

PUBLIC RECORD

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Investigation 654: Tomatoes, prepared or preserved, exported from Italy.

Reinvestigation of certain findings in Report No 654.

Submission by Calispa S.p.A on the Preliminary Reinvestigation Report

Dear Director,

We make this submission on behalf of Calispa S.p.A (Calispa), an Italian exporter of the goods and an interested party in Investigation 654. It responds to the Preliminary Reinvestigation Report published on 28 September 2026 (PRR) and to Non-Confidential Attachment A to the PRR, the report of Frontier Economics Pty Ltd (Frontier report).

Calispa is a residual exporter. The Commissioner found a dumping margin of 3.6 per cent for residual exporters, and terminated the subsidy investigation in relation to them. The Commissioner "preliminarily affirms" the finding in Report No 654 (REP 654) that the Commissioner "is not satisfied that dumping and subsidisation have been causing, or are the cause of, material injury to the Australian industry". Calispa supports that finding. It is the correct finding on the evidence.

The concern expressed in the Anti-Dumping Review Panel's request of 18 May 2026 (ADRP request) was with the Commission's "analytical approach (or lack thereof)" to the "additional injury" caused by dumping, rather than with the result that REP 654 reached. The PRR provides that analysis, notwithstanding that in several areas the final report can state it more firmly.

1. The counterfactual answers the question the Panel asked

The PRR compares the Australian industry's actual condition in the investigation period with the condition it would likely have been in if Italian imports had been sold at non-dumped and non-subsidised prices. The PRR describes the comparison as "the analysis removes only the price advantage arising from exports at dumped and subsidised prices". Everything else, including the Italian producers' lower costs, retailer buying power, domestic competition and consumer preferences, is held at its observed value.

That is the comparison the Act requires. Section 269TAE(2A) directs the Minister to consider whether injury is being caused by a factor other than the exportation of the goods, and provides that "any such injury or hindrance must not be attributed to the exportation of those goods". The causation requirement in s.269TG is narrower again. As Wigney J explained in *Yara*, it "arises from the words 'because of that'", so that the Minister must be satisfied that material injury "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".¹ What has to be measured is the effect of the margin. The effect of the imports' presence in the market is a different question.

The Panel took the same view. It accepted that the remedied price analysis is "a useful analytical tool to distinguish the injury attributable to dumping from that of competitive advantage".² It then identified the form of counterfactual it would accept, one in which "the dumped imports would be remedied by the reduction in the price advantage conferred by dumping", observing that in that case "the impact of any valid non-dumping factors would be reflected in the remaining price advantage".³ The PRR adopts exactly that form.

Frontier reached the same conclusion independently. It advised that "the appropriate comparator is a market in which Italian imports remain but the dumping and subsidy margins are removed", and that "[a] market without Italian imports is not the appropriate comparator, because it would attribute to dumping the effect of fair Italian competition."⁴ That disposes of any counterfactual that removes the Italian imports from the market altogether.

The method also reflects the Commission's practice where it has used a counterfactual to find injury. In the ammonium nitrate investigation, as the Federal Court recorded in *Yara*, the Commission's analysis "involved adjusting the import prices achieved by the applicants to take into account the 'dumping margin'", and "[a]ll other variables were held constant".⁵ The PRR applies the same discipline.

The Panel was explicit that the choice of method is for the Commission. It noted that the methods by which the Commission separates the injurious effects of dumped imports from those of other factors "are not prescribed by the Act, the Material Injury Direction or the WTO Anti-Dumping Agreement", and required only that the approach "appropriately separate and distinguish the injurious effects of the dumped imports from the injurious effects of the other factors".⁶ The PRR's counterfactual does that.

Calispa submits that the final report should say so in clear terms, citing s.269TAE(2A), *Yara* at [75] and the ADRP request at [23] and [24], so that the method is anchored in the Act and in the Panel's own reasoning.

2. The materiality finding holds at full pass-through

2.1 The PRR already reaches that conclusion

The PRR calculates the counterfactual at full pass-through, in which the Australian industry raises its prices by the full 3.3 per cent increase in the remedied Italian price. It then assesses materiality across a range of 25 to 100 per cent pass-through. Its conclusion on the full range is that "[e]ven under assumptions most favourable to the Australian industry, the estimated improvements in prices,

¹ *Yara AB v Minister for Industry, Science and Technology* [2022] FCA 847 (Wigney J), [75].

² ADRP request, [9], p 4.

³ ADRP request, [23], pp 9–10.

⁴ Frontier report, p 7.

⁵ *Yara AB v Minister for Industry, Science and Technology* [2022] FCA 847 (Wigney J), [80].

⁶ ADRP request, [24], p 10.

revenue and profitability did not materially alter the industry's overall financial condition during the investigation period."⁷

That sentence carries the finding. Calispa submits that the final report should place it at the front of the materiality analysis and state expressly that the Commissioner is not satisfied that the injury is material at 100 per cent pass-through. The lower end of the range can then be presented as confirming the conclusion, without carrying it.

3.2 The finding should not rely on the lower end of the range

The PRR states that, in assessing materiality, the Commission "placed greater weight on the likelihood that the injury attributable to dumping and subsidisation was less than the upper-bound outcomes identified by the counterfactual analysis". That sentence makes the finding appear to rely on pass-through below 100 per cent. Calispa submits that the finding should not rely on it, and does not need to.

The PRR gives retailer buying power and the Italian producers' competitive advantage as its reasons for expecting less than full pass-through. Retailer buying power is supported by evidence, and Frontier confirmed that because SPC sells to a small number of large retailers, "those buyers have bargaining power and may resist part of any such increase, so SPC may recover less than the full margin in its wholesale prices."

Competitive advantage is a different matter. The PRR states that the lower end of the range "recognises that price increases achieved by Australian producers are constrained by a range of market factors, including the negotiating power of the major retailers and the continued competitive advantages enjoyed by Italian exporters even after the effects of dumping and subsidisation are removed".

That reason exposes the finding to the very criticism the Panel has already made of REP 654. The Panel's concern was that REP 654 leaned on competitive advantage instead of measuring the effect of dumping itself. It observed that REP 654 "focusses on the 'substantial' portion of the price gap attributable to competitive advantage, as the main reason for the conclusion that dumping and subsidisation does not cause material injury", and that "such a focus appears to detract from the 'correct analytical approach ... to assess whether the dumping has caused material injury in its own right'"⁸. A pass-through floor justified by the same competitive advantage may be observed by the Panel as a return to that reasoning by another route.

Calispa contends that the finding does not need that reason. The counterfactual already leaves the competitive advantage in place, and that advantage is why a remedied gap of 9.4 to 20.4 per cent remains between Australian industry prices and remedied Italian prices. As the Panel put it, the impact of the non-dumping factors "would be reflected in the remaining price advantage"⁹. Measured in its own right, the effect of dumping is the 3.3 per cent uplift, and the Commission's conclusion holds even when the whole of that uplift is passed through.

⁷ PRR, section 5.3.7, p 58.

⁸ ADRP request, [13], pp 5–6.]

⁹ ADRP request, [23], p 10

The PRR also provides no evidentiary basis for the 25 per cent figure itself. A determination for the purposes of s.269TAE(1) "must be based on facts and not merely on allegations, conjecture or remote possibilities". Calispa therefore submits that the final report should rely on the findings based on the full pass-through, where competitive advantage plays no part in the reasoning, and present the lower end of the range only as confirming the conclusion.

3.3 The result at full pass-through

At 100 per cent pass-through the PRR's figures confirm that SPC's revenue would have been at most 3.3 per cent higher, and Safcol's the same. Sales volumes would not have changed, because the Commission found no causal link between dumping and volume injury. The effect on SPC's profitability is stated as up to 46 per cent, and on its losses as a reduction of up to 49 per cent.

The profitability and loss percentages need to be read for what they are. Each expresses a revenue effect of no more than 3.3 per cent as a proportion of a financial result that, on the PRR's figures, was a loss for both producers in the investigation period. A ratio of that kind grows as the result approaches zero, whatever caused the result. It describes how weak the industry's position was. The size of the injury that dumping caused is measured by the price and revenue effect, which is the effect of dumping "in its own right".¹⁰

The position is not altered by the Direction's guidance on an industry "weakened by other events". The Direction contemplates that such an industry "could at another time, weakened by other events, suffer material injury from the same amount and degree of dumping or subsidisation". The PRR's counterfactual was not run on a hypothetical healthy industry. It applied the price uplift to the reported revenue of SPC and Safcol in the investigation period and carried the result through to their actual profit and profitability. The industry's weakened condition is built into the calculation. What the Direction still requires, in every case, is that "the injury caused by dumping or subsidisation must be material in degree".

4. Materiality should be measured by the size of the effect

4.1 The comparison with SPC's normal variation

The PRR assesses the dumping effect against the year-on-year variation in SPC's profit, and finds that at full pass-through the effect is 18 per cent of the average annual variation. Frontier proposed the same benchmark.

Calispa submits that the final report should not make this comparison the basis of the finding. In ADRP Report No. 107 (ammonium nitrate), the Commission had quantified profit forgone through a counterfactual, and the applicants for review argued that it remained necessary to test that figure against the industry's historical profit swings. The Panel rejected the argument. It agreed with the Commission that such an assessment "would not form the basis of a proper comparison in order to reach a conclusion that the injury was greater than that likely to occur in the normal ebb and flow of business", because the counterfactual figure "was therefore solely attributable to dumping".¹¹

¹⁰ ADRP request, [8], p 4.

¹¹ ADRP Report No. 107, *Ammonium Nitrate from China, Sweden and Thailand* (July 2020), [453], pp 163–164.

On that reasoning, once the counterfactual has isolated the effect of the margin, the ebb and flow requirement in the Direction is met by the isolation itself.¹² The materiality question then turns on whether the isolated effect is "not immaterial, insubstantial or insignificant", which the Direction says depends "upon the circumstances of each case". The comparison with SPC's annual variation can remain in the final report as context.

Calispa also notes the circumstance the Panel treated as decisive in ADRP Report No. 107. It noted that "[o]ne of the most significant circumstances" was "the practice of entering into long-term contracts so that the impact of that negotiated contract extended for the full contract period".¹³ The PRR identifies no equivalent mechanism in this market carrying the effect of dumping beyond the investigation period.

4.2 The share of losses

The PRR also records that, depending on pass-through, losses would have been reduced by between 11 and 49 per cent for SPC. SPC will present the upper figure as showing that dumping was close to a principal cause. For the reason given in section 3.3, the figure is a ratio against a loss, and it rises as the losses from other causes fall. Calispa submits that the final report should treat it as context, in the same way as the variation comparison.

4.3 The size of the effect in its own right

The finding should rest on the measured size of the effect, which is small on every measure the PRR uses. The weighted average dumping margin is 4.6 per cent and the weighted average combined dumping and subsidy margin is 5.2 per cent. The remedied Italian price is on average 3.3 per cent higher than the actual Italian price, and the quarterly uplift moved within a narrow band of 3.1 to 3.7 per cent across the investigation period. The maximum price effect on the Australian industry is therefore 3.3 per cent, and so is the maximum revenue effect. The Commission found no causal link to volume injury.

The Commission has already put the point in the right terms when discussing the dumping margins. It said that "the size of the dumping margin is an indicator of the extent to which dumping may have affected prices", and that materiality "is assessed through analysis of the effects of dumping and subsidisation on the Australian industry". Calispa submits that the final report should conclude on that basis. An effect confined to price, of no more than 3.3 per cent, with no effect on volumes or market share, is not material in degree in this market.

That approach also meets the Panel's request for "some discussion relating to the Material Injury Direction guidance that there is no threshold amount".¹⁴ The finding applies no threshold. It assesses the measured effect against the circumstances of this market, as the Direction requires.

¹² Ministerial Direction on Material Injury 2012, p 1, which provides that "The injury must also be greater than that likely to occur in the normal ebb and flow of business."

¹³ ADRP Report No. 107, [446], p 161.

¹⁴ ADRP request, [15], p 7.

5. The remedied price uplift is 3.3 per cent

The PRR presents two sets of figures throughout, with one excluding negligible subsidy margins, with an average uplift of 3.3 per cent, and one including them, with an average of 3.6 per cent. It states that "[t]he commission considers the non-inclusion approach to be more consistent with the commission's practices", and that the REP 654 approach "has also been retained to enable comparison".

Calispa submits that the final report should adopt the 3.3 per cent figures as its findings, and present the 3.6 per cent figures, if at all, only as a comparison with REP 654. The Commissioner terminated the subsidy investigation in relation to De Clemente, IMCA, Mutti and the residual exporters, including Calispa, "on the basis that the level of subsidisation received by these exporters never, at any time in the investigation period, exceeded the negligible level of countervailable subsidy, in accordance with section 269TDA(2)". A negligible subsidy margin on goods for which the subsidy investigation has been terminated cannot form part of the injury caused by subsidisation. Including it attributes to subsidisation an effect on goods that the Commissioner has removed from the countervailing investigation.

Calispa also supports the amendment at Appendix A.1, which recalculated the uplift on the FOB export price instead of the FIS price. As the PRR explains, "[t]his amendment ensured that the uplift was calculated consistently with the methodology applied in determining the dumping margins during the investigation."

6. "Not negligible" and "not material" answer different statutory questions

The Panel asked for "reasoned explanation for bridging the gap between a finding of 'not negligible'" and "a finding of 'not material'".¹⁵ The PRR answers that the Commissioner "must be positively satisfied" that injury is negligible before terminating, and that where the Commissioner is not satisfied that injury caused by dumping is material, "it does not necessarily follow that the Commissioner would be positively satisfied that the injury caused by exports of the goods is negligible". Calispa submits that the answer is correct, and that the final report should develop it by reference to the text and function of the two provisions.

Section 269TDA(13) is a termination provision. It applies where, in an investigation, "the Commissioner is satisfied that the injury, if any, to an Australian industry ... that has been, or may be, caused by that export is negligible", and it then provides that "the Commissioner must terminate the investigation so far as it relates to that country". Its function is to end an investigation early, and only on a positive state of satisfaction. In ADRP Decision No. 75 the Panel emphasised the requirement that, "[f]or a termination decision to be made under s.269TDA(13), the Commissioner must be satisfied that the injury, if any, to an Australian industry that has been, or may be caused, by the exported goods is negligible. This requires a positive finding."¹⁶

The material injury question arises under ss.269TG and 269TJ, as a condition of imposing measures, and asks whether material injury has been caused "because of" the dumping or subsidisation. The two

¹⁵ ADRP request, [15], p 7.

¹⁶ ADRP Report No. 75, *Alloy Round Bar from China* (April 2018), [37], pp 12–13.

provisions therefore differ in their subject matter, since s.269TDA(13) refers to injury caused by "that export" while s.269TG refers to injury caused by the dumping. They differ as well in the satisfaction each requires and in their consequence. REP 654 conducted the termination assessment on the effect of "undumped/unsubsidised and dumped/or subsidised goods from Italy" taken together.

The outcome in REP 654 was therefore that the Commissioner was not satisfied, on the evidence, that the injury was negligible, so the condition for termination under s.269TDA(13) was not met. It was not a positive finding that the injury caused by dumping cleared some lower bar on the way to materiality. The PRR records the position accurately and confirms that there is no gap to bridge between a finding that was not made and the finding that was.

Calispa requests that the final report state the distinction in the terms above, so that the answer to the Panel's paragraph 15 rests on the Act.

7. Past practice

The Panel asked the Commission to address SPC's comparisons with past practice "and provide a reasoned explanation for any differing conclusions".¹⁷ The PRR's answer is that the market for the goods "exhibits characteristics that differ materially" from the steel markets in SPC's comparator cases. The Panel has already rejected a distinction based on product type, and the final report should not rely on that one alone.

The stronger answer is that the Commission has applied the same test before and reached the opposite result because the facts were opposite. In the original railway wheels investigation, Report No 466, an interested party argued that the Commission had to ascertain whether price differences arose from dumping or from other factors, including the Chinese producer's comparative advantages. The Commission removed the dumping margin and found "that in a clear majority of transactions analysed during the investigation period, if the imported goods had not been dumped, Comsteel's price would have been lower than the price of imports".¹⁸ On that basis it concluded that the injury "was not caused by these factors".¹⁹

Report No 632, the continuation inquiry on which SPC relies, continued the measures "initially imposed on 16 July 2019 following the Investigation 466".²⁰ The finding underlying SPC's own comparator is therefore a remedied price finding in which the Australian producer would have undersold the non-dumped imports.

Here the same test produces the reverse. Even after removing dumping and subsidisation, Italian imports would have remained "priced approximately 9.4% and 20.4% ... below Australian industry prices". The ammonium nitrate investigation shows the same contrast in another form. There the Commission found that "on average, the prices adjusted for dumping are approximately 17.8 per cent higher than the negotiated prices".²¹ The corresponding figure here is 3.3 per cent.

¹⁷ ADRP request, [18], p 8.

¹⁸ Report No 466, *Certain railway wheels from China and France* (1 March 2019), section 8.13.1, p 47.

¹⁹ REP 466, section 8.13.1, p 47.

²⁰ Report No 632, *Certain railway wheels from China and France* (12 June 2024), section 1.1, p 7.

²¹ *Yara AB v Minister for Industry, Science and Technology* [2022] FCA 847 (Wigney J), [81], quoting the Commission's report in the ammonium nitrate investigation at section 9.2.2.

Calispa submits that the final report should set out these comparisons. They show that the Commission's practice is consistent with the remedied price test applied correctly in each case, and the outcome follows the facts it reveals.

8. Volume

The PRR finds that "the available evidence does not reliably support a conclusion that dumped and subsidised imports contributed to the observed volume injury". Calispa supports that finding. It is also the finding SPC will strongly contest, because the PRR records that SPC's price premium over Italian imports, measured on a VOTI basis, fell from about 52 per cent in the year to September 2021 to 18 per cent in the year to September 2023, then rose to about 26 per cent in the year to September 2024. It is expected that SPC will say that the import price advantage widened in the investigation period, when its volumes fell.

The relevant information held by the Commission answers that view point, and the final report should draw the answers together.

The dumping component cannot explain most of the widening. The quarterly uplift was 3.2, 3.1, 3.1 and 3.7 per cent across the investigation period. If the average uplift of 3.3 per cent is applied in the same proportion to the VOTI comparison for the year to September 2024, SPC's premium falls from about 26 per cent to about 22 per cent, still above the 18 per cent of the prior year. On that approximation, at least half of the widening is unexplained by dumping even on the view most favourable to SPC, which assumes that no dumping occurred in the prior year.

Within the investigation period itself, Frontier found that "the magnitude of that discount remained relatively stable". The PRR states the test it applied, "[i]f declining Australian industry sales volumes were being driven by an increasing price advantage of Italian imports, the commission would ordinarily expect to observe a widening relative price differential over time, with Italian imports becoming progressively cheaper relative to SPC." At the retail level, where consumers choose between brands, Frontier found price increases since August 2021 "of 27-29% for SPC/Ardmona brands and 32-37% for imported brands", and that "the retail data also does not show reductions in imported prices from October 2023 to May 2024".

The PRR also cannot confirm that the imports which gained volume before the investigation period were dumped. It states that "[t]he commission cannot confirm whether goods from these entities were dumped or subsidised prior to the investigation period."

Frontier's conclusion is qualified, and the qualification should be addressed directly by the Commission. Frontier treats the relative price evidence "as evidence that weakens the volume-displacement mechanism, not as evidence that excludes it". The statutory standard does not call for evidence that excludes a possibility. It requires that a determination "be based on facts and not merely on allegations, conjecture or remote possibilities". A volume finding against the dumped imports would need positive evidence of a mechanism by which a margin that stayed close to 3.3 per cent throughout the investigation period moved volume. The public record contains none.

Calispa submits that the final report should reconcile the measures of relative price on which it relies (wholesale customs value, VOTI, wholesale prices by customer, and retail prices), state expressly that the widening in the year to September 2024 is not explained by the dumping component, and confirm the volume finding on that basis.

9. Domestic competition and Calispa's data

The PRR records that Calispa "had incorrectly relied on a sales revenue figure to estimate Simplot's sales volumes", and that the error affected the analysis in REP 654. We acknowledged the error and provided the clarification the Commission sought. The Commission has revised its estimate of Simplot's sales volumes and validated the revised method against information provided by SPC. Calispa accepts that the observation attributed to it at page 126 of REP 654 can no longer be substantiated on the corrected data.

The domestic competition finding survives the correction in principle. On the revised data, Frontier found that "[v]olume falls for Ardmona using the Woolworths data appear closely tied to Simplot's entry", within the five months in which Leggo's was competing. The PRR finds that Simplot may have accounted for up to 20 per cent of SPC's lost sales volume, and that "domestic competition explains a portion of SPC's lost sales volume during the investigation period but not the entirety of it". That addresses the Panel's request to consider the five months in which Simplot was present.

The correction also leaves the materiality finding untouched. The counterfactual measures the effect of the dumping margin, and the PRR explains that "the effects of domestic competition are also separate from the price injury counterfactual analysis". The size of the domestic competition factor changes how the residual injury is described. It does not change the 3.3 per cent price effect attributable to dumping.

10. Corrections the final report should make

Several figures in the PRR and the Frontier report should be corrected so that SPC cannot use them against the finding.

The Frontier report states in three places that the dumping and subsidy margins account for about 3 percentage points of "a price gap of 22 to 24 per cent". Those undercutting figures were superseded after the Commission notified a calculation error in Confidential Attachment 31 to REP 654. The PRR uses the corrected range of 13.1 to 23.6 per cent. The final report should record that Frontier's conclusions on materiality rest on SPC's returns and remain valid on the corrected figures.

The PRR states that revenue "would have been reduced by between approximately 0.8 per cent to 3.5 per cent depending on the degree of pass through". The figures given in the preceding paragraph of the PRR are 0.8 to 3.3 per cent, or 0.9 to 3.6 per cent including negligible subsidy margins. The upper figure should read 3.3 per cent.

