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ANTI-DUMPING AND ANTI-SUBSIDY INVESTIGATIONS ON IMPORTS OF PREPARED OR PRESERVED TOMATO PRODUCTS EXPORTED TO AUSTRALIA FROM ITALY (ERP 654)

Submission by the European Commission to the Anti-Dumping Review Panel

On 15 October 2024, the Australian Anti-Dumping Commission (“ADC”) initiated anti-dumping and countervailing investigations concerning imports of prepared or preserved tomatoes originating in, or exported from, Italy, following an application lodged by SPC Operations Pty Ltd (“SPC”). On 12 November 2025, the ADC issued the Statement of Essential Facts (SEF) 654, setting out its preliminary findings, which were subsequently followed by the final determination REP 654. On 2 February 2026, the Australian Minister for Industry and Innovation terminated both investigations.

Consistent with established practice, SPC lodged, on 2 March 2026, an application with the Anti-Dumping Review Panel (“the Panel”) seeking a review of the Minister’s decision in Investigation No. 654. This action demonstrates SPC’s continued efforts to exert pressure on Italian producers of preserved tomatoes, notwithstanding the extensive investigation and evidentiary findings showing that Italian imports are not the cause of injury suffered by the Australian industry.

The European Commission (“the Commission”) participated as an interested party in the investigation at issue in this review, as well as in the previous investigation concerning imports of prepared or preserved tomatoes from Italy. In that context, the Commission acted in full coordination with, and in support of, the Italian exporters. The Commission therefore submits the following comments for the purposes of these Panel proceedings.

1. BACKGROUND OF THE CASE

In order to facilitate a proper understanding of the arguments set out below, the Commission considers it necessary, in light of the history of this matter, to recall certain elements of the previous investigations requested by SPC concerning the product at issue, as well as key aspects relating to the initiation of the proceedings before the Panel.

The Australian producer, SPC, has a long-standing pattern of submitting anti-dumping and countervailing duty applications against Italian producers of processed tomato dating back to

1990s. While the latest investigation (EPR 654) did not analyse the history, the record now confirms that these applications serve primarily to restrict competition on the Australian market, rather than addressing genuine unfair trade practices such as dumping and subsidisation.

The chronological record of Australian trade defence actions demonstrates that SPC has consistently sought to maintain or re-establish barriers to Italian imports by initiating successive proceedings irrespective of the outcomes of previous investigations. SPC has routinely submitted new applications following the lapse, termination, or negative conclusion of earlier investigations.

This pattern began in June 2013, when SPC Ardmona sought anti-dumping duties on imports of preserved tomato products from Italy. However, instead of pursuing an anti-dumping investigation, the Australian Government mandated the Productivity Commission to conduct a safeguard investigation, which concluded, in December 2013, that the WTO requirements for safeguard measures were not met.

In April 2014, anti-dumping duties were imposed on Italian exporters, with the exception of La Doria and Feger, for which dumping margins were found to be negligible. This should have marked the end of the matter as regards those exporters. Instead, SPC again filed in November 2014 a targeted application against the very same companies. The definitive duties imposed in February 2016 were not grounded in any new evidence of dumping; rather, they relied on speculative cost adjustments premised on alleged distortions arising from EU decoupled agricultural payments. That approach was subsequently and decisively rejected by the Panel.

SPC continued to pursue additional proceedings in parallel. In May 2016, it requested a review concerning “all other” Italian exporters, alleging “changed circumstances” based on increased raw material costs, despite the absence of evidence supporting a renewed likelihood of dumping or injury. La Doria and Feger were excluded from this review as they were already subject to separate measures.

In July 2018, SPC filed an application to initiate an expiry review, covering all Italian exporters except those two companies (La Doria and Feger). The Australian Anti-Dumping Commission concluded that there was no likelihood of recurrence of dumping or material injury, and the measures expired in April 2019. The duties imposed on La Doria and Feger similarly lapsed in October 2019 following the rejection of the underlying methodology.

The record thus demonstrates a continuous sequence of SPC’s applications pursued in the face of findings of negligible dumping, absence of injury, and no likelihood of recurrence. Such conduct cannot reasonably be characterised as a good-faith use of trade defence instruments. Rather, it reflects a strategy of maintaining pressure on Italian exporters through successive proceedings, irrespective of their legal or factual merits.

2. INVESTIGATION (EPR) 654

In order to illustrate the persistent efforts of SPC to exert pressure on imports of preserved tomatoes from Italy, it is sufficient to consider the latest unsubstantiated claims advanced in its application requesting yet another investigation in 2024, 5 years after the expiry of the last duties in 2019.

In this regard, SPC referred to some 70 “countervailable subsidy programmes” allegedly benefiting Italian tomato producers during the period of investigation (1 October 2023 to 30 September 2024). However, the programmes cited included, *inter alia*, measures **dating back to the 1960s and 1990s which have been discontinued for over two decades**, as well as unrelated schemes such as support for digital connectivity or transport infrastructure. In addition, SPC listed specific funds which are not even available to Italy, but only to countries below a certain GDP threshold that do not even provide subsidies to undertakings and were therefore completely irrelevant to the investigation or the product concerned. It follows that SPC merely provided the list of EU instruments that was included in its first complaint when requesting the imposition of anti-dumping and countervailing duties in 1991, adding all other EU funding regardless of its relevance to tomato producers or even to the agricultural sector.

Moreover, as evidence, SPC referred to the “LECA report” that was using data from 2011 and was commissioned for a previous anti-dumping investigation requested by SPC in 2015. Such outdated information cannot reasonably be regarded as evidence in an investigation in 2024 and 2025⁽¹⁾.

In light of the above, it is evident that SPC is unable to compete under normal market conditions and is therefore systematically resorting to filing successive applications seeking the imposition of anti-dumping, anti-subsidy, or safeguard measures on imports of prepared or preserved tomatoes from Italy.

3. CLAIMS MADE BY SPC

SPC submits that its request for review is founded on an alleged error in the determination that factors other than dumping have caused, or are causing, material injury to the Australian industry.

3.1 Legal Framework: The Ministerial Direction on Material Injury

Statement of claim

SPC states that the ADC acted inconsistently with the Ministerial Direction on Material Injury 2012 (the Direction)⁽²⁾ in reaching this conclusion. However, the claim is misconceived.

Commission’s rebuttal

First, the Direction is a subordinate instrument issued under 269TA of the Customs Act 1901. While it provides guidance as to the general principles relevant to the assessment of “material injury”, it expressly operates **subject to the Customs Act 1901** and does not replace or override the legal framework. The ADC’s primary obligation is to undertake an assessment required under the Customs Act 1901.

Secondly, the Direction does not impose rigid rules. Rather, it confirms that:

- material injury must be assessed on the **facts of each case**;
- a range of economic factors must be considered collectively; and

⁽¹⁾ SPC Application for dumping and/or countervailing duties, PART C – SUPPLEMENTARY SECTION

⁽²⁾ https://www.industry.gov.au/sites/default/files/2019-05/acd_ministerial_direction_on_material_injury.pdf

- injury caused by factors other than dumping must not be attributed to dumping, although dumping need not be the sole cause of injury.

REP 654 illustrates this approach. The ADC found that the Australian industry experienced adverse economic trends but concluded that these outcomes were not materially caused by dumping. Instead, the analysis identified several significant other factors than dumping, including:

- structural cost disadvantages and economies of scale favouring Italian producers;
- strong price competition among Italian exporters themselves, independent of Australian market conditions;
- supermarket procurement practices driving down prices through tendering processes;
- consumer preferences for Italian-origin products; and
- increased domestic competition and rising input costs.

These findings demonstrate the practical operation of the Direction's principle of non-attribution: even where dumping coincides with injury, the ADC must separate and assess other causal factors.

Thirdly, SPC's assertion improperly elevates the Direction beyond its legal status by treating it as if it mandates particular conclusions once certain indicators (such as price undercutting or declining profitability) are present. REP 654 confirms that this approach is incorrect. The ADC expressly found that, although dumped imports undercut domestic prices and coincided with indicators of injury, those factors were **insufficient to establish that dumping was a material cause of injury** when assessed in the full economic context.

These findings reinforce that the Direction guides the exercise of judgment, it does not dictate outcomes. The statutory inquiry remains about the finding of causation, requiring the ADC to determine whether the dumped imports contribute materially to the injury, not merely whether they are present alongside it.

3.2 The investigations' findings evidence material injury from Italian dumping

Statement of claim

Sales volumes declined significantly during the investigation period, with SPC's sales falling by 28% and the Australian industry by 20%. Market share also contracted markedly. In contrast, Italian imports increased by 10%, with 91% found to be dumped, displacing both domestic products and fairly traded imports.

Italian imports consistently undercut domestic prices by approximately 21–36% across all segments. This resulted in price suppression, as the domestic industry was unable to recover rising costs, and price depression, with selling prices declining over time due to sustained import competition.

The industry experienced a 13% decline in revenue, ongoing losses, and a substantial deterioration in return on investment. In SEF 654, the ADC established that these adverse outcomes were directly caused by dumped imports, which exerted significant downward pressure on prices and led to a loss of market share.

Commission's rebuttal

A closer look at SEF 654 shows that these statements are selective and materially misleading in framing the ADC's findings.

The ADC's preliminary conclusion is that it is not satisfied that dumping and/or subsidisations caused material injury to the domestic industry.⁽³⁾

While injury is acknowledged, it is not attributed primarily to dumping. SEF 654 confirms sales volume declines, price suppression and price depression as well as decreased profitability.

However, SEF 654 explicitly finds that these are largely driven by other factors⁽⁴⁾, including:

- higher production and raw material costs;
- domestic competition (e.g. entry of another tomato producer);
- consumer preference for Italian products;
- structural cost advantages (economies of scale in Italy).

SPC emphasises that undercutting margins are evidence of injury. The SEF report clarifies that Italian products are cheaper even after removing dumping/subsidy effects, reflecting structural competitiveness, not necessarily unfair pricing⁽⁵⁾. Moreover, SPC also omits the critical finding in the SEF 654 that subsidy margins for all examined exporters remained below the 1% negligible threshold throughout the investigation period, demonstrating that any injury attributable to subsidisation must also be negligible; La Doria recorded a negative dumping margin (-8.8%), and the remaining cooperating exporters showed only minimal dumping margins of 2.3 to 5.5 %⁽⁶⁾. These calculations support the finding that dumping could not be the main cause of injury to the Australian industry.

Similarly, and contrary to SPC's assertion, imports from Italy did not experience a substantial surge. Rather, the contraction in the market affected both domestically produced and imported goods alike, indicating that shifts in demand and broader market conditions were the primary drivers during the period concerned. SEF 654 finds that *"the size of the Australian market has remained relatively stable overall, with the exception of the year ending September 2023, during which a marked decline was observed. The Commission attributes this decrease to heightened cost-of-living pressures, coupled with a sudden increase in prices and supply shortages resulting from adverse weather events"*⁽⁷⁾.

Under the applicable WTO framework, anti-dumping duties may only be imposed where there is sufficient evidence of dumping and a demonstrable causal link showing that such dumping has caused material injury to the domestic industry.

The analysis set out in SEF 654 preliminary established that, while certain indicators of injury were present, the required causal link between the dumped imports and any injury was not demonstrated to the applicable standard. The evidence instead clearly identified alternative factors, including structural cost differences, prevailing market dynamics, and domestic competitive conditions.

⁽³⁾ SEF 654 Tomatoes, prepared or preserved – Italy, 1.2 Preliminary Findings

⁽⁴⁾ SEF 654 Tomatoes, prepared or preserved – Italy, 9.8 Factors other than dumping causing injury

⁽⁵⁾ SEF 654 Tomatoes, prepared or preserved – Italy, 9.1 Preliminary finding

⁽⁶⁾ SEF 654 Tomatoes, prepared or preserved – Italy, 1.2 Preliminary Findings

⁽⁷⁾ SEF 654 Tomatoes, prepared or preserved – Italy, 5.6 Market size

This position was confirmed in REP 654. In its final determination, the ADC expressly found that, although the Australian industry experienced injury, dumped or subsidised imports were not the cause. The evidence demonstrated that a substantial proportion of the observed price effects and deterioration in industry performance resulted from factors other than dumping, in particular structural cost advantages, broader market forces, and the nature of domestic competition.

It follows that the statutory requirement for dumping to constitute a material cause of injury was not satisfied⁽⁸⁾, and the imposition of anti-dumping duties was therefore not warranted.

3.3 Refuting the ‘other factors’ causing injury

i. Competitive advantage of Italian producers

Statement of claim

SPC states that Italian producers’ efficiencies enable lower prices, but dumping amplifies this advantage, leading to greater price undercutting and injury to the Australian industry; even when prices are adjusted to remove dumping (“remedied prices”), Italian imports still undercut Australian prices, yet this only shows underlying competitiveness, not the absence of dumping-related injury. Removing dumping would reduce (but not eliminate) price undercutting, providing partial relief to Australian producers.

SPC further refers to prior determinations in which factors such as economies of scale and labour costs were considered as elements of competitive advantage. It contends that SEF 654 has erred by treating competitive advantage as a decisive factor, rather than as one among several contributing causes of injury.

Overall, SPC maintains that competitive advantage and dumping can coexist, and dumping remains a significant cause of injury even when foreign producers are inherently more efficient.

Commission’s rebuttal

While SPC claims that Italian efficiencies (economies of scale) support a finding that dumped imports have caused injury to domestic industry, SEF 654 confirms the opposite. It explicitly finds that the injury experienced by the Australian industry was primarily attributable to factors other than dumping, including inherent cost advantages of Italian producers, higher domestic production costs, increased competition within Australia, and consumer preferences. Crucially, SEF 654 concludes that “*material injury to the Australian industry has not been caused by those imports*”⁽⁹⁾.

With reference to “remedied price”, indeed SEF 654 also states that even after adjusting for dumping and subsidisation, Italian prices still significantly undercut Australian prices. It explains that across all tiers over the investigation period, Italian export prices undercut Australian prices by between 22% to 24%. The weighted average dumping and subsidy margin adds 4% to the price, leaving a gap of 18% to 20% across the investigation period

⁽⁸⁾ REP 654 Tomatoes, prepared or preserved – Italy, 10.2 Recommendations

⁽⁹⁾ SEF 654 Tomatoes, prepared or preserved – Italy, 1.2 Preliminary Findings

between the price at which Australian industry sold like goods and the “remedied price” of Italian exports⁽¹⁰⁾. This confirms that price differences are structural, and Italian producers would remain competitive regardless. This clearly contradicts SPC’s claim that dumping is the key driver of undercutting.

Moreover, dumping margins range from negative to modest (–8.8% to 5.5%), while subsidy margins are negligible for almost all exporters. The SEF 654 confirmed, based on verification visits, that dumping is too limited in magnitude to explain the observed injury suffered by the Australian industry.

SPC’s claim that competitive advantage is “*legally irrelevant*” to causation is also inconsistent with the legal framework applied by the WTO framework as well as the Australian Customs Act 1901. The causation analysis expressly requires the investigating authority to examine and distinguish the effects of factors other than dumped imports. These include, among others, structural cost differences, market conditions, and consumer behaviour, and their impact must not be wrongly attributed to dumped imports.

Taken together, SEF 654 supports the conclusion that the injury suffered by the Australian industry arises from legitimate competitive pressure and structural market factors, rather than from dumping ⁽¹¹⁾.

The same claims were advanced by SPC in a submission subsequent to SEF 654, and the ADC’s assessment has been reaffirmed. In REP 654, the ADC concluded that the investigation demonstrated that the degree of competitive advantage held by Italian producers over the Australian industry, evidenced by the extent of price undercutting, has **contributed** to the injury experienced by the Australian industry, **alongside the other factors** discussed in Chapter 9.8⁽¹²⁾.

ii. Increase in Raw Material Costs

Statement of claim

SPC argues that the ADC misinterpreted the role of rising raw material costs in SPC’s financial injury. SPC acknowledged that fresh tomato costs increased due to factors like fewer growers, higher demand, and rising production expenses. Yet, the SEF 654 treated these cost increases as a separate cause of injury, concluding that SPC’s profitability declined because it could not raise prices enough to offset higher costs.

SPC states that this confuses cause and effect. It argues that rising costs alone did not cause injury; rather, the real issue was its inability to pass those costs onto customers due to competition from lower-priced dumped Italian imports. The SEF 654 own findings indicated that such imports exerted downward pressure on prices, leading to price suppression.

Commission’s rebuttal

⁽¹⁰⁾ SEF 654 Tomatoes, prepared or preserved – Italy, 9.9.1 Remedied imports

⁽¹¹⁾ SEF 654 Tomatoes, prepared or preserved – Italy, 9.8.1 Competitive advantage of Italian imports

⁽¹²⁾ REP 654 Tomatoes, prepared or preserved – Italy, 9.8.1 Competitive advantage of Italian imports, Commission assessment

As in previous instances, a close reading of SEF 654 shows that SPC's claims are selective and factually incomplete.

The SEF 654 did not isolate raw material costs in the way SPC suggests. Instead, it identified multiple concurrent causes of injury (as stated above, such as competitive advantage, rising costs, increased domestic competition, consumer preferences).

SPC's argument on "cause v effect" is overstated. The SEF 654 explains that costs increased (an independent structural factor), SPC could not pass these costs on, and profitability declined. That is a standard economic causation chain, rather than a conceptual error made by the investigating authority. Hence, SPC states that the real cause was its inability to raise prices due to dumped imports and references are made to certain selective extractions in the SEF 654, namely:

- *"Chapter 5.5.2: The presence of Italian imports of the goods influence its pricing negotiations with customers...;"*

However, SPC fails to acknowledge that the statement is incomplete and merely a **reiteration of its own declarations**. In fact, the investigating authority found that, **although price is an important** consideration for Australian supermarkets, **it is only one of several factors** influencing purchasing decisions. Supermarkets also place significant emphasis on reliability of supply, often sourcing from multiple suppliers to mitigate risk, as well as on consumer preferences.

Furthermore, negotiations for own-brand products are conducted separately. As Italian imports are predominantly used in own-brand products, supermarkets indicated that their **pricing does not directly influence negotiations with SPC** or other Australian proprietary brands. Supermarkets also run separate tenders for Australian and Italian suppliers, typically aligned with each region's harvest season. While these tenders are distinct, indirect competition persists, as all parties remain aware of alternative products in the market, and lower-priced offers (from Italian suppliers) can secure higher sales volumes.

- *Chapter 9.4.3: Undercutting...has placed the Australian industry under pressure to accept reduced prices...;*

The claim overstates the findings in the SEF 654 and omits important context. The ADC acknowledged that **both dumped and undumped** Italian goods undercut Australian prices, indicating that any price differences are not exclusively attributable to dumping but may also reflect structural factors and the price pressure cannot be linked solely to dumped imports.

The counterfactual analysis in the SEF 654, suggests that absent Italian imports, Australian producers might achieve higher prices, remains speculative and is not supported by observed market behaviour. The investigating authority itself noted that such pricing outcomes did not materialise, indicating that other market dynamics are at play.

Accordingly, while price undercutting exists, SPC wrongly claims that it is the decisive or sole cause of downward pricing pressure. Rather, the evidence points to a more complex competitive environment in which multiple factors, including cost structures, supply considerations, and procurement practices, shape pricing outcomes.

- *Chapter 9.4.2: Customers' access to lower priced imports places downward pressure on the Australian industry's prices...*

This part of the sentence is, in fact, drawn from Chapter 9.4.3. However, the extract relied upon by SPC actually relates to the preceding counterfactual analysis, where SEF 654 explicitly notes that it did not observe the expected behaviour, namely, that Australian producers would achieve higher prices in the absence of Italian imports⁽¹³⁾.

Because such behaviour was not observed, the ADC put forward a possible explanation, an inference rather than a definitive finding, that customers' access to lower-priced imports may place downward pressure on domestic prices. This inference is grounded in standard economic concepts, including substitutability (that Italian and Australian products are sufficiently similar for buyers to switch between them) and price elasticity (that buyers are responsive to price differences, even relatively small ones).

In addition, SPC invokes the concept of a “cost-price squeeze”; however, the existence of such a condition does not, in itself, establish that dumping is the operative cause. The findings in the SEF 654 indicate that both dumped and undumped imports undercut domestic prices, and that Italian exporters may benefit from structural efficiencies. This points to broader competitive pressures rather than a particular effect attributable to dumping.

Accordingly, the ADC's conclusion that rising costs and a limited price increase jointly contributed to injury was reasoned and supported by the evidence. SPC's claim that the analysis was legally deficient or inadequate merely amounts to a disagreement with the outcome, rather than demonstrating any failure in the report's reasoning.

iii. Increase in domestic competition

Statement of claim

SPC claims that while Simplot's entry introduced some competitive pressure on the Australian market and may have caused minor redistribution within domestic producers, SPC argued that its impact was marginal. The primary cause of injury was the large-scale presence of dumped Italian imports, which dominated the market, undercut domestic prices, and captured nearly all growth. It states that SEF 654 and REF 654 are based on unreliable and unverified data, unsupported by evidence.

Commission's rebuttal

First, SPC isolates domestic competition from import effects, arguing that either imports or domestic competition must have caused the injury it suffered. However, the ADC's conclusion is clearly that domestic competition **contributed** to material injury. This approach is consistent with established causation analysis, which recognises that multiple factors may operate concurrently, which requires the **consideration of any known factors**, other than the dumped imports, that are simultaneously injuring the domestic industry.

⁽¹³⁾ SEF 654 Tomatoes, prepared or preserved – Italy, 9.4.3 Effect of price undercutting

Second, SPC overlooks its own strategic response of discounting prices in anticipation of Simplot's market entry, noting that "*SPC heavily discounted its selling prices from \$2.13 per can to \$1.67 per can*⁽¹⁴⁾". This pricing behaviour was considered part of the competitive dynamics associated with Simplot's entry and suggests that SPC itself viewed Simplot as a credible competitive threat. Therefore, for SPC to respond aggressively in the market, by discounting prices heavily, is contradictory with the claim that the competitor had no meaningful impact.

A balanced view in the REP 654 supports the conclusion that Simplot's market entry constituted a genuine and measurable contributing factor to the injury suffered by SPC. The evidence indicated that its presence exerted competitive pressure through increased supply, thereby affecting domestic market conditions in a tangible way. At the same time, REP 654 does not suggest that this factor displaced or superseded the impact of Italian imports. Rather, it demonstrates that both elements operated concurrently, with Italian imports continuing to play a significant role in the causation of injury.

iv. Consumer preferences for Italian origin and flavour

Statement of claim

SPC claims that consumer preference for Italian tomatoes in SEF 654 is speculative and unsupported by evidence, not material, and cannot explain the injury. It maintains that any preference for Italian origin is secondary to price, and that lower-priced (dumped) imports drive consumer choices regardless of origin. According to SPC, ADC relied on statements from supermarkets, but argues this is not real evidence, just an assumption that supermarkets understand customer preferences.

Commission's rebuttal

SPC's critique of SEF 654 understates the evidentiary and analytical basis for the ADC's position.

First, the finding was not speculative. SEF 654 explicitly relied on evidence from Australian supermarkets⁽¹⁵⁾, which stated that consumers prefer Italian tomatoes due to taste and perceived superior quality. This is not assumption; it is first-hand commercial evidence from retailers with direct visibility of purchasing behaviour. While SPC dismisses this as insufficient, such evidence is commonly accepted in trade analyses as probative qualitative evidence, especially where retailers:

- interact directly with consumers,
- observe repeated purchasing patterns, and
- make stocking decisions based on demand signals.

The investigating authority is entitled to rely on this type of industry evidence; it does not require formal surveys or laboratory testing to establish the existence of consumer preferences.

⁽¹⁴⁾ REP 654 Tomatoes, prepared or preserved – Italy, 9.8.3 Competition between Australian suppliers

⁽¹⁵⁾ SEF 654 Tomatoes, prepared or preserved – Italy, 9.8.4 Consumer preferences, Confidential Attachment 34 – Australian supermarket evidence

Second, the findings **did not claim preference was the sole or dominant factor**; SPC's argument mischaracterises the finding. SEF 654 clearly states that price is the most significant factor, but **purchasing decisions** are driven by a **combination** of price, flavour, and origin. SEF 654 does not claim that origin or taste outweigh price.

Third, there is no requirement that non-price factors be independently determinative. SPC argues that consumer preference must be shown to independently cause injury or break the causal link. This would set an **incorrect** threshold. The investigating authorities' task is to assess whether other factors are causing injury at the same time, but WTO rules and jurisprudence do not provide for whether such assessment has to be carried out individually or collectively⁽¹⁶⁾. The SEF 654 finds that lower-priced imports are a driver, and consumer preferences also likely contribute to reduced domestic sales.

Fourth, the ADC's reasoning in the reports state that tomatoes are a partially commoditised product, therefore price matters greatly; however, there is product differentiation (origin, taste, perceived quality), in other words, preferences exist. Hence, **both price and non-price** factors jointly influence demand.

This reflects real-world retail dynamics rather than the simplified "price-only" model advanced by SPC.

SPC's argument relies on dismissing qualitative evidence, imposing an unduly strict evidentiary standard. SEF 654 adopts a balanced and economically coherent view: price is the dominant driver, but consumer preferences for Italian tomatoes, supported by supermarket evidence, also play a contributory role in purchasing decisions.

Following the rebuttal submissions and the ADC's assessment thereof, REP 654 confirmed the preliminary findings⁽¹⁷⁾.

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

Statement of claim

SPC argues that the ADC applied an incorrect and unsupported standard by implying anti-dumping duties should not be imposed if price undercutting would persist after imposing trade remedies. According to SPC, the law only requires removal of the unfair effects of dumping, not complete elimination of undercutting.

SPC argues that this approach undermines the purpose of an anti-dumping duty, as it would allow exporters with cost advantages to continue dumping without consequence. It also states that even a 4–6 percentage point reduction in undercutting is material in a price-sensitive market.

Finally, SPC notes that in prior cases, duties were imposed despite ongoing undercutting, showing the reasoning in the SEF 654 is inconsistent with established practice.

⁽¹⁶⁾ Appellate Body Report, EC – Tube or Pipe Fittings, para. 189: “[...] It further stated that "provided that an investigating authority does not attribute the injuries of other causal factors to dumped imports, it is free to choose the methodology it will use in examining the "causal relationship" between dumped imports and injury."

⁽¹⁷⁾ REP 654 Tomatoes, prepared or preserved – Italy, 9.8.4 Consumer preferences

Commission's rebuttal

SPC's core claim seems to be that the law only requires removal of unfair effects of dumping. However, the law also requires that dumping must be a cause of material injury and that injury attributable to other factors must not be attributed wrongly to dumped imports.

As in this case, the assessment in SEF 654 has, while ensuring compliance with the non-attribution analysis, provided that even if dumping is offset, imports would continue to undercut domestic prices, as dumping is not the material cause of the injury observed.

SPC has made the same claim in its post SEF 654 submission, which was addressed in the REP 654⁽¹⁸⁾. Imposing duties, where injury is primarily caused by other factors would risk violating obligations under the WTO Anti-dumping Agreement, in particular the requirement to establish a genuine causal link.

3.4 The counterfactual assessment would have had significant probative value

Statement of claim

SPC argues that a counterfactual analysis would have been highly valuable, contrary to the ADC's statement that it had little probative worth as it would be an estimate only.

It contends that such an analysis would have clearly demonstrated that dumped imports caused significant harm to the Australian industry (SPC) by depressing prices, reducing market share, and lowering profits. Without these imports, SPC would likely have achieved higher prices and improved profitability, leading to a stronger overall economic condition (including better revenue and capacity utilisation).

SPC further asserts that the ADC's own findings already point to these outcomes, making its dismissal of the counterfactual unjustified. It emphasises that conducting a counterfactual analysis is essential to distinguish the effects of dumping from other factors, as required by law, and that failing to do so undermines the Commission's ability to properly assess causation and injury.

Commissions rebuttal

SEF 654 clearly identifies that SPC suffered injury, including loss of sales volume and market share, price suppression and depression, reduced profits and profitability, and declines in revenue, return on investment, and capacity utilisation. It also confirms that Italian imports undercut domestic prices.

However, the SEF 654 goes further by conducting a structured multi-factor causation analysis. It not only identifies injury but also evaluates dumping and subsidy margins (finding them to be largely low or negligible) and examines other potential causes of injury in detail. These include structural cost disadvantages, consumer preference for Italian products, increased domestic competition, and rising input costs.

⁽¹⁸⁾ REP 654 Tomatoes, prepared or preserved – Italy, 9.9.3 Commissioner's assessment, Assessment of remedied imports analysis

On this basis, the SEF 654 concludes that, although material injury exists, it has not been caused by dumped or subsidised imports. The injury is also attributed to these other factors. This approach satisfies the requirements under the Customs Act and WTO law, which do not mandate a quantitative counterfactual analysis but require a clear separation of the effects of dumping from other causal factors (the non-attribution analysis). The SEF 654 achieves this through its structured “other factors” analysis⁽¹⁹⁾.

Accordingly, while injury is expressly acknowledged, causation is not established. This distinction is decisive: the mere existence of injury is insufficient without a demonstrated causal link to dumped or subsidised imports.

3.5 A structural cost advantage permits dumping, causing material injury

Statement of claim

SPC challenges the reasoning in REP 654, arguing it is inconsistent and flawed. While the ADC claimed that much of the price gap was due to structural cost advantages rather than dumping, SPC contends that this does not undermine a finding of material injury from dumping.

According to SPC, Italian producers’ structural advantages (such as economies of scale and lower production costs) enabled them to export at lower prices, but dumping allowed them to undercut Australian producers even further. The Commission’s own analysis suggests dumping increased undercutting by an additional 4–6 percentage points, causing injury outside normal competition.

SPC argues that anti-dumping measures would not remove the legitimate competitive advantages of Italian producers but would eliminate the unfair price effects caused by dumping, thereby reducing injury to the Australian industry.

SPC maintains that, in past cases, competitive advantages have never been treated as a reason to dismiss injury caused by dumping, and therefore should not do so here.

Commission’s rebuttal

SPC’s principal claim is that the ADC treated structural advantages (e.g. economies of scale) as a reason to dismiss injury from dumping. This is not an accurate reading of REP 654. The report explicitly found that dumping exists and has price effects, and that injury to the Australian industry exists. However, it concludes that dumping was not a material cause of that injury. This conclusion rests on a causation analysis, not a denial of either dumping or injury.

A central factual finding by the ADC is that Italian exporters compete intensely among themselves, which drives prices downward independently of any targeted strategy against the Australian market. REP 654 highlights that procurement practices of major Australian supermarkets, particularly tender processes prioritising the lowest bids, amplify this dynamic

⁽¹⁹⁾ SEF 654 Tomatoes, prepared or preserved – Italy, 9.8 Factors other than dumping causing injury

by incentivising Italian suppliers to undercut one another to secure contracts⁽²⁰⁾. Consequently, the low prices of Italian exports stem primarily from intra-supplier competition rather than direct price competition with Australian producers, even though these lower prices still adversely affect the domestic industry.

In the premium segment, the report finds less intense competition among Italian suppliers. While Australian producers briefly offered lower prices during a promotional period, Italian premium exports generally remained cheaper than Australian equivalents.

The final determination in REP 654 is therefore consistent with WTO requirements. It is based on positive evidence and an objective examination of price effects and injury⁽²¹⁾, includes proper identification of other causal factors, clearly distinguishes between dumping-related and non-dumping causes, and provides a reasoned conclusion that dumping is not a material cause of the injury⁽²²⁾.

By contrast, SPC appears to conflate mere contribution to injury with material causation, fails to meet the materiality threshold, and does not adequately account for the mandatory non-attribution analysis.

4. CONCLUSION

To conclude, the case reinforces a clear principle: dumped/subsidised imports must be the material cause of injury; without proven causation measures are unjustified.

- SPC shows a **pattern of repetitive, unsubstantiated claims** against Italian exporters; its actions reflect a strategy to **restrict competition**, not address genuine dumping.
- No causal link between dumping and injury could have been established. The investigation confirms injury to the Australian industry but **not caused materially by dumping**.
- Key drivers of injury have been identified (**other factors**) such as higher domestic costs and inefficiencies in Australia, economies of scale and competitiveness of Italian producers, retail pricing pressure and tender systems in Australia, consumer preference for Italian products as well as increased domestic competition.

Thus, the imposition of measures would not have been justified and the Minister's decision to terminate the case without imposing duties on imports from Italy is legally warranted.

⁽²⁰⁾ REP 654 Tomatoes, prepared or preserved – Italy, Italian pricing competition, Australian Competition and Consumer Commission (ACCC) 2025, Supermarkets Inquiry: Final Report, Commonwealth of Australia, Canberra

⁽²¹⁾ WTO Anti-dumping Agreement, Article 3.1

⁽²²⁾ WTO Anti-dumping Agreement, Article 3.5