

Submission filed on behalf of:

***Associazione Nazionale Industriali Conserve Alimentari
Vegetali (ANICAV)***

with comments in response to the application for review, lodged by *SPC Operations Pty Ltd*, following the Ministerial Decision no 654 of 2 February 2026 terminating the investigation concerning alleged dumping of tomatoes, prepared or preserved exported from Italy and alleged subsidisation of tomatoes, prepared or preserved exported from Italy.

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1. INTRODUCTION

1. On 15 October 2024, the Anti-Dumping Commission (the “**Commission**”) initiated a combined anti-dumping and countervailing duty investigation (“**Investigation No. 654**”) on imports of prepared and preserved tomatoes (the “**product under investigation**” or “**PPTs**”) exported from Italy, following an application lodged by SPC Operations Pty Ltd (“**SPC**”, or the “**Complainant**”).

2. On 27 January 2026, the Commissioner issued the Anti-Dumping Notice No. 2026/019 which terminated (i) the dumping investigation in relation to La Doria S.p.A (“**La Doria**”), on the basis that La Doria was found not to have engaged in dumping during the investigation period; and (ii) the subsidy investigation in relation to De Clemente Conserve S.p.A (“**De Clemente**”), IMCA S.p.A (“**IMCA**”), Mutti S.p.A (“**Mutti**”), La Doria, as well as all residual exporters, on the basis that the level of subsidisation attributable to each of those exporters was *de minimis* during the investigation period. The detailed reasons for these determinations are set out in Termination Report No. 654 (“**TER 654**”).

3. On 2 February 2026, the Minister for Industry and Innovation and Minister for Science (the “**Minister**”) issued Anti-Dumping Notice No. 2026/021 (“**ADN 2026/021**”), accepting the Commissioner’s recommendation¹ set out in Report No. 654 (“**REP 654**”),² to terminate both the anti-dumping and countervailing duty investigations in respect of goods exported from Italy. In particular, the Minister was not satisfied that dumping or subsidisation had caused, or was causing, material injury to the Australian industry. This conclusion was reached considering a number of factors, other than dumping and subsidisation (*inter alia*, competitive advantage, raw material costs, domestic competition, and consumer preferences), identified as the actual causes of the injury suffered by SPC.

4. On 2 March 2026, SPC lodged an application with the Anti-Dumping Review Panel (the “**ADRP**”) seeking review of the Minister’s decision pursuant to section 269ZZE of the Customs Act 1901 (Cth) (the “**Act**”). On 18 March 2026, the ADRP published a notice under section 269ZZI, accepting SPC’s application and proposing to conduct a review of the Minister’s decision (the “**Reviewable Decision**”).

5. This submission is filed on behalf of the *Associazione Nazionale Industriali Conserve Alimentari Vegetali* (“**ANICAV**”), the national trade association representing the vast majority of the Italian tomato processing industry, including all cooperating exporting companies selected in this investigation: I.M.C.A.; La Doria; Mutti, and De Clemente.

6. ANICAV respectfully submits these comments in response to SPC’s application and in support of the affirmation of the Reviewable Decision. ANICAV submits that the Minister’s decision was, in all respects, the correct and preferable decision within the meaning of section 269ZZK of the Act, as well as WTO law, and that SPC’s application for review should be dismissed.

¹ 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 (“**SEF 654**”).

² 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**”).

1.1 Structure of this submission

7. Section 2 sets out the applicable legal framework governing causation, including the non-attribution obligation under the Anti-Dumping Agreement (“**ADA**”) (and its implementation in Australian law). Section 3 addresses SPC’s grounds of review and demonstrates that they are misconceived in law and unsupported by evidence. Section 4 highlights additional domestic factors contributing to SPC’s performance. Section 5 explains why the Commissioner’s decision satisfies the applicable standard of review and should be upheld. Section 6 sets out ANICAV’s conclusions and the relief sought.

2. THE LEGAL FRAMEWORK FOR THE ASSESSMENT OF CAUSAL LINK

2.1 Statutory requirements

8. The sole ground of review advanced by SPC concerns causation. Specifically, SPC claims that the Commission erred in finding that factors other than dumping caused the injury allegedly suffered by the Australian industry.³

9. Under sections 269TG, 269TJ and 269TJA of the Act, anti-dumping measures can only be imposed where the Minister is satisfied that dumped goods have caused, or are causing, material injury to the domestic industry.

10. Section 269TAE(2A) imposes an affirmative obligation on the Minister to have regard to whether any injury to an industry is being caused by a factor other than the exportation of the goods and, if so, **to not attribute that injury to the dumped exports**. This provision directly implements the non-attribution obligation in Article 3.5 of the ADA, which provides that “*the authorities shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports.*” This is not a discretionary consideration; rather, it is a mandatory obligation that goes to the lawfulness of any decision to impose measures.

11. The Material Injury Direction issued by the Minister on 27 April 2012 (the “**Direction**”)⁴ elaborates on these requirements consistently with the ADA. The Direction provides, *inter alia*, that:

- “*Material injury*” is injury that is not immaterial, insubstantial or insignificant;
- The injury attributable to dumping must be greater than that which would occur in the normal “*ebb and flow*” of business;
- Injury caused by other factors must not be attributed to dumping (or subsidization); and
- Dumping need not be the sole cause of injury, but the injury it causes must be material in degree.

³ SPC’s ground of review is based on an “*erroneous determination that factors other than dumping have been causing, or are the cause of, material injury to the Australian industry*”. See SPC Application for review of Ministerial Decision, p. 15.

⁴ Material Injury Direction issued by the Minister on 27 April 2012 (the “**Direction**”).

12. These provisions establish a structured inquiry: the decision-maker must identify all relevant causes of injury, isolate the effects of dumping, and determine whether those effects are material in degree.

2.2 The non-attribution obligation and SPC's mischaracterisation

13. Article 3.5 of the ADA provides an illustrative, non-exhaustive list of "**other factors**" that may simultaneously injure the domestic industry, including "*inter alia, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.*"⁵

14. This framework confirms that a wide range of market forces, such as competitive advantage, rising raw material costs, increased domestic competition, and consumer preferences, may constitute relevant "*other factors*" for the purposes of the non-attribution analysis. Consistently, Article 3.2 of the ADA clarifies that no single price or volume factor can be determinative, underscoring that the **causation analysis is inherently fact-specific** and requires an integrated assessment of all relevant circumstances.

15. SPC's submission depart from this framework. SPC rests on the proposition that any "*non-trivial*" contribution by dumping suffices to establish causation. That proposition conflates two distinct elements: the existence of dumping, and the separate requirement according to which dumping, as opposed to other factors, has caused material injury.

16. Article 3.5 of the ADA requires that these inquiries be kept analytically distinct. The decisive question is not whether dumping exists, but whether, after separating the effects of other causal factors, the injury attributable to dumping is material in degree. SPC's approach collapses this analysis and effectively negates the non-attribution obligation.

17. The Commission's findings are fully consistent with such legal framework. The Commission did not conclude that dumping was a "lesser" cause of injury; rather, he found, on the evidentiary record, that the injury claimed by SPC was caused by factors other than dumping. That is a determinative finding within the meaning of Article 3.5 of the ADA and section 269TAE(2A).

18. Yet, notwithstanding the clarity of the applicable legal standards, SPC continues to assert that "*the Commissioner's investigative analysis that injury was caused by factors other than dumping was (...) contrary to law.*"⁶ The "*contrary to law*" argument is untenable, as it is precisely the law that mandates such an assessment. The claim therefore exemplifies the complainant's disqualifying approach, whereby established legal principles are set aside in favour of advancing a narrative devoid of any proper legal basis.

⁵ Article 3.5 of the ADA.

⁶ SPC Application for review of Ministerial Decision, p. 7.

19. Equally unpersuasive is SPC's claim that the Commission's findings are "*unsupported by evidence, (and) contained inconsistencies (...)*."⁷ The record contains extensive, verified evidence, which demonstrates the existence of multiple non-dumping factors that are the cause of the alleged injury suffered by SPC. Yet, SPC's position rests on disregarding that evidence and advancing a circular proposition that any observed injury must, by definition, be attributed to dumping. Such reasoning is, simply, methodologically flawed.

20. When assessed against the applicable legal standard and the evidentiary record, each of SPC's grounds of review rests on the same underlying error: the failure to distinguish between injury caused by dumping and injury caused by other factors. ANICAV addresses those grounds in turn in Section 3.

3. SPC'S GROUNDS OF REVIEW ARE MISCONCEIVED AND GROUNDLESS

3.1 Competitive advantage of Italian producers

21. The centrepiece of SPC's application is the claim that the Commission erred in treating the structural competitive advantage of Italian producers as a factor capable of breaking, or displacing, the causal link between dumping and the injury allegedly suffered by SPC. That claim rests on a series of flawed premises, all of which, as anticipated in Section 2, stem from a fundamental misapprehension of the non-attribution obligation.

3.1.1 *Competitive advantage is a relevant "other factor" under Article 3.5 of the ADA*

22. SPC asserts that: "*The existence of competitive advantages enjoyed by foreign producers is legally irrelevant to the causation analysis under the Act (and that) the question is not whether foreign producers are more efficient, it is whether dumped goods have caused material injury.*"⁸

23. This assertion is incorrect as a matter of law. Article 3.5 of the ADA and section 269TAE(2A) of the Act impose a **mandatory obligation** on the investigating authority to examine "*any known factors other than the dumped imports which at the same time are injuring the domestic industry.*" The use of the term "**shall**" makes clear that this obligation is not discretionary: all such factors must be identified, and their injurious effects must be separated from those of dumping.

24. The inclusion of "*competition between the foreign and domestic producers*" in the list contained in Article 3.5 of the ADA is, if anything, **the most direct possible affirmation that the competitive position of the foreign industry relative to the domestic industry is a relevant "other factor" for the purposes of the non-attribution analysis.** SPC's assertion to the contrary **cannot** be reconciled with the text of Article 3.5 of the ADA.

⁷ SPC Application for review of Ministerial Decision, p. 7.

⁸ SPC Application for review of Ministerial Decision, p. 8.

25. This interpretation is confirmed by WTO jurisprudence, including the Appellate Body’s ruling in *US–Hot-Rolled Steel*, which requires investigating authorities to “*seek to ensure that a determination made concerning the injurious effects of imports relates, in fact, to those imports and not to other factors.*”⁹ Such obligation is general and applies irrespective of the nature of the factor at issue. Excluding structural competitive advantage from the analysis, as SPC proposes, would negate the very purpose of the non-attribution requirement.

26. SPC’s reliance on *EU – Biodiesel (Argentina)* is misplaced. In that case, the Panel clarified that Article 3.5 of the ADA does not require a non-attribution analysis for features that are **inherent to the domestic industry and unchanged during the period of investigation**. That reasoning does not assist SPC. The competitive advantage at issue here is not an inherent characteristic of the Australian industry, but a feature of the Italian industry—namely, its economies of scale¹⁰ and cost structure—which explains why Italian products can profitably undercut domestic prices independently of dumping. It is therefore precisely the type of “other factor” that must be examined and separated under Article 3.5 of the ADA.

3.1.2 *The Commission’s finding reflects a proper separation of causal factors*

27. At the outset, it should be pointed out that the practical *reductio* that SPC offers, i.e., “*if the mere existence of economies of scale were sufficient to defeat a dumping case, virtually no measures would ever be imposed*”¹¹ amounts to a blatant mischaracterisation of the Commission’s finding.

28. The Commission **did not hold that a competitive advantage per se and the mere existence of economies of scale negate causation**. Rather, the Commission found, on the basis of the remedied price analysis, that the **dominant and persistent share of price undercutting** is attributable to structural competitive advantages, not to dumping. In other words, the Commission determined that the price undercutting between Italian and Australian goods is only negligibly impacted by the (very low) dumping margins found in respect of certain Italian exporters.

29. The evidence demonstrates that, even after fully removing the effects of dumping, Italian export prices continue to undercut Australian industry prices by approximately 18 to 20 percentage points across virtually all quarters and market segments. By contrast, the dumping margin accounts for only 4 percentage points of that differential.¹²

30. This is a **fact-specific finding**. It reflects the marginal nature of dumping relative to the structural price gap and leads to the conclusion that the bulk of the observed price undercutting, and the injury flowing from it, is not caused by dumping. In turn, this also means that the injury caused by dumping practices is manifestly immaterial if considered in the wider context that characterises the competition between Italian exports and Australian like products.

⁹ Appellate Body Report, *US – Hot-Rolled Steel* (WT/DS184/AB/R).

¹⁰ In this regard, it has to be noted that, as acknowledged by the Commissioner in SEF 654, Italy processes approximately **5.3 million tonnes** of tomatoes per year, compared with just **438,000 tonnes** in Australia. This scale difference generates substantial **economies of scale**, enabling Italian producers to achieve lower CTM, independently of any alleged dumping.

¹¹ SPC Application for review of Ministerial Decision, p. 20.

¹² REP 654, p. 140.

3.1.3 SPC's argument that competitive advantage is a confirmation of causation is a *non sequitur*

31. SPC nonetheless argues that the finding of competitive advantage “*confirms*” causation, on the basis that it explains why Italian producers can profitably undercut Australian prices and therefore why such undercutting, allegedly “*driven by dumping*”,¹³ causes injury.

32. This reasoning is flawed and amounts to a clear ***non sequitur***. The fact that competitive advantage explains why Italian products can undercut domestic prices **does not establish that the resulting injury is caused by dumping**. On the contrary, it demonstrates that the injury is primarily attributable to those underlying competitive conditions (underlying competitive conditions which, SPC itself, describes as “*the conditions that make a business more successful than the businesses it is competing with*”).¹⁴

33. In essence, SPC conflates two analytically distinct elements: (i) the general price pressure exerted by Italian imports as a result of structural competitive advantages; and (ii) the specific and incremental price effect attributable to dumping. Article 3.5 of the ADA requires precisely this analytical separation.

34. Moreover, SPC's assertion that undercutting is “*driven by dumping*” is unsupported and directly contradicted by the available evidence. As apparent from the Commission's remedied price analysis in Report No. 654, where undercutting persists at 18 to 20 percentage points even after the removal of dumping, a dumping margin of 4 percentage points **cannot plausibly be characterised as the “driving” operative cause of that undercutting.**

35. Accordingly, identifying competitive advantage as the explanation for Italian export pricing does not “*confirm causation*”; rather, it isolates the principal causal factor accounting for the predominant share of the price differential – one which, pursuant to Article 3.5 of the ADA, must be distinguished from, and not attributed to, the effects of dumping.

3.1.4 The dumping-related price effect is not material in the present context

36. SPC submits that “*removing dumping (i.e. imposing measures) would have the effect of reducing the extent of undercutting and provide material relief to the Australian Industry*”¹⁵ and that “*a 4-6 percentage point reduction in undercutting is material*” in a price-sensitive market.

37. This argument misconceives the materiality assessment.

¹³ SPC Application for review of Ministerial Decision, p. 8.

¹⁴ Cambridge Business English dictionary definition of “*competitive advantage*”, available at: <https://dictionary.cambridge.org/us/dictionary/english/competitive-advantage>.

¹⁵ SPC Application for review of Ministerial Decision, p. 8.

38. The Ministerial Direction is clear that “*material injury is injury which is not immaterial, insubstantial or insignificant*” and that “*the injury must be greater than that likely to occur in the normal ebb and flow of business.*”¹⁶ Similarly, Article 3.2 of the ADA requires the investigating authority to assess whether undercutting occurs “*to a significant degree.*” These formulations establish a threshold of significance that is not met merely by demonstrating that some (negligible) measurable price effect is attributable to dumping.

39. ANICAV does not dispute that in some circumstances a 4 percentage point price differential can be commercially significant. The question, however, is **not** whether that differential can be significant in the abstract, but rather, **whether the injury attributable to it is material in degree**, having regard to the full evidentiary record. In the present case, that record shows a structural price gap of 18 to 20 percentage points attributable to the Italian industry’s competitive advantage.

40. Against that background, SPC’s position effectively reduces the materiality test to a formalistic exercise. If any incremental price effect attributable to dumping, however small relative to the overall price differential, were sufficient to establish “*material injury*”, then the requirement under Article 3.2 of the ADA that undercutting occur “*to a significant degree*”, and the Direction’s requirement that injury be “*material in degree*”, would be deprived of independent meaning. By following SPC’s reasoning, a finding of non-causation would be simply impossible every time dumping is found to exist. However, this is not what the relevant rules provide for, both at the Australian domestic level and the WTO level.

41. It follows that where the dumping-related component represents only a minor or negligible fraction of the total undercutting, such minor or negligible fraction cannot be considered as materially injuring the domestic industry. In addition, in similar situations the anti-dumping measure wouldn’t have any remedial effect, as it would leave the overwhelming majority of the price differential, and the associated competitive pressure, intact. The alleged injury would therefore persist in substantially the same form.

42. In these circumstances, the “contribution of dumping” to the injury allegedly suffered by the Australian industry cannot be regarded as “material” within the meaning of the Act or Article 3.2 of the ADA.

3.1.5 SPC’s reliance on prior practice and comparators is misplaced

43. SPC argues that the Commission has routinely imposed measures despite the existence of competitive advantages held by foreign producers, and that the present decision is therefore inconsistent with prior practice.¹⁷ This argument is however ill-founded.

¹⁶ Material Injury Direction issued by the Minister on 27 April 2012 (the “**Direction**”).
¹⁷ SPC Application for review of Ministerial Decision, p. 9.

44. The logical error in SPC’s argument is a classic instance of the fallacy of affirming the consequent: *“in other cases where competitive advantage was present, material injury was found; competitive advantage is present here; therefore, material injury must be found here too.”* This inference is invalid. While the presence of competitive advantage is indeed a feature common to a wide range of anti-dumping investigations, its presence or absence is **not** what determines the outcome. The outcome depends on the **evidentiary record**, and in particular on whether, after proper non-attribution, the injury attributable to dumping remains material.

45. SPC’s prior-practice argument invites the ADRP to infer a causation finding from the mere presence of a shared factual feature, i.e., competitive advantage, while ignoring the evidence that establishes what actually caused the injury in the present investigation.

46. The fallacy is compounded by SPC’s failure to engage with what the cases it cites actually decided. In fact, in the cases cited by SPC, no finding was made that structural price differences constituted the dominant and persistent cause of undercutting following a remedied price analysis. The present case is therefore factually distinct. The prior-practice argument hence fails on its own terms.

47. The Commission’s conclusion is therefore not a departure from prior practice; it is an application of the same legal standard **to a different evidentiary record**.

3.2 Increase in raw materials cost

48. SPC submits that the Commission’s finding on raw materials cost *“confuses cause and effect”*, arguing that it was not the increase in raw materials cost that caused injury, but the inability to pass on this cost (due to dumped imports) to cause it. SPC indeed further states that it *“could not increase its prices due to dumped imports”*.¹⁸

49. This argument is flawed and rests on a clear causal inversion. The increase in raw materials cost is an independently established, exogenous development, driven by supply-side constraints such as a reduced offer and/or increased demand for fresh tomatoes (see in particular section 4.1 below, concerning the climatic shock that directly affected the availability of fresh tomatoes in Australia during the injury period). These factors are objectively verified by independent data from the *Australian Bureau of Agricultural and Resource Economics and Sciences*.

50. As rightly observed in REP No. 654, *“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.”*¹⁹ This finding reflects a straightforward economic reality: **an increase in input costs, in and of itself, exerts downward pressure on margins** and is capable of **generating injury** independently of any external competitive dynamic.

¹⁸ SPC Application for review of Ministerial Decision, p. 12.

¹⁹ REP 654, p.121.

51. SPC’s attempt to re-characterise this cost shock as merely incidental cannot be reconciled with the evidentiary record. It is particularly difficult to sustain SPC’s assertion that injury caused by factors other than dumping is “*unsupported by evidence*”, given that the relevant cost increases are established by independent and verifiable data. Such cost pressures are, moreover, a well-recognised source of injury under Article 3.5 of the ADA.

3.3 Increase in domestic competition

52. SPC submits that the Commission’s analysis on domestic competition “*overstates the significance*”²⁰ of Simplot’s entry into the market. However, that assertion is not borne out by the evidence on the record. On the contrary, the data demonstrate that:

- SPC’s sales volumes at Woolworths sharply declined following the entry of Leggo’s;
- Declines in SPC’s volumes coincide temporally with periods of price discounting by Leggo’s during the latter part of the investigation period;
- SPC reduced its retail prices (from AUD 2.13 to AUD 1.67 per can) **in anticipation of, and in response to, Leggo’s entry**; and
- SPC’s loss of sales volumes and market share essentially mirrors the gains achieved by Simplot (see Figure 1 of REP 654, reproduced below).²¹

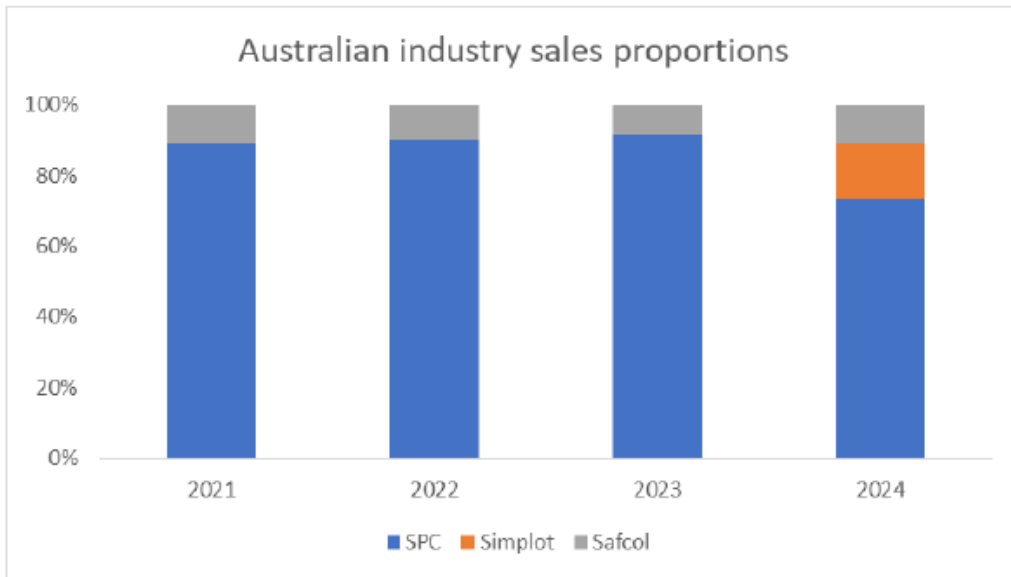


Figure 1: Proportion of sales of Australian produced like goods over the injury period

53. **Figure 1** is, in fact, central to understanding the competitive dynamics in the Australian market over the injury period. It shows the distribution of industry sales among SPC, Simplot, and Safcol between 2021 and 2024. **The data indicate a stable structure from 2021 to 2023**, with SPC consistently holding approximately 90% of sales, while Safcol accounted for a small and relatively stable share.

²⁰ SPC Application for review of Ministerial Decision, p.15.

²¹ REP 654, Figure 1 at p. 47.

54. In 2024, however **the picture dramatically changes with the entry of Simplot**, which accounted for approximately 15% of total Australian industry sales in that year. This entry coincides with a corresponding decline in SPC's share from around 90% in 2023 to approximately 75% in 2024. The temporal alignment and one-to-one substitution pattern clearly indicate that SPC's lost volumes were directly absorbed by Simplot.

55. There is thus a **clear diversion of sales among Australian producers.**

56. Furthermore, and importantly, Table 29 of REP No. 654 provides additional evidence that **the alleged injury is not industry-wide, but rather specific to SPC.**²²

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

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

57. SPC's indexed sales declined sharply over the injury period, falling from 100 in Oct 2020–Sept 2021 to 72 in the investigation period (Oct 2023–Sept 2024). Given SPC's significant weight within the domestic industry, this decline inevitably pulls down the overall industry performance. Accordingly, the decrease observed at the level of the Australian industry (from 100 to 87) must be read in light of SPC's dominant position.²³ However, the better score of the Australian industry as a whole compared to SPC (87 vs 72) clearly demonstrates that **the rest of the Australian industry (excluding SPC) performed well in the investigation period.** This gap is economically meaningful, as it indicates that other domestic producers, most notably Simplot, not only have not suffered injury but **have instead caused the injury suffered by SPC.**²⁴

58. This dynamic therefore further points to a **reallocation of market shares within the domestic industry, rather than a uniform deterioration affecting all domestic producers.** Any difficulties are clearly concentrated in SPC, as other domestic operators have been able not only to compete effectively, but also to maintain (Safcol), or even expand (Simplot) their market position during the same period.

59. Lastly, as previously explained by ANICAV in its response to SEF 654, this competitive shift was not incidental. Rather, it resulted from substantial **capital investment by Simplot**, in stark contrast with SPC's own strategic choices during the same period. For instance, in 2022 Simplot Australia announced a **\$65 million upgrade** to its Bathurst manufacturing facility, accompanied by the **acquisition of \$40 million in farmland** in the Central West region of New South Wales.²⁵

²² REP 654, table 29 at p. 97.

²³ Ibid.

²⁴ Ibid.

²⁵ See [Simplot Australia Announces \\$100 Million Investment in New South Wales Central West.](#)

60. Highlighting the company’s strategic expansion, Simplot’s Managing Director, Mr Graham Dugdale, stated that this investment would “*transform the Bathurst site into a frozen vegetable centre of excellence, enable increased production capacity, and ultimately help boost local and export volumes of value-added produce.*”²⁶ Such investments inevitably enhanced Simplot’s production capabilities, competitiveness and market presence. Notably, SPC itself acknowledges this development in its submissions, yet fails to engage with its causal implications, instead disregarding the role of intensified domestic competition in contributing to the alleged injury.

61. In light of the above, SPC’s assertion that injury caused by factors other than dumping is “*unsupported by evidence*”²⁷ cannot, once again, be sustained. The information in the file clearly demonstrates that domestic competition was not only present, **but heavily impacted SPC’s performance during the investigation period.**

3.4 Consumer preferences for Italian origin and flavour causing market segmentation

62. SPC asserts that the Commission’s findings on consumer preferences were “*speculative, unsupported by evidence, and contradicted by the Commission’s own analysis.*”

63. That assertion is incorrect. ANICAV has already provided extensive evidence on this point in its submission in response to SEF 654. In any event, ANICAV wishes to reiterate and further develop its position for the purpose of the review carried out by the ADRP.

64. First, the record contains substantial and consistent evidence demonstrating that, globally, **Australian consumers progressively changed their habits and now favour Italian products.** In particular:

- several Australian supermarkets stated that consumers prefer Italian tomatoes “*because of taste and a perception of superior quality*”;
- supermarkets highlighted that “*Italian tomatoes have a fuller-bodied and sweeter taste and a deeper red colour*” than Australian-grown tomatoes;
- the higher Brix ratings of Italian tomatoes **objectively** indicate a sweeter and richer product;²⁸
- supermarkets further explained that, while “*lower price point is likely also relevant*”, *consumers generally prefer Italian tomatoes, and this preference is “attributed to differences in taste and quality”*

65. This evidence is corroborated by independent sources. As previously submitted by ANICAV and accepted by the Commission, rankings by CHOICE, Australia’s leading consumer advocacy organisation, confirm that Italian-origin products—both proprietary brands and supermarket own-brands—consistently occupy the top positions in comparative taste tests. This provides independent, empirical confirmation that Italian products are perceived as superior in terms of quality and flavour.

²⁶ See [Simplot invests \\$105 million in Central West NSW | Invest Regional NSW](#).

²⁷ Ibid.

²⁸ Degrees Brix measures the sugar content in a liquid, with equalling gram of sucrose in grams of solution. It is used to determine ripeness in fruit, sugar levels in beverages, and quality in produce. A higher Brix number indicates higher sugar content, better flavour, and higher nutritional quality.

66. The Commission’s findings are therefore firmly grounded in probative evidence from Australian supermarkets, which are the primary purchasers of prepared or preserved tomatoes and have immediate visibility over consumer purchasing behaviour, including responses to product substitution and promotional activity. SPC’s attempt to dismiss such evidence as speculative is unfounded.

67. Second, and consistent with the analysis set out in Section 3.3 above regarding domestic competition, it must be noted that the consumers’ preference for Italian origin and flavour have determined a segmentation of the market between Italian and Australian tomato products. This is confirmed by the Commission’s findings in REP 654, from which it can be clearly inferred that **competition primarily takes place within, rather than across, these two segments**. In particular, the Commission acknowledged several times that “*the level of competition between Italian suppliers pushes down prices amongst themselves*.” [emphasis added].²⁹

68. In practice, this means that there is limited substitutability between Italian and Australian PPTs, as consumer choice is driven not only by price considerations but also by origin-based preferences and perceived product characteristics. In other words, consumers who purchase Italian-origin tomato products tend to do so because of a distinct preference for Italian origin, meaning that competition among Italian producers is predominantly intra-segment, just as competition among Australian producers is mostly contained within the domestic Australian segment.

69. Accordingly, while a certain degree of competition (mostly driven by price) between the two segments cannot be excluded, it remains marginal in economic terms compared to the competition which takes place within each segment.

70. In this regard, and without prejudice to the foregoing, it must be noted that the Commission did not find that flavour/origin preferences always override price considerations in the consumers’ choice, as alleged by SPC. Rather, the Commission’s findings reflect a balanced and economically coherent assessment: consumer purchasing decisions are driven by a combination of price considerations and flavour/origin preferences.

71. The structure of the market confirms this conclusion. If price were the sole determinant of demand, the lowest-priced products would dominate sales. This is not observed. Instead, the **mid-tier dominates**,³⁰ comprising both Australian proprietary brands and Italian products.³¹ This clearly demonstrates that **consumers prioritise quality and taste alongside price** and do not simply choose the lowest-priced option available.

72. In conclusion, the Commission’s analysis in REP 654 accurately describes a market which is characterised by a complex structure made of different tiers (reflecting price) and segments (reflecting the origin of tomatoes) (see Figure 2 from REP 654, reproduced below). The Commission correctly identified the relevant market dynamics, suggesting that while a certain level of intra-tier and intra-segment competition exists, the main driver of the market is the competition that occurs within each tier and within each segment.

²⁹ REP 654, at pp.13; 96; and 107.

³⁰ REP 654, figure 3 at p. 53.

³¹ REP 654, figure 2 at p. 53.

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

Figure 2: Analysis of brands in the Australian market⁵⁹

73. This is why SPC’s claim that Italian imports were the cause for the injury of the Australian industry is not credible. SPC’s inability to increase its prices is more plausibly explained, on the one hand, by consumers’ perception that its products do not justify a higher price point in terms of flavour and quality and, on the other hand, by the competitive pressure exerted by Simplot.

74. Such conclusion fully reconciles with the analysis carried out in section 3.3 above, where it was explained that the most significant change in market conditions during the investigation period concerns developments **within the Australian segment itself**. In particular, the entry of Simplot, with its brand Leggo’s, transformed the structure of the Australian market segment from a situation characterised by SPC’s dominant (*de facto monopolistic*) position into a situation of **effective competition within the Australian market segment**. This change **decisively** intensified the competitive pressure exerted on SPC (without significantly altering the broader pattern of origin-based segmentation between Australian and Italian products).

75. All the foregoing demonstrates that SPC’s claim according to which the Commission’s findings on consumer preferences were “*speculative, unsupported by evidence, and contradicted by the Commission’s own analysis*” is manifestly groundless and should be rejected.

3.5 The remedied price analysis

76. SPC submits that the Commission’s remedied price analysis “*effectively introduced a new and legally unsupported standard, that anti-dumping measures should only be imposed where they eliminate all instances of undercutting*”.

77. Here again, SPC fundamentally mischaracterises the Commission’s analysis. The Commission did not establish a standard that measures must eliminate all undercutting. Rather, 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*”.³² [emphasis added].

³² REP 654, p.142.

78. The purpose of the remedied price analysis is to separate the effects of dumping from the effects of other factors, which is precisely what Article 3.5 of the ADA and section 269TAE(2A) require. When the analysis demonstrates that substantial undercutting persists even after removing dumping margins, this is evidence that the effects of dumping are not material, and that the price gap is essentially attributable to factors other than dumping, as clearly recognized by Report No. 654:

“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.”³³

79. Furthermore, and as discussed in Section 3.1, SPC argues that “a 4-6 percentage point reduction in undercutting is material”. However, this argument assumes that any reduction in undercutting attributable to dumping must necessarily constitute “material injury”. This is not the legal standard. In a scenario where dumping accounts for only 4 percentage points (not 6 percentage points as SPC claims) out of a total undercutting margin of 22-24 percentage points, and when the remaining 18-20 percentage point gap would continue to cause injury regardless of whether measures were imposed, the Commission is entitled to conclude that the injury attributable to dumping is, indeed, not material.

3.6 The counterfactual assessment would have been highly abstract and speculative

80. Finally, SPC further argues that the Commission erred in declining to conduct a counterfactual analysis, submitting that such analysis “*would have significant probative value*”.³⁴ The Commission considered whether a counterfactual analysis could be conducted but concluded 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*”.³⁵ ANICAV submits that the Commission’s decision was a reasonable exercise of discretion consistent with the ADA.

81. Article 17.6(i) of the ADA provides the applicable standard of review: a panel “*shall determine whether the authorities’ establishment of the facts was proper and whether their evaluation of those facts was unbiased and objective*” and, if so, “**even though the panel might have reached a different conclusion, the evaluation shall not be overturned.**”[emphasis added]. The Commission’s decision to decline a counterfactual analysis, given the presence of multiple simultaneously-operating causal factors, was a reasoned methodological judgment.

³³ Ibid.

³⁴ SPC Application for review of Ministerial Decision, p. 25.

³⁵ REP 654, p.141.

82. As a matter of fact, where multiple causal factors operate simultaneously, the construction of a hypothetical scenario removing one factor while holding all others constant is necessarily artificial and speculative. The Commission is not required to engage in such modelling when the evidentiary record already demonstrates, through the remedied price analysis, that the principal source of the price differential causing the alleged injury is not dumping and that multiple other factors are the cause of the alleged injury.

83. Article 17.6(ii) of the ADA further confirms that where a provision admits of more than one permissible interpretation, the measure shall be found consistent with the Agreement if it rests upon one of those permissible interpretations. In the present case, the Commission's methodological choice rests on a permissible, indeed compelling, interpretation of the non-attribution obligation.

4. THE INJURY WAS CAUSED BY DOMESTIC FACTORS

84. Beyond the above-addressed, the broader evidentiary record demonstrates that SPC's difficulties are largely attributable to domestic circumstances that pre-date, and are independent of, the conduct of Italian exporters. ANICAV has already set out these factors in its submission in response to SEF 654; however, for the sake of completeness, it summarises them again below.

85. At the outset, it should be noted that, given the evident relevance of these factors, and their direct bearing on SPC's situation, it is striking that SPC has chosen to ignore them entirely. This selective omission appears designed to avoid drawing the ADRP's attention to considerations that would undermine its claims.

4.1 The 2022-23 climatic shock

86. SPC's low production and sales outcomes during the investigation period correspond precisely to the aftermath of the unprecedented climatic events that struck the Goulburn Valley³⁶ during the 2022-23 season.³⁷

87. SPC's own financial statement from 2023 confirm this causal link: "*In late December 2022, Shepparton and the Goulburn Valley was affected by devastating floods and hailstorms only days before harvest. The flood water level was at 1cm higher than that experienced in 1974, peaking at 12.10 meters. These floods led to substantial losses in crop yield or damaged crop in produce such as tomatoes.*"³⁸ This constitutes a direct admission of injury caused by extraordinary weather events.

³⁶ It has to be recalled that Australian growers of tomatoes are mostly located in northern Victoria and Southern New South Wales, which exposes them to period of low production due to bad weather. This was for example the case back in 2011, and most recently, as above assessed, in 2022. For the sake of completeness, please refer to ANICAV's submission in response to SEF 654, at Section 3.1.

³⁷ ANICAV has provided a more detailed analysis of SPC's structural fragility in its submission in response to SEF 654, at Section 3.1.

³⁸ Ibid. See also [SPC Annual Report FY23 - SPC Global Holdings Limited \(ASX:SPG\) - Listcorp.](#)

88. Independent industry sources corroborate this information. The Chairman of the Australian Processing Tomato Research Council (“APTRC”) stated that in 2022/23, Australian tomato growers “were faced with challenges from the outset, with significant and widespread rainfall that impeded field preparation efforts. Subsequently, during October, our members had to deal with the potential and realised effects of rising river levels and damaging floodwaters on properties.”³⁹ And that, “cool temperatures and localised hailstorms further hampered crop development and productivity across the regions.”⁴⁰ The outcome was catastrophic: only **110,621 tonnes** were delivered, i.e., “**under half of the pre-season forecast estimates**”;⁴¹ and yields fell to **67.9 tonnes per hectare**, dramatically below the usual averages.⁴²

89. The reduced offer of fresh tomatoes inevitably impacted SPC since it caused (i) an **increase of raw materials cost** (fresh tomatoes); (ii) a **reduction in the production volume** of PPTs, given the limited availability of fresh tomatoes to be processed and, in turn, (iii) an **increase of SPC’s cost to make and sell (CTMS)**. In fact, the increase of fresh tomatoes prices and the lower production volumes inevitably determined an increase in SPC’s unit variable costs and unit fixed costs.

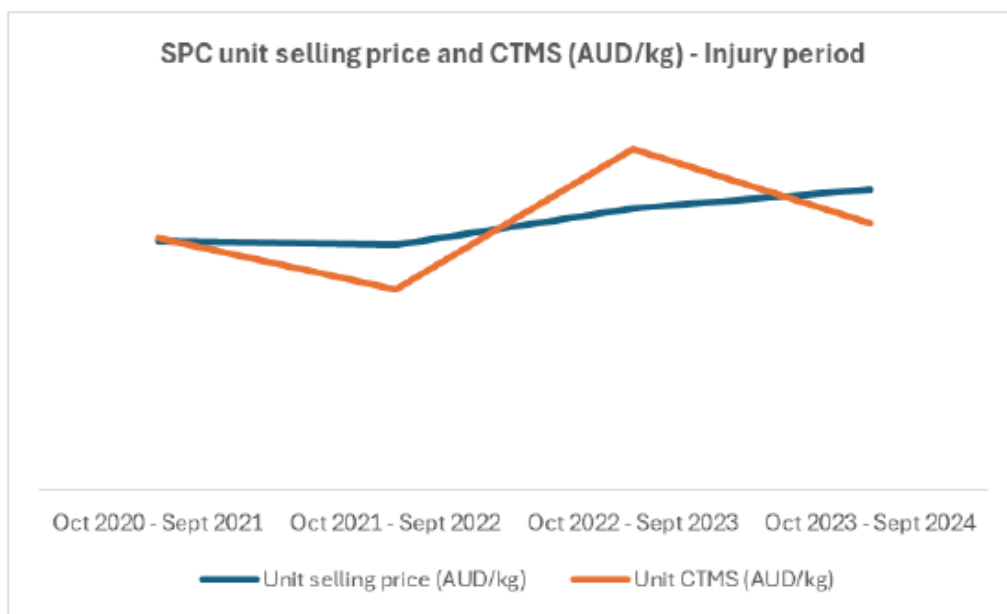


Figure 9: SPC unit selling price and CTMS (AUD/kg) – Injury period

90. As depicted in Figure 9 of REP 654 (reproduced above), at the beginning of the period (Oct 2020–Sept 2021), SPC’s unit selling price and CTMS were broadly aligned. Interestingly, in the following period (Oct 2021–Sept 2022), CTMS declines while **selling prices remain relatively stable, signalling an improvement** in cost conditions and operational efficiency.⁴³

³⁹ See <https://aptrc.asn.au/wp-content/uploads/2024/03/Australian-Processing-Tomato-Grower-Magazine-2023.pdf>.
⁴⁰ See <https://aptrc.asn.au/wp-content/uploads/2024/03/Australian-Processing-Tomato-Grower-Magazine-2023.pdf>.
⁴¹ See <https://aptrc.asn.au/wp-content/uploads/2024/03/Australian-Processing-Tomato-Grower-Magazine-2023.pdf>.
⁴² See <https://aptrc.asn.au/wp-content/uploads/2024/03/Australian-Processing-Tomato-Grower-Magazine-2023.pdf>.
⁴³ REP 654, Figure 9, at p. 98.

91. This trend **reverses sharply in the subsequent period (Oct 2022–Sept 2023)**, where CTMS **increases significantly and exceeds the unit selling price by a substantial margin**. This spike **reflects a period of acute cost pressure**. As demonstrated and substantiated above in Section 4.1, this development coincides with the climatic shock that led to agricultural disasters, including **a poor tomato harvest and supply disruptions**.⁴⁴

92. Reduced availability of raw tomatoes **inevitably led to lower production volumes, which, in turn, increased the unit CTMS due to the spreading of fixed costs over a smaller output**. At the same time, the **limited usable crop** was inevitably procured at significantly higher prices, **further inflating variable costs**. This combination of factors explains the pronounced peak in SPC’s CTMS and the resulting margin compression—indeed, a clear manifestation of injury during this period that is directly attributable to exogenous supply-side shocks affecting the Australian domestic industry.

93. Article 3.5 of the ADA requires that the investigating authority examine “*any known factors other than the dumped imports which at the same time are injuring the domestic industry.*”⁴⁵ Catastrophic domestic crop failure—heavily impacting the cost of production and therefore the Australian industry’s competitiveness—is precisely one of these factors. Italian imports were, if anything, the mechanism that prevented supply gaps from worsening, as vastly documented in ANICAV’s submission to SEF 654, in relation to the Australian industry inability to meet domestic demand (as further discussed in subsection 4.2 below).

4.2 Australian domestic industry’s inability to meet domestic demand

94. Major Australian supermarkets have consistently submitted that the domestic industry is **incapable of supplying sufficient volumes to meet national demand for PPTs**. Retailers cited both “*capacity constraints*” and “*relative inefficiencies*” of Australian producers compared with their Italian counterparts.⁴⁶ They further noted that the small scale of the Australian industry **inherently limits its ability to produce adequate volumes**, and that SPC has not invested (as above noted, contrary to Simplot) in expanding capacity for production. SPC’s inability to maintain sufficient levels of production explains the increased volumes of Italian imports. In this regard, the following should be noted.

95. First, as explained in subsection 3.1 above, SPC lost approximately **60% of its planned crop** due to severe flooding in Greater Shepparton—conditions described by the Chair of the APTRC as “*the most challenging (...) ever experienced during a planting period.*”⁴⁷ This collapse in crop availability prevented SPC from meeting customer demand and directly caused its reductions in output, sales volumes, and market share. Such crop failure is not a consequence of a lack of customer orders but of uncontrollable weather-driven supply constraints.

96. Second, the industry suffered an additional shock in August 2024, when a **Tomato Brown Rugose Fruit Virus (ToBRFV)** outbreak was detected across three South Australian businesses, causing approximately **AUD 20 million** in losses.⁴⁸ The outbreak further exposes the fragility of domestic tomato production and underscores the limited resilience of the Australian supply chain.

⁴⁴ Ibid.

⁴⁵ Article 3.5 of the ADA.

⁴⁶ REP 654, p. 54.

⁴⁷ See <https://aptrc.asn.au/wp-content/uploads/2024/03/Australian-Processing-Tomato-Grower-Magazine-2023.pdf>.

⁴⁸ See [Tomato Shortage in Australia Looming Due to Tomato Brown Rugose Fruit – Quality Plants & Seedlings](#).

97. The Commission itself acknowledged this volatility in REP 654, recognising that Australian production is inherently less stable than Italian production and that supply reliability is a key factor influencing purchasing decisions. The factual records show that supermarkets increased reliance on Italian imports precisely because SPC could not ensure consistent and adequate supply.

98. SPC's assertion that it could have expanded production upon request is, therefore, completely unfounded.

99. Lastly, even accepting *arguendo* that SPC possessed unused capacity, this does not explain **why customers did not place additional orders** for the domestic product. The Commission, in REP 654 confirmed that supply shortages caused a shift in consumer purchases towards Italian PPTs, stimulating import growth. Importantly, REP 654 also acknowledges that "*while crop yields later recovered, customer demand did not return to levels prior to the 2022/2023 season.*"⁴⁹ This raises the obvious question: why did customers not revert to Australian products once supply normalised? The most plausible explanation is that, once consumers switched to Italian PPTs, they perceived these latter as products of better taste, and overall quality. Hence, many evidently **saw no reason to revert to the domestic alternative.**⁵⁰

100. Customer demand is shaped by a combination of quality, flavour, reliability, brand perception, and product consistency. If supermarkets and consumers did not switch back to Australian tomatoes, this indicates that the domestic product failed to meet their expectations. Capacity does not create demand; consumer choice does.

4.3 SPC's structural fragility

101. As also thoroughly substantiated in ANICAV's submission in response to SEF 654,⁵¹ the evidentiary record reveals a pattern of financial difficulty at SPC that significantly predates the period of Italian import competition at issue in this investigation.

102. Between 2009 and 2014, SPC recorded successive annual losses, leading to a request for a \$25 million federal rescue package, which was rejected, and a subsequent Victorian Government intervention of \$22 million to prevent the closure of SPC's Shepparton operations.⁵²

103. Anti-dumping measures were in force under Investigation No. 217 during the period 2014 to 2016. Despite this regulatory protection, SPC did not restore its competitive position or return to sustainable profitability. Article 3.5 of the ADA requires examination of "*the export performance and productivity of the domestic industry*" as a potential other factor. SPC's chronic inability to achieve profitability even while shielded by anti-dumping duties, and its structural dependence on government support, are matters squarely within this category.

104. If SPC was unable to stabilise its financial position while measures were in force, the causal connection between Italian imports and SPC's current difficulties **cannot be as direct or as dominant as SPC asserts.**

⁴⁹ REP 654, p.134.

⁵⁰ Preference for Italian tomatoes is further discussed in section 3.4 above.

⁵¹ Ibid.

⁵² See [Victorian Government announces \\$22m assistance package for SPC Ardmora - ABC News](#).

5. THE COMMISSION'S DECISION WAS CORRECT AND SHOULD BE AFFIRMED

105. Article **17.6(i) of the ADA** states:

*"In its assessment of the facts of the matter, the panel shall determine whether the authorities' establishment of the facts was proper and whether their evaluation of those facts was unbiased and objective. **If the establishment of the facts was proper and the evaluation was unbiased and objective, even though the panel might have reached a different conclusion, the evaluation shall not be overturned.**"*⁵³

106. This provision defines the applicable standard of review. It makes clear that the role of the ADRP is **not** to conduct a *de novo* assessment, **nor to substitute its own judgment for that of the investigating authority**. Rather, its role is to assess whether the Commission's evaluation of the evidence was objective and unbiased.

107. SPC's application fails to engage with this standard. In substance, it invites the ADRP to reweigh the evidence and to replace the Commission's reasoned conclusions with its own preferred interpretation. That is not the function of review under Article 17.6(i) of the ADA.

108. The record demonstrates that the Commission conducted a thorough and rigorous investigation over a period of more than 15 months. In particular, the investigation included:

- Verification visits to SPC's premises;
- Verification visits to the premises of De Clemente, IMCA and Mutti in Italy;
- Collection and analysis of data from importers including Coles and Woolworths;
- Consideration of 19 submissions from interested parties;
- Analysis of the Australian market, economic condition of the industry, and causation.

109. The Commission's findings were hence based on this comprehensive evidentiary record. Analysing such evidentiary record, the Commission found that:

- Dumping margins ranged from negative 8.8% to 5.5%;
- Subsidy margins were negligible for all exporters except non-cooperative entities;
- Italian imports undercut Australian industry prices by 13-24%, even when dumping was remedied;
- The price gap was attributable to competitive advantage and other factors, not dumping;
- The factors causing the alleged injury were, *inter alia*, the competitive advantage of Italian imports, increased raw material costs, increased domestic competition, and consumer preferences.

⁵³ Article 17.6 of the WTO Anti-Dumping Agreement.

110. These findings reflect a careful, evidence-based, and internally consistent analysis. They demonstrate that the Commission properly established the facts and conducted an objective and unbiased evaluation, as required by Article 17.6(i) of the ADA.

111. SPC has failed to identify any error of fact or law in this analysis. Rather, SPC's submission merely expresses disagreement with the assessment of the evidence and, despite the extensive evidence on the record, inexplicably persists in asserting that such evidence does not exist.

112. Accordingly, ANICAV respectfully submits that the Commission's determination was lawful, reasoned, and fully supported by the evidentiary record, and should therefore be affirmed.

6. CONCLUSION

113. For the reasons set forth above, and as required by Section 269ZZK of the Customs Act 1901, ANICAV respectfully submits that the Minister's decision not to impose anti-dumping measures was the correct and preferable decision.

- (a) **The decision was legally correct.** The Commission properly applied the causation standard under section 269TAE, including the non-attribution obligation under section 269TAE(2A) and Article 3.5 of the ADA. The finding that injury was caused by factors other than dumping was supported by the evidence.
- (b) **The decision was factually supported.** The Commission's findings regarding, *inter alia*, competitive advantage, raw material costs, domestic competition, and consumer preferences were based on verified data, market analysis, and submissions from interested parties.

114. ANICAV therefore respectfully requests the ADRP to:

- (c) **Dismiss SPC's application for review;** and
- (d) **Affirm the Minister's decision** pursuant to section 269TL(1) of the Customs Act 1901.