



Australian Government
Department of Industry,
Innovation and Science

Anti-Dumping
Commission

CUSTOMS ACT 1901 - PART XVB

**REPORT
NO. 508**

**REVIEW OF THE ANTI-DUMPING MEASURES APPLYING TO
PREPARED OR PRESERVED TOMATOES
EXPORTED TO AUSTRALIA FROM ITALY
BY FEGER DI GERARDO FERRAIOLI S.P.A.**

31 August 2019

PUBLIC RECORD

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ABBREVIATIONS

ABF	Australian Border Force
the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
AEP	ascertained export price
ANV	ascertained normal value
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
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
EPR	electronic public record
Feger	Feger di Gerardo Ferraioli S.p.A
FOB	Free on Board
FY	financial year
g	gram
IDD	interim dumping duty
injury analysis period	the period from 1 July 2010 to 30 June 2018
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
NIP	non-injurious price
the Notice	ADN No. 2016/13
OCOT	ordinary course of trade
PPT, or the goods	certain prepared or preserved tomatoes, the goods the subject of the application
REP 217	<i>Anti-Dumping Commission Report No. 217</i>
REP 276	<i>Anti-Dumping Commission Report No. 276</i>
REP 488	<i>Anti-Dumping Commission Report No. 488</i>

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REQ	response to the exporter questionnaire
review period	the period from 1 January 2018 to 31 December 2018
Safcol	Safcol Australia Pty Ltd
SEF	statement of essential facts
SEF 508	<i>Statement of Essential Facts No. 508</i>
SPCA	SPC Ardmona Operations Ltd
USP	unsuppressed selling price
Woolworths	Woolworths Ltd

1 SUMMARY AND RECOMMENDATIONS

1.1 Introduction

This report sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) has based his recommendations to the Minister for Industry, Science and Technology (the Minister)¹ in relation to a revocation review of the anti-dumping measures (in the form of a dumping duty notice) applying to certain prepared or preserved tomatoes (PPT) exported to Australia from Italy by Feger di Gerardo Ferraioli S.p.A (Feger).

1.2 Legislative framework

Division 5 of Part XVB of the *Customs Act 1901* (the Act)² sets out, among other things, the procedures to be followed by the Commissioner in dealing with an application for a review of anti-dumping measures.

Division 5 empowers the Commissioner to reject or not reject an application for review of anti-dumping measures. If the Commissioner does not reject the application, he is required to publish a notice indicating that it is proposed to review the anti-dumping measures covered by the application.³

The Commissioner must, within 110 days after the publication of the notice or such longer period as allowed, place on the public record a statement of essential facts (SEF) on which the Commissioner proposes to base his recommendation to the Minister in relation to the review.⁴ The Commissioner's final report and recommendations must be provided to the Minister within 155 days after the publication of a notice under subsection 269ZDA(1), or such longer period as the Minister allows.⁵

Pursuant to subsection 269ZDA(1A)(b), the Commissioner must make a revocation recommendation to the Minister in relation to the anti-dumping measures, unless he is satisfied that revoking the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the measures are intended to prevent.

¹ For the purposes of this review, the Minister for Industry, Science and Technology is the decision maker.

² All legislative references are to the *Customs Act 1901*, unless otherwise specified.

³ Subsection 269ZC(4).

⁴ Subsection 269ZD(1).

⁵ Subsection 269ZHF(1). On 14 January 2017 the powers and functions of the Minister under section 269ZHI were delegated to the Commissioner ([Anti-Dumping Notice \(ADN\) No. 2017/10](#) refers).

1.3 Findings and conclusions

The measures, consisting of a dumping duty notice (the Notice) were imposed following consideration of REP 276 on 11 February 2016.⁶ As a result of a review by the Anti-Dumping Review Panel, the decision to impose measures was revoked and substituted with a new decision, which was published on 3 April 2017. The effect of the new decision was that the measures only applied to Feger and not to La Doria S.p.A (La Doria), and that Feger's dumping margin was amended.⁷ The measures are due to expire on 11 February 2021.

The present review was initiated on 29 March 2019 following the Commissioner's consideration of an application lodged by Feger seeking the revocation of the anti-dumping measures in so far as they relate to exports of PPT from Italy by Feger.⁸

For the purpose of this review, the Commissioner established a review period of 1 January 2018 to 31 December 2018 (review period).

The Anti-Dumping Commission (Commission) has examined data from the Australian Border Force (ABF) import database, Feger's response to the exporter questionnaire (REQ) and data ascertained in *Anti-Dumping Commission Report No. 276* (REP 276)⁹ and *Anti-Dumping Commission Report No. 488* (REP 488).¹⁰

Based on the Commission's analysis of the data described above and the evidence available, the Commissioner is not satisfied that the revocation of the anti-dumping measures applying to PPT exported from Italy by Feger would lead, or be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the measures are intended to prevent.

1.4 Recommendation

Based on the above findings, the Commissioner recommends to the Minister that, in accordance with subsections 269ZDA(1)(a)(ii) and 269ZDA(1A)(b), the Notice be revoked generally.

The Commissioner recommends that any decision by the Minister in relation to this review take effect from 29 March 2019, a retrospective date allowed under subsection 269ZDB(6)(a), being the date of publication of the notice under section 269ZC indicating the Commissioner's proposal to undertake the revocation review.

⁶ ADN No. [2016/13](#) refers.

⁷ [Anti-Dumping Commission Reinvestigation Report No. 360](#), ADRP [Report No. 35](#) and the [notice](#) of the decision of the then Parliamentary Secretary to the Minister for Industry, Innovation and Science, refer.

⁸ ADN No. [2019/39](#) refers.

⁹ The original investigation which resulted in the publication of the Notice. [REP 276](#) is available on the Commission website.

¹⁰ [REP 488](#) sets out the Commissioner's inquiry concerning whether anti-dumping measures applying to all exporters of PPT from Italy except Feger and La Doria S.p.A. ought to be continued. The relevant measures were imposed following *Anti-Dumping Commission Report No. 217*, and expired on 17 April 2019.

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The effect of the recommendations would be that interim dumping duty (IDD) would not apply to the goods entered for home consumption on and after 29 March 2019. If this recommendation is accepted by the Minister, importers that have paid IDD in relation to the anti-dumping measures on and after 29 March 2019 would be eligible for a refund.

2 BACKGROUND

2.1 Initiation

The present revocation review was initiated on 29 March 2019, following the Commissioner's consideration of an application lodged by Feger.

The application requests that the anti-dumping measures (in the form of a dumping duty notice) which apply to Feger's exports of PPT exported to Australia from Italy be revoked, on the basis that the anti-dumping measures are no longer warranted.¹¹

Consideration Report No. 508 on the electronic public record (EPR) sets out the Commissioner's reasons for initiating the revocation review.¹²

2.2 Applicant's claims

Feger claims that the anti-dumping measures are no longer warranted on the basis that:

- it is not dumping, and dumping is unlikely to recur in the future; and
- the PPT exported by Feger to Australia are not causing injury to the Australian industry, nor are likely to cause injury in the future.

2.3 Current anti-dumping measures

The anti-dumping measures were imposed on 11 February 2016 by publication of the Notice, ADN No. 2016/13, following the relevant Minister's consideration of REP 276.¹³ The relevant Minister's decision was reviewed by the Anti-Dumping Review Panel (ADRP), which resulted in changes to the anti-dumping measures applying to Feger.¹⁴

A separate notice applied to all exporters of PPT from Italy except for Feger and La Doria. However, following the findings in REP 488, this notice was allowed to expire on 17 April 2019 and Feger remained as the only exporter of PPT from Italy subject to anti-dumping measures.

The IDD currently applying to exports of PPT from Italy by Feger is calculated by reference to the combination of fixed and variable duty method (combination duty method). The fixed component is calculated as a percentage (2.3 per cent) of the export price or the ascertained export price (AEP), whichever is higher, plus a variable amount of duty if the actual export price (per kilogram) is below the AEP.

The anti-dumping measures are due to expire (unless continued) on 11 February 2021.

¹¹ Subsection 269ZA(1)(b)(ii).

¹² [Consideration Report No. 508](#) is available on the Commission [website](#).

¹³ Available on the Commission [website](#).

¹⁴ [Anti-Dumping Commission Reinvestigation Report No. 360](#), ADRP [Report No. 35](#) and the [notice](#) of the decision of the then Parliamentary Secretary to the Minister for Industry, Innovation and Science, refer.

2.4 Conduct of inquiry

The Commission established a review period of 1 January 2018 to 31 December 2018 to assess whether dumping has occurred. The Commission has also examined data from 1 January 2015, particularly in terms of Feger's past export sales and the ABF import database, for the purpose of analysing trends in the market for the goods and assessing potential injury factors and where relevant, data obtained in REP 488, from 1 July 2010.

The Commission invited SPC Ardmona Operations Limited (SPCA), the largest Australian industry producer of PPT, to participate in this review, however, SPCA advised that it did not wish to participate.

Due to a partial overlap between the period examined in REP 488 and the review period, the Commission has relied on verified data from REP 488 to assess the Australian market and the economic condition of the Australian industry. The Commission also relied on verified data from REP 488 for the purposes of analysing trends in the market and assessing potential injury factors.

2.5 Statement of essential facts

The Commissioner published *Statement of Essential Facts No. 508* (SEF 508) on 17 July 2019.¹⁵ SEF 508 set out the findings of the Commissioner and the recommendations he proposed to make to the Minister based on the information before him at that time.

2.6 Submissions received from interested parties

The Commission did not receive any submissions in response to SEF 508.

¹⁵ [Document 05](#) on the EPR 508 refers.

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 and that 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 whether the revocation of measures would lead, or be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the measures are intended to prevent, 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 revocation review in determining the normal value of goods exported to Australia 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).¹⁶

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.

3.3 The goods

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

¹⁶ Available on the Commission [website](#).

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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

SPCA is a manufacturer of PPT in Australia. The Commission has considered the findings of previous investigations and inquiries as well as 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. SPCA may use tomato paste as a thickening agent, while exporters of PPT may use tomato juice concentrate for similar purposes.

The locally produced goods and the imported goods are available in similar packaging sizes, typically a 400 gram (g) can. During the review period Feger exported 400 g can products and a 500 g glass jar product. However, if the can or jar 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 exported to Australia by Feger during the review period have been predominately sold to specialty distributors, whereas the locally produced goods are predominately sold to supermarkets. During the injury period, Feger sold the goods to supermarkets and competed directly with SPCA within supermarkets to win sales to the end consumer.

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

Based on the findings outlined in REP 488 and REP 276, the production process for PPT is standardised for all products with marginal differences made at various production stages depending on specific product variables (such as cut profile (e.g. diced versus crushed) and value adding (e.g. with herbs / spices)).

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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.

Based on past cases and verification visits, the Commission is satisfied that the locally produced goods have a production likeness to the goods exported to Australia from Italy by Feger.

3.4.1 Other producers

Based on the findings in REP 488, Safcol Australia Pty Ltd (Safcol) has been identified as 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.

As noted in REP 488, SPCA accounts for the vast majority of all PPT produced in Australia during that inquiry period; in the absence of relevant data from Kagome, the Commission did not consider it necessary to determine whether Safcol was a member of the Australian industry producing like goods. This review takes the same approach.

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 review and the goods produced by SPCA, and being satisfied that the manufacture of the goods by SPCA 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 does not have financial data pertaining to SPCA for the last six months of the review period (i.e. from 1 July 2018 to 31 December 2018). As such, the Australian market analysis in this chapter is based on verified financial information submitted by SPCA and Safcol in the context of REP 488 for the injury analysis period in that inquiry, being 1 July 2010 to 30 June 2018 (injury analysis period).

The Commission also examined import data from the ABF import database for the period 1 July 2014 to 31 December 2018, verified data in REP 276 for the period 1 January 2014 to 31 December 2014, and financial data provided in Feger's REQ for the period 1 January 2015 to 31 December 2018.

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

4.3 Australian market

4.3.1 Market size

The Commission has calculated that the Australian market for the goods was approximately 47 million kilograms in the 12 months ending 30 June 2018, comprising of goods sold by SPCA, Safcol, imports from Italy and imports from other countries. As shown in figure 1, the market has fluctuated across financial years (FY) but has been declining as a general trend.

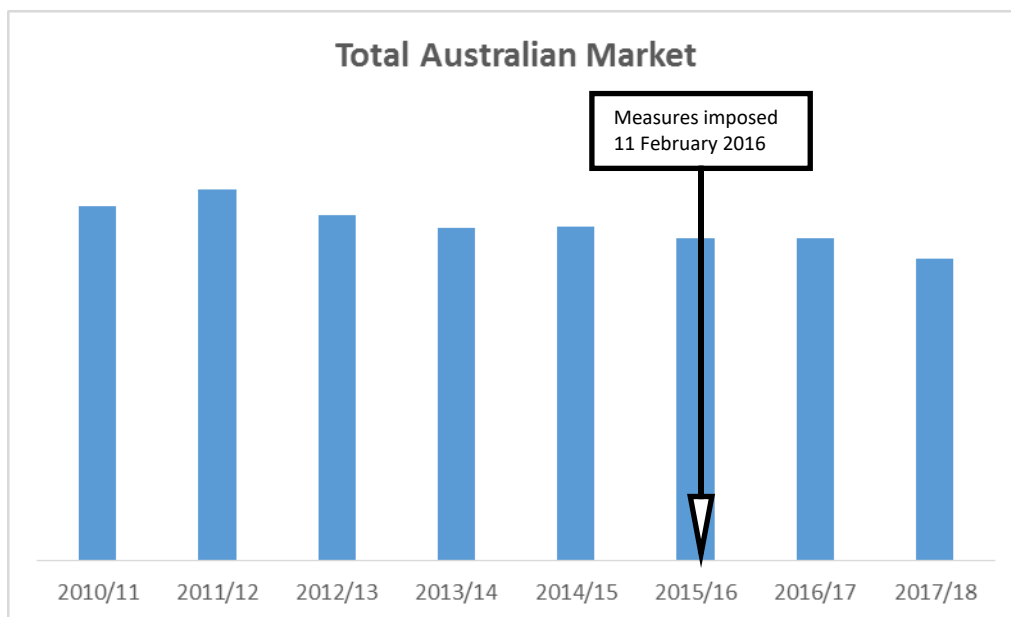


Figure 1: Australian market for PPT, FYs 2010/11 to 2017/18

4.3.2 Feger’s volume of exports

The imposition of measures had a significant impact on the volume of exports from Italy by Feger. As shown in Figure 2 below, Feger’s export volume was at its highest in calendar year 2015. Since the imposition of measures (11 February 2016), exports from Feger have significantly declined year on year and represented less than 1 per cent of the total Australian market in the review period.

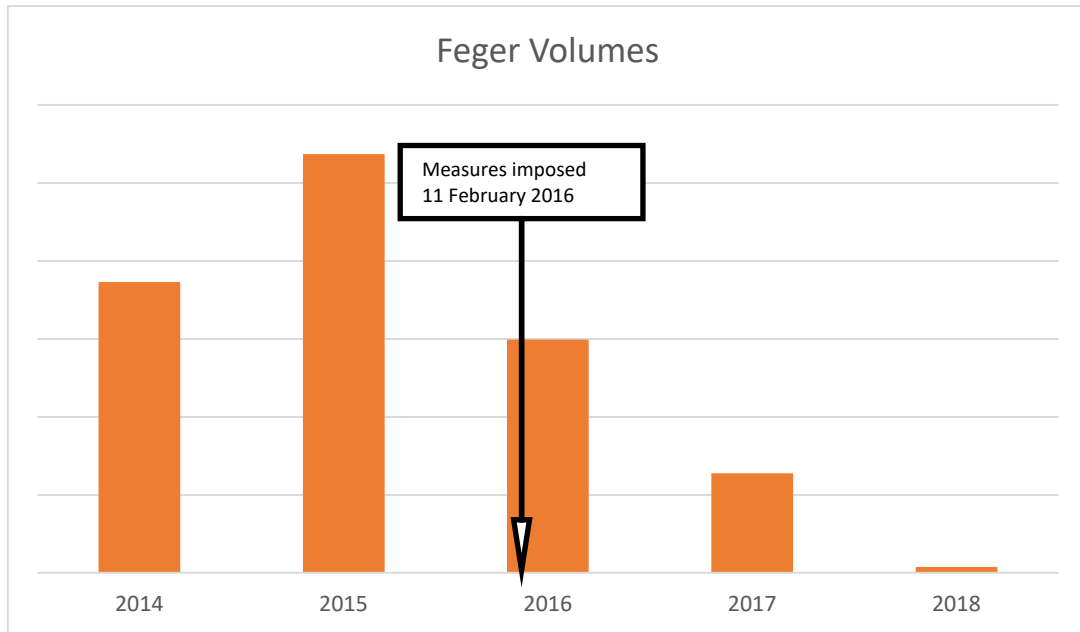


Figure 2: Feger export volume, calendar years 2014 to 2018

4.3.3 Market structure

Based on findings in REP 488, the Commission found that the goods can be separated into two major categories. These categories are *private labels*, which are brands owned by supermarkets, and *proprietary labels*, which are brands owned by the suppliers of the goods. Typically, PPT brands can be categorised as per the examples in the table below:

Private labels
Coles
Woolworths
Essentials
Homebrand

Table 1a – Examples of Private labels

Proprietary labels
Ardmona
Mutti
Val Verde

Table 1b – Examples of Proprietary labels

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Each of these categories (both private label and proprietary label) contained tomato products (i.e. PPT) which were:

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

SPCA is the largest Australian manufacturer of the goods in the Australian market. The Australian market is also supplied by Safcol, to a lesser extent.

Based on the findings in REP 488, the goods produced by SPCA mostly compete with imported goods at the supermarket retail level of trade. The majority of imports from Italy are directly imported by the major supermarkets, or indirectly, through distributors and trading companies. Feger has supplied the major supermarkets previously, however these exports largely ceased before the review period.

The goods exported to Australia from Italy by Feger during the review period have predominately been imported by specialty distributors rather than the major supermarkets. These goods are categorised as organic proprietary labelled tomatoes. The Australian industry did not supply any organic proprietary labelled tomatoes during the review period.

The Commission's detailed analysis is at **Confidential Attachment 2**.

4.3.4 Pricing

As part of the findings in REP 488, the Commission conducted a detailed analysis of pricing of PPT at Coles and Woolworths during that inquiry period. These supermarkets are responsible for the majority of imports from Italy and the majority of the Australian industry'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 2**.

The Commission 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 PPT. Minimal to no promotional activities and discount pricing was offered on Italian private label, local private label or local proprietary PPT, hence those prices were typically flat.

The Commission observed that the goods are somewhat price sensitive, with promotional (i.e. discounted) pricing on Italian proprietary PPT resulting in significantly increased sales volumes in response. However, this did 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 increased 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

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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. The injury analysis period for this review is 1 July 2010 to 30 June 2018. 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 analysis in this chapter is based on verified financial information submitted by SPCA in the context of REP 488, import data from the ABF for the period 1 January 2014 to 31 December 2018, and verified data in REP 276 and REP 488.

As SPCA has not participated in this review, the Commission does not have financial data pertaining to SPCA for the last six months of the review period (i.e. from 1 July 2018 to 31 December 2018). As such, the analysis below is based wholly on the injury analysis in REP 488. As noted in REP 488, SPCA was responsible for almost all of the Australian industry's production and sales of like goods, and therefore the Commission's analysis has focused on SPCA's economic condition as being representative of the Australian industry as a whole.

The Commission's detailed analysis of the economic condition of the Australian industry is contained in **Confidential Attachment 1** and **Confidential Attachment 3**.

5.2 Findings in original investigation

In REP 276 the Commissioner found that SPCA had experienced injury in the form of:

- price suppression;
- reduced profit; and
- reduced profitability.

5.3 Volume effects

5.3.1 Sales volume

Figure 4, below, demonstrates SPCA's total sales volumes for the goods in the Australian market since 1 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.

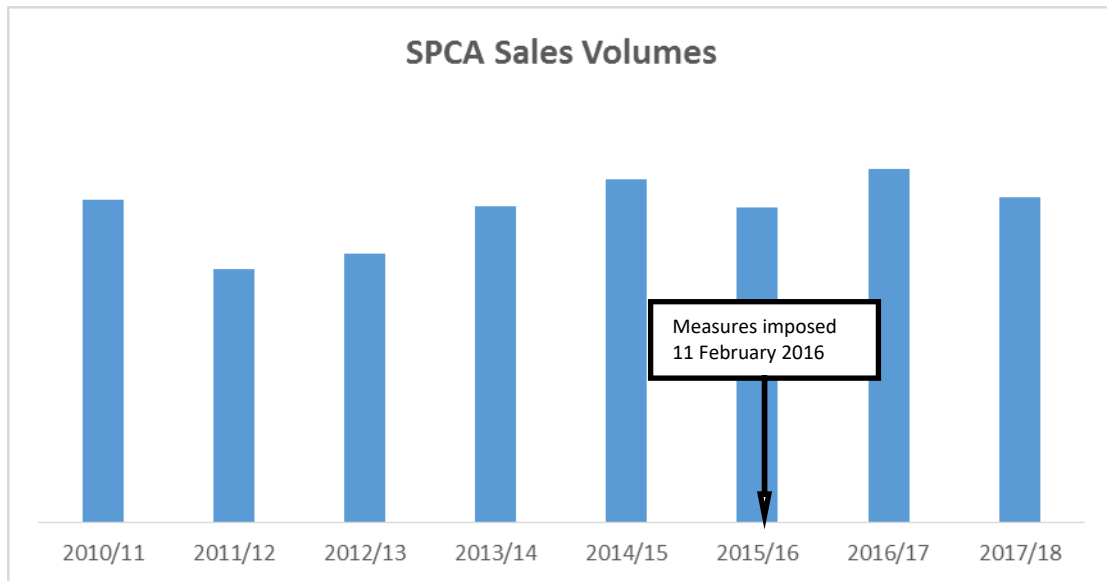


Figure 3 – SPCA’s PPT sales volume

5.3.2 Market share

Figure 4, below, demonstrates movements in market share in the Australian PPT market from 1 July 2010.

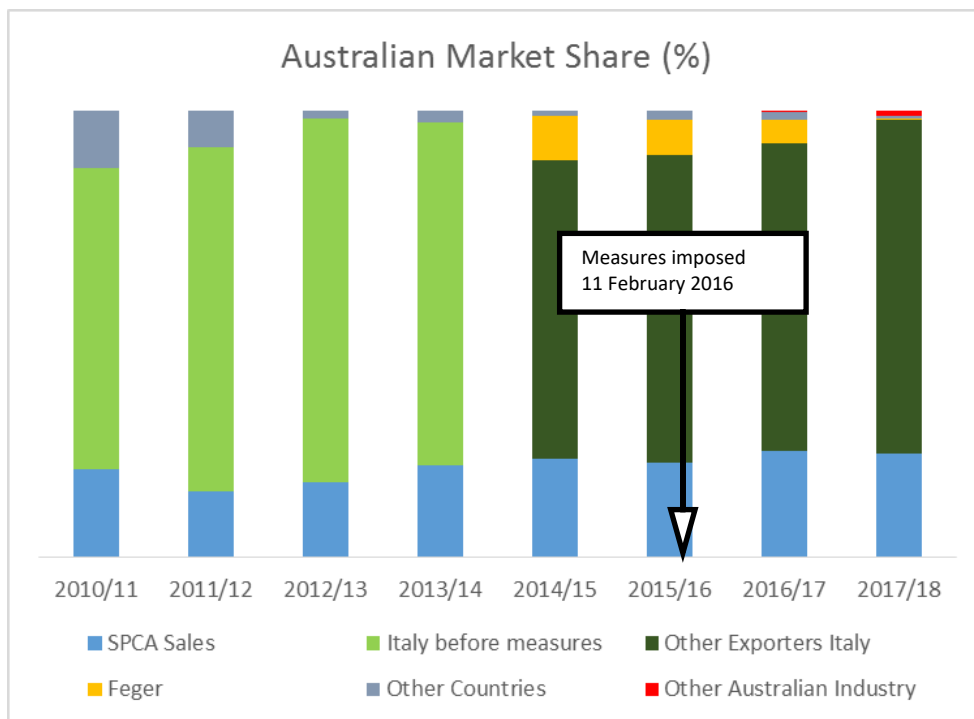


Figure 4 – PPT Australian market shares

The market share of imports from Italy has not been noticeably affected by the imposition of anti-dumping measures, either as a result of REP 276 or *Anti-Dumping Commission Report No. 217* (REP 217).¹⁷ The majority of imports from Italy are from exporters that are not subject to the Notice that was published following REP 276. As noted previously, Feger's export volume and share of the market has declined.

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.

Based on the findings in REP 488, SPCA had been in an unprofitable position on a per unit basis throughout the injury analysis period. In the FY that the measures were imposed (FY 2015/16), a significant reduction in CTMS is noted; however, this is attributed to the write-off of an indirect cost that had been recurring since FY 2013/14.

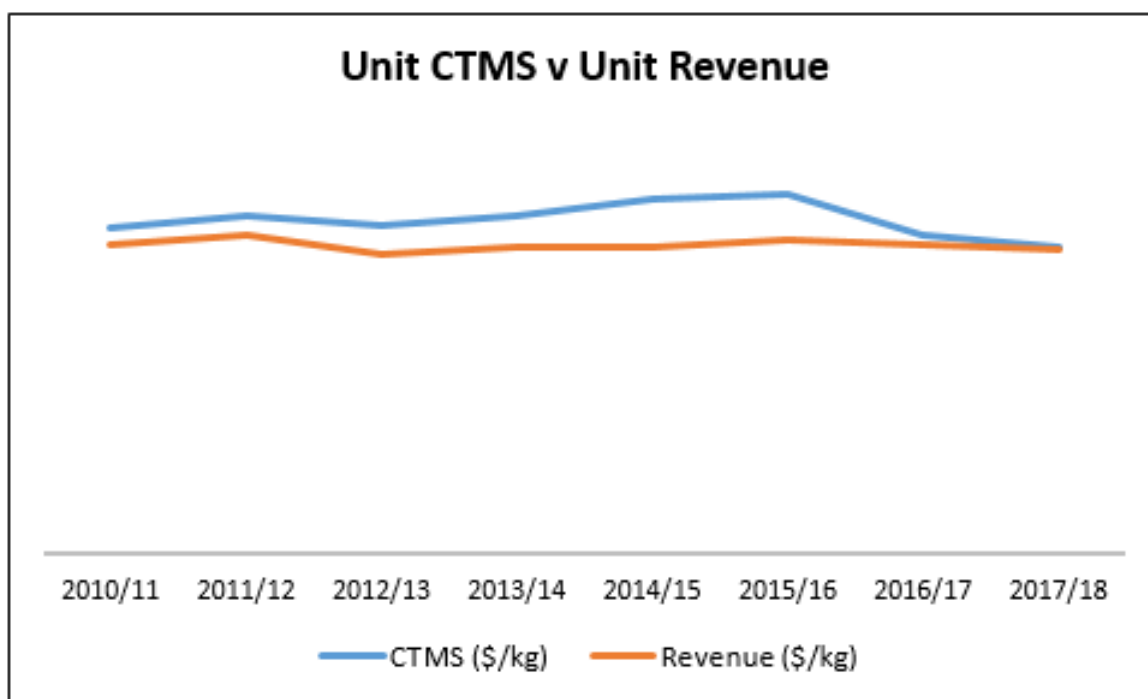


Figure 5 – Comparison of unit selling price and unit CTMS for SPCA

¹⁷ As noted in footnote 8, REP 217 resulted in the imposition of measures on all exporters of PPT from Italy other than Feger and La Doria S.p.A. from 17 April 2014.

5.5 Profit and profitability

The following graph shows trends in SPCA's profit and profitability.¹⁸

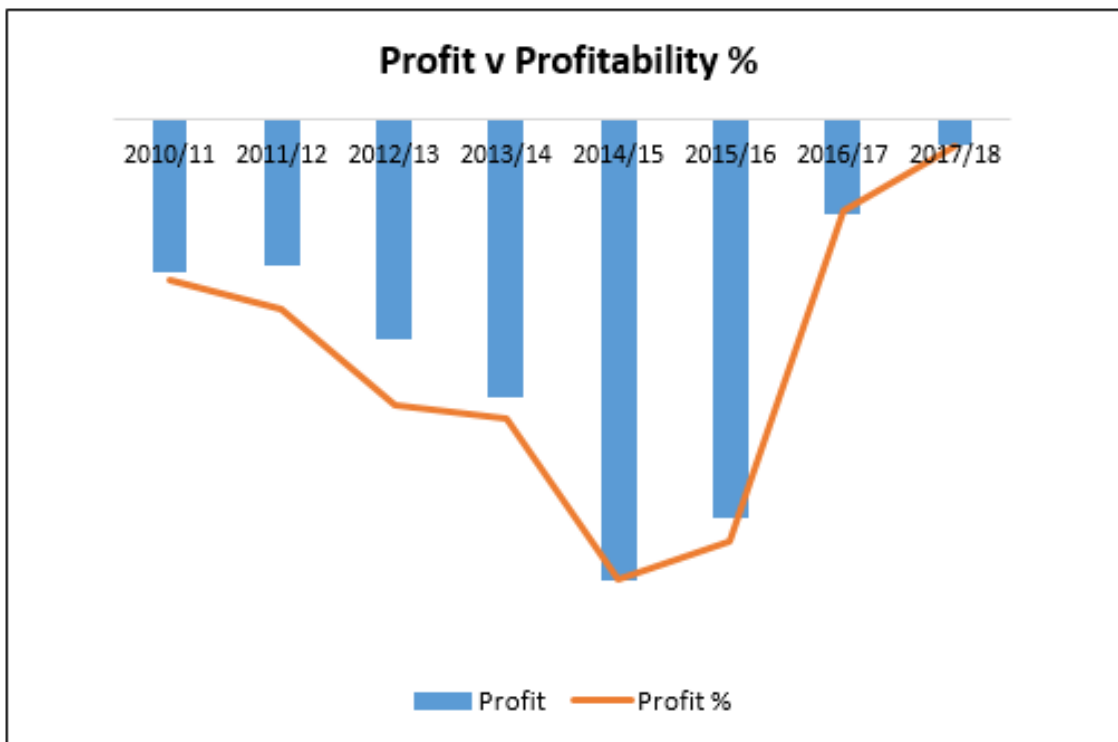


Figure 6 – Comparison of SPCA's profit (\$) and profitability (%)

SPCA's sales of the goods were not profitable throughout the injury analysis period. SPCA's profitability improved in the immediate year following the imposition of the measures (FY 2016/17); however, this was the result of an additional recurring indirect cost incurred during this period. Improvements in profitability were noted after the recurring expense was written off.

5.6 Other injury factors

REP 488 noted the following observations based 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 remained stable to FY 2017/18;
- capital investment trended down significantly post FY 2015/16 and remained stable to FY2017/18;
- actual production of like goods and capacity utilisation improved in FY 2017/18; and
- revenue remained stable since FY 2013/14.

¹⁸ As a percentage of sales revenue.

6 ASSESSMENT OF CURRENT DUMPING

6.1 Finding

For the purpose of assessing whether the revocation of the measures would lead, or would be likely to lead, to the continuation or recurrence of dumping, the Commissioner has considered whether there was dumping during the review period.

6.2 Calculation of dumping margin

The Commission compared the data submitted by Feger in its REQ to the data it had previously submitted in the context of REP 276, and benchmarked the data to that provided by exporters examined in REP 488. As a result, the Commission was satisfied that the information provided by Feger was complete, accurate and reliable.

For the purposes of calculating Feger's dumping margin, the Commission compared the weighted average export prices over the whole of the review period with the weighted average of corresponding normal values over the whole of that period, consistent with the methodology in subsection 269TACB(2)(a).

6.2.1 Export price

Despite a significant drop in export volumes of PPT to Australia by Feger from Italy, the Commission considers these exported volumes during the review period to be material and in sufficient volumes to calculate an export price for the purpose of this revocation review in accordance with subsection 269TAB(1).

In respect of all Australian sales of PPT made by Feger during the review period, the Commission has considered the following factors to determine whether exports from Feger 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.

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.

Feger produced the goods, is the principal in the transaction located in Italy from where the goods were shipped and gave up responsibility for the goods by knowingly placing the goods in the hands of a carrier located in Italy to have these goods shipped to its unrelated customers in Australia. The Commission is therefore satisfied that Feger is the exporter

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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 Feger 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.

6.2.2 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 ordinary course of trade (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 packing
Domestic inland transport	Deduct the cost of domestic inland transport
Domestic handling cost	Deduct the cost of domestic handling
Domestic other expenses	Deduct the cost of domestic other expenses
Export packaging	Add the cost of Australian packaging
Export inland transport	Add the cost of Australian export inland transport
Export handling cost	Add the cost of Australian export handling cost
Export other expenses	Add the cost of Australian other expenses
Export credit terms	Add the cost of Australian credit terms

Table 2 – Adjustments to normal value for Feger

6.2.3 Dumping margin

The Commission has calculated a dumping margin in respect of the goods exported to Australia by Feger for the review period. The margin is **negative 4.4 per cent**.

The Commission's calculations are included at **Confidential Attachment 4**.

7 LIKELIHOOD THAT DUMPING AND MATERIAL INJURY WILL CONTINUE OR RECUR

7.1 Findings

On the basis of the available evidence, the Commissioner is satisfied that revoking the anti-dumping measures as they apply to PPT exported to Australia from Italy by Feger:

- would not lead, or be likely to lead, to a continuation of, or a recurrence of, dumping that the measures are intended to prevent; and
- would not lead, or be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

7.2 Legislative framework

Pursuant to subsection 269ZDA(1A), after conducting a revocation review of the anti-dumping measures, the Commissioner must make a revocation recommendation unless satisfied that revoking the measures would lead, or be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and material injury that the 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 revocation review, necessarily requires an assessment of a hypothetical situation. This view has been supported by the ADRP in the context of continuation inquiries, which noted that the Commission must consider what will happen in the future should a certain event (in this instance, being the revocation of the measures) occur. However, the Commissioner's conclusions and recommendation must nevertheless be based on facts.¹⁹

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.²⁰ 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 review.

7.3 Will dumping continue or recur?

7.3.1 Dumping during the review period

Chapter 6 sets out the dumping margin established in the review period. The dumping margin calculated for Feger is **negative 4.4 per cent**.

¹⁹ [ADRP Report No. 44](#) (Clear Float Glass) refers.

²⁰ Pages 174-176 refer.

7.3.2 Patterns of trade at dumped prices

As noted in section 2.4, exports from Feger are currently subject to measures in the form of the combination duty method, with an ad valorem component at the rate of 2.3 per cent.

Prior to the imposition of measures, Feger supplied both major supermarkets with substantial volumes of private label PPT. Once measures were imposed, over time the major supermarkets replaced those volumes with PPT from other Italian suppliers with more favourable anti-dumping measures (if any).

Historically, Feger's exports were found to have been dumped at a *de minimis* rate in the context of REP 217 (i.e. in the period 1 July 2012 to 30 June 2013), and that investigation was terminated in respect of Feger. When next examined in the context of REP 276 and resulting in the Notice (i.e. in the period 1 January 2014 to 31 December 2014), Feger's exports of PPT to Australia were dumped with a margin only slightly higher than the *de minimis* rate found in REP 217 (i.e. 2.3 per cent). In the review period, PPT exported to Australia by Feger was not dumped. As a result, the Commission considers that Feger's export prices have typically been close to its normal values, with only one period of actionable dumping (i.e. above *de minimis*) observed.

The Commission has observed that Feger's export prices in the review period are substantially higher than the floor price component of the measures applying to its exports, but notes that this is a result of a substantially different product mix (and pricing arrangements) applying to its exports at different times. These arrangements also suggest that Feger's export pricing is not set by reference to the measures.

7.3.3 Capacity to produce PPT and exporter profitability

The Commission has analysed the spare production capacity available to Feger. Whilst limited spare capacity is available in percentage terms, this capacity still represents a large potential volume of PPT.

The Commission also notes that the majority of Feger's domestic sales and all of its Australian sales are profitable, with similar profits on goods sold domestically as those exported to Australia. The Commission also compared the profit margin on Feger's export sales of PPT to Australia during the review period with the period examined in REP 276. Feger's profit margins have changed only marginally.

Details of this analysis are available at **Confidential Attachment 5**.

7.4 Will injury continue or recur?

7.4.1 Feger's claims

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

- findings in *Anti-Dumping Commission Report No. 354* and *Statement of Essential Facts No. 488* (SEF 488), the major findings of which have since been accepted by the Minister in REP 488, indicate that the vast majority of exporters in Italy are not engaged in dumping of PPT to Australia;
- there is no economic incentive for Feger to export PPT to Australia at dumped prices given the small size of the Australian market on a global scale and given the existing high degree of price competition in this market; and

- SEF 488, and the decision which has since been made by the Minister (as recommended in REP 488), concluded that the expiration of the measures on PPT exported to Australia from Italy by all exporters other than Feger and La Doria, is not likely to lead to a continuation or a recurrence of dumping.

7.4.2 Impact of measures on import volumes and market share

The Commission has established in Chapter 4 that the volume of exports from Italy to Australia by Feger and its respective share of the market has changed significantly since the measures were imposed. Since the imposition of the measures, Feger's export volumes of PPT to Australia have reduced, and were less than 1 per cent of the overall Australian market during the review period.

As noted earlier in this report, there were other anti-dumping measures which applied to all other exporters of PPT from Italy except La Doria, and which were examined in REP 488. In REP 488, the Commission 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 other Italian exporters with comparatively lower anti-dumping measures (such as a lower floor price and / or a lower ad valorem rate for the payment of IDD). REP 488 also showed that the volume of exports subject to those measures had increased, but at the expense of Feger and/or La Doria. The Commission's analysis of prices and consumer preferences (see below) suggests that Feger's relative position in the market compared to other exporters was less competitive as a result of the anti-dumping measures generally, which resulted in the decline in its export volume and market share.

The Commission's analysis is in **Confidential Attachment 1** and **Confidential Attachment 6**.

7.4.3 Impact of measures on prices

The major supermarkets sell PPT supplied by both Australian and Italian suppliers. Evidence presented to the Commission by at least one supermarket throughout REP 488 suggests that tender documents for private label PPT specifically request submissions for Australian or Italian PPT. Both of the major supermarkets stock an Australian origin private label and an Italian origin private label category of PPT on their shelves. The Australian industry is unable to compete for the supply of the Italian private label category of PPT, and vice versa.

Feger supplied PPT to the major supermarkets prior to the imposition of measures, but afterwards Feger ceased to supply certain types of lower priced PPT, instead exporting mostly higher priced organic PPT (a category in which the Australian industry did not supply a similar product). The measures resulted in an increase in Feger's export prices (noting that organic PPT tend to command higher prices generally), but this had no material impact on the pricing levels of PPT at the major supermarkets generally (noting that Feger progressively ceased supplying the major supermarkets after the measures were imposed).

To further analyse the impact of the measures on prices, the Commission examined SPCA's weighted average into-store prices of the goods prior to and post the imposition of the measures in REP 217, relying on information from REP 217 and data submitted in REP 488. REP 488 found that SPCA's weighted average revenue per kilogram has remained stable each year during the injury analysis period.

Whilst this calculation involved a mix of products sold throughout the year, the imposition of those measures did not result in any improvement in SPCA's prices. In fact, the Commission's analysis suggests that all prices have declined generally throughout the injury analysis period examined in REP 488. There is no evidence before the Commission which points to a different conclusion concerning the review period.

Finally, the Commission compared previous export prices from Feger for its largest selling model of PPT during the period examined in REP 276 with the export prices achieved by the cooperating exporters of similar products during the period examined in REP 488. The Commission found that Feger's export prices were generally consistent for that product in 2015, 2016 and 2017, and that these prices were higher than the export prices established for most of the exporters examined in REP 488.

The Commission's analysis is included at **Confidential Attachment 2** and **Confidential Attachment 7**.

7.4.4 Supermarket pricing behaviour

In REP 488, the Commission 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 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 measures being considered in that inquiry.

The Commission observed that in the year those 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 PPT 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 2**.

7.4.5 Significance of other suppliers in the market

As noted in REP 488, 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 had a significant impact on SPCA.

In terms of competition for tenders, the Commission observed 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, nor by the goods currently subject to the anti-dumping measures but which were not dumped during the review period.

7.5 Conclusion

As discussed in Chapter 4, Italian private label PPT tends to compete directly with Italian proprietary label PPT. La Doria, and the exporters of PPT from Italy examined in REP 488, have established relationships with major supermarkets. Consumers tend not to switch between products with differing origins. In this environment, Feger's future success in the Australian market in the absence of the measures will depend almost entirely on its ability to compete with other Italian exporters of PPT.

As discussed at Chapter 5 and in REP 488, the imposition of anti-dumping measures has had little, if any, impact on the economic condition of SPCA. Dumping has not conferred any apparent price advantage to the goods exported from Italy, with movements in retail pricing occurring independently of the measures, indicating a competitive market. Indeed, the major supermarkets have demonstrated they will change their purchasing behaviours to take advantage of the most favourable prices offered among all Italian exporters, including purchasing from exporters subject to comparatively lower measures.

As a general principle the Commission considers that, whilst the presence (or absence) of dumping during the review period may be indicative of future behaviour, this factor alone is not determinative. The negative dumping margin indicates that Feger could reduce its export prices further and still not dump. The Commission considers that there is little economic incentive for Feger to reduce its prices (and therefore profitability) to direct additional capacity to the Australian market, noting that the Australian market is small by global standards, declining in volume, and already subject to a high degree of price competition.

In the absence of the measures the Commission anticipates that Feger is likely to seek to increase its export volume of PPT, potentially seeking to regain its past share of the market. Whilst there is a close relationship between price and volume in terms of consumer purchasing behaviour (as set out in Chapter 4), this occurs in a market which is largely 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 fundamental preferences. SPCA's prices are, in the main, higher than those achieved by exporters that have been found not to be dumping in REP 488 and by Feger in the past. Future imports in volumes and prices similar to Feger's past volumes and prices would therefore be likely to have negligible impact on SPCA in the absence of the measures. Whilst some consumers have a preference for an Australian product, the anti-dumping measures have had little, if any, 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 revoking 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 by Feger.

8 RECOMMENDATION

On the basis of the reasons contained in this report, and in accordance with subsection 269ZDA(1A)(b), the Commissioner is satisfied that the anti-dumping measures applying to PPT exported from Italy by Feger are no longer warranted, and that the revocation of the anti-dumping measures:

- would not lead, or be likely to lead, to a continuation of, or a recurrence of, dumping; and
- would not lead, or be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

The Commissioner recommends that the Minister **declare** that:

- in accordance with subsection 269ZDB(1)(a)(ii) and for the purposes of the Act and the Dumping Duty Act, the dumping duty notice applying to PPT exported to Australia from Italy by Feger is taken to be revoked generally with effect from 29 March 2019, a retrospective date as provided for under subsection 269ZDB(6)(a), being the date of the publication of the notice under subsection 269ZC(4).

9 APPENDICES AND ATTACHMENTS

Confidential Attachment 1	Australian market analysis
Confidential Attachment 2	Price analysis
Confidential Attachment 3	SPCA analysis
Confidential Attachment 4	Dumping margin calculation summary
Confidential Attachment 5	Export profitability
Confidential Attachment 6	Impact of measures on market share
Confidential Attachment 7	Exporter AEP analysis