



Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601

Attn: Leora Blumberg
Panel Member
c/o- ADRP Secretariat

By email: ADRP@industry.gov.au

Dear Member Blumberg

ADRP Review No. 177: Tomatoes, prepared or preserved exported to Australia from the Italian Republic (Italy)

I write regarding the notice under section 269ZZI of the *Customs Act 1901* (Cth) (the **Act**) published by the Anti-Dumping Review Panel (**ADRP** or **Review Panel**) on 18 March 2026.

The notice advised of your intention to review the decision of the Minister for Industry and Innovation and Minister for Science (the **Minister**), under section 269TL(1) of the Act in respect of the investigation by the Anti-Dumping Commission (**commission**) into whether a dumping duty notice and a countervailing duty notice (collectively, **anti-dumping measures**) applying to Tomatoes, Prepared or Preserved (the **goods**) exported from Italy should be published. The Minister decided under section 269TL(1) not to impose anti-dumping measures on the goods.

I have considered the applications for review submitted by SPC Operations Pty Ltd (**SPC**) and make the submissions, under section 269ZZJ(aa) of the Act, at **Attachment A** for your consideration.

Please let us know if we can assist you further in this matter.

Yours sincerely

David Latina
Commissioner
Anti-Dumping Commission

15 April 2026

COMMISSIONER, ANTI-DUMPING COMMISSION SUBMISSION

ADRP Review 2026/177

1. The Commissioner of the Anti-Dumping Commission (the **Commissioner**), with the assistance of officers of the Anti-Dumping Commission (the **commission**), makes this submission under section 269ZZJ(aa) of the *Customs Act 1901* (Cth) (the **Act**).¹
2. This submission is made in response to the application for review to the Anti-Dumping Review Panel (the **ADRP** or **Review Panel**) by SPC Operations Pty Ltd (**SPC**) of the decision (the **Reviewable Decision**) by the Minister for Industry and Innovation and Minister for Science (the **Minister**) regarding tomatoes, prepared and preserved, exported to Australia from the Italian Republic (**Italy**).
3. The Minister's decision made under section 269TL(1) of the Act was not to declare that:
 - Section 8 of the *Customs Tariff (Anti-Dumping) Act 1975* (Cth) (the **Dumping Duty Act**) applies to Tomatoes, Prepared or Preserved (the **goods**) and like goods exported to Australia from Italy (except La Doria S.p.A (**La Doria**), or
 - Section 10 of the Dumping Duty Act applies to the goods and like goods exported to Australia from Italy (except De Clemente Conserve S.p.A (**De Clemente**), IMCA S.p.A (**IMCA**), La Doria, Mutti S.p.A (**Mutti**) and residual exporters).
4. The effect of the Minister's decision is that no anti-dumping or countervailing measures apply to tomatoes exported to Australia from Italy.
5. The Minister in making the Reviewable Decision, considered and accepted the recommendations of the Commissioner, the reasons for the recommendations, the material findings of fact on which the recommendations were based, and the evidence relied on to support those findings in Anti-Dumping Commission Report No 654 (**REP 654**).
6. The ground of review advanced by SPC in its application and accepted by the Review Panel as a reasonable ground for the Reviewable Decision not being the correct or preferable decision is:

Erroneous decision that dumping was not the cause of material injury to the Australian industry and that other factors were the primary cause of the injury.
7. In addressing this ground, the Commissioner's Submission is structured as follows:

Commissioner's submissions

 - I. Legal Framework
 - II. Competitive Advantage of Italian Producers.

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

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- The Commissioner did not treat competitive advantage as a “complete defence”
- The existence of competitive advantage is legally relevant
- Remedied price analysis and the commission’s past practice

III. Increase in Raw Material Costs

IV. Increase in Domestic Competition

V. Consumer Preferences for Italian Origin and Flavour

VI. Other Submissions

VII. Conclusion

8. Generally, the Commissioner’s responses to each of SPC’s claims can be found in the following sections of the Commissioner’s submissions:

SPC submissions²	Responses in Commissioner’s submission
Legal framework: The Ministerial Direction on Material Injury	Where relevant throughout the submission
The investigation’s findings evidence material injury from Italian dumping	VI. Other Submissions
Competitive advantage of Italian producers	II. Competitive Advantage of Italian Producers
Increase in raw material costs	III. Increase in Raw Material Costs
Increase in domestic competition	IV. Increase in Domestic Competition
Consumer preferences for Italian origin and flavour	V. Consumer Preferences for Italian Origin and Flavour
Remedied price analysis — undercutting margins commonly exceed dumping margins	II. Competitive Advantage of Italian Producers: <i>Remedied price analysis and the commission’s past practice</i>

² Based on the headings used in the answer to Question 11 of the application form in SPC Application, Attachment 2.

The counterfactual assessment would have had significant probative value	VI. Other Submissions
A structural cost advantage permits dumping, causing material injury	II. Competitive Advantage of Italian Producers

Commissioner's submissions

I. Legal Framework

9. The Minister's decision — not to declare that section 8 of the Dumping Duty Act applied to the goods — resulted from the Minister not being satisfied for the purposes of section 269TG that material injury to an Australian industry had been caused or was being caused because the export price of the goods exported from Italy was less than the normal value of those goods.³

10. Section 269TG(1) of the Act provides:

(1) Subject to section 269TN, where the Minister is satisfied, as to any goods that have been exported to Australia, that:

(a) the amount of the export price of the goods is less than the normal value of those goods; and

(b) because of that:

(i) material injury to an Australian industry producing like goods has been or is being caused or is threatened, or the establishment of an Australian industry producing like goods has been or may be materially hindered; or

[...]

the Minister may, by public notice, declare that section 8 of that Act applies:

(c) to the goods in respect of which the Minister is so satisfied; and

[...]

(emphasis added)

11. Therefore, to publish a notice under section 269TG(1), the Minister must be satisfied that material injury to an Australian industry producing like goods has been or is

³ SPC's application only alleges error in the decision that dumping was not the cause of material injury, and therefore, the Commissioner's submissions do not address sections 269TJ or 269TJA, or section 10 of the Dumping Duty Act.

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being caused or threatened *because the export price of goods exported to Australia is less than the normal value of those goods.*

12. The Commissioner submits that the causal link which the Minister must be satisfied of to publish a notice under section 269TG(1) is not simply that an Australian industry has experienced material injury because of dumped imports, but that it has experienced material injury **because those imports are dumped**. The Commissioner submits that the same interpretation, *mutatis mutandis*, is true for notices published under section 269TG(2). As explained throughout these submissions, this distinction is important when dumped imports have injurious effects on an Australian industry that are not attributable to the difference between their export price and normal value.
13. This interpretation accords with Wigney J's explanation of the section 269TG causation requirement in *Yara AB v Minister for Industry, Science and Technology (Yara)*:

*The causation requirement in s 269TG(1) and (2) arises from the words "because of that" in both those provisions. In the case of s 269TG(1), the relevant causation requirement is, in substance, that the Minister is satisfied that material injury to an Australian industry producing like goods has been or is being caused by the fact that the amount of the export price of the goods is less than the amount of the normal value of the goods. In the case of s 269TG(2), the relevant causation requirement is, in substance, that the Minister is satisfied that material injury to an Australian industry producing like goods has been or is being caused by the fact that the amount of the export price of the goods that may be exported to Australia in the future may ... be less than the normal value of the goods.*⁴

14. It is also consistent with the *Ministerial Direction on Material Injury 2012* (the **Material Injury Direction**) and the commission's policy set out in the "Dumping and Subsidy Manual" (December 2021) (the **Manual**), which refer to material injury caused by "dumping" — that is, caused by the export price of imports being less than their normal value.⁵ It is also consistent with relevant provisions of the World Trade Organization (**WTO**) *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (the **Anti-Dumping Agreement** or **ADA**). Article 3.5 provides: "It must be demonstrated that the dumped imports are, **through the effects of dumping**, as set forth in paragraphs 2 and 4, causing injury within the meaning of this Agreement."⁶
15. Section 269TAE provides the legislative framework for the Minister's consideration of whether material injury has been caused or is being caused, threatened, etc, by dumping.

⁴ [2022] FCA 847; (2022) 177 ALD 192, 209 [75] (emphasis added).

⁵ Material Injury Direction: "I direct that injury caused by dumping or subsidisation must be material in degree."; Manual, 99 [22.1]: "the Minister must be satisfied that because of that dumping or subsidisation, material injury to an Australian industry producing like goods has been or is being caused or threatened...".

⁶ Emphasis added.

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- Section 269TAE(1) lists circumstances to which the Minister may have regard, “without limiting the generality of [section 269TG] but subject to subsections (2A) to (2C)”.
 - Section 269TAE(2A) requires the Minister to consider whether any injury to an industry is being caused or threatened by a factor other than the exportation of the dumped goods to Australia, and lists some such other factors.
 - Section 269TAE(2B) relates to findings of a threat of injury, and section 269TAE(2C) relates to cumulative effects when considering different countries of export, so these subsections are not relevant to this review.
 - Section 269TAE(3) defines “relevant economic factors” in relation to an Australian industry — the effect of the exportation of goods on the relevant economic factors in relation to the Australian industry is one of the circumstances to which the Minister may have regard under section 269TAE(1)(g).
16. The Commissioner’s assessment of whether dumping has caused material injury is also subject to the Minister’s directions in the Material Injury Direction, made under section 269TA(1) of the Act.
17. The test in section 269TG(1) and (2) is whether the Minister (and the Commissioner) is **satisfied** that dumping caused material injury. If the Minister is not satisfied that dumping caused material injury, this does not necessarily mean the Minister is satisfied that another factor caused material injury. However, a finding that another factor or factors contributed to injury experienced by an Australian industry may diminish the Minister’s ability to be satisfied that dumping caused material injury.

II. Competitive Advantage of Italian Producers

18. The Commissioner’s findings that Italian producers benefited from a competitive advantage was based on analysis of production volumes during verification, comparison of Italian producers’ cost to make (**CTM**) compared to Australian industry’s CTM, and the commission’s “remedied price analysis”, which demonstrates what the price difference between Italian imports and Australian goods would be if the Italian imports were sold at non-dumped prices.⁷ The Commissioner considers that the claims in SPC’s application regarding competitive advantage are closely related to SPC’s claims regarding “structural cost advantage” and the commission’s remedied price analysis,⁸ so the Commissioner’s submissions on these points are grouped together under this section.
19. SPC’s application claims that the finding of competitive advantage “confirms causation”, as it explains “why Italian producers can profitably export at prices that

⁷ See REP 654, 120 [9.8.1], 137–42 [9.9], particularly at 142 [9.9.3]: “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.”

⁸ See SPC Application, Attachment 2, 21–4, 26.

undercut Australian industry, and why that undercutting (driven by dumping) causes material injury”.⁹

20. It is important to distinguish between undercutting and dumping. Undercutting means the Italian imports are sold in Australia at less than Australian industry prices. Dumping means they are sold at less than their normal value — the normal value being their domestic selling price in the country of origin. Where the imported goods substantially undercut Australian-produced goods, but the dumping margins are relatively modest, it does not automatically follow that the undercutting is “driven by dumping” in every context as was evident from the analysis undertaken by the commission.
21. The overall conclusion of the commission’s remedied price analysis was that Italian export prices undercut the price of the Australian industry by between 13% and 24% over the four quarters of the investigation period.¹⁰ The weighted average dumping and subsidy margin added 4% to the price, meaning that, even at non-dumped prices, Italian imports would still undercut the Australian industry by between 9% to 20%.¹¹ In other words, the Commissioner’s conclusion was that undercutting was primarily “driven” by competitive advantage, although some level of undercutting was also attributable to dumping.¹²

The Commissioner did not treat competitive advantage as a “complete defence”

22. SPC’s application submits that the finding that Italian producers benefited from a competitive advantage was something which the Commissioner used to “negate” a finding of causation, and was a finding which the Commissioner treated as a “complete defence” rather than as one of multiple factors to be weighed.¹³
23. The Commissioner disagrees that the finding of competitive advantage acted as a “complete defence” or that it “negated causation”.
24. Where the Commissioner has found dumping, and has found that the Australian industry experienced injury during the investigation period, the Commissioner must still be positively satisfied that material injury was caused by dumping. As per the Material Injury Direction, “[i]t is not enough to assert that because there is dumping or subsidisation, injury automatically follows”. In forming a view, the Commissioner will consider the available evidence that may support that there is a causal connection between dumping and material injury as well as evidence that may not support a causal connection. The latter can include evidence that there are other factors which are contributing to injury experienced by the Australian industry.
25. The Commissioner’s finding that Italian producers benefited from competitive advantages was one factor considered in determining whether dumping caused

⁹ SPC Application, Attachment 2, 8. See also at 26: “[i]t is precisely the structural cost advantage that permitted Italian exporters to export at lower — and dumped — prices, undercutting SPC, and thereby causing material injury.”

¹⁰ REP 654, Figure 12.

¹¹ REP 654, 140 [9.9.1] and Figure 34. Note that the 18% to 20% Australian industry gap range stated at 140 [9.9.1] below Figure 38 was affected by an error in converting the underlying figures to percentages. The correct range is 9% to 20% as indicated by Figure 34. This error was notified to the Review Panel by email dated 14 April 2026.

¹² See REP 654, 142 [9.9.3].

¹³ SPC Application, Attachment 2, 9.

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material injury. As detailed in Chapter 9 of REP 654, and recognised in SPC's application, the Commissioner made other factual findings and considered several factors in the assessment of whether dumping had caused material injury.

26. The Commissioner notes that section 269TAE lists various factors to consider in determining whether dumping has caused material injury, but it does not stipulate how these different factors should be considered or what weight should be afforded to different factors (other than that some are mandatory considerations and some are discretionary). The Material Injury Direction provides that "[a] material injury assessment involves a range of factors that are considered together; no one or several of these factors can necessarily give decisive guidance".
27. This is also consistent with relevant provisions from the WTO Anti-Dumping Agreement on determination of injury. Article 3.2, which identifies some considerations to make, states that "[n]o one or several of these factors can necessarily give decisive guidance". Similarly, article 3.4 states "nor can one or several of these factors necessarily give decisive guidance". The Commissioner submits that the consideration of competitive advantage was as one of a number of relevant factors considered in this assessment.
28. The Commissioner agrees with SPC's submission in its application that, even where exporters have a competitive advantage, there can be "additional injury" caused by dumping, and that "[t]he correct analytical approach is to assess whether the dumping has caused material injury in its own right".¹⁴ This accords with the Material Injury Direction, which provides that: "Whether dumping or subsidisation is the sole cause of injury or whether there are other contributing factors, ... the injury caused by dumping or subsidisation must be material in degree."
29. The Commissioner disagrees with SPC's submission that the commission's approach "conflated" the existence of a competitive advantage with the unfair price advantage conferred by dumping.¹⁵ As discussed below at paragraph [40] the commission's remedied price analysis was a method of distinguishing the price advantage of imports attributable to dumping from competitive advantage. The Commissioner's conclusion in REP 654 was that he could not be satisfied that additional injury caused by dumping (that is, injury additional to the injury caused by competitive advantage) was material in degree.¹⁶
30. The Material Injury Direction directs the Commissioner to consider "material injury to be injury that is not immaterial, insubstantial or insignificant", and directs that "there is no threshold amount that is capable of general application". The Commissioner's inability to be satisfied that dumping in itself had caused material injury, was informed by the level of the dumping margins relative to the margin of undercutting (and by the other factors which contributed to injury as set out in chapter 9 of REP 654 and in this submission).

¹⁴ SPC Application, Attachment 2, 11.

¹⁵ SPC Application, Attachment 2, 26.

¹⁶ See REP 654, 141 [9.9.3]: "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."

The existence of competitive advantage is legally relevant

31. SPC submitted in its application that: “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.”
32. The Commissioner disagrees that the competitive advantage of Italian producers is a legally irrelevant consideration. As noted above at paragraph [15], section 269TAE does not limit the generality of section 269TG and the matters which may be considered in determining whether dumping has caused material injury to an Australian industry. The Material Injury Direction requires that, where other factors may be contributing to injury suffered by the Australian industry, such injury “must not be attributed to dumping or subsidisation”. The Commissioner submits that the competitive advantage of Italian producers is a factor other than dumping which contributes to the injury of the Australian industry.
33. Under section 269TAE(1), two of the factors which the Commissioner may have regard to are: the size of the dumping margin, or of each of the dumping margins, worked out in respect of the goods that have been exported to Australia and dumped;¹⁷ and the difference between the price paid for goods produced by the Australian industry and the goods exported to Australia.¹⁸ The Commissioner’s consideration of competitive advantage is relevant under these two factors: REP 654 considered that the level of undercutting (that is, price difference between exports and Australian-produced goods), together with the relatively modest levels of dumping, indicated that a substantial proportion of the price gap was attributable to competitive advantage rather than dumping.¹⁹ As this analysis shows, price undercutting can happen for reasons unrelated to dumping.
34. SPC also refers to the decision of the WTO Dispute Panel in *EU — Biodiesel (Argentina) (DS473)*²⁰ to support the proposition that article 3.5 of the ADA 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.²¹ The Commissioner notes that DS473 does support this proposition, however, the Dispute Panel did not hold that an investigating authority was prohibited from considering factors which might be characterised as “differences in the structure of the domestic industry as compared to that of the exporting member”. The European Union authorities did in fact consider the alleged structural differences in that investigation, and the Dispute Panel went on to evaluate the reasonableness of that assessment.²²

¹⁷ Section 269TAE(1)(aa).

¹⁸ Section 269TAE(1)(e).

¹⁹ REP 654, 142 [9.9.3]. See also REP 654, 110–11 [9.3] (“Size of dumping and subsidy margins”), which refers to the commission’s remedied price analysis at [9.9] of REP 654.

²⁰ *European Union — Anti-Dumping Measures on Biodiesel from Argentina*, WT/DS473/R (29 March 2016).

²¹ SPC Application, Attachment 2, 11, quoting DS473 [7.522].

²² See DS473, 151 [7.524].

Remedied price analysis and the commission's past practice

35. In its application, SPC submits that the Commissioner's findings on competitive advantage are inconsistent with its past practice. It notes Anti-Dumping Commission Report No 632 (**REP 632**)²³ as an example where the Commissioner accepted that overseas manufacturers may enjoy a competitive advantage relative to the Australian industry, however was nonetheless satisfied that the expiration of measures would lead or be likely to lead to a continuation or recurrence of dumping and the material injury the measures were intended to prevent. SPC submits that in REP 632, the Commissioner did not consider that competitive advantage negated causation.²⁴
36. Similarly, in regard to the commission's remedied price analysis, SPC submits that the Commissioner's conclusions drawn from the analysis "effectively introduced a new and legally unsupported standard, that anti-dumping measures should only be imposed where they eliminate all instances of undercutting".²⁵ SPC noted previous anti-dumping investigations²⁶ where the Commissioner recommended the imposition of dumping duties despite findings that the level of undercutting was greater than the level of dumping.²⁷
37. SPC also refers to the statement in REP 654 that facts specific to the investigation, including that the goods are a processed agricultural product as opposed to a commodity product like railway wheels, demonstrated that it is the level of competitive advantage of Italian producers over the Australian industry, along with other factors discussed in chapter [9.8], that contributed to injury experienced by Australian industry.²⁸
38. Generally, the Commissioner assesses each case based on the particular factual circumstances and evidence available, applying the relevant test to that evidence base.²⁹ In REP 654, the Commissioner's recommendations were based on the level of dumping found in REP 654 relative to the level of price undercutting, and the other

²³ Anti-Dumping Commission Report No 632, continuation inquiry, railway wheels from China and France (12 June 2024).

²⁴ SPC Application, Attachment 2, 10–11.

²⁵ SPC Application, Attachment 2, 22.

²⁶ Anti-Dumping Commission Report No 550, investigation, precision pipe and tube steel from China, Republic of Korea (**ROK**), Taiwan, and Vietnam (27 August 2021) (**REP 550**); Anti-Dumping Commission Report No 558, investigation, aluminium zinc coated steel from ROK, Taiwan, and Vietnam (15 November 2021) (**REP 558**); Anti-Dumping Commission Report No 655, investigation, hot rolled deformed steel bar from Indonesia, Malaysia, Thailand, Türkiye, and Vietnam (16 December 2025) (**REP 655**).

²⁷ SPC Application, Attachment 2, 23–4.

²⁸ REP 654, 121 [9.8.2]. SPC submits that the notion that competitive advantage in an agricultural product sector can be distinguished from competitive advantage in other sectors is not supported by law or academic literature, and that it introduces an untenable inconsistency to the commission's decision making whereby Australian industries manufacturing food products are afforded a lesser standard of protection under the anti-dumping system than manufacturers of other products: SPC Application, Attachment 2, 9–11.

²⁹ As a continuation inquiry, the Commissioner notes the legislative tests applicable to in REP 632 differed from those applicable in REP 654. To recommend continuation of measures, rather than being satisfied of the matters in section 269TG(1) and/or (2), the Commissioner must be satisfied under section 269ZHF(2) that the expiration of measures would lead or be likely to lead to a continuation or recurrence of the dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent.

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factors which were found to contribute to material injury, including an increase in raw material costs and higher production costs for the Australian industry; an increase in domestic Australian competition; and preference by some consumers for Italian products over Australian products, based on flavour preferences and origin. As submitted above at paragraphs [22]–[27], the Commissioner did not treat competitive advantage as a “complete defence” or a factor which “negated” causation — it was one of a number of factors considered in assessing whether dumping caused material injury to the Australian industry.

39. The Commissioner disagrees with SPC’s submission that the conclusions from the remedied price analysis introduce a standard whereby measures will not be imposed if the margin of undercutting is greater than the dumping margin. Neither Statement of Essential Facts No 654 (**SEF 654**) nor REP 654 state or imply that the Commissioner would or could only recommend the imposition of measures if the measures would completely remedy undercutting.
40. A remedied price analysis, which SPC acknowledges is “standard and appropriate”,³⁰ is useful as it informs the assessment of whether dumping causes material injury. If dumping margins are a large portion of the overall level of undercutting, this suggests that dumping is causing material injury, as it means the price advantage of imported goods is largely due to dumping. Conversely, if dumping margins are small in proportion to the overall level of undercutting, this can suggest that factors other than dumping, like exporters’ competitive advantage, are significant causes of injury. Every case must be assessed on its own factual circumstances — there is no set proportion that the dumping margin must hold relative to the overall level of undercutting.
41. The Commissioner submits that REP 654 did not treat competitive advantage in an agricultural product sector as fundamentally different to competitive advantage in other sectors. The Commissioner treats competitive advantage in a consistent manner, however the significance of a competitive advantage will differ from case to case, depending on the magnitude of competitive advantage and other factors that may be relevant. The passage in REP 654 referred to in SPC’s application noted the nature of the goods as a processed agricultural product as an example of a fact that was specific to the case. It should not be read as meaning that the nature of the goods meant that the Commissioner treated competitive advantage fundamentally differently to other cases. The difference in product types is context for why a factor like consumer preference was found to be relevant in this case. As a food product where the ultimate end-users are consumers, consumer preference was found to be more significant than it may have been for a more commoditised product. The nature of the product is also relevant to the finding that the goods existed in a segmented market.³¹ The Commissioner notes the guidance of the Material Injury Direction that “identifying material injury will depend upon the circumstances of each case and will differ from industry to industry and from time to time”.

III. Increase in Raw Material Costs

42. SPC submits in its application that the Commissioner treated increased raw material costs for the Australian industry as a separate cause of injury; however, it submits

³⁰ SPC Application, Attachment 2, 21.

³¹ See REP 654, 51 [5.4.2].

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that it was unable to increase its prices in response to increased raw material due to competition with dumped imports, and thereby experienced price suppression because of dumped imports. SPC notes passages in SEF 654 to the effect that that the presence of lower priced Italian imports put downward pressure on prices and influenced pricing negotiations.³²

43. The Commissioner agrees that competition with dumped imports affected SPC's ability to pass on increased costs to its customers. However, the distinction made above at paragraphs [20] and [28]–[30] between injury due to dumping and injury due to competitive advantage is also relevant here. The Commissioner submits that the main reason dumped imports affected SPC's ability to pass on increased costs was due to their competitive advantage, rather than due to their being dumped. Therefore, the price suppression injury attributable to dumping was not material in degree.
44. The Commissioner also submits that increases in raw material costs acted independently to contribute to reduced profit and profitability.³³

IV. Increase in Domestic Competition

45. SPC submitted in its application that the Commissioner's finding that SPC competed with other Australian manufacturers of like goods (Simplot Australia Pty Ltd (**Simplot**)³⁴ and Safcol Australia Pty Ltd (**Safcol**)), and that the entry of Simplot into the market coincided with a fall in market share of SPC and Safcol, was unsupported by evidence and factually incorrect.³⁵
46. The Commissioner found in REP 654 that there was competition between Australian industry members and that the entry of Simplot into the market during the investigation period coincided with the fall in market share of SPC and Safcol, which was roughly equal to SPC's fall over the investigation period.³⁶ The Commissioner examined evidence which supported this finding including:

³² SPC Application, Attachment 2, 12–13. SPC's application quotes SEF 654, 48 [5.5.2], 84 [8.4.3], 96 [9.4.3], 103 [9.8.2], and Figure 10 which are equivalent to, respectively, REP 654, 58 [5.5.2], 100 [8.4.3], 114 [9.4.3], 121–2 [9.8.2], and Figure 11. The quoted passage "An inference that could be drawn is that customers' access to lower priced imports places downward pressure on the Australian industry's prices ..." appears at SEF 654, 97 [9.4.3]; REP 654, 114 [9.4.3], rather than at [9.4.2] as stated in SPC's application. The Commissioner also notes that the passage "The presence of Italian imports of the goods influence [SPC]'s pricing negotiations with customers..." at SEF 654, 48 [5.5.2]; REP 654, 58 [5.5.2] was a summary of SPC's submission during the investigation.

³³ See REP 654, 118 [9.6]: "As discussed in chapter 8.5, the commission considers that SPC has achieved lower profit and profitability than would have been the case had sales volume and prices been maintained due to reduced sales volume and price suppression and depression. ... The commission is satisfied that sales prices have remained depressed and suppressed over the injury period, while costs have increased (unrelated to Italian imports)."

³⁴ Simplot sells like goods under the "Leggo's" brand.

³⁵ SPC Application, Attachment 2, 14.

³⁶ REP 654, 129 [9.8.3]. The proportional market share of each Australian industry member is illustrated in Figures 1 and 33 of REP 654.

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- Woolworths Group Ltd (**Woolworths**) sales data, provided by an exporter, Calispa S.p.A (**Calispa**);³⁷ and
- Volume, sales and costs data provided by Safcol.³⁸

47. SPC submits that the weight given to this evidence is inappropriate, given that:

- the Woolworths sales data was not verified, related only to retail sales, covered only one Australian supermarket, and examined a period mostly outside the investigation period;³⁹
- Safcol provided volume, sales and costs data but did not complete the Australian industry questionnaire.⁴⁰

48. The Commissioner submits that:

- Evidence considered in SEF 654 indicated that Simplot sold the goods only to Woolworths.⁴¹ The Commissioner therefore considers that the Woolworths sales data being limited to one supermarket does not diminish its relevance.
- The investigation period was 1 October 2023 to 30 September 2024, while the Woolworths sales data provided by Calispa covered the period November 2023 to October 2025.⁴² Thus, while “the data included in Calispa’s written submission examined a period mostly outside the investigation period”,⁴³ 11 out of 12 months of the investigation period were covered in the data provided by Calispa. In examining the data provided by Calispa, the Commissioner limited examination to the investigation period.⁴⁴
- In the absence of other data, the Commissioner considered that the retail-level Woolworths sales data was a suitable proxy for wholesale prices,⁴⁵ noting that supermarkets made up 86% of the Australian market for the goods during the investigation period.⁴⁶

³⁷ See REP 654, 124–8 [9.8.3] and Confidential Attachment 2 to REP 654. In SEF 654, Simplot’s share of the Australian market was estimated based on a weekly sample of its sales, which was provided by SPC (see SEF 654, 37–8 [4.3.2], 103–4 [9.8.3] and Confidential Attachments 1 and 2 to SEF 654). This data was superseded in REP 654 by the Woolworths sales data provided by Calispa: see REP 654, 128 [9.8.3]: “With the provision of additional data on sales by Calispa, the commission has revised its Australian market volume analysis throughout this report.” The revised analysis showed the same basic trend of an increase of Simplot’s share coinciding with a decline in SPC’s share, however the revised analysis showed a greater increase in Simplot’s share: compare REP 654, Figure 33 to SEF 654, Figure 26.

³⁸ See REP 654, 48–9 [4.3.3] and Confidential Attachment 3 to REP 654.

³⁹ SPC Application, Attachment 2, 16–17.

⁴⁰ SPC Application, Attachment 2, 14.

⁴¹ See Confidential Attachment 2 to SEF 654.

⁴² REP 654, 125 [9.8.3].

⁴³ REP 654, 124 [9.8.3].

⁴⁴ REP 654, 124 [9.8.3].

⁴⁵ REP 654, 129 [9.8.3].

⁴⁶ REP 654, 51 [5.4.1].

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- The volume, sales and costs data provided by Safcol was relevant to the assessment even if it did not complete the whole Australian industry questionnaire.
- In summary, the evidence used was the best evidence available to the commission.⁴⁷ The Commissioner considered this evidence to be reliable. In the section of SEF 654 on material injury from dumping and subsidisation, the Commissioner specifically invited interested parties to provide submissions and further evidence.⁴⁸ The Woolworths sales data provided by Calispa was relevant evidence provided within the 20 days for submissions in response to the SEF. The information provided by Safcol in its questionnaire, though incomplete, was relevant information before the commission.

49. The Commissioner notes SPC's emphasis in its application that Simplot entered the Australian market in May 2024, after the investigation period originally proposed by SPC.⁴⁹ In its application for measures, SPC provided data for the 12-month period ending 31 March 2024.⁵⁰ The investigation period specified by the Commissioner for the purposes of section 269TC(4)(bf) was 1 October 2023 to 30 September 2024,⁵¹ which is consistent with the commission's general policy of specifying the investigation period to be the 12 months preceding the initiation date and ending on the most recently completed quarter or month.⁵² In its application for measures, SPC did not provide reasons why this general policy should be departed from, nor did it make submissions on this point during the investigation. Simplot entered the Australian market during the investigation period specified by the Commissioner and the Commissioner duly considered this a relevant factor in the assessment. This relevance is not affected by the fact that SPC originally proposed a different investigation period.

50. SPC submits in its application that the Commissioner's analysis of competition between Australian industry members "ignored" the fact that the Australian industry as a whole lost market share, and failed to "properly contextualise" the scale of domestic competition against the impact of dumped Italian imports. SPC described the findings in relation to domestic competition as a "modest redistribution of volume between Australian producers".⁵³

51. The Commissioner submits that the finding of competition between Australian industry members did not ignore that Australian industry members also faced competition from Italian imports.⁵⁴ The Commissioner found that competition between Australian industry members was not merely a redistribution of volume among Australian industry members, but had an impact on prices with increased discounting.⁵⁵ The Commissioner did not find that competition between Australian

⁴⁷ The commission's efforts to obtain Woolworths sales data directly are detailed at REP 654, 124 [9.8.3].

⁴⁸ SEF 654, 111 [9.9.2].

⁴⁹ SPC Application, Attachment 2, 14.

⁵⁰ See, eg, SPC Application for Measures (4 September 2024), [EPR 654 No 2](#), 16.

⁵¹ Consideration Report 654, [EPR 654 No 1](#), 3.

⁵² See Manual, 13 [3.2].

⁵³ SPC Application, Attachment 2, 15–17.

⁵⁴ REP 654, 129 [9.8.3]: "This is in the context of an Australian market which increased 16% over the same period, and where Italian imports increased 22%."

⁵⁵ REP 654, 129–30 [9.8.3].

industry members caused material injury on its own. However, the finding that it contributed to the injury experienced by Australian injury, together with the impact of other factors, meant the Commissioner was not satisfied that dumping caused material injury.

52. In its application, SPC contests the relevance of the statement in REP 654 that, if Simplot's 5-month volume were extrapolated for the full investigation period, its position in the market would have been more significant.⁵⁶ The Commissioner notes that its analysis of the impact of Simplot's presence in the Australian market did not extrapolate its 5-month presence over the whole 12-month investigation period. The statement referred to by SPC was merely an observation made in response to SPC's submission in reply to SEF 654. It was not a critical element of the Commissioner's finding that competition between Australian industry members contributed to injury.

V. Consumer Preferences for Italian Origin and Flavour

53. In its application, SPC submitted that other factors causing injury must be "material in degree to break the causal link between dumping and injury", and submitted that the commission had insufficient evidence for the Commissioner to make this finding in regard to consumer preferences for Italian origin and flavour.⁵⁷

54. The evidence before the Commissioner which supported the finding that some consumers have a preference for Italian origin or flavour included:

- Statements and evidence from Australian supermarkets, noting in particular that Italian tomatoes had higher Brix ratings (a measure of sugar content) and that some tomato varieties could not be produced by Australian industry.⁵⁸
- Mid-tier products dominate the market, which indicates that both price and non-price (flavour and origin) preferences influence consumer decisions.⁵⁹
- Submissions and evidence provided by exporter Calispa and exporter industry association Associazione Nazionale Industriali Conserve Alimentari Vegetali (**ANICAV**), including findings by consumer advocacy organisation Choice.⁶⁰

55. The Commissioner disagrees with SPC's submission that other injury factors must be "material in degree to break the causal link between dumping and injury". This suggests that there is a presumption that dumping causes material injury, which must be rebutted by positive evidence. However, neither the Act nor the Material Injury Direction specifies a threshold of contribution which a non-dumping factor must meet before it becomes relevant. As noted above at paragraph [24], non-dumping factors are one of a number of factors to consider in assessing whether dumping caused material injury.

⁵⁶ SPC Application, Attachment 2, 17.

⁵⁷ SPC Application, Attachment 2, 18.

⁵⁸ See REP 654, 56 [5.4.4] and Confidential Attachment 34 to REP 654.

⁵⁹ REP 654, 57 [5.4.4].

⁶⁰ REP 654, 130–1 [9.8.4]; Calispa submission (26 November 2025), [EPR 654 No 38](#); ANICAV submission (1 December 2025), [EPR 654 No 40](#).

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56. SPC submits that the commission's Manual requires the Commissioner to determine whether a non-price factor is material.⁶¹ The Commissioner disagrees that this determination is required by the Manual.

57. The Commissioner notes the Manual provides that:

*In examining the effects of the other factors, the Commission accepts that the purpose is to 'disentangle' their effects from those of the dumping or subsidisation. A judgement must be made as to whether these factors have not acted in such a way to 'break the causal link' that may have seemed apparent between the dumped or subsidised imports and the material injury.*⁶²

58. The Commissioner notes that this passage refers to the effect of "these factors", that is the totality of non-dumping factors. The Commissioner also submits that the passage does not (and cannot) alter the legal test required by the Act and the Material Injury Direction.

59. The Commissioner disagrees with SPC's interpretation of the following passage from REP 654:

*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.*⁶³

60. SPC submits that the phrase "such evidence" can only be understood as referring to the proposition that supermarkets are incentivised to satisfy their customers' preferences.⁶⁴ However, the Commissioner submits that "such evidence" refers to the evidence provided by Australian supermarkets.

61. The Commissioner agrees with SPC that price is the most significant factor in consumer purchasing decisions.⁶⁵ However, as discussed above in regard to competitive advantage, the price advantage of Italian imports is not entirely due to dumping — it is also attributable to competitive advantage. The influence of consumer preferences for Italian flavour and origin further diminished the Commissioner's ability to be satisfied that dumping caused material injury.

VI. Other Submissions

62. In REP 654, the Commissioner indicated that the commission had considered whether it could examine a counterfactual situation to calculate the position of the

⁶¹ SPC Application, Attachment 2, 19.

⁶² Manual, 102 [22.3].

⁶³ REP 654, 132 [9.8.4].

⁶⁴ SPC Application, Attachment 2, 20.

⁶⁵ REP 654, 131 [9.8.4]: "[T]he commission consider that consumer purchasing decisions are driven by a combination of price, flavour preferences and origin factors, with price the most significant factor."

Australian market and SPC if dumped and/or subsidised imports from Italy did not compete in the Australian market. However, the commission considered that this analysis would be of little probative value given the presence of other factors in the market causing injury.⁶⁶ SPC submits in its application that such a counterfactual analysis would have had “significant probative value” and that the existence of other factors made it “essential”.⁶⁷

63. The reason why the presence of other factors would render such a counterfactual analysis of little probative value is because important non-dumping factors, particularly competitive advantage of Italian producers of consumer preferences for Italian flavour and origin, were inherent to the dumped imports. The Commissioner found that approximately 91% of imports from Italy were dumped during the investigation period (although the dumping margins for De Clemente, IMCA, Mutti, and residual exporters, which together constituted 73% of imports, were very low, and La Doria did not dump).⁶⁸ A counterfactual analysis removing these imports from the Australian market may have demonstrated the improvements that SPC suggests, but it would also have largely removed the impact of these non-dumping factors. The Commissioner submits that the commission’s remedied price analysis was a more insightful method of assessing the contribution of dumping to material injury — it is essentially a counterfactual scenario showing the impact of a reduction in the price advantage conferred by dumping. This type of analysis was proposed by SPC as an alternative to a counterfactual scenario removing dumped imports.⁶⁹

64. In its application, SPC stated that the Commissioner found “negative profitability across multiple years”.⁷⁰ The Commissioner’s findings on profitability in REP 654, and in SEF 654, were that the annualised profit and profitability data compiled was not a reliable indicator of SPC’s profit and profitability during the investigation period, due to effects of inventory movement on cost to make and sell. However, the Commissioner did find that, based on the findings of reduced sales volume, market share, price depression, and price suppression, SPC had “achieved lower profit and profitability than would have been the case had sales volume and prices been maintained”.⁷¹

VII. Conclusion

65. The evidence before the Commissioner supported that non-dumping factors, namely competitive advantage of Italian producers, increase in raw material costs, increase in domestic competition, and consumer preferences for Italian origin and flavour, contributed to the injury experienced by the Australian industry. The Commissioner was not satisfied that additional injury because of dumping was material. The Commissioner submits that this is the correct and preferable decision.

⁶⁶ REP 654, 141 [9.9.3].

⁶⁷ SPC Application, Attachment 2, 25.

⁶⁸ REP 654, 111 [9.3].

⁶⁹ See SPC Application, Attachment 2, 25: “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.”

⁷⁰ SPC Application, Attachment 2, 7.

⁷¹ REP 654, 100 [8.5]; SEF 654, 84–5 [8.5].