Australian Government
Anti-Dumping Review Panel

Application for review of a Ministerial decision

Customs Act 1901 s 269ZZE

This is the approved[1] form for applications made to the Anti-Dumping Review Panel (Review Panel) on or after 20 October 2025 for a review of a reviewable decision of the Minister.

Any interested party[2] may lodge an application to the Review Panel for review of a Ministerial decision.

All sections of the application form must be completed unless otherwise expressly stated in this form.

The Review Panel maintains a public record for reviews of decisions of the Minister. If a review is initiated, a copy of the application will be placed on the Review Panel's website.

Please note that the existence of applications will be disclosed on the Review Panel's 'Pending Applications and Duty Assessments' webpage prior to initiation, including the following information:

- Relevant reviewable decision
- Country and goods to which the application relates
- Number of applications
- Status (e.g. application/s under consideration)

Time
Applications must be made within 30 days after public notice of the reviewable decision is first published.

Conferences
The Review Panel may request that you or your representative attend a conference for the purpose of obtaining further information in relation to your application. The conference may be requested any time after the Review Panel receives the application for review and before beginning to conduct a review. Failure to attend this conference without reasonable excuse may lead to your application being rejected. See the Review Panel website for more information.

Further application information
You or your representative may be asked by the Member to provide further information in relation to your answers provided to questions 9, 10, 11 and/or 12 of this application form (s 269ZZG(1)). See the Review Panel website for more information.

[1] By the Senior Member of the Anti-Dumping Review Panel under section 269ZY *Customs Act 1901*.
[2] As defined in section 269ZX *Customs Act 1901*.

Withdrawal
You may withdraw your application at any time, by completing the withdrawal form on the Review Panel website.

International Trade Remedies Advisory (ITRA) Service
Small and medium enterprises (i.e., those with less than 200 full-time staff, which are independently operated and which are not a related body corporate for the purposes of the *Corporations Act 2001*), may obtain assistance, at no charge, from the ITRA Service.

For more information on the ITRA Service, visit www.business.gov.au or telephone the ITRA Service Hotline on +61 2 6213 7267

Contact
If you have any questions about what is required in an application refer to the Review Panel website. You can also call the Review Panel Secretariat on (02) 6276 1781 or email adrp@industry.gov.au.

PART A: APPLICANT INFORMATION

1. Applicant's details

Applicant's name: **SPC Operations Pty Ltd (SPC)**
Address: **Level 6, 501 Swanston Street** **Melbourne VIC 3000**
Type of entity (trade union, corporation, government etc.): **Corporation**

2. Contact person for applicant

Full name: [redacted]
Position: [redacted]
Email address: **customercare@spc.com.au**
Telephone number: **1800 805 168**

3. Set out the basis on which the applicant considers it is an interested party:

SPC is an Australian producer of like goods to the goods the subject of the reviewable decision. SPC is also the applicant for this review.

4. Is the applicant represented?

Yes ☒ **No** ☐

If the application is being submitted by someone other than the applicant, please complete the attached representative's authority section at the end of this form.

It is the applicant's responsibility to notify the Review Panel Secretariat if the nominated representative changes or if the applicant become self-represented during a review.*

PART B: REVIEWABLE DECISION TO WHICH THIS APPLICATION RELATES

5. Indicate the section(s) of the *Customs Act 1901* the reviewable decision was made under:

☐Subsection 269TG(1) or (2) – decision of the Minister to publish a dumping duty notice

☐Subsection 269TH(1) or (2) – decision of the Minister to publish a third country dumping duty notice

☐Subsection 269TJ(1) or (2) – decision of the Minister to publish a countervailing duty notice

☐Subsection 269TK(1) or (2) decision of the Minister to publish a third country countervailing duty notice

☒Subsection 269TL(1) – decision of the Minister not to publish duty notice

☐Subsection 269ZDB(1) – decision of the Minister following a review of anti-dumping measures

☐Subsection 269ZDBH(1) – decision of the Minister following an anti-circumvention enquiry

☐Subsection 269ZHG(1) – decision of the Minister in relation to the continuation of anti-dumping measures

Please only select **one** box. If you intend to select more than one box to seek review of more than one reviewable decision(s), **a separate application must be completed**.

6. Provide a full description of the goods which were the subject of the reviewable decision:

The goods that are the subject of the reviewable decision were described in Anti-Dumping Notice 2026/021 as:

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

Further information on the goods was described in ADN 2026/021 as:

The common container sizes of the imported prepared or preserved tomatoes the subject of this application are 300 grams (g) to 850 g; however, this application covers all container sizes up to and including 1.14 litres (L). The imported goods can be packaged in different containers, such as cans, glass jars, pouches or tetra packs. Products sold in multi-unit packs for example, 3 x 400 g cans, are to be considered as 3 single packs. The imported prepared or preserved tomatoes can be labelled with a generic, a house brand/private label for the retailer, or a proprietary label. The imported prepared or preserved tomatoes the subject of this application include all imported prepared or preserved tomatoes, regardless of how labelled.

Exclusions in ADN 2026/021 were described as:

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

- *pastes*
- *purees*
- ***sauces***

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

7. Provide the tariff classifications/statistical codes of the imported goods:

The tariff classification/statistical codes of the imported goods is 2002.10.00 (statistical code 60) of the *Customs Tariff Act 1995*.

8. Anti-Dumping Notice details:

Anti-Dumping Notice (ADN) number: **ADN 2026/021**

Date ADN was published: **2 February 2026**

Attach a copy of the notice of the reviewable decision (as published on the Anti-Dumping Commission's website) to the application

Refer to Attachment 1 – ADN 2026/021

PART C: GROUNDS FOR THE APPLICATION

If this application contains confidential or commercially sensitive information, the applicant must provide a non-confidential version of the application that contains sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Confidential or commercially sensitive information must be highlighted in yellow, and the document marked '**CONFIDENTIAL**' (bold, capitals, red font) at the top of each page. Non-confidential versions should be marked '**NON-CONFIDENTIAL**' (bold, capitals, black font) at the top of each page.

- Personal information contained in a non-confidential application will be published unless otherwise redacted by the applicant/applicant's representative.

For lengthy submissions, responses to this part may be provided in a separate document attached to the application. Please check this box if you have done so: ☒

Please note: Failure to adequately and accurately respond to questions 9 – 12 below may result in the application or ground/s being rejected pursuant to s 269ZZG(2) or s 269ZZG(5) of the *Customs Act 1901*. Where there are multiple grounds of review, it is important to address each of the questions below for each ground.

9. Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision:

Note: Each ground should be articulated as a short, clear statement. Reasons to support the ground of review should be included in Question 11.

Refer Attachment 2 to this application.

10. Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 9:

Refer Attachment 2 to this application.

11. Set out how the grounds raised in question 9 support the making of the proposed correct or preferable decision:

Refer Attachment 2 to this application.

12. Set out the reasons why the proposed decision provided in response to question 10 is materially different from the reviewable decision:

Do not answer question 12 if this application is in relation to a reviewable decision made under subsection 269TL(1) of the Customs Act 1901.

On the basis that the reviewable decision was made under subsection 269TL(1) of the *Customs Act 1901*, this question has been been answered in Attachment 2.

13. Please list all attachments provided in support of this application:

Attachemnt 1 – ADN 2026/021

Attachment 2 – Grounds for the Application – Non Confidential

Attachment 3 – Letter of Authority

PART D: DECLARATION

The applicant's authorised representative declares that:

- The applicant understands that the Review Panel may hold conferences in relation to this application, either before or during the conduct of a review. The applicant understands that if the Review Panel decides to hold a conference *before* it gives public notice of its intention to conduct a review, and the applicant (or the applicant's representative) does not attend the conference without reasonable excuse, this application may be rejected; and
- The information and documents provided in this application are true and correct. The applicant understands that providing false or misleading information or documents to the Review Panel is an offence under the *Customs Act 1901* and *Criminal Code Act 1995*.

Signature:

Name: **Chad Uphill**

Position: **Trade Advisor**

Organisation: **Chad Uphill Trade Advisory**

Date: **2 March 2026**

PART E: AUTHORISED REPRESENTATIVE

This section must only be completed if you answered yes to question 4.

Provide details of the applicant's authorised representative:

Full name of representative: **Chad Uphill**
Organisation: **Chad Uphill Trade Advisory**
Address: **PO Box 3004** **Minnaumuua NSW 253** **Australia**
Email address: **chad@cutrade.com.au**
Telephone number: **+61 (0) 412 377 603**

Representative's authority to act

Refer Attachment 3 to this application.

A separate letter of authority may be attached in lieu of the applicant signing this section

The person named above is authorised to act as the applicant's representative in relation to this application and any review that may be conducted as a result of this application.

Signature:

(Applicant's authorised officer)

Name:

Position:

Organisation:

Date: / /

Customs Act 1901 – Part XVB

ANTI-DUMPING NOTICE NO 2026/021

Tomatoes, prepared or preserved

Exported from the Italian Republic

Findings in relation to a Dumping and Subsidy Investigation

Public notice under section 269TL of the Customs Act 1901

Customs Act 1901 – Part XVB[1]

The Commissioner of the Anti-Dumping Commission (**the Commissioner**) has completed the investigation into the alleged dumping and subsidisation of prepared or preserved tomatoes (**the goods**) exported to Australia from the Italian Republic (**Italy**)

The goods the subject of the investigation are:

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

Further information on the goods:

> *The common container sizes of the imported prepared or preserved tomatoes the subject of this application are 300 grams (g) to 850 g; however, this application covers all container sizes up to and including 1.14 litres (L). The imported goods can be packaged in different containers, such as cans, glass jars, pouches or tetra packs. Products sold in multi-unit packs for example, 3 × 400 g cans, are to be considered as 3 single packs. The imported prepared or preserved tomatoes can be labelled with a generic, a house brand/private label for the retailer, or a proprietary label. The imported prepared or preserved tomatoes the subject of this application include all imported prepared or preserved tomatoes, regardless of how labelled.*

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

Exclusions:

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

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

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

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

Table 1: General tariff classification for the goods

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

On 28 January 2026, the Commissioner terminated:

- both the dumping and subsidy investigation in relation to La Doria S.p.A (**La Doria**)
- the subsidy investigation in relation to De Clemente Conserve S.p.A (**De Clemente**), IMCA S.p.A (**IMCA**), La Doria, Mutti S.p.A (**Mutti**) and residual exporters.[2]

Termination Report No 654 (**TER 654**) sets out the reasons for that termination. TER 654 is available at www.adcommission.gov.au.

In respect of the remainder of the investigation, the Commissioner provided their findings and recommendations to me in *Anti-Dumping Commission Report No 654* (**REP 654**). In REP 654, the Commissioner outlines the investigation carried out and recommends that I do not publish a dumping duty notice or countervailing duty notice in respect of the goods exported from Italy.

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[2] ADN 2026/019

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

Exporter	Dumping margin	Subsidy margin
De Clemente	**5.5%**	**0.8%**
IMCA	**3.0%**	**0.8%**
La Doria	**Negative 8.8%**	**0.3%**
Mutti	**2.2%**	**0.1%**
Residual exporters	**3.6%**	**0.5%**
Uncooperative exporters and Non-cooperative entities	**11.1%**	**1.6%**

Table 2: Summary of dumping and subsidy margins

I, TIM AYRES, the Minister for Industry and Innovation and Minister for Science (**the Minister**), have considered, and accepted, the recommendations of the Commissioner, the reasons for the recommendations, the material findings of fact on which the recommendations are based, and the evidence relied on to support those findings in REP 654.

I am not satisfied, for the purposes of sections 269TG, 269TJ or 269TJA, as to the goods that have been exported to Australia from Italy, that material injury to an Australian industry producing like goods has been or is being caused because:

- the export price of the goods exported from Italy is less than the normal value of those goods
- a countervailable subsidy has been received in respect of those goods, or
- of the combined effect of the export price of the goods exported from Italy being less than the normal value of those goods and a countervailable subsidy being received in respect of those goods.

I am not satisfied dumping and subsidisation have been causing or are the cause of material injury to the Australian industry. I made this finding after considering factors other than dumping and subsidisation, namely:

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

Therefore, under section 269TL(1) of the Act, I have **DECIDED NOT** to declare that:

- section 8 of the *Customs Tariff (Anti-Dumping) Act 1975* applies to the goods and like goods exported to Australia from Italy (except La Doria)

- section 10 of the *Customs Tariff (Anti-Dumping) Act 1975* applies to the goods and like goods exported to Australia from Italy (except De Clemente, IMCA, La Doria, Mutti and residual exporters).

REP 654 sets out the reasons for my decision not to publish a dumping duty notice or countervailing duty notice in respect of the goods exported from Italy. REP 654 is available at www.adcommission.gov.au
Interested parties may seek a review of this decision by lodging an application with the Anti-Dumping Review Panel, in accordance with the requirements in Division 9 of Part XVB of the Act, within 30 days of the publication of this notice.

REP 654 and other documents included on the public record are available at: www.adcommission.gov.au

Enquiries about this notice may be directed to the case manager on telephone number +61 3 8539 2518 or by email at: investigations4@adcommission.gov.au.

Dated this 2nd day of February 2026

TIM AYRES
Minister for Industry and Innovation and Minister for Science

NON-CONFIDENTIAL

2nd March 2026

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NON-CONFIDENTIAL

Anti-Dumping Review Panel

Application by SPC Operations Pty Ltd for review concerning the Minister's decision in Investigation No. 654

Tomatoes, prepared or preserved from Italy

1. Introduction

By way of notice published 15 October 2024, the Commissioner of the Anti-Dumping Commission (**the Commissioner**) initiated an investigation concerning the imposition of anti-dumping and countervailing measures on tomatoes, prepared or preserved (**tomatoes**) exported from Italy (**Investigation 654**). The initiation of the investigation was a consequence of an application lodged by SPC Operations Pty Ltd (**SPC**) which has been found by the Commissioner to constitute the Australian industry producing like goods to those to which the anti-dumping and countervailing measures were sought.

On 27 January 2026 the investigation concerning subsidy allegations was terminated.

On, or around, 28 January 2026, the Commission recommended to the Minister that he not impose anti-dumping duties on tomatoes exported from Italy.

The Minister accepted the Commission's recommendation, declaring on 2 February 2026, by way of notice made under Section 269TL of the *Customs Act 1901* (**the Act**) and published on 3 February 2026, that he had *…considered, and accepted, the recommendations of the Commissioner, the reasons for the recommendations, the material findings of fact on which the recommendations are based, and the evidence relied on to support those findings in REP 654*.[1]

SPC, being an interested party in relation to the reviewable decision, seeks review by the Anti-Dumping Review Panel (**ADRP**) of that decision under Sections 269ZZA(1)(a) and 269ZZC of the Act with respect to exports from Italy.

[1] Report No. 654 – Alleged Dumping of Tomatoes, Prepared or Preserved, Exported from Italy, and Alleged Subsidisation of Tomatoes, Prepared or Preserved, Exported from Italy (27 January 2026) (**REP 654**).

2. Investigation findings

The Anti-Dumping Commission's (**the Commission**) Statement of Essential Facts No. 654 (**SEF 654**),[2] dated 12 November 2025 established the Commission's preliminary findings. With no substantive changes, the final report dated 27 January 2026 (**REP 654**) reaffirmed those findings and sought to address interested party representations to the SEF.

Central to this application are the Commissioner's findings in relation to the Australian market, the economic condition of the industry, and the Commission's consequent causation assessment.

In relevance to this, the investigation's findings can be understood as follows:

- The Commission determined that cooperative exporters De Clemente Conserve S.p.A., IMCA S.p.A. and Mutti S.p.A. exported dumped goods to Australia during the investigation period (1 October 2023 – 30 September 2024) with dumping margins between 2.3 percent and 5.5 percent, while cooperative exporter La Doria S.p.A. was found not to have dumped. Subsidisation was identified for all exporters but deemed negligible for cooperative exporters.

- On the Australian market,[3] the Commissioner assessed it as being supplied predominantly by the domestic industry and imports from Italy, with supermarkets accounting for the bulk of sales. The Commissioner found that pricing decisions were strongly influenced by supermarket procurement practices, which in turn were sensitive to supplier reliability and price. Products were segmented by price tier (low, mid, premium), brand type (proprietary versus private-label) and origin (Australian versus Italian).

- While noting this segmentation, the Commissioner concluded that Australian and Italian goods were substitutable and had identical end uses. It was also concluded that Italian imports undercut Australian prices throughout the investigation period by between 13 and 24 percent.

- On the economic condition of the Australian industry,[4] the Commissioner found that SPC, as the principal domestic producer, experienced substantial deterioration across every major indicator: lost sales volume and market share, price suppression and depression, lower profits, reduced return on investment and diminished capacity utilisation. Industry-wide volumes fell by 13 per cent in 2023 and by 20 per cent in 2024 relative to the beginning of the injury period. The Commissioner also found that imported goods undercut domestic prices in every quarter of the investigation period.

- On causation, the Commissioner found that dumped and subsidised imports had affected SPC's economic condition but found that the injury was not materially caused by those imports.

- Despite confirming that SPC experienced volume, price and profit injury, the Commissioner concluded that material injury was not caused by dumping or subsidisation, attributing SPC's volume, price and profit injury to:
    - a structural competitive advantage of Italian producers;
    - rising domestic raw-material costs;
    - increased domestic competition; and
    - consumer preference for Italian origin and flavour.

[2] Statement of Essential Facts No. 654, Alleged Dumping of Tomatoes, Prepared or Preserved, Exported from Italy, and Alleged Subsidisation of Tomatoes, Prepared or Preserved, Exported from Italy. 12 November 2025.
[3] Ibid, Chapter 5, p. 40-49.
[4] Ibid, Chapter 8, p. 81-86.

This assessment then resulted in the reviewable decision to not to impose interim dumping duties.

3. Grounds of review

Ground – erroneous determination that factors other than dumping have been causing or are the cause of material injury to the Australian industry

9	**Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision**

The Minister was not satisfied that dumping and subsidisation had been causing or were the cause of material injury to the Australian industry. The Minister made this finding after considering factors other than dumping, namely:

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

SPC submits that the Commissioner's recommendation that the Minister not be satisfied that dumping had been causing or was the cause of material injury to the Australian industry was erroneous. The Commissioner's own SEF/REP 654 analysis presents substantial and compelling evidence of price suppression, price depression, lost market share, reduced profitability, and declining revenue – hallmarks of material injury caused by dumped imports.

Therefore, the Commissioner's decision to conclude that other factors were the primary cause of injury was neither correct nor preferable. SPC submits that the decision is unsupported by evidence, is inconsistent with the Commission's established practice, and contrary to the legal framework established by the *Ministerial Direction on Material Injury 2012* (**the Direction**).[5]

10	**Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 9**

The correct or preferable decision was that material injury to the Australian industry was being caused by dumped imports from Italy. This determination being possible, based on the extensive evidence before the Commissioner, would have then directed the Commissioner to recommend that interim dumping duties be imposed.

[5] Clare, J., Minister for Home Affairs, Ministerial Direction on Material Injury 2012, Canberra, Commonwealth of Australia, 27 April 2012.

11	**Set out how the grounds raised in question 9 support the making of the proposed correct or preferable decision**

The grounds raised in question 9 establish that:

- there is substantial evidence of material injury caused by dumped Italian imports: SEF654/REP654 comprehensively documented volume injury (material decline in sales), price injury (suppression and depression), and profit injury across multiple metrics.

- dumping has caused material injury: even where 'remedied prices' continue to undercut Australian prices (expanded on further below), this did not negate causation – it confirmed the extent of price-driven injury, with dumping contributing materially to that injury.

- "Other factors" are unsupported: the Commissioner's findings on competitive advantage, raw material costs, domestic competition, and consumer preferences were either unsupported by evidence, legally irrelevant, or factually incorrect.

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

Legal Framework: The Ministerial Direction on Material Injury

The Ministerial Direction on Material Injury 2012 states clearly:

> *Whether dumping or subsidisation is the sole cause of injury or whether there are other contributing factors, I direct that the injury caused by dumping or subsidisation* ***must be material in degree****.* [**emphasis** added].

SPC submits that materiality does not require that dumping be the predominant or overriding cause of injury; it requires that dumping contribute to injury in a non-trivial, non-negligible way. The Commissioner's own analysis of the impact of Italian tomato imports demonstrated that this threshold was not only met but exceeded.

The Direction further provides:

> *Injury caused by other factors must not be attributed to dumping or subsidisation. However, I direct that dumping or subsidisation need not be the sole cause of injury to the industry.*

The Direction acknowledges that materiality must be assessed in context:

> *In considering the circumstances of each case I direct that you consider that an industry which at one point in time is healthy and could shrug off the effects of the presence of dumped or subsidised products in the market, could at another time, weakened by other events, suffer material injury from the same amount and degree of dumping or subsidisation.*

This principle is critical. The Commissioner's findings acknowledged that SPC experienced a 28 percent decline in sales volume and 29 percent decline in market share,[6] price suppression and depression,[7] reduced revenue,[8] lost profitability and negative ROI,[9] and reduced capacity utilisation.[10] An industry in this weakened state is precisely the scenario contemplated by the Direction, where even modest dumping margins can cause material injury.

The investigations' findings evidence material injury from Italian dumping

The Commissioner's own investigative analysis presented substantial and compelling evidence of price suppression, price depression, lost market share, reduced profitability, and declining revenue.

On volume injury, the Commissioner found that SPC sales volumes had declined 28 percent over the injury period, and that Australian industry sales volumes declined by 20 percent.[11] The Commissioner also found that SPC's market share had declined by 29 percent, and that Australian industry share declined by 21 percent.[12]

Critically, while Italian import volumes increased 10 percent over the injury period, the SEF concluded that 91 percent of Italian imports during the investigation period were dumped.[13]

SEF 654 stated that:

> *Figure 22 shows that since October 2020, the volume and market share of both like goods produced by the Australian industry and undumped imported goods has fallen. This share and volume has been replaced by an increase in imports from exporters the commission has found exported dumped and subsidised goods from Italy to Australia during the investigation period.*

Figure 22 depicted dumped goods capturing market share from both Australian industry and undumped imports:

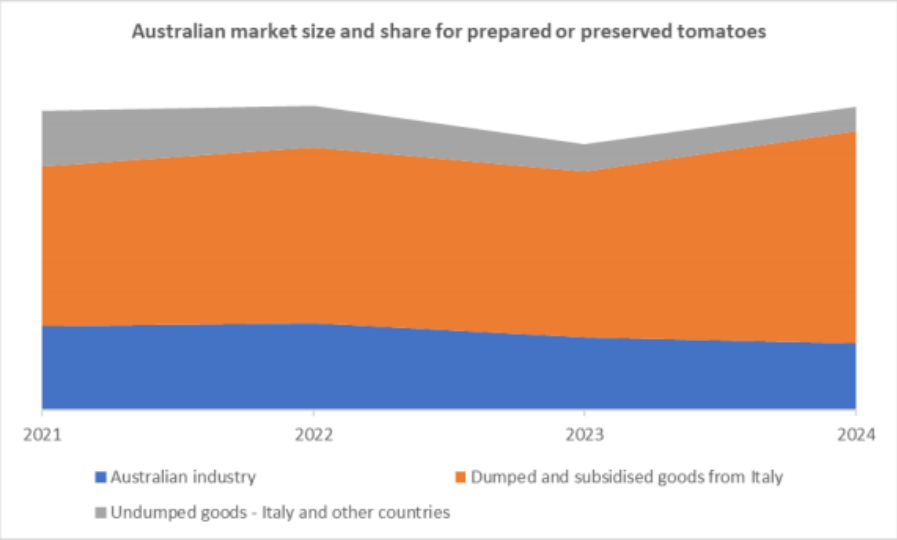

Figure 22, SEF 654

[6] Statement of Essential Facts No. 654, Alleged Dumping of Tomatoes, Prepared or Preserved, Exported from Italy, and Alleged Subsidisation of Tomatoes, Prepared or Preserved, Exported from Italy. 12 November 2025, p. 98.
[7] Ibid, p. 83-84.
[8] Ibid, p. 85.
[9] Ibid.
[10] Ibid.
[11] Ibid, p. 82.
[12] Ibid, Table 30.
[13] Ibid, p. 94.

SPC submits this to be direct evidence of volume injury caused by dumped goods.

On price effect injury, the Commission's analysis comprehensively established price undercutting, price suppression, and price depression.

The Commissioner found that dumped goods undercut Australian industry prices in every quarter of the investigation period, and that at the mid-tier level (the largest market segment), Italian goods undercut Australian prices by 21 – 26 percent in every quarter.[14] At the premium tier, Italian goods undercut Australian prices by 21 – 24 percent in 3 of 4 quarters for the 12 months ending September 2024, and at the retail level, Italian goods undercut Australian prices by 29 percent (low tier), 36 percent (mid-tier), and 11 percent (premium tier).[15]

Section 9.4.3 of SEF 654 stated that:[16]

> *The fact that Italian goods exist in the market at a lower price point to Australian industry indicates that those exporters may enjoy greater efficiencies of production…* ***The commission notes, however, the greater margins of undercutting observed in relation to dumped exports***. [**emphasis** added].

The Commissioner found clear evidence of price suppression. At Chapter 8.4.3 of SEF 654, the Commission stated that:[17]

> *Costs increased to a far greater extent during the second year, with* ***SPC unable to increase the selling prices by the same degree to recover these increasing costs…SPC was not able to increase selling prices sufficiently to recover the increased costs*** *of manufacture and sale that had accrued during the injury period.* [**emphasis** added].

Figure 10 of SEF 654 depicted this clearly, with the Commission concluding that SPC experienced price suppression during the investigation period:

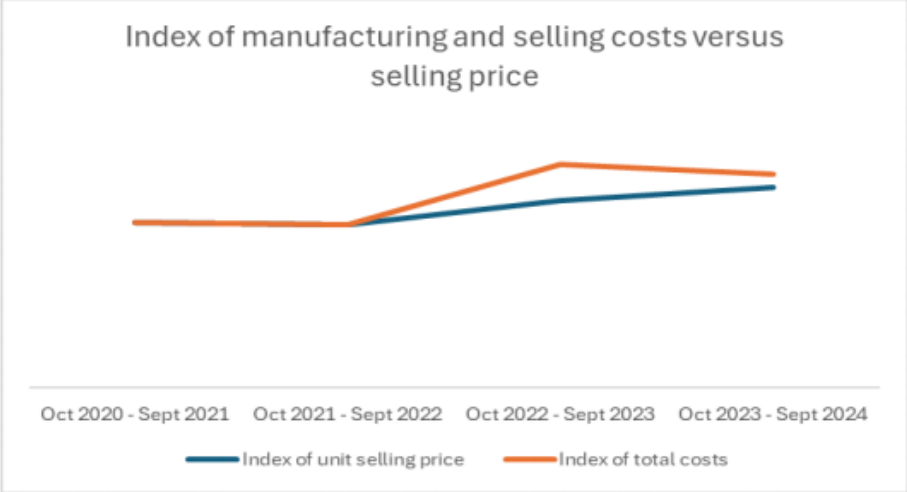

Figure 10, SEF 654

[14] Ibid, p. 86-87.
[15] Ibid, p. 89-90.
[16] Ibid, p. 96
[17] Ibid, p. 84.

The Commissioner also found price depression during the investigation period. At Chapter 8.4.2 of SEF 654, Figure 9 evidenced that SPC's selling price *…trended downward for the remainder of the investigation period*:[18]

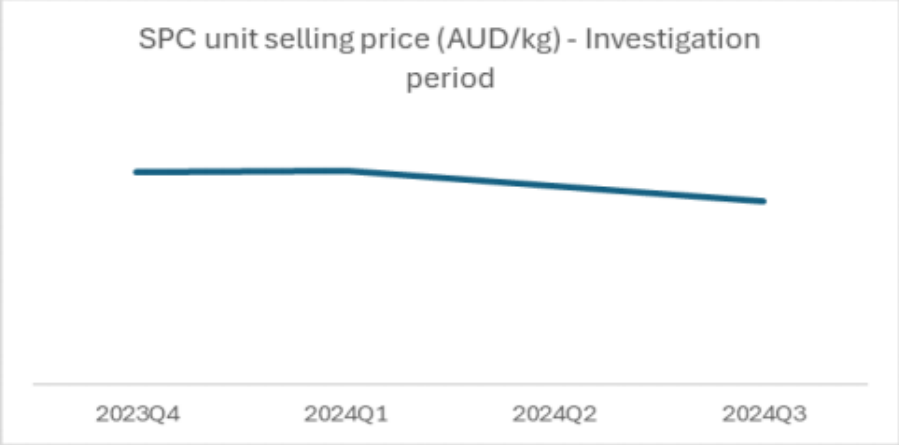

Figure 9, SEF 654

The Commission stated that this trend was indicative of SPC reducing its prices during the investigation period and was evidence that SPC has experienced price depression.[19]

On profits and profitability, the investigation found negative profitability across multiple years, return on Investment declined to negative 19 (as an indexed representation) (from positive 100 in 2021), and revenue declined 13 percent in the investigation period.[20]

These findings establish causation. At Chapter 8.7 of SEF 654, the Commission explicitly linked undercutting to injury:

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

And at Chapter 9.4.3:

> *Undercutting evident at both the wholesale and retail level **has placed the Australian industry under pressure** to accept reduced prices from their customers…. in an attempt to maintain sales volume and market share.* [**emphasis** added].

In summary, the Commissions analysis established substantial and convincing evidence of material injury from dumping. The Commissioner nonetheless found that 'other factors' overrode all of this.

<u>Refuting the 'other factors' causing injury</u>

SPC submits that the Commissioner's investigative analysis that injury was caused by factors other than dumping was unsupported by evidence, contained inconsistencies, and was contrary to law. Each of the four main 'other'

[18] Ibid, p. 83.
[19] Ibid.
[20] Ibid, Chapter 8.5, Table 32, and Table 31 respectively.

injury factors to which, when combined, the Commissioner established a neither correct nor preferable conclusion over, are addressed below. SPC also addresses the Commission's 'remedied price' analysis and its relevance to the material injury finding.

i. Competitive advantage of Italian producers

The Commission's analysis found that:[21]

> *…Italian producers benefit from economies of scale, allowing them to spread fixed costs across a greater volume and variety of products. Italian producers can then produce prepared or preserved tomatoes at lower costs... thereby providing them with a competitive advantage over the Australian industry.*

This finding does not negate causation – it confirms it. The existence of competitive advantages enjoyed by foreign producers is legally irrelevant to the causation analysis under the Act. SPC submits that the question is not whether foreign producers are more efficient, it is whether dumped goods have caused material injury. The mere fact that imports are competitive due to factors such as lower labour costs, economies of scale, or technological advantages does not preclude a finding of material injury from dumping.

Most foreign producers subject to anti-dumping investigations will be larger than Australian producers and therefore enjoy comparative economies of scale. Such a circumstance does not and has not prevented the Commission from finding material injury and recommending measures. If the mere existence of economies of scale were sufficient to defeat a dumping case, virtually no measures would ever be imposed. This cannot be the correct and preferable conclusion to draw from an economy of scale analysis.

The finding that Italian producers enjoy competitive advantages supports the case for causation and the imposition of interim dumping duties. It explains why Italian producers can profitably export at prices that undercut Australian industry, and why that undercutting (driven by dumping) causes material injury. The Commission acknowledged this at Chapter 9.8.1 of SEF 654:[22]

> *These lower production costs mean that Italian exporters can sell their goods at a lower price when compared to the Australian industry and are therefore more competitive in the Australian market, being a price-sensitive market.*

However, the Commission's analysis was contradictory by stating that:

> *The commission observed that when these lower prices are adjusted to account for dumping and/or subsidisation (i.e. a 'remedied price'), they still undercut the Australian industry prices and thereby retain their advantage.[23]*

The fact that remedied prices continue to undercut Australian prices does not mean dumping has not caused injury. Rather, it means that Italian producers can export profitably at prices below Australian prices (due to competitive advantages). However, dumping allows them to undercut by even greater margins, causing additional injury. Removing dumping (i.e. imposing measures) would have the effect of reducing the extent of undercutting and provide material relief to the Australian Industry.

[21] Ibid, Chapter 9.8.1.
[22] Ibid. P. 102
[23] Ibid.

The Commission's "remedied price" analysis, a full assessment of which is detailed further below, demonstrated that removing dumping and subsidisation would have materially reduced undercutting:

- across the full product range, undercutting would reduce from 22-24 percent to 18-20 percent; [24]
- at the mid-tier level, undercutting would reduce from 21-26 percent to approximately 15-20 percent;[25] and
- at the premium level, undercutting would reduce from 21-24 percent to approximately 15-18 percent.

The Commission's past practice is also relevant to this point, where it has confirmed materiality despite notions of competitive advantage. The Commission has routinely imposed measures in cases where foreign producers enjoy competitive advantages, such as (i) lower labour costs (cases involving imports from China, Vietnam, Indonesia), (ii) economies of scale (cases involving large multinational producers), and (iii) government support (cases involving subsidised industries). In none of these cases did the Commission find that competitive advantages negate causation or materiality.

A case-in-point is the Commission's July 2024 decision concerning the continuation of measures on Chinese railway wheels.[26] In this inquiry, the Commission explicitly recognised the existence of a competitive advantage but nonetheless concluded that the measures were required to prevent material injury. In relevant part:[27]

> *The Commissioner accepts that overseas manufacturers may enjoy a competitive advantage relative to the Australian industry due to a range of potential factors, including lower costs of labour, higher levels of productivity, greater levels of automation, more efficient business processes and/or the benefits of economies of scale. Noting that overseas manufacturers may enjoy competitive advantages, the Commissioner is nonetheless satisfied that the expiration of the measures applying to railway wheels exported to Australia from China would lead, or would be likely to lead, to a continuation of, or recurrence of dumping and the material injury that the measures are intended to prevent.*

Even assuming Italian producers enjoy competitive advantages, this does not mean dumping has not caused material injury.

The Ministerial Direction explicitly contemplates this scenario:

> *Whether dumping or subsidisation is the sole cause of injury or whether there are other contributing factors, I direct that the injury caused by dumping or subsidisation* ***must be material in degree****.* [**emphasis** added]

Material injury caused by Italian exporter dumping was material in degree. SPC's SEF 654 response argued, and SPC continues to maintain, that the Commission has erred in treating "competitive advantage" as a complete defence to causation, rather than as one of multiple factors to be weighed.

In response to SPC's submission on its views to SEF 654, REP 654 stated only that: [28]

> *The commission considers that facts specific to the investigation, including that* ***the goods are a processed agricultural product*** *(as opposed to a commodity product like railway wheels) demonstrate that it is the level of competitive advantage of Italian producers over Australian industry, indicated by the*

[24] Ibid, p. 109-111.
[25] Ibid.
[26] Report No. 632: Inquiry into the Continuation of Anti-Dumping Measures on Certain Railway Wheels, exported from the People's Republic of China and the French Republic. 12 June 2024.
[27] Ibid, p. 76.
[28] REP 654, p. 121.

> *levels of undercutting, that contributes to injury experienced by the Australian industry (along with the other factors discussed in chapter 9.8). Chapter 9.9.1 examines this further.* [**emphasis** added].

In other words, while the Commission found that competitive advantages existed across different product categories, the fact that tomatoes are a processed agricultural product then means that competitive advantage in this sector can be distinguished from others, and therefore anchor a fundamentally different material injury analysis than, say, for example, an injury assessment on steel products. Respectfully, such an assessment carries no weight whatsoever. A manufacturing competitive advantage is the same irrespective of the product type.

The term "competitive advantage" has a settled and uniform meaning across all fields of economic and commercial analysis. It is not a concept whose content varies according to product type, industry classification, or the nature of a manufacturing process. Every credible dictionary and authoritative source defines it in substantially the same way:

- Cambridge Business English Dictionary defines competitive advantage as *…the conditions that make a business more successful than the businesses it is competing with…*[29]
- Collins English Dictionary defines competitive advantage as *…An advantage based on success in competition…*[30]
- Oxford states that competitive advantage occurs *…when an organization is implementing a strategy that has not been adopted by its current or potential competitors.*[31]

None of these definitions draw any distinction based on the type of good produced, the industry in which the advantage arises, or the category of product involved. None suggest that competitive advantage in the manufacture of processed agricultural products is conceptually or economically different from competitive advantage in the manufacture of steel, aluminium, chemicals, or any other product. The concept is, by its very nature, industry-agnostic.

The foundational academic literature on competitive advantage, particularly Michael Porter's *Competitive Advantage: Creating and Sustaining Superior Performance* (1985), establishes that competitive advantage arises from a firm's cost structure, differentiation capability, or strategic focus. These are structural economic characteristics that apply equally to a tomato processor, a steel mill, or a railway wheel foundry. The sources of competitive advantage – economies of scale, lower input costs, labour cost differentials, technological superiority, access to resources – are the same regardless of whether the output is a processed food product, a commodity product, or an intermediate industrial good.

The Commission's attempt to distinguish tomatoes from other product categories on the basis that they are processed agricultural products rather than commodity products introduces a distinction that has no basis in the Act, the WTO Anti-Dumping Agreement, or the Ministerial Direction. Neither section 269TAE nor Article 3 of the Anti-Dumping Agreement draws any distinction between product types in the application of the causation or material injury tests. The statutory framework applies a single, uniform test for material injury across all industries and all products. There is no legislative avenue for the proposition that competitive advantage operates differently, or should be treated differently, depending on the nature of the goods under investigation.

Furthermore, the Commission's own past practice demonstrates the universality of the concept. In Report No. 632 concerning Chinese railway wheels, the Commission explicitly accepted that overseas manufacturers enjoyed competitive advantages arising from lower labour costs, higher productivity, greater automation, more efficient

[29] See https://dictionary.cambridge.org/us/dictionary/english/competitive-advantage
[30] See https://www.collinsdictionary.com/dictionary/english/competitive-advantage
[31] See https://www.oxfordreference.com/display/10.1093/oi/authority.20110803095628985

business processes, and economies of scale. In that case, the Commission did not treat those competitive advantages as negating causation; it found that measures were nonetheless required to prevent material injury. The sources of competitive advantage identified in Report No. 632 are the same sources of competitive advantage identified in respect of Italian tomato producers in SEF 654 and REP 654.

On relevant jurisprudence, against which the Commissioner's finding plainly contradicts, the WTO Dispute Panel in *EU – Biodiesel (Argentina)* pointed out, with regard to the EU Commission's non-attribution assessment concerning the lack of vertical integration in the EU industry and its lack of access to raw materials, that Article 3.5 does not require investigating authorities to conduct a non-attribution analysis in relation to features that are inherent to the domestic industry and that have remained unchanged during the period of investigation for the injury determination. In relevant part:[32]

> *"Argentina primarily takes issue with the EU authorities' conclusion that the structure of the EU industry was not a cause of injury. The two factors, namely lack of vertical integration and lack of access to raw materials, identified by Argentina, essentially are inherent features of the EU domestic industry that, according to Argentina, render it less competitive than the Argentine producers. In our view, however, this line of argument is premised on a misreading of Article 3 of the Anti-Dumping Agreement and its various paragraphs, including Article 3.5.* ***The concept of injury envisaged by Article 3 relates to negative developments in the state of the domestic industry. Article 3 is not intended to address differences in the structure of the domestic industry as compared to that of the exporting Member****. Rather, it is clear from the text of Article 3.5 and from its indicative list of such 'other factors' – which all pertain to developments in the situation of the domestic industry – that* ***the authority is not required to conduct a non-attribution analysis with respect to features that are inherent to the domestic industry*** *and have remained unchanged during the period considered by the investigating authority for purposes of its injury analysis.* [**emphasis** added].

SPC believes that the Commission's reasoning in REP 654, if not overturned on merits review, would create an untenable inconsistency in the Commission's decision-making. Two foreign producers enjoying the same type of competitive advantage (e.g., economies of scale) would be treated differently depending solely on whether the goods they export are classified as "processed agricultural products" or "commodity products." Such an outcome is arbitrary and finds no support in the statutory scheme. It would also produce the perverse result that Australian industries manufacturing processed food products are afforded a lesser standard of protection under the anti-dumping system than industries manufacturing steel, aluminium, or other industrial goods – a result that is plainly contrary to the objectives of the legislation.

SPC submits that the Commission's characterisation of competitive advantage as varying by product category is an error of law and reasoning and is neither correct nor preferable. Competitive advantage is a single, well-understood economic concept. Its existence explains <u>why</u> foreign producers can undercut Australian prices, but it does not explain away the <u>additional</u> injury caused by dumping. The correct analytical approach is to assess whether the dumping has caused material injury in its own right, having regard to the factors in section 269TAE, irrespective of the product type or the source of the foreign producer's underlying competitive advantage.

[32] Panel Report, EU – Biodiesel (Argentina), para. 7.522. See also Panel Report, EU – Fatty Alcohols (Indonesia), para. 7.198.

ii. Increase in Raw Material Costs

In SEF 654, the Commission referenced SPC's representations throughout the inquiry on raw material cost aspects:[33]

> *SPC noted that fresh tomato prices in Australia have escalated over the injury period. The escalation in costs has been caused by a range of factors including a reduction in the number of tomato growers, increased demand for fresh tomatoes (leaving less for processing) and increased costs of production for the growers being passed on to the purchasers (notably water prices).*

The Commission has treated raw material cost increases as a separate cause of injury. In totality, the assessment in SEF 654/REP 654 was that:[34]

> *…while costs were stable across the first year of the injury period, costs rose in the second year, with SPC unable to increase its selling prices to recover these increasing costs. While costs stabilised and began to decline in the investigation period, SPC was not able to increase selling prices sufficiently to recover the increased costs of manufacture and sale that had accrued during the injury period, resulting in price suppression and falling revenue and profitability.*

SPC submits that this finding confuses cause and effect. The increase in raw material costs did not cause injury – the inability to pass on those costs (due to dumped imports) caused injury. SPC could not increase its prices due to dumped imports. The SEF itself acknowledged this at Chapter 8.4.3:[35]

> *While costs stabilised and began to decline in the investigation period, SPC was not able to increase selling prices sufficiently to recover the increased costs of manufacture and sale that had accrued during the injury period.*

The answer as to why SPC could not increase prices was provided throughout SEF 654:

- Chapter 5.5.2: *The presence of Italian imports of the goods influence its pricing negotiations with customers*…;
- Chapter 9.4.3: *Undercutting...has placed the Australian industry under pressure to accept reduced prices*…; and
- Chapter 9.4.2: *Customers' access to lower priced imports places downward pressure on the Australian industry's prices…*

This is text-book price suppression caused by dumped imports. The Commission's own SEF analysis confirmed dumping prevented cost recovery due to competitive pressure of significantly lower priced Italian imports. Figure 10 demonstrated that manufacturing costs spiked in 2022-2023, that selling prices could not keep pace, and that the gap persisted into the investigation period:

[33] SEF 654, p. 103
[34] SEF 654, p. 103. REP 654, p. 122.
[35] Ibid, p. 84.

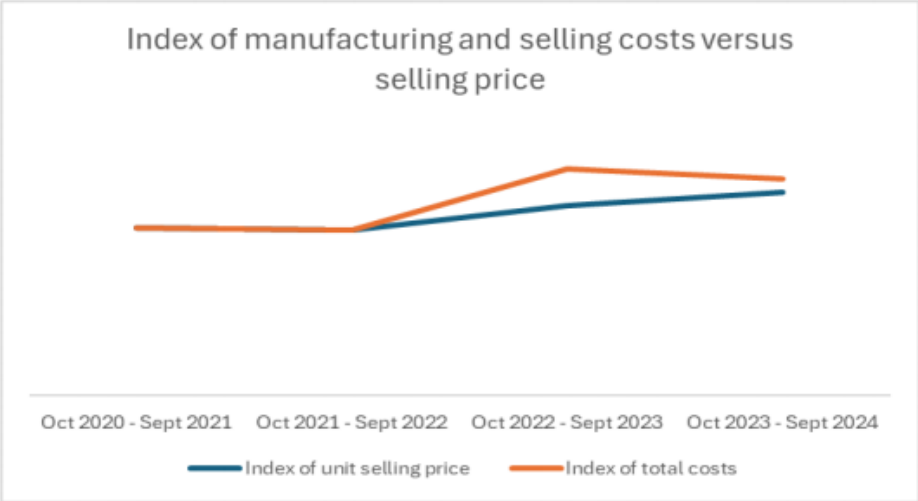

Figure 10, SEF 654

Based on this analysis, the Commission considered that SPC experienced price suppression during the investigation period.

Price suppression is an injury caused by dumped imports, not a separate "other factor." The Commission often defines price suppression as occurring where price increases, which otherwise would have occurred, have been prevented. An indicator of price suppression may be the margin between prices and costs.

This is precisely what occurred. SPC's costs increased, but dumped imports prevented SPC from raising prices accordingly. Unfortunately however, while the Commission found that SPC experienced price suppression and that the dumped goods caused this price suppression, it then attributed this same injury to raw material cost increases. This is double counting the same injury with attribution to different causes.

These arguments were articulated to the Commission in SPC's SEF 654 response submission. In addressing these, REP 654 stated only that:

> *The commission considers that both the increase of costs and the inability to pass on the increase are related causes of injury. If raw material costs had remained lower, SPC would have been able to maintain a greater margin between its costs and selling price and therefore not have experienced price injury, or not experienced such injury to the same level.*

This does not address why SPC was unable to pass cost increases on. Increases in input costs do not preclude findings of material injury from dumping. Indeed, they often exacerbate the injury caused by dumped imports, as producers face a "cost-price squeeze." SPC would have otherwise passed cost increases on, but for the suppressive effects of dumped Italian imports.

SPC therefore submits that the Commission's finding on raw material costs was legally incorrect, lacked analysis, and was neither correct nor preferable.

iii. Increase in domestic competition

SEF 654 found that:[36]

> *In addition to competition with Italian exporters of the goods, SPC competes with other Australian manufacturers of like goods, Simplot and Safcol... The entry of Simplot into the market in the investigation period coincided with the fall in market share of SPC and Safcol…*

Under the SEF, this finding was unsupported by evidence and factually incorrect. As the Commission acknowledged, Simplot entered the market in May 2024. The investigation period was October 2023 to September 2024. Simplot was therefore only present for 5 months of the 12-month investigation period. In its SEF response, SPC argued that it was implausible that a new entrant, present for less than half the investigation period, could have caused the comprehensive injury documented throughout the entire 4-year injury period (October 2020 to September 2024).

SPC also argued that there was a lack of evidence to support this finding. The SEF stated that *…Simplot did not complete the questionnaire or participate in the investigation…*,[37] and that *In the absence of sales and production volume data from Simplot, the Commission has estimated sales for the investigation period based on a sample of weekly sales data it obtained during the investigation from alternative sources.*[38] The Commission had no verified data from Simplot regarding actual sales volumes, pricing strategies, customer base, and impact on competitors.

Furthermore, the Commission stated at Chapter 2.5.2 of the SEF that …*Safcol did not complete the questionnaire, but provided confidential volume, sales and costs data*.[39] The Commission therefore had no data from Safcol regarding competitive dynamics, pricing strategies, customer interactions, and its impact on SPC.

Throughout the course of the investigation, SPC had provided no evidence of material domestic competition. SPC had not claimed – and had not furnished evidence – that domestic competition from Simplot or Safcol caused material injury. This was because no such material injury occurred.

SEF 654 acknowledged at Chapter 2.5.2 that in its application, SPC stated *…that there were no other Australian producers of like goods during its proposed investigation period (which was April 2023 to March 2024)…*[40] While SPC noted that Simplot entered in May 2024, SPC did not attribute injury to Simplot's entry. Nor could it have, given that Simplot was only present for a few months. Furthermore, Simplot's market entry occurred after the originally SPC-proposed investigation period.

SPC submits that the Commission's analysis on domestic competition is circular. Figure 26 of the SEF showed that Simplot gained market share in the investigation period:[41]

[36] Ibid, p. 103-104.
[37] Ibid, p. 19.
[38] Ibid, p. 37-38.
[39] Ibid, p. 19.
[40] Ibid.
[41] Ibid, p. 104.

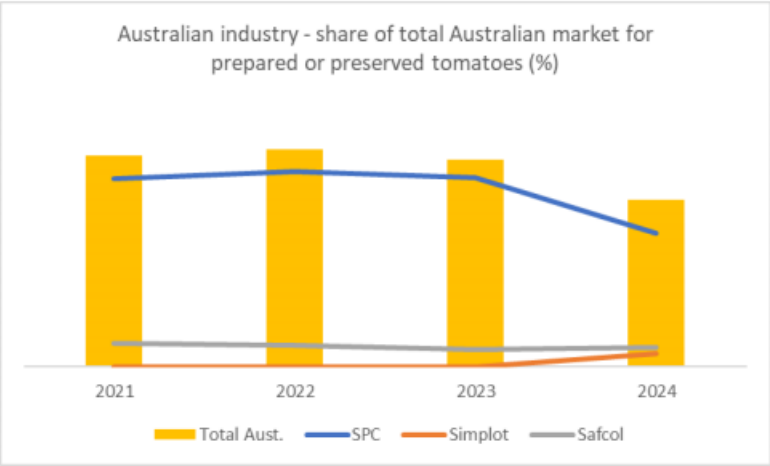

Figure 26, SEF 654

The Commission noted in the SEF that SPC and Safcol lost market share in the same period.[42] The Commission concluded that Simplot's entry caused injury to SPC and Safcol. However, this analysis ignored the fact that Italian imports also gained market share (and were present for the entire 4-year injury period). It also ignored the fact that Simplot's market share was minimal (the Commission's own estimates show this), and that the Australian industry, as a whole, lost market share, meaning imports (not inter-domestic competition) displaced Australian production.

Following SEF 654, the Commission received a submission from *Calispa S.p.A* (**Calispa**) which, inter alia, provided confidential weekly sales data for Woolworths.[43] With this additional data, the Commission then revised its Australian market volume analysis.[44]

The Calispa submission argued that the Commission had failed to account for Simplot's market entry and provided the confidential Woolworths data to support its case. Calispa contended that Leggo's entry caused significant volume and price injury to SPC.[45]

The Commission's analysis of the Calispa data at section 9.8.3 of REP 654 found that:

- SPC's sales volumes at Woolworths fell with the entry of Leggo's;
- There was some correlation between Leggo's price discounts and falls in SPC volumes, though this broke down later in the investigation period;
- SPC began discounting its retail prices (from $2.13 to $1.67 per can) in anticipation of Leggo's entry; and
- SPC's market share fell roughly by the amount Simplot gained.

The Commissioner was satisfied that the entry of Simplot contributed to injury through increased discounting and shifting sales volumes, particularly by SPC. However, this was set in the context of an Australian market that grew 16 percent while Italian imports increased by 22 percent, and overall Australian industry share continued to fall. The Commission used the Calispa-provided Woolworths data as indicative, noting that if Simplot's 5-month volumes were extrapolated for the full period, its market position would have been even more significant.[46]

SPC does not dispute that it now competes with other Australian manufacturers of like goods, including Simplot (Leggo's) and Safcol. Nor does SPC dispute that Simplot's entry into the market during the investigation period

[42] Ibid.
[43] REP 654, p. 123.
[44] Ibid, p. 128.
[45] Ibid, p. 123.
[46] Ibid, p. 130.

introduced a change to the competitive dynamics within the Australian industry. It is economically self-evident that when a new competitor enters a market, some degree of competitive adjustment will occur, and that prices may fall as a consequence of that adjustment.

However, the Commissioner's analysis at section 9.8.3 of REP 654 fails to properly contextualise the scale of this domestic competitive impact against the vastly larger impact of dumped Italian imports on the Australian industry. When measured against the volume and price effects of Italian imports documented in REP 654 itself, the contribution of domestic competition to the injury experienced by the Australian industry is, at most, marginal.

The Commissioner's own findings demonstrate the overwhelming scale of the injury caused by Italian imports relative to any domestic competitive adjustment:

- On volume: as documented at chapter 9.5 of REP 654,[47] Italian imports represented 76 percent of the Australian market during the investigation period. Of these, 91 percent were dumped, meaning that 70 percent of the Australian market was made up of dumped goods. From October 2020, SPC's sales volume has fallen 28 percent and its market share by 30 percent, while Italian imports increased 10 percent in volume and 7 percent in market share (Figures 22 and 23, chapter 9.5). The Commission further found at Figure 24 that the volume and market share of both Australian industry like goods and undumped imported goods fell over the injury period, with this share replaced by an increase in imports from exporters found to have dumped and received subsidies.

- On price: the Commission found at chapter 8.7 of REP 654[48] that dumped goods undercut Australian industry prices in every quarter of the investigation period at an all-of-product level (Figure 12). At the mid-tier, Italian exporters undercut Australian industry prices by between 21 percent and 26 percent in every quarter (Figure 13). For SPC's highest-volume MCC, undercutting ranged from 23 percent to 33 percent (Figure 15). These are massive and sustained price differentials.

- On market dynamics: the Commission itself notes at section 9.8.3 of REP 654[49] that the Australian market increased 16 percent during the investigation period while Italian imports increased 22 percent.[50] Meanwhile, total Australian industry sales volumes remained flat.[51] In other words, virtually all of the market growth was captured by Italian imports – not by Simplot or any other domestic competitor. The entry of Simplot may have redistributed a small amount of volume within the Australian industry, but it did not cause the overall decline in the Australian industry's position.

In this context, the Commissioner's finding that domestic competition *…has contributed to the injury experienced by the Australian industry…*[52] overstates the significance of what was, at best, a minor redistribution of volume among Australian producers, while Italian imports were simultaneously capturing the vast majority of market growth and systematically undercutting Australian industry prices by double-digit margins.

Furthermore, the Commission's analysis at section 9.8.3 of REP 654 is substantially based on retail sales data provided by Calispa. The Commission itself acknowledged that this data:

- had not been verified;

[47] Ibid, beginning p. 115.
[48] Ibid, beginning p. 101.
[49] Ibid, beginning p. 123.
[50] Ibid, p. 129.
[51] Ibid, p. 129. In relevant part: *Total Australian sales volumes remained flat between the period October 2023 to September 2024 and the investigation period. Within Australian industry, SPC's sales volume fell 19%, which was broadly taken up by increases in sales by Safcol of 27% (from a much lower base than SPC) and the entry of Simplot, which was starting from zero sales.*
[52] Ibid.

- related only to downstream retail sales to consumers at Woolworths, rather than the wholesale level at which the Australian industry competes;
- covered only one Australian supermarket, not the full Australian market; and
- examined a period mostly outside the investigation period.[53]

The Commission relied on this data to revise its Australian market volume analysis throughout section 9.8.3 of REP 654, and to draw conclusions about the competitive impact of Simplot's entry. SPC submits that the weight given to this unverified and partial data is inappropriate, particularly in the context of a material injury assessment that requires the Commissioner to be "satisfied" of the causal link between factors and injury. The standard of evidence applied to the Calispa data stands in stark contrast to the verified exporter and Australian industry data used elsewhere in REP 654.

The Commission's concludes its analysis in REP 654 by stating that:[54]

> *While Simplot was only competing for 5-months of the investigation period, the commission did not extrapolate its sales data for the full period, but only used in its analysis the volume of sales from those 5-months. If the 5-month volume was extrapolated for the full period, Simplot's position in the market would have been more significant.*

SPC submits that this observation is purely theoretical and has no place in a material injury assessment under the Act. The legal test requires the Commissioner to assess whether injury has been caused to the Australian industry – not to speculate about what might have occurred in a hypothetical scenario. Simplot was present in the market for only 5 months of the 12-month investigation period. Its actual volumes over those 5 months are the relevant data point, not an annualised extrapolation.

The Commission's emphasis on what the figures would look like if extrapolated lends unwarranted additional weight to the domestic competition finding and is inconsistent with the evidentiary standard required for a determination of this kind. An injury assessment must be grounded in actual market conditions observed during the investigation period, not theoretical projections of what those conditions might have been.

SPC acknowledges the existence of domestic competition and accepts that Simplot's entry into the market during part of the investigation period introduced some additional competitive pressure. However, the Commissioner's analysis at section 9.8.3 of REP 654 fundamentally fails to weigh this factor against the scale of the injury caused by Italian imports.

The Commission's own findings demonstrate that Italian imports dominated the Australian market, undercut Australian industry prices across all tiers in every quarter of the investigation period, captured virtually all market growth, and displaced both Australian industry and undumped import volumes. Against this backdrop, a modest redistribution of volume between Australian producers – based largely on unverified retail data from a single supermarket provided by an interested party – cannot properly be characterised as a material contributor to the injury experienced by the Australian industry.

[53] Ibid, p. 130.
[54] Ibid.

iv. Consumer preferences for Italian origin and flavour

SEF 654 found that:[55]

> *Several Australian supermarkets stated that consumers prefer Italian tomatoes, because of taste and a perception of superior quality... The commission considers that consumer purchasing decisions are driven by a combination of price, flavour preferences and origin factors…*

In its SEF response, SPC argued that this finding was speculative, unsupported by evidence, and contradicted by the Commission's own analysis. SPC argued that the Commission provided no consumer research or survey evidence to back its views. It provided no consumer surveys, no taste tests or sensory analysis, no market research data, and no quantitative evidence of consumer preferences.

SPC acknowledges that the Commission is required to consider all factors that may influence injury, which may include non-price factors such as origin or perceived quality. However, the Act and the Direction require that any such factor must be material in degree to break the causal link between dumping and injury. SEF 654 contained no evidence, qualitative or quantitative, demonstrating that consumer preference for Italian origin has been material. Absent evidence of materiality, the Commission could not have reasonably concluded that such preferences caused or substantially contributed to the significant declines in SPC's volume, market share, selling prices, or profitability. Simply acknowledging that a preference might exist was insufficient; the Commission must demonstrate that it materially contributed to the injury suffered, and no such demonstration was made.

SPC has also challenged the customer preference view throughout the inquiry, recognised in SEF 654 where the Commission stated that …*The Australian industry submits that prepared or preserved tomatoes are a* ***commoditised product****, with price taking great significance.*[56] [**emphasis** added]. The Commission then acknowledged that *..The Australian supermarkets* ***agreed that price takes great significance*** *in customer purchasing decisions.*[57] [**emphasis** added].

If price is the primary driver, as both SPC and the supermarkets confirm, then consumer preferences for origin/flavour are secondary at best. In the absence of Australian consumer surveys regarding tomato preferences, or blind taste tests, or market data on origin preferences, the Commission had, at the time of SEF 654, no evidentiary basis for this finding.

Furthermore, the Commission's price elasticity analysis in SEF 654 (chapter 9.4.2) directly contradicted the consumer preference finding:[58]

> *The commission considers that the goods are a staple item, and as such changes in the price of the goods at a macro level... are unlikely to result in significant changes in the total volume...****However, within the general category... there is price elasticity****.* [**emphasis** added].

The SEF found that:

> *At an empirical level, the commission's analysis of pricing and volume at the retail level shows that* ***the volume of sales increased in response to promotional activities where prices were lowered****, indicating that* ***consumer behaviour is responsive to price.*** [**emphasis** added]**.**

[55] SEF 65, p. 104-105.
[56] Ibid, p. 105.
[57] Ibid.
[58] Ibid, p. 95.

Figure 18 of the SEF demonstrated this conclusively – when prices fall (due to discounts), sales volumes spike:

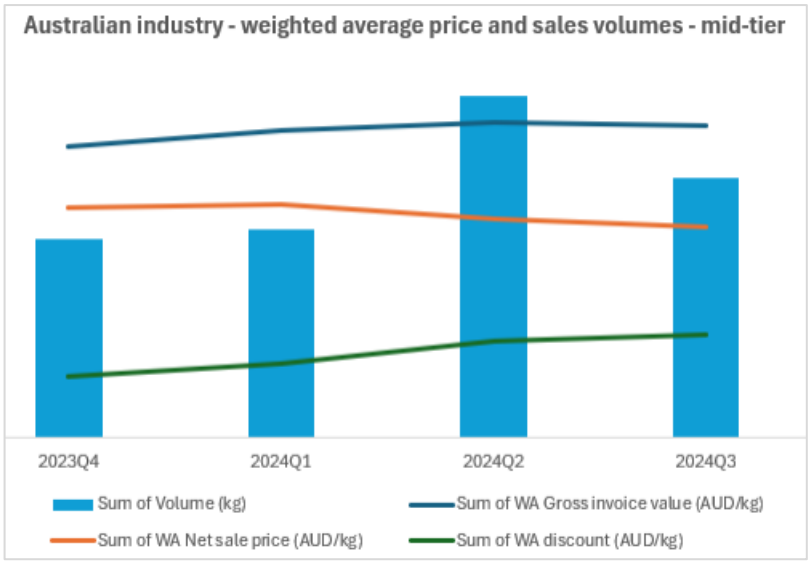

Figure 18, SEF 654

This shows that price, and not origin or flavour, drives purchasing decisions.

Even if preferences exist, they do not negate causation. SEF 654 explicitly found that price is the primary driver. Dumped imports are priced lower, making them more attractive regardless of preferences.

The Direction permits measures even where multiple factors contribute to injury. At chapter 9.4.1 of SEF 654, the Commission acknowledged that …*while price is an important factor, it is not the only factor upon which purchasing decisions are made*.[59]

However, this was then followed by:[60]

> *Prepared or preserved tomatoes are substitutable with demand elastic, meaning that the price premium that might be achieved by preferred goods is not infinite: consumers will shift to less preferred goods if they offer better value* ***through a lower price that overcomes these consumer preferences.*** [**emphasis** added].

SPC submits that this is a price effect of dumping, not an independent "consumer preference" factor.

Even if some preference exists, the Commission must determine whether it is material. The Manual itself requires this analysis.

SPC argues that the Commission, at the time of the SEF, had provided no evidence that consumer preferences:

- caused a specific quantum of injury;
- operated independently of price;
- would persist if dumping were remedied; and/or
- were material in degree.

[59] Ibid, p. 94.
[60] Ibid, p. 46.

The Commission addressed SPC's arguments in REP 654 by stating that:

> *The commission disagrees with SPC's submission that the commission's finding that consumer preference is a factor is speculative or unsupported by evidence. SPC submits that Australian supermarkets may be incentivised to provide evidence that their customers prefer the lower priced products, however, the commission considers* ***supermarkets are also incentivised to satisfy their customers' preferences and will be more aware of consumers' preferences****, due to their proximity to consumers, compared to producers, and therefore considers* ***such evidence to have probative value****.* [**emphasis** added].

The reference to "such evidence" in that statement can only be understood to mean that the Commission's evidentiary foundation for its consumer preference finding is the proposition that supermarkets are incentivised to satisfy customer preferences and are better placed than producers to understand those preferences. There is no other reasonable reading of the statement. SPC submits, however, that this is not evidence at all — it is simply an assertion of the obvious: that supermarkets are familiar with their customers' product preferences. That observation, however unremarkable, does not constitute evidence capable of supporting a finding on consumer preference. Accordingly, REP 654 adds no further weight to the Commission's preliminary findings in the SEF, and does not counter the validity of SPC's contrary arguments and evidence.

Actual evidence was presented by SPC in response to the SEF in the form of the an independent study that provided robust evidence of what drives consumer choice in the canned tomato category.[61] Among buyers of canned tomatoes, the study found that:[62]

- price is the number one driver of product choice when buying canned tomatoes;
- other factors such as can size, format and quality follow price;
- brand is of secondary importance, and there is substantial brand and product switching in the category; and
- only a minority of consumers cite Italian origin as a key driver, and even then, this does not override price in most purchase decisions.

The study also highlighted that:[63]

- almost one-third of consumers have a preferred brand but regularly buy other brands, indicating low loyalty and high switching; and
- less than one-fifth of consumers are strictly loyal to a single brand.

This evidence, in conjunction with the majority of the Commission's findings, directly contradicts the Commission's minority emphasis on consumer preference for Italian origin and flavour as a primary explanation for injury. The data shows that consumers are fundamentally price-driven in this category and are willing to switch between Italian and Australian products based on price.

On these contradictions, the Commission's price elasticity analysis directly contradicted the consumer preference finding:[64]

> *The commission considers that the goods are a staple item, and as such changes in the price of the goods at a macro level... are unlikely to result in significant changes in the total volume...****However, within the general category... there is price elasticity****.* [**emphasis** added].

[61] SPC SEF submission, folio no. 39, p. 9.
[62] Ibid.
[63] Ibid.
[64] SEF 654, p. 95.

The Commission found that:[65]

> *At an empirical level, the commission's analysis of pricing and volume at the retail level shows that **the volume of sales increased in response to promotional activities where prices were lowered**, indicating that **consumer behaviour is responsive to price.*** [**emphasis** added]**.**

Figure 18 of SEF 654 / Figure 20 of REP 654 demonstrated this conclusively – when prices fall (due to discounts), sales volumes spike:

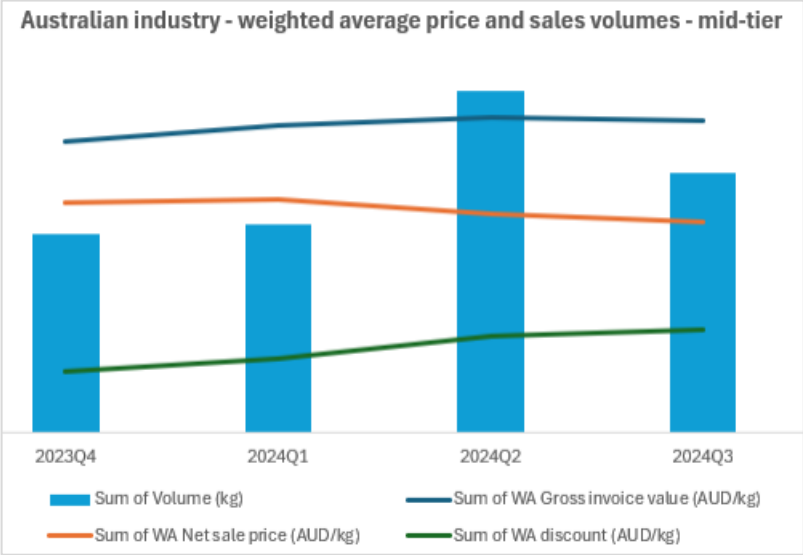

Figure 18 SEF 654 / Figure 20 REP 654

This shows that price, and not origin or flavour, drives purchasing decisions.

SPC therefore submits that the Commission's finding on consumer preferences is speculative, unsupported, and was neither correct nor preferable.

v. Remedied price analysis – undercutting margins commonly exceed dumping margins

To dovetail its material injury assessment, the Commission conducted a "remedied price" analysis, comparing Australian prices to Italian prices adjusted upward to remove dumping and subsidy margins. This analysis was standard and appropriate. However, SPC submits that Commission's conclusion from this analysis – that measures should not be imposed – is inconsistent with Commission practice.

In SEF 654, the Commission undertook the following price undercutting analysis using 'remedied Italian export prices' i.e. including the applicable dumping and subsidy margins:[66]

- quarterly weighted average Australian industry prices and remedied Italian export prices, across all tiers;
- quarterly weighted average Australian industry prices and remedied Italian export prices, across the mid-tier;
- the lowest quarterly Australian industry price and the highest remedied Italian export price, across the mid-tier; and

[65] REP 654, p. 112.
[66] Refer analysis at Chapter 9.9.1 of SEF 654, beginning p. 108.

- quarterly weighted average Australian industry prices and remedied Italian export prices, across the premium tier.

The Commission then preliminarily considered that:[67]

> *…if anti-dumping measures were imposed on those Italian exporters found to be dumping during the investigation period (recognising that the subsidy investigation is proposed to be terminated for all exporters except non-cooperative entities due to negligible margins), the Australian industry would continue to be undercut and would continue to experience injury. This injury would then be caused by exports of the goods subject to anti-dumping measures (at a remedied price), and exports from La Doria, which would not be subject to measures. Lower priced imported goods at a remedied price would continue to put downward pressure on Australian industry prices, and, given the price sensitivity of prepared or preserved tomatoes in the Australian market, customers would continue to purchase lower priced goods in higher volumes.*
>
> *The Commissioner preliminarily considers that the level of undercutting, even once remedied, across all tiers and all quarters (noting one exception at the premium tier level in the September 2024 quarter), indicates that factors other than the levels of dumping and subsidisation are factors causing injury to the Australian industry.*

The SEFs reasoning effectively introduced a new and legally unsupported standard, that anti-dumping measures should only be imposed where they eliminate all instances of undercutting. This standard appears nowhere in the Act, the Direction, the Manual, or the Commission's prior decisions. Materiality does not require the complete removal of price disadvantage; it requires only that the measures remove the unfair price effects attributable to dumping. By implying that measures are unwarranted because some undercutting would remain, the SEF applied an unprecedented interpretation that would, if adopted broadly, nullify the purpose of Australia's anti-dumping regime and prevent relief in most cases involving efficient foreign producers.

The approach set out in the SEF, if perpetuated, would also create a perverse incentive for foreign exporters. If the Commission's reasoning were accepted, that measures should not be imposed where remedied prices would still undercut Australian industry, then any exporter with a structural cost advantage would be effectively free to dump into the Australian market without consequence. Dumping would become risk-free so long as the exporter remained generally competitive even after remedies. This interpretation would nullify the purpose of the anti-dumping framework, which is to remove the unfair element of dumping, not to equalise underlying cost structures or competitive advantages. Such an outcome would undermine confidence in the system and incentivise aggressive dumping strategies aimed at permanently displacing Australian production.

Figure 31 of SEF 654 revealed the prevalence of undercutting, with Italian prices 76-78 percent of Australian prices (i.e., a 22-24 percent level of undercutting):[68]

[67] SEF 654, p. 111.
[68] Ibid, p. 111.

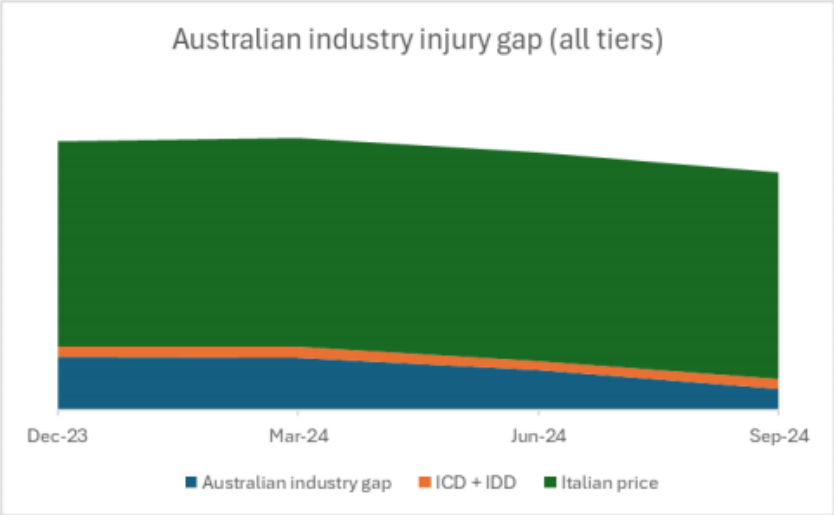

Figure 31, SEF 654

After remedying the dumping/subsidisation, the gap narrowed to 18-20 percent,[69] and therefore the benefit from measures is a 4-6 percentage point reduction in undercutting. In a price-sensitive market (as the Commission acknowledges is the case for tomatoes), a 4-6 percentage point reduction in undercutting is material.

In its response to the SEF, SPC highlighted that the Commission routinely imposes measures where remedied prices continued to undercut prices of the Australian industry. In numerous cases, the Commission has imposed measures even where undercutting margins exceed dumping margins, even where remedied prices would still be competitive with Australian prices, and even where foreign producers may enjoy cost or efficiency advantages. SPC noted recent examples, including:

- investigation No. 550 concerning precision pipe and tube steel from China and Korea, where the Commission observed that Australian selling prices for goods imported from China and Korea undercut Australian selling prices in every quarter of the investigation period, sometimes by close to 50 percent.[70] Dumping margins of between 2.9 percent and 19.7 percent were imposed for cooperative exporters.[71]

- investigation No. 558 concerning aluminium zinc coated steel from Korea, Taiwan, and Vietnam, where the Commission found that the level of undercutting was up to 17 percent.[72] Dumping margins of between 2.6 percent and 8.1 percent were imposed for cooperative exporters.[73]

- investigation No. 655 concerning hot rolled deformed steel reinforcing bar in lengths from Indonesia, Malaysia, Thailand, Türkiye, and Vietnam, where the Commission found that dumped imports of the goods undercut the Australian industry's prices.[74] Depending on the market channel in which the goods were sold into the Australian market, imports undercut Australian industry's prices in a range of between 1 percent to

[69] Ibid.
[70] Anti-Dumping Commission Report no. 550: Dumping of precision pipe and tube steel exported to Australia from the People's Republic of China, the Republic of Korea, Taiwan and the Socialist Republic of Vietnam, and subsidisation of precision pipe and tube steel exported to Australia from the People's Republic of China and the Socialist Republic of Vietnam. 27 August 2021. Page 56 (SPC's interpretation of Figure 5).
[71] Ibid, p. 123.
[72] Anti-Dumping Commission report no 558: Dumping of aluminium zinc coated steel of a width equal to or greater than 600 millimetres exported from the Republic of Korea, Taiwan and the Socialist Republic of Vietnam, and alleged subsidisation of aluminium zinc coated steel of a width equal to or greater than 600 millimetres exported from the Socialist Republic of Vietnam. 15 November 2021. Page 83.
[73] Ibid, p. 104.
[74] Statement of Essential Facts no 655: Alleged dumping of hot rolled deformed steel reinforcing bar in lengths exported from the Republic of Indonesia by Pt Ispat Panca Putera and Pt Putra Baja Deli, Malaysia, the Kingdom of Thailand, the Republic of Türkiye and the Socialist Republic of Vietnam. 22 October 2025. Page 92.

> 24 percent. Interim dumping duties of between 7.1 percent and 9.9 percent were imposed for cooperative exporters.[75]

These examples are not exhaustive.

As an almost carbon-copy of the SEF position, REP 654 concluded as follows:[76]

> *Assessment of remedied imports analysis*
>
> *The Commissioner considers that if anti-dumping measures were imposed on those Italian exporters found to be dumping during the investigation period (recognising that the subsidy investigation has been terminated for all exporters except non-cooperative entities due to negligible margins), the Australian industry would continue to be undercut and would continue to experience injury. This injury would then be caused by exports of the goods subject to anti-dumping measures (at a remedied price), and exports from La Doria, which would not be subject to measures. Lower priced imported goods at a remedied price would continue to put downward pressure on Australian industry prices, and, given the price sensitivity of prepared or preserved tomatoes in the Australian market, customers would continue to purchase lower priced goods in higher volumes.*
>
> *Due to the level of undercutting, even once remedied, across all tiers and all quarters (noting one exception at the premium tier level in the September 2024 quarter), the Commissioner cannot be satisfied that dumping and subsidisation are factors causing material injury to the Australian industry.*

What was new in REP 654 was a counterfactual consideration to ponder the position of the Australian market and SPC if dumped and/or subsidised imports from Italy had not competed in the Australian market, and hence determine the level of injury caused by such imports.[77] The Commission concluded, however, that:

> *…given the presence of the other factors in the market causing injury discussed in chapter 9.8, the commission considers* ***any analysis would be only an estimate of little probative value****.* [**emphasis** added].

REP 654 also addressed SPC's SEF representations on the SEF's remedied price conclusions:[78]

> *In respect of SPC's submission regarding the level of undercutting and the remedied price analysis, the commission notes that the remedied price analysis is used as an analytical tool to assess causation and materiality, not to suggest that dumping must account for all price undercutting. The analysis demonstrates that, even when Italian export prices are adjusted to remove dumping and subsidisation (which are at relatively modest levels), they continue to significantly undercut Australian industry prices across most tiers and quarters of the investigation period. This indicates that a substantial portion of the price gap is attributable to structural cost advantages (i.e. competitive advantage) and other factors, rather than dumping or subsidisation.*

These two new REP 654 conclusions vis-à-vis their absence in SEF 654 are addressed as follows.

[75] ADN 2025/124.
[76] REP 654, p. 141.
[77] Ibid.
[78] Ibid, p. 142.

The counterfactual assessment would have had significant probative value

SPC strongly disagrees with the conclusion that a counterfactual assessment would have had little probative value. Instead, it would have significant value and would have been directly relevant to the Commissioner's causation and materiality findings.

Had the Commission undertaken a counterfactual analysis removing dumped Italian imports from the Australian market, the outcomes would have revealed a material improvement in the Australian industry's economic condition across all injury indicators. Specifically:

- Prices: The Commission found that dumped Italian imports undercut Australian industry prices in every quarter of the investigation period, by between 21 percent and 33 percent depending on the tier and MCC.[79] The removal of this sustained, systematic price undercutting would have relieved the downward pressure on Australian industry selling prices that the Commission identified as a cause of price depression and price suppression.[80] SPC would have been able to achieve the prices necessary to recover its increasing costs of production, rather than being forced to increase promotional discounting to compete with lower-priced Italian products.

- Market share: The Commission found that 70 percent of the Australian market was composed of dumped goods during the investigation period.[81] From October 2020, the Australian industry's market share fell by 15 percent, while Italian imports gained 7 percent.[82] At the mid-tier level, the Australian industry's share fell from 46 percent to 35 percent, with dumped Italian exports rising from an already dominant position to 54.[83] In a counterfactual scenario, the removal of dumped imports (or even the reduction in the price advantage conferred by dumping) would have materially altered these market share dynamics.

- Profits and profitability: The Commission found that SPC achieved lower profit and profitability than would have been the case had sales volumes and prices been maintained.[84] Both variables – price and volume – were directly and demonstrably affected by dumped Italian imports. Higher prices and higher volumes in the absence of dumped imports would necessarily have resulted in materially improved profitability and a material improvement in SPC's return on investment, which fell dramatically over the injury period.[85]

- SPC's overall economic condition: The combined effect of improved prices, increased market share, and restored profitability would have represented a material improvement in SPC's economic condition — including revenue,[86] capacity utilization,[87], and return on investment. The Commission's own data, taken together, points overwhelmingly to the conclusion that a counterfactual without dumped imports would reveal material improvement across all indicators.

The Commission's dismissal of the counterfactual on the basis that it would be *…only an estimate of little probative value…* was untenable given the weight of its own findings. The existence of other factors causing injury does not render a counterfactual exercise valueless; instead, it makes it essential. Section 269TAE(2A) requires the Minister to ensure that injury caused by factors other than dumping is not attributed to the exported goods. This necessarily implies an analytical separation of the effects of different factors, which is precisely what a counterfactual is

[79] Ibid, chapter 8.7, beginning p. 101.
[80] Ibid, chapter 8.4, beginning p. 98.
[81] Ibid, chapter 9.5, beginning p. 115.
[82] Ibid, p. 116.
[83] Ibid, p. 118.
[84] Ibid, chapter 9.6, p. 118.
[85] Ibid, p. 101.
[86] Which showed a decline at Table 31 of chapter 8.6.1, p. 101.
[87] Ibid, at chapter 8.6.3.

designed to achieve. By declining to undertake the analysis, the Commission has denied itself the very tool needed to discharge this statutory obligation.

A structural cost advantage permits dumping, causing material injury

In response to SPC's SEF representations, the Commission stated in REP 654 that the remedied price analysis was *…used as an analytical tool to assess causation and materiality, not to suggest that dumping must account for all price undercutting…* and that *…a substantial portion of the price gap is attributable to structural cost advantages (i.e. competitive advantage) and other factors, rather than dumping or subsidisation*.

SPC respectfully submits that this reasoning was erroneous and contradictory. The price gap attributed to structural cost advantage does not negate a finding of material injury from dumping. To the contrary, it is precisely the structural cost advantage that permitted Italian exporters to export at lower – and dumped – prices, undercutting SPC, and thereby causing material injury.

The mechanism facilitating this is straightforward: Italian producers, benefiting from economies of scale and lower production costs (as the Commission found at chapter 9.8.1 and Figure 26 of REP 654[88]), were able to export profitably at prices below Australian industry levels. However, dumping allowed those Italian producers to undercut Australian industry by even greater margins than their competitive advantage alone would permit. The additional undercutting attributable to dumping – which the Commission's own analysis demonstrates is in the range of 4 to 6 percentage points[89] – caused additional injury to the Australian industry beyond that which would exist from fair competition alone.

Removing dumping through the imposition of measures would reduce the extent of undercutting and provide material relief to the Australian industry. It would not eliminate the competitive advantage enjoyed by Italian producers — which, in any case, is not the purpose of anti-dumping measures. The purpose is to remove the unfair price effects attributable to dumping, which is precisely what measures would achieve.

SPC believes that the Commission's approach has conflated two distinct issues: (a) the existence of a competitive advantage, which is a normal feature of international trade; and (b) the unfair price advantage conferred by dumping, which is what the anti-dumping regime exists to address. As SPC submitted in response to SEF 654, and as this application has argued above, the Commission has routinely imposed measures in cases where foreign producers enjoy competitive advantages, including lower labour costs, economies of scale, and government support. In none of those cases has a finding of competitive advantage been treated as negating the materiality of injury caused by dumping.

A relevant example was included above, being the Commissioner's July 2024 decision concerning the continuation of measures on railway wheels exported from China (**CON 632**). The Commission's approach in REP 654 is irreconcilable with this recent precedent. The existence of a structural cost advantage in Italian tomato production is conceptually identical to the competitive advantages recognised in CON 632 and the numerous other cases cited by SPC. In none of those cases was the existence of a competitive advantage treated as a reason to deny relief from injurious dumping. There was no principled basis for departing from that established approach in arriving at the neither correct nor preferable reviewable decision.

[88] At p. 120.
[89] Ibid, at Figure 38, p. 140.

12	**Set out the reasons why the proposed decision provided in response to question is 10 materially different from the reviewable decision**

The 'Application for review of a Ministerial decision' proforma stipulates that the applicant does not answer question 12 if the application is in relation to a reviewable decision made under subsection 269TL(1) of the *Customs Act 1901*.

As this application does relate to a reviewable decision under 269TL(1), SPC has not answered this question.

4. Conclusion and request

The Minister's decision to which this application refers is a reviewable decision under 269TL(1) of the Act.

SPC is an interested party in relation to the reviewable decision. SPC's application is in the prescribed form and has otherwise been lodged in accordance with the Act.

SPC submits that the application is a sufficient statement setting out the reasons for believing that the reviewable decision was not the correct or preferable decision, and that there are reasonable grounds to accept this application for review.

The correct and preferable decision that should result from the grounds that are raised in the application is detailed above.