacture, or export of all products of the recipient enterprise, including goods exported to Australia. This therefore constitutes a benefit in relation to the goods exported to Australia.

As the financial contribution under this program is provided by a public body, Regione Campania, and includes both grants and subsidised financial instruments, it meets the definition of a subsidy under section 269T.

#### **A5.21.6 Is the subsidy countervailable?**

##### *Consideration of section 269TAAC(2)*

The eligibility criteria limit access to a benefit under this program to enterprises operating within the Campania Region and within designated strategic sectors. While the program is not contingent on export performance or upon the use of domestically produced or manufactured goods in preference to imported goods, it restricts access based on geographic location.

##### *Consideration of sections 269TAAC(3) and 269TAAC(4)*

Funding under the program is not automatic. Decisions on funding are made Regione Campania after making an assessment of information provided by companies in their application.

Noting the limited geographic eligibility requirements, the commission considers the criteria favours particular enterprises, are not neutral, economic in nature nor horizontal in application.

Accordingly, the commission considers that the subsidy under this program is regionally specific and is therefore countervailable under section 269TAAC.

**A5.21.7 Amount of subsidy**

While grants, subsidised loans and public guarantees are available under this program, the commission only identified payment of grants to selected exporters during the investigation period.

The commission has therefore determined that the amount of the subsidy is the amount received by eligible selected exporters under this program during the investigation period.

As this amount has been provided in connection with the production, manufacture, or export of all products, the commission has attributed this amount to each unit of the goods based on the value of company turnover during the investigation period, in accordance with section 269TACD(2).