



Australian Government
Department of Industry,
Innovation and Science

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

STATEMENT OF ESSENTIAL FACTS

NO. 488

**INQUIRY INTO THE CONTINUATION OF
ANTI-DUMPING MEASURES APPLYING TO**

**PREPARED OR PRESERVED TOMATOES
EXPORTED TO AUSTRALIA
FROM ITALY**

25 January 2019

PUBLIC RECORD

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ABBREVIATIONS

ABF	Australian Border Force
the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
Attianese	Attianese S.p.A.
Calispa	Calispa S.p.A.
Coles	Grocery Holdings Pty Ltd (a wholly owned company of Coles Group Ltd)
combination duty method	the combination of fixed and variable duty method
Commission	the Anti-Dumping Commission
Commissioner	the Commissioner of the Anti-Dumping Commission
CTMS	cost to make and sell
current measures	the anti-dumping measures currently applicable to exports of prepared or preserved tomatoes from Italy that are due to expire on 15 April 2019
De Clemente	De Clemente Conserve S.p.A.
the Direction	<i>Customs (Extensions of Time and Non-cooperation) Direction 2015</i>
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
EC	European Commission
EPR	electronic public record
Feger	Feger di Gerardo Ferraioli S.p.A
FOB	Free on Board
FY	financial year
g	gram
the Guidelines	<i>Guidelines on the Application of Forms of Dumping Duty November 2013</i>
IDD	interim dumping duty
inquiry period	the period from 1 July 2017 to 30 June 2018
injury analysis period	the period from 1 July 2010
Kagome	Kagome Australia Pty Ltd
La Doria	La Doria S.p.A
the Manual	<i>Dumping and Subsidy Manual</i>
the Minister	Minister for Industry, Science and Technology

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Mutti	Mutti S.p.A.
NIP	non-injurious price
the Notice	ADN No. 2014/32
OCOT	ordinary course of trade
PIR	preliminary information request
PPT, or the goods	certain prepared or preserved tomatoes, the goods the subject of the application
Princes	Princes Industrie Alimentari S.r.L.
the Regulation	<i>Customs (International Obligations) Regulation 2015</i>
REP 217	<i>Anti-Dumping Commission Report No. 217</i>
REP 276	<i>Anti-Dumping Commission Report No. 276</i>
REP 349/354	<i>Anti-Dumping Commission Report Nos. 349 and 354</i>
REQ	response to the exporter questionnaire
ROI	return on investment
Safcol	Safcol Australia Pty Ltd
SEF	statement of essential facts
SG&A	selling, general and administrative expenses
SPCA	SPC Ardmona Operations Ltd
USP	unsuppressed selling price
Woolworths	Woolworths Ltd

1. SUMMARY AND RECOMMENDATIONS

1.1 Introduction

This statement of essential facts (SEF) sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) proposes to base his recommendations to the Minister for Industry, Science and Technology (the Minister) in relation to a continuation inquiry related to a dumping duty notice applying to prepared or preserved tomatoes (PPT) exported to Australia from Italy.

The anti-dumping measures currently applicable to exports of PPT to Australia from Italy (the current measures) are due to expire on 16 April 2019.

1.2 Legislative framework

Division 6A of Part XVB of the *Customs Act 1901* (the Act)¹ sets out, among other things, the procedures to be followed by the Commissioner in dealing with an application for the continuation of anti-dumping measures.

Subsection 269ZHE(1) requires that the Commissioner publish a SEF on which he proposes to base his recommendations to the Minister concerning the continuation of the measures. Subsection 269ZHE(2) requires that in doing so, the Commissioner must have regard to the application and any submissions received within 37 days of the initiation of the inquiry, and may have regard to any other matters that he considers relevant.

Subsection 269ZHF(1)(a) requires that the Commissioner must, after conducting his inquiry, give the Minister a report which recommends that the relevant notice:

- remain unaltered;
- cease to apply to a particular exporter or to a particular kind of goods;
- have effect in relation to a particular exporter or to exporters generally as if different variable factors had been ascertained; or
- expire on the specified expiry day.

Pursuant to subsection 269ZHF(2), in order to recommend that the Minister take steps to secure the continuation of the anti-dumping measures, the Commissioner must be satisfied that the expiration of the anti-dumping measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measures are intended to prevent.

1.3 Findings and conclusions

The measures were imposed as a result of the publication of a dumping duty notice (the Notice) on 16 April 2014.² The measures are due to expire on 16 April 2019.

¹ All legislative references in this SEF are to the *Customs Act 1901*, unless otherwise stated.

² Anti-Dumping Notice No. [2014/32](#) refers.

The present inquiry was initiated on 16 July 2018 following the Commissioner's consideration of an application lodged by SPC Ardmona Operations Limited (SPCA) seeking the continuation of the anti-dumping measures.³ For the purpose of this inquiry, the Commissioner established an inquiry period of 1 July 2017 to 30 June 2018 (inquiry period).

The Anti-Dumping Commission (Commission) has examined data from the Australian Border Force (ABF) import database, financial data from the Australian industry, data from the cooperating exporters of PPT from Italy, and data from importers of those goods.

Based on the Commission's analysis of the data described above and the evidence currently available, the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of the dumping that the measures are intended to prevent in respect of PPT exported to Australia from Italy by Princes Industrie Alimentari S.r.L. (Princes). The Commissioner is not satisfied that dumping by all other exporters is likely to recur in the absence of the measures.

Further, the Commissioner is not satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent for PPT exported to Australia from Italy.

1.4 Proposed recommendation

Based on the above findings, the Commissioner proposes to recommend to the Minister that, after 16 April 2019, the Notice expire with respect to PPT exported to Australia from Italy.

1.5 Responding to this SEF

This SEF sets out the essential facts on which the Commissioner proposes to base his final recommendations to the Minister. The SEF represents an important stage in the inquiry as it informs interested parties of the facts established and allows them to make submissions in response to the SEF.

It is important to note that the SEF may not represent the final views of the Commissioner. The final report will recommend whether or not the anti-dumping duty notice should continue to apply.

Interested parties are invited to make submissions to the Commissioner in response to the SEF within 20 days of the SEF being placed on the public record. The due date to lodge written submissions in response to this SEF therefore is **14 February 2019**.

The Commissioner is not obliged to have regard to any submission made in response to the SEF received after this date if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Minister.⁴

The Commissioner must report to the Minister by **11 March 2019**.⁵

³ [Anti-Dumping Notice No. 2018/106](#) refers.

⁴ Subsection 269ZDA(4).

⁵ As this day is a public holiday, the effective due date will be 12 March 2019.

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Submissions should preferably be emailed to investigations1@adcommission.gov.au. Alternatively, they may be posted to:

Director, Investigations 1
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601
AUSTRALIA

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the public record. A guide for making submissions is available at the Commission website.⁶

The public record contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's verification reports and other publicly available documents on the Commission's website.

Documents on the public record should be read in conjunction with the SEF.

1.6 Final report

The Commissioner's final report and recommendations must be provided to the Minister within 155 days after the publication of a notice under subsection 269ZHD(4), or such longer period as the Minister allows.⁷

On 2 November 2018, the Commissioner approved an extension of time to provide the Minister with the final report, in conjunction with the extension of time to publish the SEF (Anti-Dumping Notice (ADN) No. 2018/169 refers). The final report and recommendations must now be provided to the Minister on or before **11 March 2019** or within such longer period as may be allowed.

⁶ www.adcommission.gov.au.

⁷ Subsection 269ZHF(1). It is noted that, on 14 January 2017, the powers and functions of the Minister under section 269ZHI were delegated to the Commissioner. Refer to [ADN No. 2017/10](#) for further information.

2. BACKGROUND

2.1 Initiation

The present inquiry was initiated on 16 July 2018 following the Commissioner's consideration of an application lodged by SPCA seeking the continuation of the anti-dumping measures in relation to PPT exported to Australia from Italy.

ADN No. 2018/106 on the electronic public record (EPR) sets out the Commissioner's reasons for initiating the current inquiry.⁸

2.1.1 Submission from European Commission regarding application

The European Commission (EC) lodged a submission arguing that the application lodged by SPCA did not provide sufficient evidence to duly substantiate the probability of more than *de minimis* dumping occurring, nor that probable material injury would be caused by the hypothesised dumping.⁹

2.1.2 Commission assessment

As per subsection 269ZHD(2)(b), in considering an application for continuation of anti-dumping measures, one of the matters on which the Commissioner is required to be satisfied is "whether there *appear* to be reasonable grounds for *asserting* that the expiration of the anti-dumping measures to which the application relates *might* lead, or *might be likely* to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent" (Commission's emphasis).

As explained at the time of initiation of this inquiry, the Commissioner examined the information in SPCA's application, the ABF import database and information gathered in previous cases and concluded that the relevant evidentiary threshold had been met.¹⁰ The standard of satisfaction sought in the EC's submission, however, is relevant to the preparation of this SEF.

2.2 Current anti-dumping measures

The anti-dumping measures were initially imposed by public notice on 16 April 2014 by the then Parliamentary Secretary to the then Minister for Industry following consideration of *Anti-Dumping Commission Report No. 217* (REP 217). The Notice applies to all exporters of PPT from Italy other than Feger di Gerardo Ferraioli S.p.A (Feger) and La Doria S.p.A (La Doria).¹¹

⁸ [ADN No. 2018/106](#) is available on the Commission [website](#).

⁹ EPR 488 [Document 003](#) refers.

¹⁰ ADN No. 2018/106 refers.

¹¹ The investigation in respect of Feger and La Doria was terminated (for the reasons set out in [Termination Report No. 217](#) and [ADN No. 2014/22](#)). Feger and La Doria were the subject to a subsequent investigation, which resulted in the imposition of anti-dumping measures in respect of only Feger ([Anti-Dumping Commission Report No. 276](#), [Anti-Dumping Commission Reinvestigation Report No. 360](#), Anti-Dumping Review Panel [Report No. 35](#) and the [notice](#) of the decision of the then Parliamentary Secretary to the Minister for Industry, Innovation and Science, refer).

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Since the anti-dumping measures were initially imposed, the Commission has conducted other cases relating to PPT, including a number of accelerated reviews. Full details can be found on the Commission website.

A summary of the major cases is set out in Table 1.

Case type and case no.	ADN No.	Date	Country of export	Findings
Investigation 217	2014/32	16 April 2014	Italy	Dumping measures imposed
Review 349	2017/46	5 May 2017	Italy	Dumping measures altered
Review 354	2017/46	5 May 2017	Italy	Dumping measures altered

Table 1: Summary of past cases

2.2.1 Current measures

The current measures applying to the goods exported to Australia which are subject to the Notice are set out in Table 2 below.

Country	Exporter	Interim dumping duty (IDD)	Form of measures
Italy	AR Industrie Alimentari S.p.A	17.8%	Combination
	Calispa S.p.A	0%	Floor Price
	Conserve Italia Soc. Coop Agr	5.4%	Combination
	De Clemente Conserve S.p.A	0%	Floor Price
	Della Peruta Vincenzo S.p.A	0%	Floor Price
	La Specialita' Italiane S.R.L	0%	Floor Price
	La Vera Napoli Soc. Coop. Agr	0%	Floor Price
	Mutti S.p.A	3.9%	Combination
	Princes Industrie Alimentari S.p.A	0.1%	Combination
	Residual exporters ¹²	0%	Floor Price
	All other exporters	118%	Combination

Table 2: Anti-dumping measures applying to PPT

¹² The residual exporters are listed in the [Dumping Commodity Register](#) for PPT.

2.3 Conduct of inquiry

The Commission established an inquiry period of 1 July 2017 to 30 June 2018. The Commission has also examined data from the ABF import database, financial data submitted with the application by SPCA and data from the original investigation for the purpose of analysing trends in the market for the goods and assessing potential injury factors in the period from 1 July 2010 (the injury analysis period).

2.4 Australian Industry

The Commission must be satisfied that “like” goods are produced in Australia. Subsections 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. The Commission is satisfied that like goods are wholly manufactured in Australia. The Commission is aware of two Australian producers of PPT: SPCA and Safcol Australia Pty Ltd (Safcol).

The Commission has established that the applicant, SPCA, accounts for more than 98 per cent by volume of the PPT produced in Australia which are “like” to the goods subject to the Notice. The Commission conducted a verification visit to SPCA’s premises in September 2018. The report in relation to this visit is available on the EPR.¹³

The Commission also sought information from Safcol to determine its role in the production of PPT.¹⁴

2.5 Importers

The Commission identified several importers in the ABF import database that imported PPT during the inquiry period from Italy. The Commission forwarded questionnaires to the major importers and received ten completed importer questionnaires (these importers were responsible for approximately 92 per cent of the imports that are subject to the Notice). The Commission conducted verification visits to four cooperating importers, which were collectively responsible for approximately 74 per cent of imports. The verification visit reports for three of these visits are available on the public record.¹⁵

Importer	Document No. ¹⁶
Grocery Holdings Pty Ltd ¹⁷	015
Leo’s Imports and Distributors Pty Ltd	013
Woolworths Ltd	014

Table 3: Importers

¹³ [SPCA Visit Report](#) refers.

¹⁴ [Safcol file note](#) refers.

¹⁵ The fourth importer did not consent to the Commission publishing its visit report. Despite this, the Commission was able to verify the accuracy and reliability of the information provided and has therefore had regard to the information obtained.

¹⁶ The visit reports are available on the [EPR](#).

¹⁷ Grocery Holdings Pty Ltd is a wholly owned company of Coles Group Ltd. Grocery Holdings provides wholesaling services to Coles Supermarkets. In this report, these arrangements are collectively referred to as “Coles”.

2.6 Exporters

On 16 July 2018 the Commission published ADN No. 2018/106 which, among other things, outlined that the Commissioner intended to make findings and recommendations in relation to this inquiry based on an examination of a limited number of exporters in accordance with section 269TACAA.

Subsection 269TACAA(1) states that where the number of exporters from a particular country of export in relation to the investigation, review or inquiry is so large that it is not practicable to examine the exports of all of those exporters, then the investigation, review or inquiry may be carried out, and findings may be made, on the basis of information obtained from an examination of a selected number of those exporters who:

- constitute a statistically valid sample of those exporters; or
- are responsible for the largest volume of exports to Australia that can reasonably be examined.

2.6.1 Selected Exporters

The Commission identified more than fifty suppliers listed in the ABF import database that may be exporters of PPT from Italy.

Given the large number of suppliers, it is not practicable to examine the exports of all exporters. Accordingly, the inquiry has been carried out on the basis of 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 Commission selected the five largest suppliers of the goods subject to the Notice, responsible for more than 90 per cent by volume, for examination in accordance with subsection 269TACAA(1). The Commission forwarded exporter questionnaires to the following exporters:

Attianese S.p.A
Calispa S.p.A
De Clemente Conserve S.p.A
Mutti S.p.A
Princes Industrie Alimentari S.r.L

Table 4: Selected exporters

2.6.2 Residual exporters

Exporters of the goods other than the selected exporters were given an opportunity to make themselves known to the Commission by providing a response to the preliminary information request (PIR). Exporters who respond to the PIR may be considered to be “residual exporters”.

The Commission received responses to the PIR from twenty exporters of the goods from Italy. After close analysis of the responses received, the Commission identified the following exporters to be “residual exporters” for the purposes of this inquiry:

Agriconserve Rega
Alfonso Sellitto S.p.A

Benincasa S.R.L
Bioagriworld S.R.L
Campagnia Mercantile D'Oltremare S.R.L
Conditalia S.p.A
Conserve Italia Soc. Coop Agricola
Coop Solania A.R.L
Davia S.p.A
Della Peruta Vincenzo S.p.A
Felice Conserve S.R.L
Greci Industria Alimentare S.p.A
I.M.C.A S.p.A
Italorto Fine Food S.R.L
La Vera Napoli Soc Coop Agricola
Pancrazio S.p.A
Rispoli Luigi & C. S.R.L
Rodolfi Mansueto S.p.A

Table 5: Residual exporters

2.7 Submissions received from interested parties

The following submissions have been received from interested parties:

Interested Party	Date Received	Document No.¹⁸
Attianese S.p.A	23 January 2019	023
European Commission	21 August 2018	003
Mutti S.p.A	23 January 2019	024
Princes Industrie Alimentari S.r.L	24 January 2019	025
SPCA	10 October 2018	010

Table 6: Submissions

The matters raised in two submissions have been addressed in the relevant sections of this SEF.

The submissions dated 23 and 24 January 2019 will be addressed in the Final Report as to address these in the SEF would, in the Commissioner's opinion, prevent the timely placement of the SEF on the public record.

¹⁸ The submissions are available on the [EPR](#).

3. THE GOODS AND LIKE GOODS

3.1 Finding

The Commissioner considers that PPT produced locally is “like” to the goods subject to the anti-dumping measures. SPCA is responsible for over 98 per cent of the volume of like goods produced in Australia.

3.2 Legislative and policy framework

In order to be satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or recurrence of, dumping or subsidisation, the Commissioner firstly determines whether the goods produced by the Australian industry are “like” to the imported goods. Subsection 269T(1) defines like goods as:

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

The definition of like goods is relevant in the context of this inquiry in determining the normal value of goods exported to Australia, the non-injurious price (NIP) and the goods subject to the Notice. The Commission’s framework for assessing like goods is outlined in Chapter 2 of the *Dumping and Subsidy Manual* (the Manual).¹⁹

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:

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

The Commissioner must also consider whether the “like” goods are in fact produced in Australia. Subsection 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 subsection 269T(3), 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. The following analysis therefore establishes a framework for assessing whether dumping would cause injury to the Australian industry producing the like goods.

3.3 The goods

The goods subject to the anti-dumping measures and therefore this inquiry are:

¹⁹ Available on the Commission [website](#).

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

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

3.3.1 Tariff classification of the goods

The goods are currently classified to subheading 2002.10.00 (statistical code 60) in Schedule 3 to the *Customs Tariff Act 1995*.

3.4 Like goods

The applicant is a manufacturer of PPT in Australia. The Commission has considered the application and findings of previous investigations and publicly available information in its assessment of like goods.

Physical likeness

The locally produced goods and the imported goods are physically alike. Product recipes differ, however the major ingredient of the locally produced goods and the imported goods is raw tomatoes. The locally produced goods and the imported goods are available in similar packaging sizes of 400 gram (g) and 800 g net weighted cans. SPCA may use tomato paste as a thickening agent while the exporters subject to the investigation may use tomato juice concentrate for similar purposes. If the tin is opened, the contents of the exported goods and the locally produced goods are similar in colour, texture and flavours.

Commercial likeness

The goods produced by the Australian industry has a commercial likeness to the goods exported to Australia from Italy. The goods and the locally produced goods are sold to the same customers (predominantly supermarkets), and they compete directly within supermarkets to win sales to the end consumer. Consumer behaviour in the Australian market indicates the exported goods and the locally produced goods are interchangeable.

Functional likeness

The Commission is satisfied that the exported goods and locally produced goods perform the same functions and have the same or similar end uses, predominantly as an ingredient in the preparation of meals.

Production likeness

During the verification of SPCA's data, the Commission observed a flowchart outlining the production of the goods, and compared this to previous findings. Similar to findings in *Anti-Dumping Commission Report No. 276 (REP 276)*, the manufacture of the goods occurs, subject to weather, between February and April each year at its facility near Shepparton, Victoria. The production process is standardised for all products with marginal differences made at various production stages depending on specific product variables (such as cut profile and value adding).

Raw tomatoes are delivered to the facility on the same day that they are harvested from the vine. The delivered raw tomatoes are moved immediately to the processing line, so as to be washed and graded. The higher quality raw tomatoes are then steam-peeled, whilst the lower quality tomatoes are graded for use in the production of juice which is either used as filling in the canning process or evaporated and used to produce concentrates and paste products.

The peeled raw tomatoes are further graded to be sorted for processing according to cut profile, processed, and then all raw tomatoes are put into cans. Each can is filled with standardised ratios of raw tomatoes to liquid filling stage (juice that is derived from the earlier step). Products are then sorted by can size and cut profile. At this stage, depending on specific product requirements, certain cans are produced with additional ingredients such as herbs, spices and other flavouring (referred to as 'value added' products).

Once filled to product specifications, cans are sealed and pasteurised (cooked) to preserve the product and moved to cool to ambient temperature. Once cooled, all unlabelled cans (referred to as the 'bright can' stage) are moved to storage according to product grouping. Cans are then taken out of storage and labelled on an as-needed basis prior to shipping, depending on specific order requirements and customer demands.

The Commission conducted verification visits in Italy and observed similar production processes at the manufacturers which were visited. The Commission is therefore satisfied that the locally produced goods have a production likeness to the goods exported to Australia from Italy.

3.4.1 Other producers

The Commission has also considered other suppliers of the goods in Australia.

Safcol is a private label supplier for a Woolworths Ltd (Woolworths) brand product line. Safcol receives its processed tomatoes from Kagome Australia Pty Ltd (Kagome) according to an agreed recipe. Safcol then places the processed tomatoes into 400 g cans, pasteurises them and then labels the cans in preparation for delivery to Woolworths.

Noting that SPCA accounts for the vast majority of all PPT produced in Australia during the inquiry period and the absence of relevant data from Kagome, the Commission does not consider it necessary to determine whether Safcol is a member of the Australian industry producing like goods in the present case.

3.5 Conclusion

For the purpose of considering whether there is an Australian industry producing like goods, the Commissioner makes this determination by considering the description of the goods as a whole. Noting the very similar physical, commercial, functional and production likenesses between the goods the subject of this continuation inquiry and the goods produced by SPCA, and being satisfied that the manufacture of the goods is wholly carried out in Australia, the Commissioner is satisfied that there is an Australian industry producing like goods.

4. AUSTRALIAN MARKET

4.1 Summary

The Commission finds that the Australian market for the goods is supplied by the Australian industry and imports, primarily from Italy.

4.2 Approach to analysis

The Commission has examined data from the ABF import database and financial data from the Australian industry from 1 July 2013 to 30 June 2018, provided for the purposes of this inquiry. The Commission compared this to the data reported in REP 217.²⁰ The Commission has considered data from 1 July 2010 for the purpose of analysing trends in the market for the goods covered by the Notice and assessing potential injury factors.

The Commission's detailed analysis is contained in **Confidential Attachment 1** and **Confidential Attachment 2**.

4.3 Australian market

4.3.1 Market size

During the inquiry period, the Commission has found that the Australian market for the goods was approximately 47 million kilograms, comprising of goods sold by SPCA, Safcol, imports from Italy and imports from other countries.

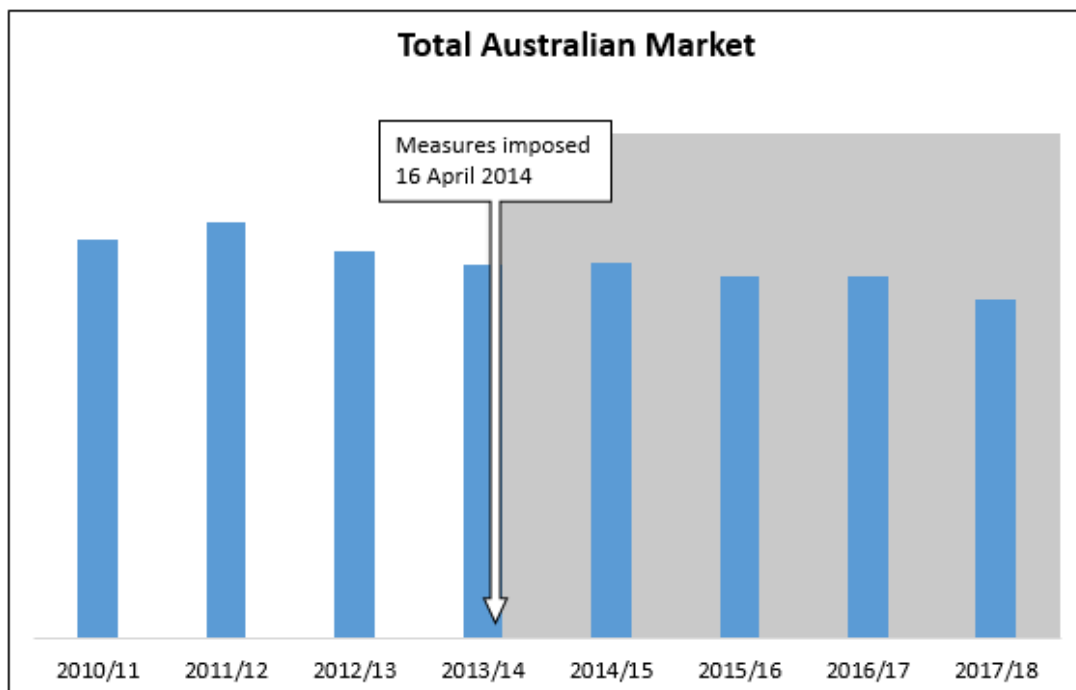


Figure 1: Australian market for Financial Year 2010/11 to Financial Year 2017/18

²⁰ EPR 217, <http://adcommission.gov.au/cases/Pages/ArchivedCases/EPR217.aspx>, original investigation.

The overall market has remained consistent year-on-year, with slight fluctuations throughout, as can be seen in Figure 1 above. The imposition of measures in financial year (FY) 2013/14 did not appear to have a significant impact on the overall market size.

4.3.2 Market structure

The goods produced by SPCA mostly compete with imported goods at the supermarket retail level of trade. Both SPCA and importers either supply the supermarkets directly or through traders and distributors (who, in turn, mostly supply the supermarket retailers).

SPCA is the largest Australian manufacturer of the goods in the Australian market. The Australian market is also supplied by Safcol, which supplies the Woolworths private label Australian diced 400 g cans.

The majority of imports from Italy are directly imported by the major supermarkets, with the majority of the remaining imports also being distributed to the major supermarkets through distributors and trading companies. Almost all of SPCA's sales are to the major supermarkets.

Imports of the goods from Italy make up more than 70 per cent of the Australian market. However, the Notice only applies to approximately 40 per cent of the total market (or around 55 per cent of all imports).

4.3.3 Buying arrangements

The Commission found that the goods can be separated into two major categories being supermarket owned "private labels" (ie. Coles, Woolworths, Essentials, Homebrand etc.) and supplier owned "proprietary labels" (Ardmona, Annalisa, Mutti, Val Verde etc.). Each of these categories contained tomatoes which were:

- diced / chopped / crushed;
- whole peeled;
- value added (e.g. addition of herbs and vegetables); and
- miscellaneous (e.g. baby tomatoes, cherry tomatoes and organic).

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

The Commission observed that private label tomatoes are mostly purchased through a tender process. Supermarkets issue tender briefs to the market which specify the characteristics essential to the private label product. In the majority of these tenders, a key characteristic is that the product is either of Italian or Australian origin. Other aspects considered are the quality of the goods, the price and the quantity which can be supplied.

The retail price of the supermarket owned private label goods is determined by the supermarket. For supplier owned proprietary label goods, although the supermarket is responsible for determining the end retail price, a marketing plan is put in place between the supplier and the supermarket. This plan outlines promotional activities which may take place throughout the year, often resulting in a number of promotional periods when the goods are discounted.

Supermarket shelf space is allocated by the supermarket, having regard to anticipated consumer demand and the revenue and profit forecast for each product.

4.3.4 Pricing tiers

The Commission obtained retail sales data from Coles and Woolworths in relation to the goods during the inquiry period. The Commission categorised the goods into four tiers of pricing:

- local proprietary label;
- Italian proprietary label;
- local private label; and
- Italian private label.

The Commission compared the lowest, highest and weighted average pricing of each of the tiers for the goods which make up the majority of all cans sold at the major supermarkets, being 390 g to 410 g diced, chopped and crushed cans sold at Coles and Woolworths during the inquiry period. Value added and miscellaneous categories were excluded to ensure a more precise comparison of products. The price comparison is shown in Figure 2; the Commission's detailed analysis is at **Confidential Attachment 3**.

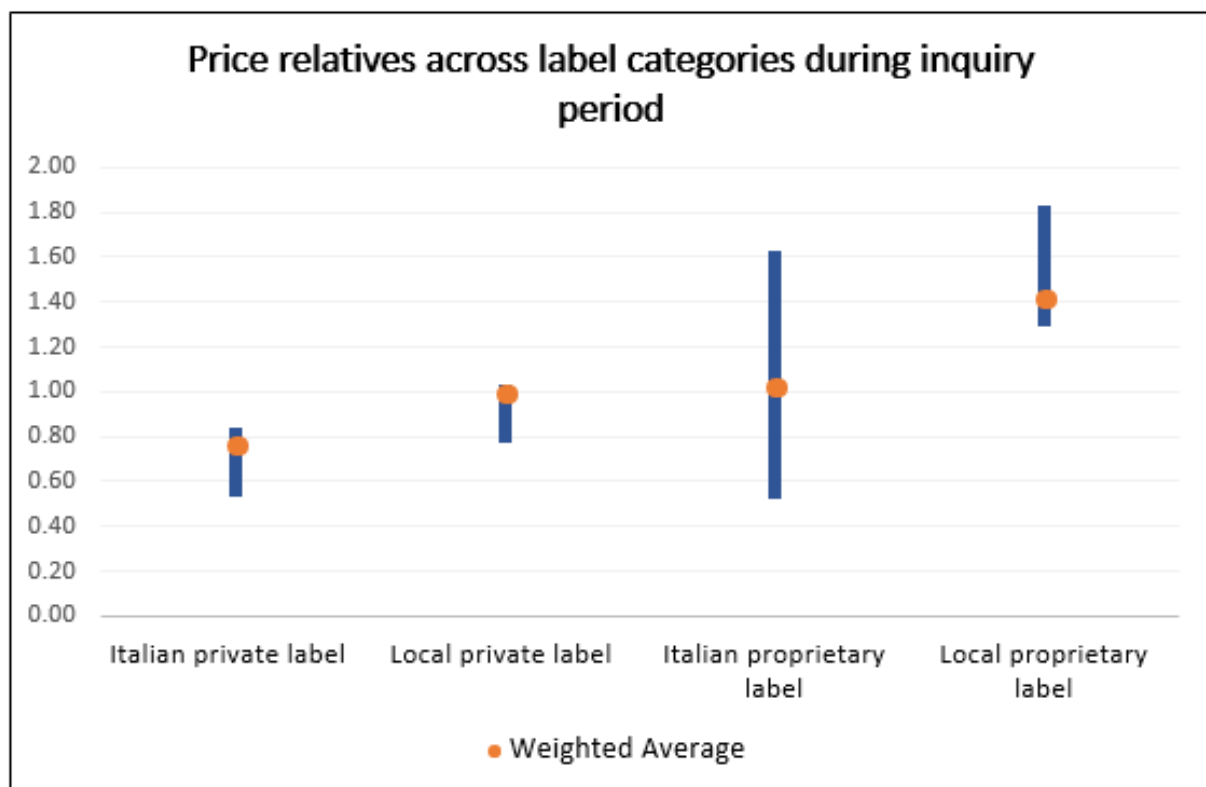


Figure 2: Lowest, highest and weighted average prices of 390-410 g diced, chopped and crushed cans at Coles and Woolworths during inquiry period

The Commission also compared the volumes of sales within these categories at Coles and Woolworths. As shown in Figure 3 below, the Italian private label category had the largest market share.

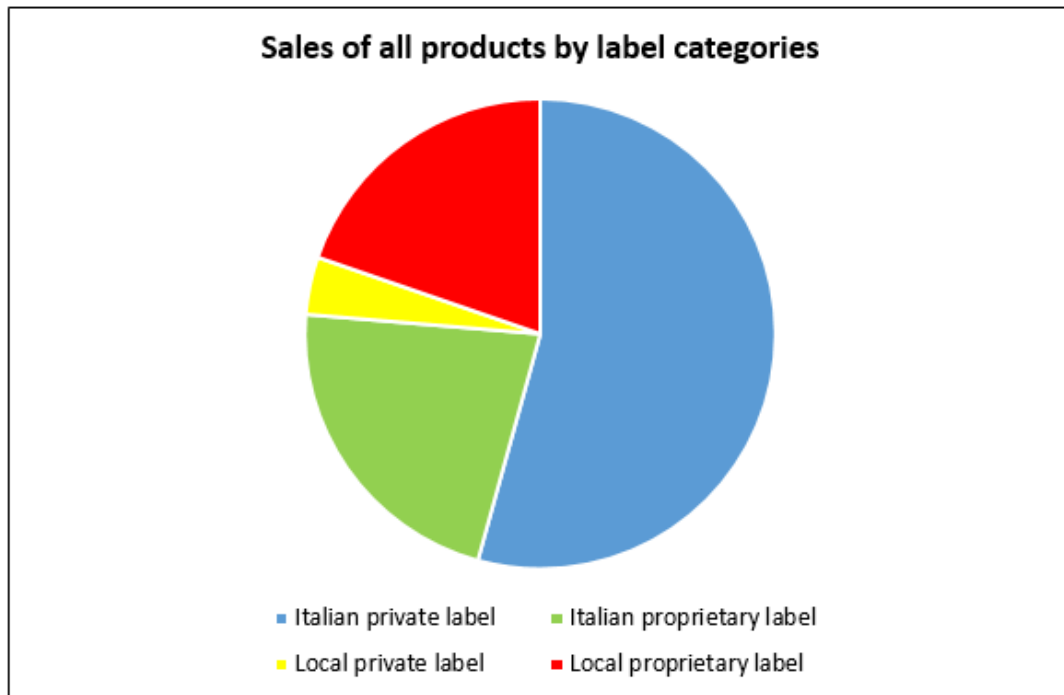


Figure 3: Market share at Coles and Woolworths

4.3.5 Pricing

The Commission has conducted a detailed analysis of pricing of PPT at Coles and Woolworths during the inquiry period. These supermarkets are responsible for the majority of imports from Italy and the majority of SPCA's sales. The Commission tested the effects that promotional activities and pricing have on volumes of the promoted goods sold on a weekly basis, as well as volume effects on other goods in the category during this time, both at the specific supermarket and across supermarkets. The analysis is contained in **Confidential Attachment 3**.

The Commission has observed that there is a seasonal trend for sales of PPT that sees an increase in sales occurring during colder weather. The least volume of PPT sales occurs around the Christmas / New Year period, however demand exists throughout the year.

Both Coles and Woolworths offered promotional activities and discount pricing on Italian proprietary tomatoes. Minimal to no promotional activities and discount pricing was offered on Italian private label, local private label or local proprietary tomatoes, hence those prices were typically flat throughout the inquiry period.

The Commission observes that the goods are somewhat price sensitive, with promotional pricing resulting in sales volumes of that product increasing significantly in response. However, this does not coincide with a comparable reduction in the sales volumes of local proprietary goods. The products which appear to be most affected by discounted prices of Italian proprietary labelled goods are Italian private label goods. Overall sales volumes of Italian PPT increase significantly when heavy discounting occurs, with no concurrent decrease in sales volumes of locally produced PPT. This is likely due to the discounted pricing resulting in these goods being at the same or a similar price point as the Italian private label goods. The Commission's interpretation is that price discounting tends to encourage consumers to increase their purchase volumes of their preferred product in terms of origin, rather than prompting consumers to substantially switch to an alternative.

5. ECONOMIC CONDITION OF THE AUSTRALIAN INDUSTRY

5.1 Approach to analysis

This chapter considers the economic condition of the Australian industry during the injury analysis period. Given SPCA is the sole applicant for this inquiry and is responsible for almost the entire Australian production and sale of the goods, the analysis detailed in this chapter is based on verified financial information submitted by SPCA and import data from the ABF for both the original investigation period and the current inquiry. The injury analysis period in REP 217 was from 1 January 2009, however the Commission has focused on data from 1 July 2010 for the purposes of this inquiry due to a gap in some information from the original investigation.

Analysis of data for the injury analysis period allows the Commission to identify trends in the economic condition of the Australian industry before and after the imposition of the anti-dumping measures. The Commission's graphs have been produced using a consistent scale for volumes, prices, costs, profit and profitability.

The original data and analysis on which the Commission has relied to assess the economic position of the Australian industry is at **Confidential Attachment 2**.

Consideration of whether the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measure is intended to prevent (as opposed to other factors) is considered in Chapter 7 of this SEF.

5.2 Findings in original investigation

REP 217 found that SPCA had experienced injury in the form of:

- price depression;
- price suppression;
- reduced profit;
- reduced profitability;
- reduced sales revenue;
- reduced return on income; and
- loss of employment.

5.3 Volume effects

5.3.1 Sales volume

The following graph demonstrates SPCA's total sales volumes for the goods in the Australian market since July 2010. The sales volumes have fluctuated year-on-year with a slight increase in the year following the imposition of measures, and a similar decrease the following year.

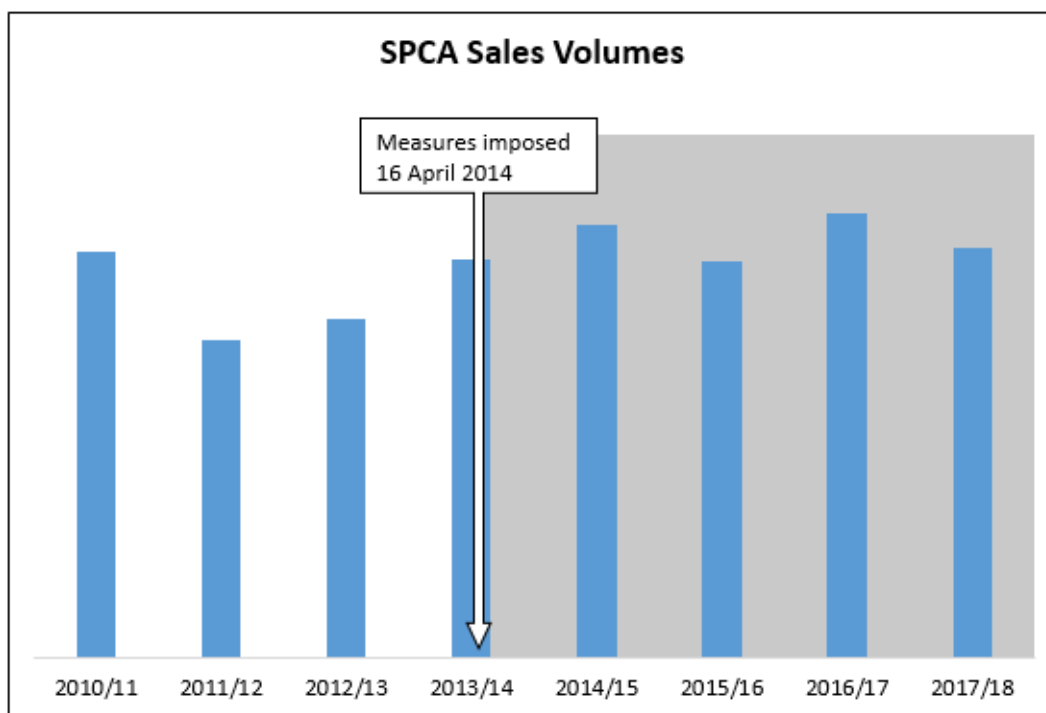


Figure 4 – SPCA's PPT sales volume

5.3.2 Market share

Figure 5, below, demonstrates movements in market share in the Australian PPT market during the injury analysis period. SPCA has slightly increased its market share post the imposition of measures in FY 2013/14, however this appears to have been as a result of decreases in exports from countries other than Italy in the context of a declining market (as shown in Figure).

Market share of imports from Italy has not been affected by the imposition of measures, with the majority of imports from Italy being from exporters which are not subject to measures. In FY 2017/18 the market share of Italian exporters not subject to the Notice has decreased significantly, resulting in an increase in the market share held by all other manufacturers, including SPCA.

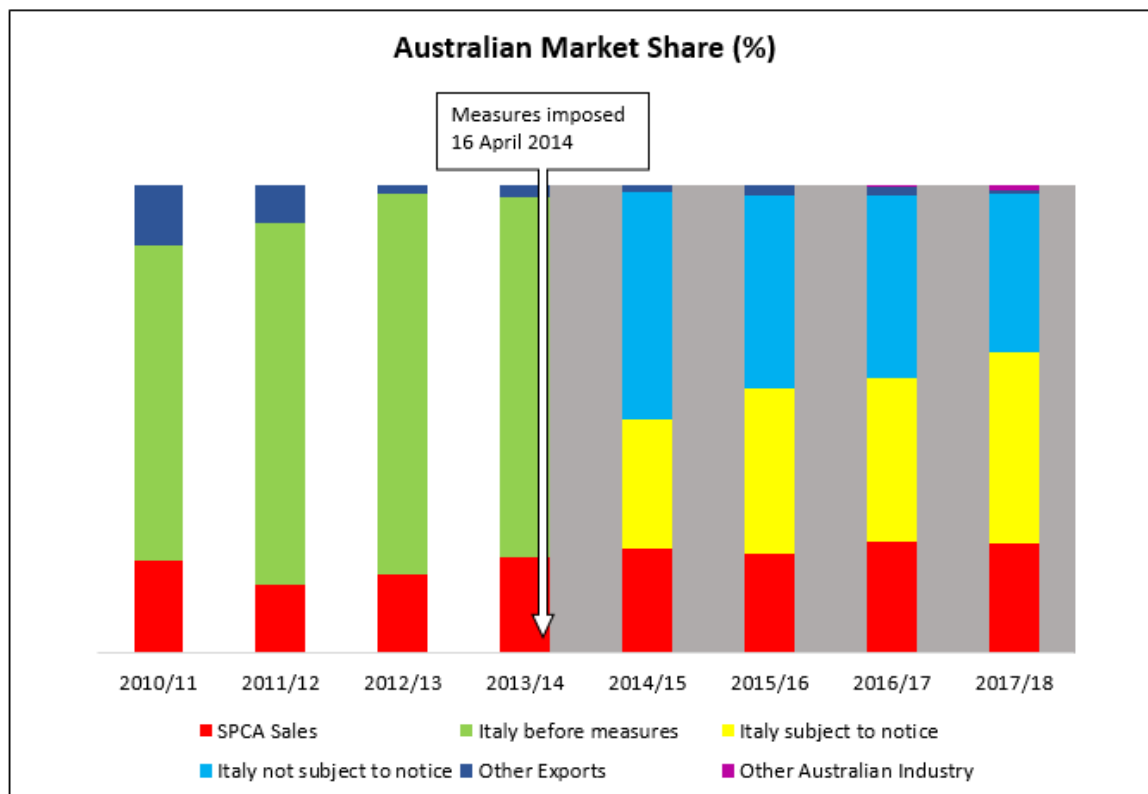


Figure 5 – PPT Australian market shares

5.4 Price effects

The following graph compares SPCA's unit price and unit cost to make and sell (CTMS) for PPT from FY 2010/11.

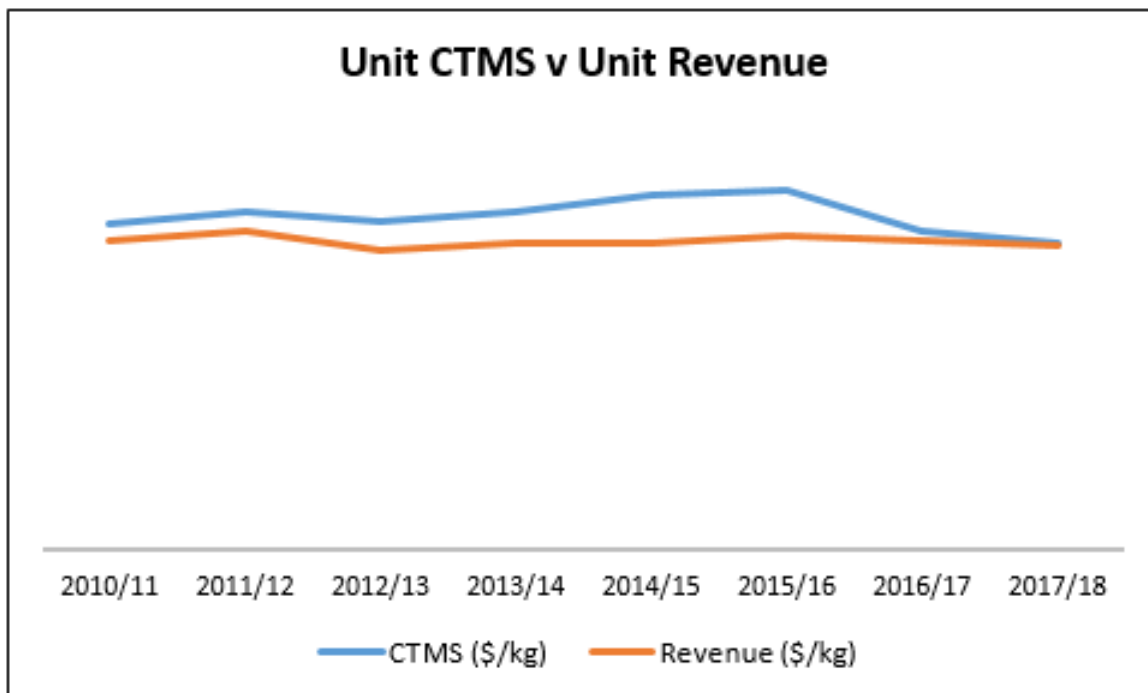


Figure 6 – Comparison of unit selling price and unit CTMS for SPCA

SPCA has been in an unprofitable position on a per unit basis throughout the period of analysis for the goods. There was no significant change to SPCA's unit sales revenue following the imposition of the measures.

The Commission has established that the increased CTMS between FY 2013/14 and FY 2015/16 was due to SPCA incurring an additional recurring indirect cost during this period. The significant reduction in CTMS in the final two years of the period examined was due to this indirect expense being written off.

5.5 Profit and profitability

The following graph shows trends in SPCA's profit and profitability.²¹

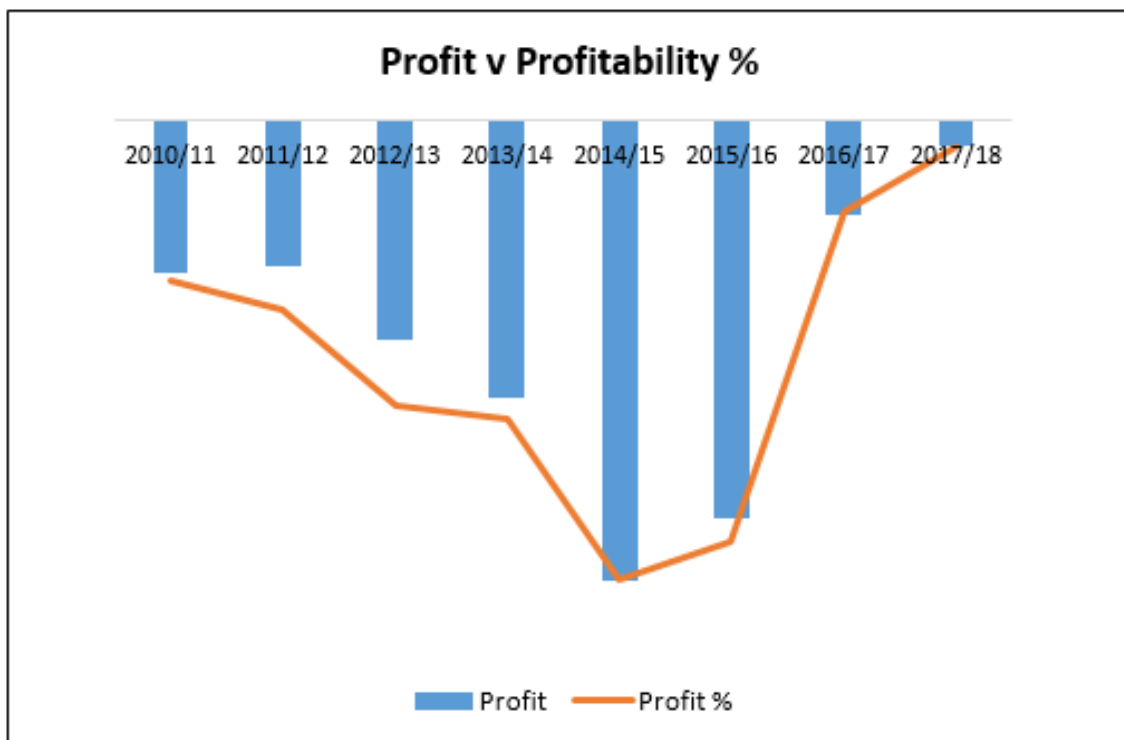


Figure 7 – Comparison of SPCA's profit (\$) and profitability (%)

As can be seen in Figure 7, SPCA's sales of the goods have not been profitable throughout the analysis period. SPCA were least profitable in the two years immediately following the imposition of the measures, however this was the result of an additional recurring indirect cost incurred during this period, with improvements in profitability after the recurring expense was written off.

5.6 Other injury factors

The Commission makes the following observations on the information provided by SPCA in relation to other injury factors between 1 July 2013 and 30 June 2018:

- asset values have trended down significantly post FY 2015/16 and have remained stable to FY 2017/18;

²¹ As a percentage of sales revenue.

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- capital investment has trended down significantly post FY 2015/16 and has remained stable to FY2017/18;
- actual production of like goods and capacity utilisation improved in FY 2017/18; and
- revenue has remained stable since FY 2013/14.

6. ASCERTAINMENT OF VARIABLE FACTORS

6.1 Finding

For the purpose of assessing whether the expiration of the measures would lead, or would be likely to lead, to the continuation or recurrence of dumping, the Commissioner has ascertained all variable factors relevant to the taking of the measures during the inquiry period. The Commissioner has found that the variable factors have changed for all exporters.²²

6.2 Legislative framework

In accordance with subsection 269ZHF(2), the Commissioner must not recommend that the Minister take steps to secure the continuation of anti-dumping measures unless the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, dumping. The existence of dumping during the inquiry period may be an indicator of whether dumping may occur in the future.

Dumping occurs when a product from one country is exported to another country at a price less than its normal value. The export price and normal value of goods are determined under sections 269TAB and 269TAC respectively. Further details of the export price and normal value calculations for each exporter are set out below.

Dumping margins are determined under section 269TACB.

6.3 Calculation of dumping margins

For all dumping margins calculated for the purposes of this inquiry, the Commission compared the weighted average export prices over the whole of the inquiry period with the weighted average of corresponding normal values over the whole of that period, in accordance with subsection 269TACB(2)(a).

6.3.1 Uncooperative exporters

Subsection 269T(1) provides that an exporter is an “uncooperative exporter” where the Commissioner is satisfied that an exporter did not give the Commissioner information that the Commissioner considered to be relevant to the continuation inquiry within a period the Commissioner considered to be reasonable, or where the Commissioner is satisfied that an exporter significantly impeded the investigation.

The *Customs (Extensions of Time and Non-cooperation) Direction 2015* (the Direction) states at section 8 that the Commissioner must determine an exporter to be an uncooperative exporter, on the basis that no relevant information was provided in a reasonable period, if that exporter fails to provide a response or fails to request a longer period to do so within the legislated period.

²² The variable factors are export price and normal value (examined in this chapter) and non-injurious price (examined in Chapter 8).

After having regard to the Direction, the Commissioner has determined that all exporters which did not provide a response to the exporter questionnaire or the PIR, or which did not request a longer period to provide a response within the legislated period (being 37 days, concluding on 22 August 2018), are uncooperative exporters for the purposes of this inquiry.

6.3.2 Residual exporters

Subsection 269TACAB(2) sets out that the export price for residual exporters must not be less than the weighted average of export prices for like goods of cooperative exporters from the same country. The normal value for residual exporters must not exceed the weighted average of normal values for like goods of cooperative exporters from the same country.

6.3.3 Submission from SPCA regarding competitive costs of tomatoes

SPCA submitted that the Commission in *Anti-Dumping Commission Reinvestigation Report No. 360* and the Anti-Dumping Review Panel (ADRP) in *Report No. 56* have incorrectly interpreted how the European Union's *Common Agricultural Policy* payments are received and the impact these have on the costs of raw tomatoes in Italy.²³

The Commission noted that no evidence in addition to that which had already been provided in the context of the reinvestigation and the ADRP's review of the relevant reviewable decision was included in SPCA's submission. The Commission therefore invited SPCA to provide further evidence with respect to its claims. No further evidence was provided by SPCA.

The Commission considers that the matters raised by SPCA were addressed in those previous cases, and has had no further regard to the submission.

6.4 Attianese S.p.A

The Commission conducted an onsite verification of the data submitted by Attianese S.p.A (Attianese) in its response to the exporter questionnaire (REQ).²⁴ The Commission is satisfied that the information provided by Attianese is accurate and reliable for the purpose of ascertaining the variable factors applicable to its exports of the goods.

6.4.1 Export price

In respect of all Australian sales of PPT made by Attianese during the inquiry period, the Commission has considered the following factors to determine whether exports from Attianese were arms length transactions.

The Commission is satisfied that there was no evidence that:

- there was any consideration payable for, or in respect of, the goods other than their price; or
- the price was influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or

²³ Submission dated 10 October 2018, [Document 010](#) on the EPR.

²⁴ The visit report is [Document 022](#) on the EPR.

- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.

The Commission generally identifies the exporter as a principal in the transaction, located in the country of export from where the goods were shipped, that gave up responsibility by knowingly placing the goods in the hands of a carrier, courier, forwarding company, or its own vehicle for delivery to Australia; or a principal in the transaction, located in the country of export, that owns, or previously owned, the goods but need not be the owner at the time the goods were shipped.

Attianese produced the goods, and exported these to its unrelated customers in Australia. The Commission is therefore satisfied that Attianese is the exporter and that the goods were exported to Australia otherwise than by the importer, and were purchased in arms length transactions by the importer from the exporter.

The export price for Attianese was therefore calculated under subsection 269TAB(1)(a), as the price paid by the importer to the exporter, less transport and other costs arising after exportation.

6.4.2 Normal value

The Commission is satisfied that there were sufficient domestic sales of like goods in the ordinary course of trade (OCOT) for two models of PPT and was able to derive the normal value for these models under subsection 269TAC(1). To test whether the like goods were at prices that were within the OCOT, the Commission compared the revenue for each domestic sale to the corresponding CTMS to test whether those sales were profitable.

The Commission is not satisfied that there were sufficient sales of like goods in the domestic market for three models of PPT to enable the use of domestic sales under subsection 269TAC(1). The Commission constructed the normal value under subsection 269TAC(2)(c) for these three models that did not have sufficient domestic sales volumes, using Attianese's:

- cost to make the goods exported to Australia in accordance with subsection 43(2) of *Customs (International Obligations) Regulation 2015* (the Regulation); plus
- selling, general and administrative expenses (SG&A) amounts on the assumption that the goods, instead of being exported, were sold domestically in accordance with subsection 44(2) of the Regulation; and,
- an amount for profit in accordance with subsection 45(2) of the Regulation, based on domestic sales of like goods made in the OCOT.

Adjustments

The Commission is satisfied that there is sufficient and reliable information to justify the following adjustments, in accordance with subsections 269TAC(8) and (9), and considers these adjustments are necessary to ensure a fair comparison of normal values and export prices.

Adjustment Type	Deduction/addition
Domestic packaging	Deduct the cost of domestic packaging
Domestic credit	Deduct the cost of domestic credit
Inland Transport	Deduct the cost of inland transport
Domestic commissions	Deduct the cost of domestic commissions
Export packaging	Add the cost of export packaging
Export inland transport and handling	Add the cost of export inland transport handling
Export credit	Add the cost of export credit
Export commissions	Add the cost of export commissions

Table 7 – Adjustments to normal value for Attianese

6.4.3 Dumping margin

The Commission has calculated a dumping margin in respect of the goods exported to Australia by Attianese for the inquiry period. The margin is **negative 13.6 per cent**.

The Commission's calculations are included at **Confidential Attachment 5**.

6.5 Calispa S.p.A

The Commission conducted an onsite verification of the data submitted by Calispa S.p.A (Calispa) in its REQ.²⁵ The Commission is satisfied that the information provided by Calispa is accurate and reliable for the purpose of ascertaining the variable factors applicable to its exports of the goods.

6.5.1 Export price

In respect of all Australian sales of PPT made by Calispa during the inquiry period, the Commission has considered the following factors to determine whether exports from Calispa were arms length transactions.

The Commission is satisfied that there was no evidence that:

- there was any consideration payable for, or in respect of, the goods other than their price; or
- the price was influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.

Calispa produced the goods, and exported these to its unrelated customers in Australia either directly or via intermediaries. The Commission is therefore satisfied that Calispa is the exporter and that, in respect of its direct sales, the goods were exported to Australia otherwise than by the importer and were purchased in arms length transactions by the importer from the exporter.

²⁵ The visit report is [Document 017](#) on the EPR.

The export price for Calispa for these sales was therefore calculated under subsection 269TAB(1)(a), as the price paid by the importer to the exporter, less transport and other costs arising after exportation.

The Commission is satisfied that, for all other Australian sales by Calispa, these transactions did not involve the direct purchase of the goods by the importer from the exporter and therefore the export price for Calispa for these sales could not be calculated under subsection 269TAB(1)(a) or 269TAB(1)(b). The export price was therefore calculated under subsection 269TAB(1)(c), as the price paid or payable for the goods by the intermediaries, less (as appropriate) transport and other post exportation costs.

6.5.2 Normal value

The Commission is satisfied that there are sufficient volumes of domestic sales of like goods, for all models of PPT exported to Australia, that were arms length transactions and at prices that were within OCOT. The Commission is therefore satisfied that the prices paid in respect of domestic sales of PPT are suitable for assessing normal value under subsection 269TAC(1).

Adjustments

The Commission is satisfied that there is sufficient and reliable information to justify the following adjustments, in accordance with subsection 269TAC(8), and considers these adjustments are necessary to ensure a fair comparison of normal values and export prices.

Adjustment Type	Deduction/addition
Domestic credit terms	Deduct the cost of domestic credit terms
Domestic commissions	Deduct the cost of domestic commissions paid
Domestic packaging	Deduct the cost of domestic packaging
Domestic inland transport	Deduct the cost of domestic inland transport
Export packaging	Add the cost of Australian packaging
Export inland transport and handling	Add the cost of Australian export inland transport and handling
Australian credit terms	Add the cost of Australian credit terms

Table 8 – Adjustments to normal value for Calispa

6.5.3 Dumping margin

The Commission has calculated a dumping margin in respect of the goods exported to Australia by Calispa for the inquiry period. The margin is **negative 16.1 per cent**.

The Commission's calculations are included at **Confidential Attachment 5**.

6.6 De Clemente Conserve S.p.A

The Commission conducted an onsite verification of the data submitted by De Clemente Conserve S.p.A (De Clemente) in its REQ.²⁶ The Commission is satisfied that the information provided by De Clemente is accurate and reliable for the purpose of ascertaining the variable factors applicable to its exports of the goods.

6.6.1 Export price

In respect of all Australian sales of PPT made by De Clemente during the inquiry period, the Commission has considered the following factors to determine whether exports from De Clemente were arms length transactions.

The Commission is satisfied that there was no evidence that:

- there was any consideration payable for, or in respect of, the goods other than their price; or
- the price was influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.

De Clemente produced the goods and exported these to its unrelated customers in Australia either directly or via intermediaries. The Commission is therefore satisfied that De Clemente is the exporter and that, in respect of its direct sales, the goods were exported to Australia otherwise than by the importer and were purchased in arms length transactions by the importer from the exporter. The export price for De Clemente for these sales was therefore calculated under subsection 269TAB(1)(a), as the price paid by the importer to the exporter, less transport and other costs arising after exportation.

The Commission is satisfied that, for all other Australian sales by De Clemente, these transactions did not involve the direct purchase of the goods by the importer from the exporter and therefore the export price for De Clemente for these sales could not be calculated under subsection 269TAB(1)(a) or 269TAB(1)(b). The export price was therefore calculated under subsection 269TAB(1)(c), as the price paid or payable for the goods by the intermediaries, less (as appropriate) transport and other post exportation costs.

6.6.2 Normal value

The Commission is satisfied that there are sufficient volumes of domestic sales of like goods, for all models of PPT exported to Australia, that were arms length transactions and at prices that were within the OCOT. The Commission is therefore satisfied that the prices paid in respect of domestic sales of PPT are suitable for assessing normal value under subsection 269TAC(1).

²⁶ The visit report is [Document 019](#) on the EPR.

Adjustments

The Commission is satisfied that there is sufficient and reliable information to justify the following adjustments, in accordance with subsection 269TAC(8), and considers these adjustments are necessary to ensure a fair comparison of normal values and export prices.

Adjustment Type	Deduction/addition
Domestic packaging	Deduct the cost of domestic packaging
Domestic inland transport and handling	Deduct the cost of domestic inland transport and handling
Domestic credit	Deduct the cost of domestic credit
Domestic debt insurance	Deduct the cost of domestic debt insurance
Domestic commissions	Deduct the cost of domestic commissions
Domestic pallet rental	Deduct the cost of domestic pallet rental
Export packaging	Add the cost of export packaging
Export inland transport and port charges	Add the cost of export inland transport and port charges
Export credit	Add the cost of export credit
Export debt insurance	Add the cost of export debt insurance
Export commissions	Add the cost of export commissions

Table 9 – Adjustments to normal value for De Clemente

6.6.3 Dumping margin

The Commission has calculated a dumping margin in respect of the goods exported to Australia by De Clemente for the inquiry period. The margin is **negative 8.6 per cent**.

The Commission's calculations are included at **Confidential Attachment 5**.

6.7 Princes Industrie Alimentari S.r.L

The Commission conducted an onsite verification of the data submitted by Princes in its REQ.²⁷ The Commission is satisfied that the information provided by Princes is accurate and reliable for the purpose of ascertaining the variable factors applicable to its exports of the goods.

6.7.1 Export price

In respect of all Australian sales of PPT made by Princes during the inquiry period, the Commission has considered the following factors to determine whether exports from Princes were arms length transactions.

The Commission is satisfied that there was no evidence that:

- there was any consideration payable for, or in respect of, the goods other than their price; or
- the price was influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or

²⁷ The visit report is [Document 020](#) on the EPR.

- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.

Princes produced the goods and exported these to its unrelated customers in Australia either directly or via intermediaries. The Commission is therefore satisfied that Princes is the exporter and that, in respect of its direct sales, the goods were exported to Australia otherwise than by the importer and were purchased in arms length transactions by the importer from the exporter. The export price for Princes for these sales was therefore calculated under subsection 269TAB(1)(a), as the price paid by the importer to the exporter, less transport and other costs arising after exportation.

The Commission is satisfied that, for all other Australian sales by Princes, these transactions did not involve the direct purchase of the goods by the importer from the exporter and therefore the export price for Princes for these sales could not be calculated under subsection 269TAB(1)(a) or 269TAB(1)(b). The export price was therefore calculated under subsection 269TAB(1)(c), as the price paid or payable for the goods by the intermediaries, less (as appropriate) transport and other post exportation costs.

6.7.2 Normal value

The Commission is satisfied that there was an absence of sufficient volumes of domestic sales of like goods, for all models of PPT exported to Australia that were arms length transactions and at prices that were within the OCOT. The Commission is therefore satisfied that the prices paid in respect of domestic sales of PPT are not suitable for assessing normal value under subsection 269TAC(1).

The Commission has calculated normal values for all domestic models sold by Princes under subsection 269TAC(2)(c) and in accordance with the Regulation using Princes':

- cost to make the goods exported to Australia in accordance with subsection 43(2) of the Regulation; plus
- SG&A amounts on the assumption that the goods, instead of being exported, were sold domestically in accordance with subsection 44(2) of the Regulation; and,
- an amount for profit in accordance with subsection 45(2) of the Regulation, based on those domestic sales of like goods which were made in the OCOT.

Adjustments

The Commission is satisfied that there is sufficient and reliable information to justify the following adjustments, in accordance with subsection 269TAC(9), and considers these adjustments are necessary to ensure a fair comparison of normal values and export prices.

Adjustment Type	Deduction/addition
Domestic packaging	Deduct the cost of domestic packaging
Domestic credit	Deduct the cost of domestic credit
Domestic commissions	Deduct the cost of domestic commissions
Export packaging	Add the cost of export packaging
Export inland transport and handling	Add the cost of export inland transport and handling
Export credit	Add the cost of export credit

Table 10 – Adjustments to normal value for Princes

6.7.3 Dumping margin

The Commission has calculated a dumping margin in respect of the goods exported to Australia by Princes for the inquiry period. The margin is **10.2 per cent**.

The Commission's calculations are included at **Confidential Attachment 5**.

6.8 Mutti S.p.A

The Commission elected not to conduct an onsite verification of the data submitted by Mutti S.p.A (Mutti) in its REQ. The Commission conducted a risk assessment of all information available to it about the goods exported by Mutti from Italy, and compared the information provided by Mutti in its REQ with other verified data obtained from other exporters from Italy.²⁸ The Commission is satisfied that the information is accurate and reliable for the purpose of ascertaining the variable factors applicable to its exports of the goods.

6.8.1 Export price

In respect of all Australian sales of PPT made by Mutti during the inquiry period, the Commission has considered the following factors to determine whether exports from Mutti were arms length transactions.

The Commission is satisfied that that there was no evidence that:

- there was any consideration payable for, or in respect of, the goods other than their price; or
- the price was influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.

Mutti produced the goods, and exported these to its unrelated customers in Australia. The Commission is therefore satisfied that Mutti is the exporter and the goods, for all Australian sales, were exported to Australia otherwise than by the importer and were purchased in arms length transactions by the importer from the exporter.

²⁸ The verification report is [Document 018](#) on the EPR.

The export price for Mutti for these sales was therefore calculated under subsection 269TAB(1)(a), as the price paid by the importer to the exporter, less transport and other costs arising after exportation.

6.8.2 Normal value

The Commission is satisfied that there were sufficient domestic sales of like goods in the OCOT for three models of PPT and was able to derive the normal value for these models under subsection 269TAC(1).

For one model where there were not sufficient domestic sales in the OCOT, the Commission constructed the normal value under subsection 269TAC(2)(c) using Mutti's:

- cost to make the goods exported to Australia in accordance with subsection 43(2) of the Regulation; plus
- SG&A amounts on the assumption that the goods, instead of being exported, were sold domestically in accordance with subsection 44(2) of the Regulation; and,
- an amount for profit in accordance with subsection 45(2) of the Regulation, based on domestic sales of like goods made in the OCOT.

Adjustments

The Commission is satisfied that there is sufficient and reliable information to justify the following adjustments, in accordance with subsections 269TAC(8) and (9), and considers these adjustments are necessary to ensure a fair comparison of normal values and export prices.

Adjustment Type	Deduction/addition
Domestic packaging	Deduct the cost of domestic packaging
Domestic inland transport and handling	Deduct the cost of domestic inland transport and handling
Domestic promotional marketing	Deduct the cost of domestic promotional marketing
Domestic commissions	Deduct the cost of domestic commissions
Domestic credit	Deduct the cost of domestic credit
Export packaging	Add the cost of export packaging
Export inland transport and handling	Add the cost of export inland transport and handling
Export promotional marketing	Add the cost of export promotional marketing
Export commissions	Add the cost of export commissions
Export credit	Add the cost of export credit

Table 11 – Adjustments to normal value for Mutti

6.8.3 Dumping margin

The Commission has calculated a dumping margin in respect of the goods exported to Australia by Mutti for the inquiry period. The margin is **negative 1.3 per cent**.

The Commission's calculations are included at **Confidential Attachment 5**.

6.9 Residual exporters

As provided for in subsection 269TACAB(2), for residual exporters, export price and normal value have been calculated by comparing the weighted average export price with the weighted average normal value established for all cooperative exporters of the goods from Italy. The Commission's calculations are included at **Confidential Attachment 1**.

The Commission has established a dumping margin of **negative 6.3 per cent** for residual exporters of the goods from Italy.

6.10 Uncooperative and all other exporters

As provided for in subsection 269TACAB(1), for uncooperative exporters, export price and normal value were worked out in accordance with subsection 269TAB(3) and subsection 269TAC(6) respectively, by having regard to all relevant information. The Commission's calculations are included at **Confidential Attachment 1**.

The Commission established an export price under subsection 269TAB(3), being the lowest weighted average export price at Free on Board (FOB) terms established amongst the cooperating exporters (Attianese, Calispa, De Clemente, Mutti and Princes).

The Commission established a normal value under subsection 269TAC(6), having regard to the highest weighted average normal value of PPT established amongst the cooperating exporters (Attianese, Calispa, De Clemente, Mutti and Princes), adjusted to FOB level.

The Commission has established a dumping margin of **90.1 per cent** for uncooperative and all other exporters of the goods from Italy.

6.11 Conclusion

The Commission has ascertained the following dumping margins.

Country	Exporter	Dumping Margin
Italy	Attianese	-13.6%
	Calispa	-16.1%
	De Clemente	-8.6%
	Mutti	-1.3%
	Princes	10.2%
	Residual exporters	-6.3%
	All other exporters	90.1%

Table 12 – Dumping margins in inquiry period

7. LIKELIHOOD THAT DUMPING AND MATERIAL INJURY WILL CONTINUE OR RECUR

7.1 Findings

On the basis of the evidence currently available, the Commissioner is satisfied that the expiration of the measures applying to PPT exported to Australia from Italy by Princes would lead, or would be likely to lead, to a continuation of, or recurrence of dumping. The Commissioner is not satisfied that dumping by all other exporters is likely to recur in the absence of the measures.

The Commissioner is not satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent for PPT exported to Australia from Italy.

7.2 Legislative framework

Subsection 269ZHF(2) provides that the Commissioner must not recommend that the Minister take steps to secure the continuation of anti-dumping measures unless the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measures are intended to prevent.

The Commission notes that its assessment of the likelihood of certain events occurring and their anticipated effect, as is required in a continuation inquiry, necessarily requires an assessment of a hypothetical situation. This view has been supported by the ADRP, which noted that the Commission must consider what will happen in the future should a certain event, being the expiry of the measures, occur. However, the Commissioner's conclusions and recommendation must nevertheless be based on facts.²⁹

7.2.1 The Commission's approach

In assessing the likelihood of whether dumping and material injury will continue or recur, a number of factors are relevant, as outlined in the Manual.³⁰ The Commission's view is that the relevance of each factor will vary depending on the nature of the goods being examined and the market into which the goods are being sold. No one factor can necessarily provide decisive guidance.

The following analysis therefore examines a range of factors which the Commission considers relevant to this inquiry.

7.3 Will dumping continue or recur?

7.3.1 Dumping during the inquiry period

Chapter 6 sets out dumping margins established in the inquiry period. These margins have been relied upon by the Commission for the purposes of this SEF.

²⁹ [ADRP Report No. 44](#) (Clear Float Glass) refers.

³⁰ Pages 174-176 refer.

The dumping margins are reproduced below:

Country	Exporter	Dumping Margin
Italy	Attianese	-13.6%
	Calispa	-16.1%
	De Clemente	-8.6%
	Mutti	-1.3%
	Princes	10.2%
	Residual exporters ³¹	-6.3%
	All other exporters	90.1%

Table 13: Dumping margins in inquiry period

The Commission has established that Princes dumped PPT in the Australian market during the inquiry period. All other exporters are responsible for only 0.3% of the Australian market.

7.3.2 Patterns of trade at dumped prices

Princes supplied less than 10 per cent of the Australian market during the inquiry period. Following the imposition of a low dumping margin in the most recently completed review of measures, as reported in *Anti-Dumping Commission Report Nos. 349 and 354* (REP 349/354), Princes increased the amount of dumping in the inquiry period. The Commission therefore considers that there is a pattern of Princes' exports to Australia being at dumped prices.

Of the exporters not found to be dumping during the inquiry period, the Commission observes that Attianese, Calispa and De Clemente were subject to a floor price following the most recently completed review of measures. This suggests that these exporters have a limited propensity to dump.

For Mutti, it was found to have dumped during the review period examined in REP 349/354 (3.9 per cent). It has continued to export the goods, but has not dumped during the inquiry period. The Commission notes that Mutti's products tend to be higher priced than those of all other exporters.

7.3.3 Capacity to produce PPT and exporter profitability

The Commission has analysed the spare capacity available for each of the cooperating exporters in Italy and found that each has spare volumes available, with each capable of supplying the majority of the Australian market. The Commission notes that sales to Australia make up a minority of all sales by each exporter.

The Commission also notes that, on average, the domestic and Australian sales by the majority of the cooperating exporters are profitable.

³¹ The residual exporters are listed in Table 5 in this report.

7.4 Will injury continue or recur?

7.4.1 Australian industry's claims

SPCA's claims regarding the continuation or recurrence of injury are that:

- exporters of the goods from Italy have maintained distribution links into the Australian market since the imposition of the original measures;
- imports from Italy have continued following the imposition of the original measures;
- capacity to supply Australia exists, evidenced by the increasing number of accelerated review applications from Italy for the goods; and
- if the measures are removed, exporters will be able to offer canned tomatoes to supermarkets at prices that will increase the current undercutting of SPCA's prices.

Therefore, SPCA claims that it is reasonable to expect that the expiration of the current measures would lead, or would be likely to lead, to a continuation of the material injury that the measures were intended to prevent.

7.4.2 Import volumes

The Commission has established in Chapter 4 that the volume of exports from Italy to Australia and the respective shares of the market have changed only marginally since the measures were imposed.

The volume of exports from exporters subject to the measures has increased year-on-year since the imposition of the measures, which has occurred almost in direct correlation with decreases, year-on-year, in volumes from exporters from Italy who are exempt from measures, and / or not subject to the Notice.

Additionally, the Commission has specifically examined the volume of goods exported by the only exporter found to have been dumping during the inquiry period, Princes. Almost all of the goods supplied by Princes were to two major importers. For the first of these importers, Princes' exports ceased in April 2018 (the supply arrangement shifted to an alternative supplier of undumped goods on normal commercial terms). For the second of these importers, Princes was one of three suppliers of a single product line that was sold in supermarkets. The other two importers were found to be supplying the goods at undumped prices.

For these reasons, the Commission considers that the imposition of the measures did not have a material impact on import volumes of the goods from Italy. The Commission considers that the continuation of the measures would be likely to have little, if any, impact on future import volumes of PPT from Italy.

The Commission's analysis is in **Confidential Attachment 1**.

7.4.3 Impact of measures on market share

The Commission has examined shifts in market share and observed that, for specific exporters found to be dumping in REP 217 and REP 276, market share has shifted in favour of exporters with comparatively lower anti-dumping measures (such as a lower floor price and / or a lower *ad valorem* rate for IDD). The overall market share of the goods exported from Italy, however, has remained stable over that time.

The Commission has observed shifts between exporters subject to the Notice and those which are not on a year-to-year basis since the imposition of the measures. The majority of imports of PPT from Italy since the imposition of measures have been from exporters not subject to the Notice, but during the inquiry period the subject exporters accounted for the majority of imports for the first time.

7.4.4 Impact of measures on prices

The Commission has considered the impact of dumping on the pricing tiers at supermarkets described at Chapter 4. The major supermarkets sell the goods supplied by both Australian and Italian suppliers. Evidence presented to the Commission by at least one supermarket suggests that tender documents for private label tomatoes specifically request submissions for Australian or Italian tomatoes. Both of the major supermarkets stock an Australian private label and an Italian private label category of tomatoes on their shelves. The Australian industry is unable to participate for the Italian private label category of tomatoes and likewise, Italian manufacturers are unable to compete for the Australian private label category of tomatoes.

SPCA submitted in its application that, should the measures be allowed to expire, retail prices will reduce as a result and SPCA will need to reduce its into-store price offering for Australian tomatoes.³² The Commission has examined SPCA's weighted average into-store prices of the goods prior to and post the imposition of the original measures, relying on information from REP 217 and data submitted for this inquiry. As can be observed at Section 5.4, SPCA's weighted average revenue per kilogram has remained stable each year during the injury analysis period. It is to be noted that this calculation involves a mix of products sold throughout the year, but the imposition of measures did not result in any improvement in SPCA's prices. In fact, the Commission's analysis (below) suggests that all prices have declined generally throughout the injury analysis period.

7.4.5 Estimated impact of dumping

To estimate the impact of dumping during the inquiry period, the Commission has focused on the PPT supplied by Princes to the Australian market.³³ There is little, if any, evidence of direct competition between PPT exported by this supplier and PPT sold by the Australian industry. The analysis is contained in **Confidential Attachment 3**.

As noted previously, Princes is one of three suppliers of a 400 g private label product at a major supermarket, and is the only one of the three suppliers that was found to be dumping. The Commission estimated that:

- if the goods supplied by Princes had been at undumped prices; and
- the full undumped price had been passed on by the importer / supermarket to the consumer,

this would have resulted in an increase of less than 2 cents per can to the shelf price of that product.

³² EPR 488, Document [001](#).

³³ The Commission notes that the uncooperative and all others rate applies to a large number of small volume exporters, and is based on the extremes of the weighted average normal values and export prices established to calculate a dumping margin. The scale of that margin does not indicate that those goods were actually at dumped prices.

As shown at Chapter 4, there is little (if any) switching from the low priced Italian product to the high priced Australian product, and no basis for finding that an increase in prices for one Italian product would translate into price increases for all other Australian products. Nevertheless, the Commission then assumed that SPCA would have also been able to achieve a price increase of 2 cents per can in the same supermarket on its sales of the private label product that is most directly price competitive with the Princes product.

The Commission estimates that such a price increase would have resulted in an immaterial improvement to SPCA's revenue in the inquiry period.

Further, noting the Commission's earlier findings on the purchasing behaviour of consumers, the Commission does not consider that such a price change would have improved SPCA's actual sales volumes during the inquiry period. The Commission notes that undumped prices from Princes to other customers during the inquiry period would have also been slightly higher, but the reduced injury to SPCA (again, assuming no other changes in the market) would have been of the same order of magnitude.

The dumped goods, exported by Princes, represented less than 10 per cent of the Australian market. The lost revenue which can be attributed to the dumped goods, on the best case scenario outlined above, is less than 1 per cent of SPCA's revenue. For these reasons, the Commission considers it unlikely that any material injury to SPCA will continue or recur due to future dumping by Princes.

7.4.6 Supermarket pricing behaviour

Additionally, the Commission has examined the supermarket retail selling prices of the goods during the injury analysis period. In order to establish an accurate reflection of the market for PPT, the Commission has examined point of sale scan data (supermarket shelf sales data) for sales of the local proprietary label goods as well as sales of private label goods by both major supermarkets prior to and post the imposition of the original measures.

The Commission observes that in the year the original measures were imposed, the retail sales price of the local proprietary 400 g cans was reduced by up to 14 cents per can. These cans were consistently sold at this same price point each year after this reduction. Further analysis of the data also shows that retail sales prices of the private label Italian tomatoes sold at Coles and Woolworths have also been reduced considerably and remained stable since 2014, similar to the local proprietary label PPT. This analysis indicates that the overall price point for PPT has been driven down since 2014 and maintained at a stable level by the major supermarkets. This is an indication that factors other than dumping are influencing the pricing of the goods. Details of this analysis are available at **Confidential Attachment 3**.

7.4.7 Impact of the measures on exporter prices

The Commission has also examined the export prices of the selected exporters and compared these with the current measures applying to those exporters. The Commission observes that for the majority of exporters, the export price is not set in line with the current floor price or ascertained export price as last ascertained for the purpose of the measures. The Commission is therefore satisfied that exporters largely base their pricing on costs and profit outlooks rather than by reference to the dumping measures.

By contrast, some wholesaling importers appear to have regard to the dumping measures when negotiating supply and pricing arrangements with their Australian customers, but

there is no evidence that similar regard is had in the context of the negotiations between the importer and the relevant exporter(s).

The Commission has also compared export prices with those of the largest volume exporter from Italy, La Doria, which is exempt from measures. The Commission observed that imports from this exporter are at lower weighted average prices than the majority of any other cooperating exporter to Australia on a quarterly basis.

7.4.8 Significance of other suppliers in the market

It is also evident that there are factors other than dumping which may be impacting SPCA in its competition for tenders. Safcol successfully tendered for the Woolworths private label 400 g diced tomatoes product (which until that time had been supplied by SPCA) and this has had a significant impact on SPCA. The Commission is satisfied that Safcol is profitable in its supply of this product.

In terms of competition for tenders, the Commission observes that there is no evidence which suggests that the anti-dumping measures have impacted on SPCA's pricing offers in the Australian market. The Commission is satisfied that SPCA's into store pricing is not materially affected by the presence of dumped goods in the market (there is no direct competition between SPCA and Princes for supply contracts), nor by the goods currently subject to the anti-dumping measures but which were not dumped during the inquiry period.

7.5 Conclusion

In the main, the Australian produced goods and the imported goods have essentially the same end uses, meet similar quality specifications and standards, are sold to the same types of customers and compete directly with each other in the same markets. The trends shown in Chapter 5 indicate that the imposition of the anti-dumping measures has had little, if any, impact on the economic condition of SPCA. Movements in retail pricing (which has occurred independently of the measures) indicates a competitive market, with no apparent price advantage conferred to the goods exported from Italy as a result of dumping other than for Princes. As shown above, even on the most generous interpretation, the price advantage achieved by Princes during that time did not have a material impact on SPCA's performance.

As a general principle the Commission considers that, whilst the presence (or absence) of dumping during the inquiry period may be indicative of future behaviour, this factor alone is not determinative. The large negative dumping margins indicates that a number of the exporters subject to the Notice could reduce their export prices even further and still not dump; there is no economic incentive for these exporters to do so, noting that the Australian market is small by global standards, declining in volume, and already subject to a high degree of price competition. All exporters (other than Princes) exported the goods profitably during the inquiry period.

Finally, whilst there is a close relationship between price and volume in terms of consumer purchasing behaviour, this occurs in a market which is almost entirely unaffected by dumping. Consumers have clear preferences for particular products in terms of origin and price point, and changes in pricing have little impact on those preferences. SPCA's prices are, in the main, higher than those achieved by exporters that have been found not to be

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dumping. Whilst some consumers have a preference for an Australian product, the anti-dumping measures have no bearing on that decision.

The test before the Commission is to assess whether dumping and injury caused by dumping is *likely* to continue or recur in the absence of the measures. Based on the Commission's analysis of the data described above and the evidence currently available, the Commissioner is not satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measure is intended to prevent for the goods exported to Australia from Italy subject to the Notice.

8. NON-INJURIOUS PRICE AND LESSER DUTY RULE

8.1 Non-Injurious Price

The NIP is defined in section 269TACA as “the minimum price necessary ... to prevent the injury, or a recurrence of the injury” caused by the dumped (or subsidised) goods the subject of a dumping duty (or a countervailing duty) notice. The NIP is ordinarily determined by having regard to the Australian industry’s selling prices from a period where the industry is not affected by dumping.

8.2 Lesser Duty Rule

The calculation of the NIP is relevant for the purposes of the lesser duty rule under the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act).³⁴

The level of dumping duty imposed by the Minister cannot exceed the margin of dumping, but, where the NIP of the goods is less than the normal value of the goods, the Minister must also have regard to the desirability of fixing a lesser amount of duty.

However, pursuant to subsection 8(5BAA) of the Dumping Duty Act, the Minister is not required to have regard to the desirability of fixing a lesser amount of duty in certain circumstances. Neither of those circumstances (being the composition of the Australian industry or the method of ascertaining normal value in circumstances of a particular market situation in the country of export) are relevant to the present inquiry.

8.3 Calculation of the NIP

The Commission generally derives the NIP by first establishing a price at which the Australian industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the unsuppressed selling price (USP).

The Commission’s preferred approach to establishing the USP is set out in Chapter 24 of the Manual and observes the following hierarchy:

- industry selling prices at a time unaffected by dumping;
- constructed industry prices – industry CTMS plus profit; or
- selling prices of un-dumped imports.

Having calculated the USP, the Commission then calculates a NIP by deducting the costs incurred in getting the goods from the export FOB point (or another point if appropriate) to the relevant level of trade in Australia. The deductions normally include overseas freight, insurance, into-store costs and amounts for importer expenses and profit.

8.4 Discussion

In REP 217, the Commission had found that it was inappropriate to use SPCA’s selling prices at a time unaffected by dumping due to dumped imports being present in the market at the time of the investigation. The Commission instead determined a USP that was

³⁴ Subsection 8(5B) of the Dumping Duty Act.

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based on SPCA's CTMS. No profit was realised by SPCA during the investigation period, and therefore no amount for profit was included in the calculation.

In the present inquiry and noting the ongoing presence of dumped goods in the Australian market, the Commission has taken the same approach as in REP 217 and established the USP by reference to SPCA's CTMS. No profit was realised during the inquiry period and therefore was not included in the calculation.

The Commission has then made deductions for the profit obtained and the SG&A expenses and into store costs incurred by the most efficient importer amongst those verified during this inquiry. The Commission has then deducted the relevant customs duty payable for imports from Italy to establish a NIP at FOB level.

The Commission's calculation of the NIP is contained in **Confidential Attachment 4**.

9. PROPOSED RECOMMENDATION

On the basis of the reasons contained in this SEF, and in accordance with subsection 269ZHF(2), the Commissioner is satisfied that the expiration of the anti-dumping measures applicable to PPT exported to Australia from Italy would not lead, or would not be likely to lead, to a continuation of, or a recurrence of, the dumping and material injury that the anti-dumping measures are intended to prevent.

As such, the Commissioner proposes to recommend that the Minister, in accordance with subsection 269ZHG(1)(a), **declare** that she has decided not to secure the continuation of the anti-dumping measures relating to PPT exported to Australia from Italy with effect from 17 April 2019. The dumping duty notice would therefore expire on 16 April 2019.

10. APPENDICES AND ATTACHMENTS

Confidential Attachment 1	Market analysis
Confidential Attachment 2	SPCA analysis
Confidential Attachment 3	Price analysis
Confidential Attachment 4	NIP
Confidential Attachment 5	Dumping margin calculation summary