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Public File

Dear Director,

Preliminary Reinvestigation Report No. 654 – Prepared or Preserved Tomatoes from Italy

1. Introduction

SPC Operations Pty Ltd (**SPC**) provides this submission in response to the Preliminary Reinvestigation Report (**PRR**) published by the Anti-Dumping Commission (**the Commission**) on 28 September 2026.¹ The PRR concerns the reinvestigation of findings in Anti-Dumping Commission Report No. 654 (**REP 654**) requested by the Anti-Dumping Review Panel (**ADRP**) on 18 May 2026.²

The Commission has now undertaken a counterfactual assessment and has accepted that dumped and subsidised imports from Italy caused price injury to the Australian industry, in the form of price suppression, price depression, reduced revenue, reduced profit and reduced profitability.³ However, SPC submits that the Commissioner's preliminary finding that this injury is not material remains neither correct nor preferable, and does not support the correct or preferable decision.

Under the PRR's analysis, dumping and subsidisation reduced SPC's profitability by between 11.5 percent and 46 percent, and accounted for up to 49 percent of SPC's losses in the

¹ Anti-Dumping Commission, Preliminary Reinvestigation Report for the Anti-Dumping Review Panel – Reinvestigation of certain findings in Report No 654, Tomatoes, prepared or preserved exported from Italy to Australia, 28 September 2026.

² ADRP Review No. 177, letter from the Review Panel to the Commissioner requesting reinvestigation, 18 May 2026.

³ PRR, p. 23–24.

investigation period.⁴ SPC submits that injury of such magnitude is not immaterial, insubstantial or insignificant. The Commission reaches the opposite conclusion only by applying a series of discounts that are unsupported by evidence, count the same other factors more than once, or remain inconsistent with the Commission's own findings and recent practice.

In summary, SPC submits that:

- (a) the PRR's findings establish that dumping and subsidisation caused material injury (section 2);
- (b) the Commission's reliance on SPC's 2023 consumer study is misplaced. Properly assessed, the study shows that price is the dominant purchase driver and that non-price preferences favour the Australian product (section 3);
- (c) the Commission has not undertaken a volume counterfactual, and the evidence supports a finding that dumped imports caused volume injury (section 4);
- (d) the 25 percent lower bound applied to injury pass-through has no evidentiary basis and double counts other factors (section 5);
- (e) the benchmarks used to assess materiality are erroneous (section 6);
- (f) competitive advantage and raw material costs continue to be counted more than once, contrary to the ADRP's request and inconsistent with the Commission's approach in REP 690 (section 7);
- (g) the Commission has not addressed its past practice, as the ADRP had requested (section 8);
- (h) dumping margins are not relatively low by the Commission's own precedent (section 9); and
- (i) the effect of domestic competition remains overstated (section 10).

For these reasons, the correct and preferable decision is that dumping and subsidisation have caused material injury to the Australian industry. SPC requests that the Commissioner's reinvestigation report to the ADRP find accordingly.

2. The PRR establishes material injury

The ADRP requested the Commission determine whether the additional injury caused by dumping, separate from Italian producers' competitive advantage and other factors, was material in its own right.⁵ The PRR has now quantified that injury. These are:

⁴ PRR, p. 55, 57. The Commission's expert, Frontier Economics, estimates the effect at 45 percent of SPC's investigation period loss: Frontier Economics, Review of injury and causation analysis, September 2026 (Frontier Report), Table 4, p. 43.

⁵ ADRP request, paras 8, 13 and 24.

Indicator	SPC	Safcol	Source
Effect on revenue	0.8% – 3.3%	0.8% – 3.3%	PRR p. 55
Effect on profitability	11.5% – 46%	7.4% – 29.5%	PRR p. 55
Reduction in investigation period losses	11% – 49%	7% – 31%	PRR p. 57
Share of investigation period loss (full pass-through)	45%	–	Frontier Report, Table 4

Non-Confidential Table 1: Injury attributable to dumping and subsidisation – PRR findings

At the upper end of the Commission's range, dumping and subsidisation account for close to half of SPC's losses in the investigation period. At the Commission's 25 percent floor (which SPC submits is unsupported at section 5 below), the effect on SPC's profitability is 11.5 percent. Frontier Economics (**Frontier**) describes the effect as "a moderate share" of SPC's losses.⁶

The Ministerial Direction on Material Injury 2012 (**the Direction**) provides that material injury is injury which is not immaterial, insubstantial or insignificant, and that dumping or subsidisation need not be the sole cause of injury. SPC submits that a contribution of up to half of the losses of the largest member of the Australian industry, or a "moderate share" on Frontier's own assessment, cannot sensibly and economically be described as immaterial, insubstantial or insignificant.

Frontier itself observes that a "...small margin in a price-sensitive market with thin processing margins can produce a material effect".⁷ That describes the Australian prepared/preserved tomatoes market. The Commission has found the market to be price sensitive,⁸ and SPC was loss-making in three of the four years of the injury analysis period.⁹

3. Consumer preferences and the 2023 consumer study

The PRR relies on no new evidence

The ADRP considered SPC's claims concerning consumer preferences to have validity, and asked the Commission to reassess its analysis and conclusions.¹⁰ SPC submits that the PRR does not identify any new evidence on consumer preferences obtained during the reinvestigation. Aside from the supermarket evidence referenced in REP 654, the only evidence the PRR relies on is SPC's [**confidential txt deleted: brand study details**] **the Study**).¹¹

The Study is not new evidence; it was provided by SPC to the Commission with its response to the Statement of Essential Facts (**SEF 654**) on 2 December 2025.¹² REP 654 recorded SPC's description of the Study but did not engage with its contents.¹³

⁶ Frontier Report, p. 8, 43 and 46.

⁷ Frontier Report, p. 40.

⁸ REP 654, p. 106 and 112; PRR, p. 39.

⁹ Frontier Report, p. 43.

¹⁰ ADRP request, para 31.

¹¹ PRR, p. 19–20. The Study is provided again as Confidential Attachment 1.

¹² REP 654, item 39; REP 654, p. 131 and Confidential Attachment 36.

¹³ REP 654, p. 131–132.

The sum-total of its consideration in REP 654 was as follows:¹⁴

SPC provided the commission as a confidential attachment to its submission a study from 2023 which found that, for Australian consumers:

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

The 'Commissions assessment' that followed did not further engage with the content.

The PRR's "reassessment" is therefore a reading of evidence that has been before the Commission from the SEF stage. A reading that does not appear to have been undertaken originally, and, as set out below, is also a selective one.

The Study is contemporaneous with, and independent of, the investigation. It surveyed [**confidential text deleted: study parameters**], within the first weeks of the investigation period. It was commissioned for [**confidential text deleted: study parameters, purpose and timing**].¹⁵

Price is the dominant purchase influence

The PRR acknowledges that the Study found price to be "the dominant purchase influence", but relies on the presence of other factors in respondents' rankings to conclude that competition "extends beyond price alone".¹⁶ That assessment misinterprets the details. Any ranking exercise will of course include non-price factors. The question is how those factors compare with price, and on that the Study is unequivocal.

Respondents were asked to rank the factors that influence their choice when buying canned tomatoes.¹⁷ Confidential Table 2 sets out the proportion of canned tomato buyers ranking each of the principal factors first and second:¹⁸

¹⁴ Ibid.

¹⁵ Confidential Attachment 1, p. 4.

¹⁶ PRR, p. 19.

¹⁷ Confidential Attachment 1, p. 25.

¹⁸ Ibid.

Factor	Ranked first	Ranked first or second
Price	[XX]%	[XX]%
Format (crushed or whole)	[XX]%	[XX]%
Country of origin	[XX]%	[XX]%
Quality of ingredients	[XX]%	[XX]%
Taste expectations	[XX]%	[XX]%
Brand	[XX]%	[XX]%
Special offers	[XX]%	[XX]%

Confidential Table 2: Factors influencing the purchase of canned tomatoes

Price was ranked first by [XX] percent of canned tomato buyers, more than twice the proportion for any other single factor. Price alone was ranked first by more respondents than country of origin, brand and taste expectations combined ([XX] percent). Including special offers, [XX] percent of buyers ranked a price factor first. **[confidential text deleted: study author]** own conclusion was that price is the dominant influence on the purchase of canned tomatoes.¹⁹ Each of the non-price factors on which the Commission relies is a fraction of price.

The Study's question on the importance of brand attributes indicates the same. "Good value for money" was the most important attribute, rated important or extremely important by [XX] percent of buyers, while "has the lowest prices" was rated important or extremely important by [XX] percent.²⁰ **[confidential text deleted: study author]** identified value as a key category choice driver.²¹

This is consistent with REP 654, which found that consumer purchasing decisions are driven by a combination of factors "with price the most significant factor".²² The PRR has departed from that finding to the weaker proposition that price "...is not the sole determinant of consumer behaviour",²³ without identifying any evidence that justifies the change.

Origin preferences favour the Australian market

The PRR treats country of origin as a factor favoring Italian imports. The Study shows the opposite. Of the [XX] brand attributes tested, **[confidential text deleted: study details]** ranked last. It was rated important or extremely important by [XX] percent of buyers, and extremely important by only [XX] percent.²⁴ In contrast, "Australian sourced tomatoes" was rated important or extremely important by [XX] percent of buyers, and "a truly Australian brand" by [XX] percent.²⁵ Hence, where origin matters to consumers, it favours the Australian product by roughly **[confidential text deleted: factor]**.

¹⁹ Ibid, p. 25.

²⁰ Ibid, p. 26.

²¹ Ibid, p. 64.

²² REP 654, p. 131.

²³ PRR, p. 14.

²⁴ Confidential Attachment 1, p. 26.

²⁵ Ibid.

Brand associations favour SPC

The PRR states that consumers associate different canned tomato brands with different attributes, and that purchasing decisions are influenced by perceptions of quality, flavour, origin and brand reputation.²⁶ The PRR does not say which brands consumers associate with those attributes. However, the Study does. SPC's Ardmona brand leads significantly on nearly every key attribute, including flavour, quality and premium positioning. The leading Italian brand leads only on being [**confidential text deleted: study details**].²⁷

This is detrimental to the Commission's reasoning. If the non-price attributes consumers value (flavour, quality and origin) are associated more strongly with SPC's brand than with Italian imports, those preferences cannot explain SPC's loss of sales and price to Italian imports. The only dimension on which the imports hold an advantage is price.

The Study also contradicts the supermarket assertion, relied on in REP 654 and the PRR, that Italian tomatoes are "generally perceived by consumers as having superior flavour, sweetness and quality".²⁸ The only quantitative consumer evidence on the record, drawn from a contemporaneous survey of canned tomato buyers, should be preferred to the untested assertions of parties who themselves source Italian product.

Brand switching = substitutability

The PRR relies on the Study's finding that more consumers have a preferred brand but also buy others rather than consistently buying one brand. The PRR then concludes that consumers "are not solely driven by price".²⁹ The data shows the opposite, as only [XX] percent of canned tomato buyers stick with a preferred brand. The remaining [XX] percent switch between brands or pay no attention to brand, and [XX] percent buy whichever brand is on promotion, change brands frequently, or do not take notice of brand at all.³⁰ [**confidential text deleted: study author**] concluded that this pattern indicates there is not significant differentiation in the category.³¹

A constant factor cannot be both neutral and injurious

The PRR accepts Frontier's view that consumer preferences form part of the market context, did not change materially during the investigation period, and do not provide an independent explanation for the deterioration in the Australian industry's prices, volumes or market share.³² It accordingly treats consumer preferences as a constant factor in the counterfactual.³³ SPC agrees. That concession now disregards REP 654's finding that consumer preferences "...likely contribute to lower volumes experienced by the Australian industry".³⁴

²⁶ PRR, p. 20. citing p. 30–31 of the Study.

²⁷ Confidential Attachment 1, p. 9 and 31.

²⁸ PRR, p. 29. REP 654, p. 56 and 130.

²⁹ Ibid, p. 20. citing p. 28 of the Study.

³⁰ Confidential Attachment 1, p. 28.

³¹ Ibid, p. 28.

³² PRR, p. 14, 21 and 50.

³³ Ibid, p. 27 and 51.

³⁴ REP 654, p. 131.

However, the PRR continues to describe consumer preferences as “...a relevant other factor that would have affected the performance of the Australian industry independently...” of dumping, applies section 269TAE(2A) of the *Customs Act 1901 (the Act)*, and treats consumer preferences as relevant to materiality.³⁵

SPC submits that those positions cannot co-exist. Section 269TAE(2A) requires that injury caused by another factor not be attributed to dumping. A factor that did not change and does not explain the injury has caused no injury to exclude. Having set aside consumer preferences in the counterfactual, the Commission cannot apply them again vis-à-vis materiality.

This is consistent with the reasoning of the WTO panel in *EU – Biodiesel (Argentina)*, that an investigating authority is not required to conduct a non-attribution analysis in respect of features that remained unchanged during the period examined, because the concept of injury relates to negative developments in the state of the domestic industry.³⁶

SPC submits that the Commission should find that consumer preferences are not an other factor causing injury to the Australian industry, and should remove them from its materiality assessment.

4. Volume injury

The Commission's premise

The PRR accepts Frontier's observation that, where imported and domestic products are close substitutes, “...even a relatively small dumping-related price advantage may result in a materially larger loss of sales volume for domestic producers”.³⁷ The Commission has found that the goods are substitutable,³⁸ that consumer behaviour is responsive to price, and that “...relative price differences may influence the allocation of sales between competing products and suppliers”.³⁹

SPC submits that the same logic logically operates in the counterfactual. Had Italian import prices been 3.3 percent higher in the absence of dumping and subsidisation, SPC's relative price position would have improved. The issue then is whether that improvement would have been realised through price, volume, or both.

Frontier recognised the price/volume trade-off. It observed that higher elasticities “...would ordinarily be expected to result in greater price matching, rather than producers accepting the decline of sales volumes”.⁴⁰ Either SPC matched import prices, in which case pass-through in the counterfactual would be close to full, or it did not fully match them, in which case the counterfactual would return volume to SPC. The Commission's scenario of low pass-through and no volume response assumes that SPC would have gained neither price nor volume. That

³⁵ PRR, p. 14, 20 and 50.

³⁶ Panel Report, *EU – Biodiesel (Argentina)*, para 7.522. In relevant part “...the authority is not required to conduct a non-attribution analysis with respect to features that are inherent to the domestic industry and have remained unchanged during the period considered by the investigating authority for purposes of its injury analysis.” Refer also: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/DS/473R.pdf&Open=True>

³⁷ PRR, p. 39. Frontier Report, p. 28.

³⁸ Ibid, p. 28.

³⁹ PRR, p. 29 and 39.

⁴⁰ Ibid, p. 39. Frontier Report, p. 28.

is an unrealistic counterfactual, and is the most adverse combination of the price/volume assumption.

Recovered volume would have materially and categorically improved SPC's financial position, even from a loss-making base. The Commission has found that the Australian industry had unused production capacity.⁴¹ Additional volume would have earned a contribution above variable cost and spread fixed costs over a larger volume, directly improving profit and capacity utilisation. Reduced capacity utilisation is an injury indicator REP 654 found SPC to have suffered,⁴² and one the PRR does not address at all.

Evidence of volume injury

The Commission's refusal to find volume injury rests on a singular assessment on whether the relative price gap between SPC and imports widened during the investigation period.⁴³ SPC submits that little weight should be placed on this, and that the Commission has not considered the more direct evidence on its own record, this being:

- Investigation period data: between the year ending September 2023 and the investigation period, the Australian market grew by 11 percent, Italian imports grew by 20 percent, and Australian industry sales volumes fell by 11 percent.⁴⁴ The Australian industry's market share fell from 27 percent to 21 percent, while the share held by Italian imports increased from 71 percent to 77 percent.⁴⁵ In the mid-tier, the largest segment, the Australian industry's share fell from 46 percent to 35 percent over the injury analysis period, while dumped goods accounted for 54 percent of the segment.⁴⁶ Italian imports captured all of the market's growth in the investigation period, plus more.
- Frontier assessment: Frontier found that the increase in Italian import volumes during the investigation period "*...is not fully or readily explained by the alternative factors considered in REP 654*".⁴⁷ It described its relative price analysis as evidence that "*...weakens the volume-displacement mechanism, not as evidence that excludes it*".⁴⁸ The Commission also details in the PRR that the inconclusive regression results "*...may reflect the limited amount of available data rather than the absence of a relationship*".⁴⁹ SPC submits that the absence of a complete econometric model is not evidence that volume injury did not occur.
- Competition: the Australian industry and Italian exporters compete for supermarket supply through range reviews and tender-based procurement processes.⁵⁰ Volume is won and lost in specific decisions at those junctures, and not through gradual switching in response to a widening average price gap. A stable average price

⁴¹ Ibid, p. 30.

⁴² REP 654, p 118.

⁴³ PRR, p. 38–40.

⁴⁴ Ibid, p. 37, Table 2.

⁴⁵ Ibid, p. 37, Table 3.

⁴⁶ REP 654, p 118.

⁴⁷ Frontier Report, p. 44.

⁴⁸ Ibid, p. 31.

⁴⁹ PRR, p. 40, footnote 68.

⁵⁰ REP 654, p. 58 and 107.

ratio is entirely consistent with SPC losing ranging and tender volume to lower priced dumped supply.

Volume counterfactual required

The Commission declined to undertake a volume counterfactual on the basis that it had not found a causal link to volume injury.⁵¹ The ADRP specifically request that the Commission consider alternative methodologies and analytical tools capable of separating the injurious effects of dumping from those of other factors.⁵² Confining the volume analysis to a narrow price-gap test, then declining to model volume at all, does not respond to that request.

SPC submits that the evidence supports a finding that dumped imports caused volume injury to the Australian industry, and that a volume counterfactual would show a material improvement in the Australian industry's sales volumes, capacity utilisation and profitability.

5. The 25 percent pass-through floor

The PRR calculates its counterfactual on full pass-through of the 3.3 percent increase in Italian prices, but then assesses materiality across a range of 25 percent to 100 percent pass-through, placing greater weight⁵³ on outcomes below the upper bound.⁵⁴

However, the 25 percent lower bound is not derived from any evidence. The PRR explains only that pass-through is unlikely to have been zero or above 100 percent, and that a range of 25 percent to 100 percent “...appropriately captures the likely range of outcomes”.⁵⁵ The Direction requires that the identification of material injury be based on facts and not on assertions unsupported by facts.⁵⁶ The ADRP expressly required “...reasoned conclusions backed by evidence and data, rather than the generalised conclusionary statements” in REP 654.⁵⁷ SPC submits that a lower bound chosen by elimination does not meet that standard.

Evidence suggests a high pass-through

The Commission found “...a reasonable level of price co-movement between imported and Australian industry prices”.⁵⁸ Frontier found that SPC and importer price indices generally moved together for three of the five retail customers, and that the relative price differential between SPC and importers remained relatively stable over the investigation period.⁵⁹

A stable relative price differential means that SPC's prices moved broadly in proportion with import prices. That equates to high pass-through in operation. The Commission relies on this price parallel to reject volume injury,⁶⁰ but disregards it when estimating the price injury. The Commission cannot rely on the relationship for one purpose and ignore it for the other.

⁵¹ PRR, p. 41.

⁵² ADRP request, para 24.

⁵³ PRR, p. 55.

⁵⁴ Ibid, p. 44 and 54–55.

⁵⁵ Ibid, p 55.

⁵⁶ A requirement the PRR itself stipulates, at p. 53.

⁵⁷ ADRP request, para 12.

⁵⁸ PRR, p. 22 and 35.

⁵⁹ Frontier Report, p. 29–30; PRR, p. 32 and 40.

⁶⁰ PRR, p. 40.

SPC notes Frontier's observation that SPC's prices moved with importer prices "...on a less than proportionate basis".⁶¹ If the Commission considers that pass-through was less than full, SPC submits that the correct approach is to estimate the pass-through rate from the price data it holds, and not adopt an arbitrary floor.

Double counting

The PRR gives two reasons for assuming less than full pass-through, being the continuing competitive advantage of Italian producers, and the buyer power of the major supermarkets.⁶² Both factors are present in the actual Australian market and in the counterfactual. By design, the counterfactual already holds them constant, removing only the dumping and subsidy margins.

The ADRP identified this point. It noted that, in a counterfactual in which dumped imports are remedied rather than removed, "...the impact of any valid non-dumping factors would be reflected in the remaining price advantage".⁶³ Frontier likewise commented that a counterfactual should hold other factors at their observed values.⁶⁴ The Commission follows that approach for consumer preferences, treating it as constant.⁶⁵ It cannot hold one factor constant and then use two others (competitive advantage and buying power) to discount the pass-through result.

Furthermore, the PRR relies on the narrowing of SPC's price premium over the injury analysis period as evidence against full pass-through.⁶⁶ The narrowing shows SPC's prices being pulled towards import prices. The Commission itself describes it as consistent with "...a weakening in SPC's ability to maintain a price premium over Italian imports".⁶⁷ That is evidence that SPC's prices respond to import prices, not that they are galvanized against them.

SPC submits that the Commission should assess materiality on the basis of full or near-full pass-through, or on a pass-through rate estimated from the evidence.

6. Materiality assessment

Revenue the wrong measure

The PRR states that the revenue effects of dumping were "...limited in magnitude...", at approximately 0.8 percent to 3.5 percent, and that this "...weighs against a finding that the injury was material".⁶⁸ For a processor operating on thin or negative margins, a price effect flows almost directly to profit. The important measure therefore is the effect on profit and profitability, which the Commission itself calculates at between 11.5 percent and 46 percent for SPC.⁶⁹ A small percentage of revenue is a large percentage of a small margin.

⁶¹ Frontier Report, p. 46.

⁶² PRR, p. 27, 35 and 51–52.

⁶³ ADRP request, para 23.

⁶⁴ Frontier Report, p. 7 and 23.

⁶⁵ PRR, p. 27.

⁶⁶ Ibid, p. 34.

⁶⁷ Ibid, p. 40, footnote 70.

⁶⁸ Ibid, p. 55.

⁶⁹ Ibid.

Dumping need not be the major cause

The PRR notes that, even under the upper-bound scenario, half of SPC's losses would have persisted, and that "...a majority of those losses remained attributable to other factors".⁷⁰ The logical flip side is that, on the upper-bound figures, half of SPC's investigation period losses were caused by dumping and subsidisation. The Direction is explicit that dumping need not be the sole cause of injury. Nor need it be the majority cause. The question is whether the injury it causes is material, and half of an industry's losses is clearly material.

The PRR also treats the absence of a finding of volume injury as weighing against materiality.⁷¹ Nothing in the Act or the Direction requires injury to extend to both price and volume before it can be material. Price depression and price suppression are forms of stand-alone injury. And in any event, SPC submits that volume injury should be found.

The weakened industry principle

The Direction provides that an industry which at one point in time is healthy and could shrug off the effects of dumping could at another time, weakened by other events, suffer material injury from the same amount and degree of dumping. The PRR's summary of the Direction omits this principle,⁷² and the PRR does not apply it, even though Frontier's third materiality benchmark is derived from it.⁷³

SPC submits that the Australian industry is a weakened one. SPC was loss-making in three of the four years of the injury analysis period,⁷⁴ and Safcol was also loss-making in the investigation period.⁷⁵ Dumping that exacerbates the losses of an already loss-making industry by up to half is material injury of the kind the Direction contemplates.

Injury timing

Frontier suggests that injury attribution to dumped imports is made harder because much of the deterioration in SPC's returns occurred in the year ending September 2023, before the investigation period.⁷⁶ SPC submits that this does not discount the materiality of the injury on the basis that:

- exporters found to be dumping increased their market share throughout the injury analysis period, at the expense of the Australian industry and undumped imports.⁷⁷ The Commission's inability to confirm whether their goods were dumped before the investigation period⁷⁸ is not evidence that they were not;
- the ADRP noted that SPC's costs began to decline during the investigation period.⁷⁹ Yet SPC's position did not recover (its accounting loss increased from \$1.61 million to \$1.85

⁷⁰ Ibid, p. 57.

⁷¹ Ibid, p. 55–56.

⁷² Ibid, p. 53–54.

⁷³ Frontier Report, p. 41, Table 3.

⁷⁴ Frontier Report, p. 43.

⁷⁵ PRR, p. 57. Frontier Report, p. 43.

⁷⁶ Frontier Report, p. 43–44.

⁷⁷ PRR, p. 38, Figure 7. REP 654, p. 117.

⁷⁸ Ibid, p. 38, footnote 61.

⁷⁹ ADRP request, para 28.

million).⁸⁰ SPC's inability to restore its margins as costs eased is still price suppression, and it occurred during the investigation period, for which dumping has been measured;

- the weakened industry principle applies (and should logically apply) with particular relevance where an industry has been weakened in an earlier period; and
- the Commission rejected the same timing argument in REP 690, in which an exporter submitted that the Australian industry's losses began before the peak of dumped imports.⁸¹

Return on investment and capacity utilisation

REP 654 found that SPC suffered injury in the form of reduced return on investment and reduced capacity utilisation.⁸² The PRR brushes aside return on investment in a single sentence,⁸³ and does not address capacity utilisation at all. That does not provide the quantitative or qualitative analysis and reasoned conclusions the ADRP requested.⁸⁴

7. Competitive advantage and raw material costs

PRR repetition and ADRP concerns

In its critique, the ADRP was concerned that REP 654's focus on the "substantial" portion of the price gap attributable to competitive advantage "...appears to detract from the correct analytical approach ... to assess whether the dumping has caused material injury in its own right".⁸⁵ Regrettably, the PRR repeats that approach. It holds that "...the substantial majority of the observed price gap arose from factors other than dumping and subsidization...", and that this "...weighs against a finding that the resulting injury was material".⁸⁶

The proportion of the price gap attributable to competitive advantage says nothing about whether the additional injury caused by dumping is material. The counterfactual has already measured that additional injury, with the size irrelevant.

Competitive advantage x3

Competitive advantage is excluded, by design, from the counterfactual, which removes only the dumping and subsidy margins.⁸⁷ It is then used to reduce the assumed pass-through,⁸⁸ and further again as a stand-alone consideration against materiality.⁸⁹ Each use discounts the same injury for the same factor.

⁸⁰ Frontier Report, Figure 13, p. 42.

⁸¹ Anti-Dumping Commission Report No. 690, Freight Railway Wheels – China (REP 690), p. 95.

⁸² REP 654, p. 118-119.

⁸³ PRR, p. 58.

⁸⁴ ADRP request, para 12.

⁸⁵ ADRP request, para 13.

⁸⁶ PRR, p. 56.

⁸⁷ Ibid, p. 27.

⁸⁸ Ibid, p. 27, 35 and 51.

⁸⁹ Ibid, p. 44–45 and 56.

Changes in competitive advantage

The PRR adopts Frontier's reasoning that a stable background factor cannot explain a deterioration in the industry's condition unless it changed, and applies that reasoning to consumer preferences.⁹⁰ Frontier applies the same reasoning to competitive advantage: to explain a worsening of SPC's position, the analysis would ideally identify whether that competitive advantage had increased.⁹¹ This appears to have been ignored, with the PRR not applying the test to competitive advantage, nor providing evidence that Italian producers' competitive advantage increased during the injury analysis period.

In contrast, the Commission applied exactly this test to structural efficiency factors in REP 690. There, the Commissioner treated technology and efficiency as "*a largely structural factor*", examined whether there had been a "*step-change*" during the injury period corresponding to the deterioration in the injury indicators, found none, and concluded that those factors did not explain the injury.⁹²

The competitive advantage relied on in the PRR (economies of scale and lower production costs) is the same kind of structural factor. The Commission has not explained why a different method applies in this case.

Competitive advantage does not displace injury caused by dumping

In REP 690, the Commissioner accepted that overseas manufacturers may enjoy a competitive advantage arising from lower labour costs, higher productivity, automation, more efficient business processes or economies of scale. The Commissioner nonetheless found that, because the goods were "*...also sold at dumped and subsidised prices...*", they were "*...more competitive on price than they would be if the goods were not dumped or subsidised*".⁹³ That is the analysis SPC has advanced and the ADRP endorsed.⁹⁴ In other words, competitive advantage and dumping operate together, and the additional price advantage conferred by dumping causes additional injury.

SPC anticipates that the Commission may seek to distinguish REP 690 on the basis that the Commissioner also found that countervailable subsidies contributed to the exporters' competitive advantage.⁹⁵ However, that was an additional reason given in REP 690. The Commissioner's primary reasoning set out above did not depend on it.

Raw material costs

The ADRP agreed with SPC that treating the increase in raw material costs as a separate other factor appeared to amount to a "*...double counting of the same injury with attribution to different causes*".⁹⁶ The PRR now treats those costs as part of competitive advantage,⁹⁷ but

⁹⁰ Ibid, pp 20–21. Frontier Report, pp 32 and 37–38.

⁹¹ Frontier Report, p 32.

⁹² REP 690, p 94.

⁹³ Ibid, 690, p. 95.

⁹⁴ ADRP request, para 8.

⁹⁵ REP 690, p. 95.

⁹⁶ ADRP request, para 26.

⁹⁷ PRR, p. 15–16.

continues to describe the injury as "...further exacerbated by increasing raw material costs for Australian industry".⁹⁸ The terminology has changed, but the double counting has not.

In REP 690, addressing the same issue, the Commissioner found that the Australian industry's costs had increased, that it had been unable to raise its prices sufficiently to recover them, and that the resulting price suppression coincided with dumped imports. The Commissioner concluded that cost pressures, while affecting profitability, "...do not explain the price suppression and loss of sales experienced by the Australian industry".⁹⁹ That is SPC's, and the ADRP's, position. The same conclusion should result here, particularly as SPC's costs had begun to decline in the investigation period.¹⁰⁰

8. Past practice

The ADRP did not accept the Commission's explanation for distinguishing REP 654 from its past practice. It requested the Commission "...address SPC's submissions relating to comparisons of the findings in REP 654 relating to comparative advantage, with the ADC's past practice, and provide a reasoned explanation for any differing conclusions".¹⁰¹ The ADRP also commented that while the nature of the product might be relevant to other factors, "...it does not appear to be relevant to the finding relating to competitive advantage and price undercutting".¹⁰²

The PRR responds in a single paragraph. It states that the market "...exhibits characteristics that differ materially from those of the steel markets" in the cases SPC referred to, and that direct comparisons are therefore...of limited assistance...".¹⁰³ The Commission does not identify those characteristics or explain why/how they relate to the treatment of competitive advantage and undercutting. It is the reinstatement of the product-type distinction the ADRP has already rejected.

The cases SPC cited were examples. SPC's application stated expressly that they were not exhaustive. The ADRP's request was directed to the Commission's past practice, which the Commission, not SPC, is best placed to examine. The PRR does not:

- address Continuation Inquiry 632 concerning railway wheels, to which the ADRP specifically referred;¹⁰⁴
- examine any case outside the steel sector; or
- reconcile its approach with REP 690, the Commission's own recent final report, which adopts the approach to competitive advantage and costs described above.

SPC submits that the Commission has not complied with the ADRP's request, and that its past practice, including REP 690, supports a finding of material injury in this case.

⁹⁸ Ibid, p. 16.

⁹⁹ REP 690, p. 95.

¹⁰⁰ ADRP request, para 28.

¹⁰¹ Ibid, para 18.

¹⁰² Ibid, para 18.

¹⁰³ PRR, p. 47.

¹⁰⁴ Ibid, paras 16–18.

9. Level of dumping margins

The ADRP directed that the Commission explain what it meant by “*relatively modest*” dumping margins, and how that informed its conclusion.¹⁰⁵ The PRR now describes the margins as “relatively low”, on the sole basis that the weighted average dumping margin of 4.6 percent (5.2 percent including subsidies) is lower than the 9.6 percent weighted average in Investigation 217.¹⁰⁶

That comparison does not support the Commission's conclusion. Measures were imposed in Investigation 217. The margins for exporters (other than uncooperative exporters) ranged from 3. percent to 4.54 percent,¹⁰⁷ comparable to the 2.2 percent to 5.5 percent found for the corresponding exporters in this investigation.¹⁰⁸ The Commission has also imposed measures at comparable margins in other investigations, including margins of 2.6 percent to 8.1 percent for cooperating exporters in Investigation 558.¹⁰⁹

In any event, the Direction provides that there is no threshold amount capable of general application. As Frontier observes, a small margin in a price-sensitive market with thin processing margins can produce a material effect.¹¹⁰ The PRR accepts that the size of the margins is not determinative.¹¹¹ The label “relatively low” adds nothing to the counterfactual analysis, which already reflects the size of the margins.

10. Domestic competition

SPC acknowledges the Commission's revision of Simplot's sales volumes, which are now assessed at 22 percent of the volume relied on in REP 654,¹¹² and its finding that domestic competition was less significant than previously assessed. However, the PRR continues to overstate its effect.

The Commission's estimate that Simplot accounted for up to 20 percent of SPC's lost sales volume assumes that every Simplot sale displaced a sale SPC would otherwise have made.¹¹³ Frontier's corrected analysis shows that assumption to be wrong. Following the entry of Leggo's, combined Ardmona and Leggo's volumes at Woolworths increased, with Leggo's additional volumes more than sufficient to cover the decline in Ardmona's sales.¹¹⁴ Leggo's grew the combined domestically produced volume rather than simply taking SPC's.

Domestic competition is also irrelevant to the materiality of the price injury the Commission has found. The Commission's counterfactual is confined to price effects, and it specifically distinguishes those effects from competition between Australian producers.¹¹⁵ Yet the PRR continues to list domestic competition among the considerations informing its materiality conclusion.¹¹⁶

¹⁰⁵ Ibid, para 14.

¹⁰⁶ Ibid, p. 49.

¹⁰⁷ ADN 2014/32.

¹⁰⁸ REP 654, p. 143.

¹⁰⁹ Anti-Dumping Commission Report No. 558, 15 November 2021, p. 104.

¹¹⁰ Frontier Report, p. 40.

¹¹¹ PRR, p. 48–49.

¹¹² Ibid, p. 17.

¹¹³ Ibid, p. 18.

¹¹⁴ Frontier Report, p. 35.

¹¹⁵ PRR, p. 27 and 51.

¹¹⁶ Ibid, p. 49–50.

At the industry level, the Australian industry as a whole (including Simplot) lost volume and market share in the investigation period, while the market grew and Italian imports captured that growth.¹¹⁷ Domestic competition redistributes sales within the Australian industry, and it cannot explain the industry's loss of market share to imports.

The PRR also attributes an effect of up to 5 percent on SPC's profitability to discounting associated with Simplot's entry, on the basis that SPC's retail discounts at Woolworths coincided with the period immediately before and after Simplot entered the market.¹¹⁸ That conclusion relies on coincidence in timing alone, including discounting before Simplot had made any sales.

The Commission accepts coincidence as sufficient to attribute injury to Simplot, while rejecting the far stronger coincidence between rising dumped import volumes and SPC's declining volumes as insufficient to establish causation.¹¹⁹ SPC submits that the same standard should apply to both.

Finally, the Commission's evidence on Simplot remains incomplete. Simplot did not provide the data the Commission requested,¹²⁰ and confirmation of Simplot's sales volumes from Woolworths had not been obtained at the date of the PRR.¹²¹

11. Conclusion

The PRR has taken critical steps in undertaking a counterfactual analysis and accepting that dumped and subsidised imports caused price injury to the Australian industry. On the Commission's figures, that injury reduced SPC's profitability by up to 46 percent and accounts for up to half of SPC's losses in the investigation period.

The Commission's conclusion that this injury is not material depends on:

- a reading of SPC's consumer study that the study's own data do not support;
- the omission of any volume effect, despite evidence of volume displacement on the Commission's record;
- a pass-through floor with no evidentiary basis;
- materiality benchmarks that are circular or measure the wrong thing;
- counting competitive advantage and raw material costs more than once, contrary to the ADRP's request and the Commission's approach in REP 690; and
- a failure to address the Commission's past practice as the ADRP requested.

For these reasons, SPC submits that the PRR's preliminary findings remain neither correct nor preferable.

¹¹⁷ Ibid, p. 37, Tables 2 and 3.

¹¹⁸ Ibid, p. 17–18.

¹¹⁹ Ibid, p. 38–39.

¹²⁰ Ibid, p. 10.

¹²¹ Ibid, p. 17, footnote 18.

The correct and preferable decision is that dumping and subsidisation have caused material injury to the Australian industry. SPC requests that the Commissioner's reinvestigation report to the ADRP find accordingly.