



Australian Government
Anti-Dumping Commission

CUSTOMS ACT 1901 - PART XVB

**CONSIDERATION REPORT
NO. 217**

APPLICATION FOR A DUMPING DUTY NOTICE

**PREPARED OR PRESERVED TOMATOES
EXPORTED FROM ITALY**

10 July 2013

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ABBREVIATIONS & SHORTENED FORMS
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Abbreviation / short form	Full reference
ABS	Australian Bureau of Statistics
ACBPS	Australian Customs and Border Protection Service
AD Agreement	World Trade Organisation Agreement on Anti-Dumping
ADN	Anti-Dumping Notice
CCA	Coca-Cola Amatil Ltd
CEO	Chief Executive Officer
Commission	The Anti-Dumping Commission
Commissioner	The Commissioner for the Anti-Dumping Commission
CON 217	The Commission's Consideration Report 217
CTMS	Cost to make and sell
EC	European Commission
EU	Europe Union
FOB	free-on-board
GUC	Goods under consideration (goods the subject of the application).
ITRB	International Trade Remedies Branch
NIP	non-injurious price
SEF	statement of essential facts
SG&A	Selling, general and administrative
SPCA	SPC Ardmona Operations Limited
the Act	<i>Customs Act 1901</i>
the applicant	SPC Ardmona Operations Limited
the Division	Division 2 of Part XVB of the Customs Act 1901
the goods	the goods the subject of the application (prepared or preserved tomatoes exported from Italy in pack sizes not exceeding 1.4 litres)
The Minister	the Minister for Home Affairs
USP	unsuppressed selling price
WTO	World Trade Organisation

1 SUMMARY AND RECOMMENDATIONS

1.1 Background

This report provides the results of the Anti-Dumping Commission's (the Commission) consideration of an application for the publication of a dumping duty notice in respect of prepared or preserved tomatoes exported to Australia from Italy.

1.2 Application of law to facts

Division 2 of Part XVB (the Division) of the *Customs Act 1901* (the Act)¹ sets out procedures for considering an application for a dumping duty notice.

In this report, the following matters are considered in relation to the application:

- whether the application complies with subsection 269TB(4);
- whether there is, or is likely to be established, an Australian industry in respect of like goods;
- whether there appear to be reasonable grounds for the publication of a dumping duty notice in respect of the goods the subject of the application.

1.2.1 The powers of the Commissioner

The Act empowers the Commissioner, after having regard to the Commission's report, to reject or not reject an application for the publication of a dumping duty notice and a countervailing duty notice.

If the Commissioner decides not to reject the application, the Commissioner must give public notice of the decision providing details of the investigation.

The Commissioner's powers have been delegated to certain officers of the Commission.

1.3 Findings and conclusions

The Commission has examined the application for the publication of a dumping duty notice in relation to prepared or preserved tomatoes from Italy.

The delegate of the Commissioner is satisfied that:

- the application complies with the requirements of s.269TB(4) of the Act (as set out in Section 3 of this report);
- there is an Australian industry in respect of like goods (as set out in Section 5 of this report); and
- there appear to be reasonable grounds for the publication of a dumping duty notice in respect of the goods the subject of the application (as set out in Sections 5 and 6 of this report)

¹ All references in this report to sections of legislation, unless otherwise specified, are to the *Customs Act 1901*.

1.4 Recommendation

The Commission recommends that the Commissioner decide not to reject the application.

If the Commissioner accepts this recommendation, to give effect to that decision, the Commissioner must publish the notice at Appendix 1 indicating that the Commission will inquire into whether grounds exist to publish a dumping duty notice.

2 BACKGROUND

2.1 Application

On 17 June 2013, an application was lodged by SPC Ardmona Operations Limited (SPCA) requesting that the Minister for Home Affairs (the Minister) publish a dumping duty notice in respect of prepared or preserved tomatoes exported to Australia from Italy.

SPCA alleges the Australian industry has suffered material injury caused by prepared or preserved tomatoes exported to Australia from Italy at dumped prices.

The applicant claims the industry has been injured through:

- loss of sales volume;
- reduced market share;
- reduced revenues;
- price depression;
- price suppression;
- reduced profits;
- reduced profitability;
- reduced cash flow
- reduced attractiveness for reinvestment in the tomato processing business.

2.2 The goods the subject of the applications

2.2.1 Description

In its application SPCA has described the goods under consideration (GUC) as;

Tomatoes, whether peeled or unpeeled, prepared or preserved otherwise than by vinegar or acetic acid, either whole or in pieces (including diced, chopped or crushed) with or without other ingredients (including vegetables, herbs or spices) in packs not exceeding 1.14 litres in volume.

SPCA indicated the goods excluded from this application are;

Pastes, purees, sauces, pasta sauces, juices, and sundried tomatoes.

2.2.2 Product information

The application stated;

The common container sizes of the imported prepared or preserved tomatoes the subject of this application are 300grams to 850grams, but the application covers all container sizes up to and including 1.14L.

The imported goods could be packaged in different containers such as cans, glass jars, pouches or Tetra packs².

The imported prepared or preserved tomatoes can be labelled with a generic, a house brand / private label for retailer or a proprietary label. The imported goods the subject of this application covers all imported prepared or preserved tomatoes regardless of how labelled. The GUC are generically called prepared or preserved tomatoes.

SPCA understands that imported prepared or preserved tomatoes are commonly packed in cans, jars, pouches or Tetra packs in sizes typically ranging from 300grams to 850grams.

2.2.3 Product standards

The ANZSIC code applicable to the domestic prepared tomato products industry is category 2130 for Division C: Manufacturing, Sub-division 21: Food, Beverage and Tobacco manufacturing, Heading 213: Fruit and Vegetable Processing, sub-heading 2130.

2.2.4 Product specifications

SPCA understands that prepared or preserved tomato products exported to Australia from Italy are either peeled or unpeeled, and in variety of specific compositions including whole or in pieces (diced, chopped or crushed) and with or without the addition of other ingredients including, but not limited to, vegetables, herbs and spices.

SPCA also understands that imported product is marketed for sale in the Australian market under one of two tiers of product labelling:

- Private label product – product labelled with specific commercial branding to the specifications of Australian importers; or
- Proprietary label product – product labelled with proprietary commercial branding of the processor or exporter.

The application makes no assertions regarding international standards of production applicable to the goods and does not suggest that there is discernible quality or specification differences between the tiers of imported product, aside from specific differences in composition (for example cut profile).

2.3 Tariff classifications

The application states that the goods are classified to subheading 2002.10.00 to Schedule 3 of the *Customs Tariff Act 1995* with statistical code 60. The general rate of duty is currently 5 per cent for goods imported from Italy.

² Tetra packs are proprietary packaging mediums produced, under copyright, by the Tetra Pak company.

2.4 Consideration of the application

Under subsection 269TC(1) of the Act, the Commissioner must examine the application and within 20 days of lodgement decide whether or not to reject the application. This decision must be made no later than 8 July 2013.

Subsection 269TC(1) of the Act specifies that the Commissioner shall reject an application if the Commissioner is not satisfied that:

- the application complies with subsection 269TB(4); or
- there is, or is likely to be established, an Australian industry in respect of like goods; or
- there appear to be reasonable grounds for the publication of a dumping duty notice and/or a countervailing duty notice in respect of the goods the subject of the application.

The above matters are examined in the following sections of this report.

2.5 Previous investigations

In April 1992, the then Minister for Customs accepted the recommendations of the Anti-Dumping Authority (ADA) in its report (No. 68 of April 1992) and imposed countervailing duties on canned tomatoes from Italy, Spain and Thailand and dumping duties on the same goods from Italy and China.

Following a Federal Court challenge by an Italian exporter, the countervailing and dumping duties on canned tomatoes from Italy were removed in June 1993. Pursuant to a subsequent appeal to the Full Bench of that Court by the ADA, the Minister reinstated the duties. In February 1994, as a result of the Court decision, importers were advised that dumping and countervailing duties would be payable on future imports but that the amount of duty was to be reassessed. This was addressed in ADA report No. 124 of May 1994.

In 1997 the ADA (Report No. 169) concluded a continuation inquiry whereby countervailing and dumping duties on canned tomatoes from Italy were continued for a further five years.

In 2001, an application to continue the countervailing duty measures was submitted with the Trade Measures Branch of the Australian Customs and Border Protection Service concluding that the measures should continue for a further five years (Trade Measures Report No. 52 refers). The Minister took steps to continue those measures for a further five years. The measures lapsed on 27 April 2007.

2.6 Current measures

There are currently no anti-dumping or countervailing measures on the goods exported to Australia.

3 DOES THE APPLICATION COMPLY WITH SUBSECTION 269TB(4)

Subsection 269TB(4) requires that the application must:

- be in writing; and
- be in an approved form; and
- contain such information as the form requires; and
- be signed in the manner indicated by the form; and
- be supported by a sufficient part of the Australian industry.

3.1 Approved form

The application is in writing, in the approved form, contains such information as the form requires (as discussed in the following sections of this report) and is signed in the manner indicated in the form.

SPCA submitted confidential and public record (non-confidential) versions of the application along with numerous appendices and attachments. The Commission considers that the public record version of the application contains sufficient detail to allow a reasonable understanding of the substance of the information.

3.2 Supported by Australian industry

An application is taken to be supported by a sufficient part of the Australian industry if the persons who produce or manufacture like goods in Australia and who support the application:

- account for more than 50% of the total production or manufacture of like goods by that proportion of the Australian industry that has expressed either support for or opposition to, the application; and
- account for not less than 25% of the total production or manufacture of like goods in Australia.

The application states that SPCA is the only Australian producer of prepared or preserved tomatoes.

3.3 The Commission's assessment

Based on the evidence provided, the Commission considers the application complies with subsection 269TB(4).

4 IS THERE AN AUSTRALIAN INDUSTRY IN RESPECT OF LIKE GOODS?

Subsection 269TC(1) requires that the Commissioner must reject an application for a dumping duty notice if, inter alia, he or she is not satisfied that there is, or is likely to be established, an Australian industry in respect of like goods.

4.1 Locally produced like goods

Subsection 269T(1) defines like goods as

goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

4.1.1 Applicant's claims

SPCA stated they produce prepared or preserved tomato products that are either identical or closely resemble the goods the subject of its application. SPCA produces a suite of products which:

- have similar composition, sizes, cuts and ingredients;
- are directly substitutable;
- compete directly in the same markets; and
- have the same end-uses.

SPCA provided further comments in terms of physical, commercial and functional likeness.

(a) Physical likeness

- The imported products are available in the same size packaging as SPCA's products. The majority of the products available are 400 gram (g) and 800g size cans.
- The key ingredient in the imported prepared or preserved tomatoes and SPCA's products are tomatoes and are available with similar composition and liquid.
- Both imported products and SPCA's products are available in the same cuts such as diced, chopped, whole, crushed or mixed with herbs and spice.

(b) Commercial likeness

- Both imported products and SPCA's prepared or preserved tomatoes are available on supermarket's shelves and compete with each other;
- Consumers switch between SPCA's products and imported products with the key purchase criteria driving the purchase decision is price.

(c) Functional likeness

- Both the locally produced and imported prepared or preserved tomato products have comparable or identical end-uses and are interchangeable.

4.1.2 Close processed agricultural goods

In its application SPCA indicated that the prepared or preserved tomato products are not close processed agricultural products. SPCA stated the fresh tomatoes used in the production of the prepared or preserved tomato products are not substantially devoted to the production of prepared or preserved tomato products.

4.1.3 The Commission's assessment

Based on the information provided in the application, the Commission is satisfied that there is an Australian industry producing like goods to the goods the subject of the application.

In the absence of any relevant information demonstrating that the raw agricultural goods (tomatoes) are devoted substantially or completely to the processed agricultural goods (prepared or preserved tomatoes), the Commission cannot be satisfied that the like goods producing by the Australian industry are close processed agricultural products.

4.2 Manufactured in Australia

Subsections 269T(2) and 269T(3) specify that, for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. In order for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

4.2.1 Applicant's manufacturing operations

SPCA advised that the process of production in relation to prepared or preserved tomatoes is standardised for all products with marginal differences made to specific production stages depending on specific product variables (such as cut profile and value adding).

SPCA submits that it undertakes more than one substantial process of manufacture in the production of like goods. In its application SPCA provided a production flow diagram which is summarised as;

1. Raw material delivery:

Fresh tomatoes are delivered to SPCA's production facility directly from local tomato growers. SPCA requires tomatoes to be delivered on the same day they are harvested from the vine.

2. Washing, grading and peeling

SPCA aims to process tomatoes from delivery to an intermediate finished product (unlabelled can) within 24 hours.

Accordingly, fresh tomatoes are moved from the point of delivery to the processing line immediately upon receipt and are washed and graded to separate tomatoes into tiers of quality:

- Higher quality tomatoes are graded for processing as canned prepared or preserved tomato products;
- Lower quality tomatoes are graded for use in the production of juice which is either used as filling in the canning process or evaporated and used to produce concentrates and paste products.

Tomatoes bound for processing are then peeled using a steam-peeling process.

3. Second grading

Peeled tomatoes are then graded for a second time according to peeled quality. Higher quality peeled tomatoes are selected for processing for whole tomato products, lower quality tomatoes are graded for dice, chop or crushed cut profiles in descending order depending on specific quality profiles.

4. Filling and liquid adding

Once sorted and processed according to cut profile, all products are moved for canning. Each can is filled with standardised ratios of processed tomatoes to liquid filling stage (juice derived from stage 2). Products are then sorted by can size and cut profile.

At this stage, depending on specific product requirements, certain cans are produced with additional ingredients such as herbs, spices and other flavouring. These products are internally delineated by can size, cut profile and additional ingredients and are summarily referred to as 'value added' products.

5. Pasteurisation, cooling and labelling

Once filled to product specifications, cans are sealed and pasteurised (cooked) to preserve the product and moved to cool to ambient temperature.

Once cooled, all unlabelled cans (referred to as the 'bright can' stage) are moved to storage according to product grouping.

Cans are labelled on an as-needed basis prior to shipping, depending on specific order requirements and customer demands.

4.2.2 The Commission's assessment

Based on the above description of the manufacturing process, the Commission is satisfied that there is at least one substantial process of manufacture performed in Australia and, therefore, that the goods may be taken to have been produced in Australia.

4.3 Australian Market

SPCA submitted that the primary end use for prepared or preserved tomatoes, irrespective of product labelling, cut profile and value add specifications, is for home consumption in food preparation. As such, the goods compete for shelf space on the supermarket shelves, smaller retailer outlets such as delicatessens and corner stores.

In its application, SPCA stated that consumer demand within the retail segment of the Australian market is typically stable throughout the year and its market research indicates that the consumption of the goods is not impacted by seasonal, geographical or market appetites. Further, the research indicates that the Australian made goods are being substituted for the imported goods.

Whilst diced and cut profile products are preferred by consumers, SPCA state that price is the primary driver of consumer patterns taking preference above product specifications. Typical can sizes in the Australian market are 400g or 800g sized cans for household consumption.

SPCA advised that major and minor retail segments are relevantly identical in terms of demand for specific variants of products and the pack sizes.

4.3.1 Market segmentation

SPCA state that major retailers are the main purchasers of the goods and in recent years they have increased their purchased volume of imported private label products at the detriment of the SPCA's proprietary label. In terms of demand for different products, SPCA indicated that the major retailers typically require the same proportions of the different products on offer.

The Australian market for the prepared or preserved tomatoes is dominated by three segments with the significant majority of volume being sold into the major retail segment. In its application SPCA identified the segments as:

- 'major' retail segment (major retail) – major corporate entities or large affiliated networks of grocery stores that source the prepared or preserved tomatoes for the retail market.
- 'minor' retail segment (minor retail) – independent, smaller retail outlets that procure the prepared or preserved tomatoes for retail to consumers.
- food-industry service segment (FSI) – independent, or larger corporate entities, that source the prepared or preserved tomatoes for preparation of food-stuffs in commercial quantities; such as catering firms and large public institutions such as hospitals, nursing homes and prisons.

Retail segment

The two retail tiers diverge in key areas:

- Major retail entities in Australia typically
 - are categorised by higher supply demands and long-term commercial sales negotiation and supply contracts; and
 - are increasingly displaying patterns of preference to its private label products over proprietary labels.

In contrast, the minor retailers typically;

- order lower volumes of the prepared or preserved tomatoes on a more ad-hoc basis depending on retail inventory, and
- do not demand private label products (in the case of small independent stores).

FSI segment

The FSI segment can be delineated from the two tiers of the retail market on the basis that buyers within this segment typically demand goods in larger pack sizes due to commercial quantity end-uses. Specifically, SPCA advised that sales into the FSI market are typically in pack sizes in excess of 1.41 liters.

SPCA indicated however that insignificant sales volumes of the goods do occur at this level.

4.3.2 Alternative products

SPCA stated that there are no commercially significant substitutable products with respect to prepared or preserved tomatoes available in the Australian market.

4.3.3 Market Size

The Commission has calculated the market size in 2012 for prepared and prepared or preserved tomato products to be approximately 54,000 kilograms. **See confidential Appendix 2**

4.4 Australian industry information

The company commenced commercial trading as SPCA in 2002, following the merger of two previously unaffiliated commercial entities – Shepparton Preserving Company (SPC) and Ardmona Fruit Products Co-Op (Ardmona).

SPCA is currently a wholly owned subsidiary of Coca Cola Amatil Limited (CCA) following completion of commercial acquisition of SPCA by CCA in 2005.

SPCA incorporates a number of distinct commercial operations related to the production of food products sold into retail and food industry markets in Australia under a number of different proprietary labels³.

SPCA's operates a calendar year for reporting purposes aligning with its parent company CCA. As part of the application SPCA provided CCA's audited financial statements and annual reports for 2011 and 2012.

4.4.1 Australian industry's sales

SPCA provided information in the application, including a summary of domestic and export sales volumes, revenues and rebates as required in Confidential Appendices A2, A3, A4, A5 and A6. Appendix A1 was also provided to substantiate production volumes.

SPCA completed an appendix A6 cost to make and sell spreadsheet for domestic sales. The information provided in appendix A6 included production and sales

³ SPCA advised in its application and associated material that the GUC are produced and marketed exclusively under SPC and Ardmona branding (or private label branding associated with particular Australian customers).

volumes, manufacturing costs, selling, distribution and administrative expenses and sales volumes for the period January 2010 to 31 March 2013.

The Commission examined the detail therein, and link between, these appendices and found they reconciled.

The Commission therefore considers that SPCA's appendices are reliable for preliminarily assessing the economic condition of the industry in respect of prepared or preserved tomatoes.

4.4.2 Other economic factors

SPCA completed Confidential Appendix A7 identifying movements in capital investment, capacity utilisation, inventory, and accounts receivable.

4.4.3 The Commission's assessment – Australian industry

Based on the information in the application, the Commission is satisfied that there is an Australian industry producing like goods to the goods the subject of the application. The Commission is also satisfied that the information contained in the application is sufficient for the purposes of a preliminary analysis of the economic condition of the industry in respect of prepared or preserved tomatoes from 2010 to 2012.

5 REASONABLE GROUNDS – DUMPING

Having regard to the matters contained in the application and to other information considered relevant, there appear to be reasonable grounds to support the claims that:

- prepared or preserved tomatoes have been exported to Australia from Italy at dumped prices;
- the volume of prepared or preserved tomatoes that appears to have been dumped from Italy is greater than 3% of the total Australian import volume of the goods, and therefore is not negligible; and
- the estimated dumping margin for Italy is greater than 2% and is therefore not negligible.

5.1 Legislative framework

Article 5.2 of the World Trade Organisation (WTO) Anti-Dumping Agreement (ADA) states that an application shall include evidence of dumping. It states that simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet this requirement, but such information must be reasonably available to the applicant.

Subsection 269TC(1) of the Act requires that the Commissioner must reject an application for a dumping duty notice if, inter alia, the Commissioner is not satisfied that there appear to be reasonable grounds for the publication of a dumping duty notice.

Under section 269TG of the Act, one of the matters that the Minister must be satisfied of to publish a dumping duty notice is that the export price of goods that have been exported to Australia is less than the normal value of those goods. This issue is considered in the following sections.

5.2 Export prices

5.2.1 SPCA's claims

Using ABS import data for the 2012 calendar year, SPCA calculated the weighted average free-on-board (FOB) unit export price for prepared or preserved tomatoes exported from Italy.

The conversion rate used by SPCA to convert Australian dollars to Euro was the annual average conversion rate of AUD to EURO for the 2012 calendar year.

5.2.2 The Commission's assessment

The Commission compared the export price calculation provided by SPCA with data contained in ACBPS's import database. Prior to making the comparison, the Commission cleansed the ACBPS import data by removing product descriptions that were outside the size range noted in the application and any other product combinations and products that were not identified as prepared or preserved tomatoes. Items identified as purees, sauces, juices etc were removed. The

Commission found that the volume in the ACBPS database was slightly lower than the estimates in the application.

A comparison of FOB export prices shows that SPCA's estimate was approximately 5% higher than import information from ACBPS's import database. The Commission considers that, based on the information submitted in the application, the amounts used by SPCA to estimate FOB export prices for prepared or preserved tomatoes exported from Italy to Australia appear to be reasonable.

A comparison of SPCA's and ACBPS's import volumes and unit price is at **Confidential Appendix 3**.

5.3 Normal values

SPCA calculated normal values by obtaining retail selling prices of prepared or preserved tomatoes on 2 May 2012 in Milan, Italy. The selling prices were gathered from six retail outlets with a total of 69 observations.

The observations included 16 brands, with 35 per cent of the observations being peeled prepared or preserved tomatoes and the remainder as chopped in both 400g and 800g sizes. A per kilogram average price in euros was calculated.

From this retail price SPCA deducted VAT, a retailer's margin and freight. SPCA estimated the retailer's margin using information based on market survey information sourced from 'Euromonitor', a third-party market data source provider. The data was filtered to reflect sales information relating to packaged food only.

5.3.1 The Commission's assessment

The Commission considers that, based on the information submitted in the application, the applicant's estimate of normal values for prepared or preserved tomatoes sold in Italy appear to be reasonable. The applicant has supported its estimates with information that is reasonably available to it and, where assumptions have been made, has explained the basis for those assumptions. Where appropriate, the applicant has used data from independent sources to make adjustments to normal values.

Whilst SPCA did not make any claims about the suitability of domestic sales of like goods on the Italian market, the Commission is aware of publicly available information which may be relevant to the determination of normal values. This information relates to the operation and administration of the European Union's Common Agricultural Policy and its possible impact on the tomato processing sector in Italy.

As a result the Commission intends publishing an issues paper addressing its assessment of the relevant information for interested parties to consider.

5.4 Dumping margins

SPCA calculated a dumping margin of 77 per cent on a per kilo basis, based on the retail selling price adjusted back to ex-works and used an AUD FOB adjusted to Euro, using the yearly average exchange rate.

The Commission considers the calculation to be slightly incorrect as the FOB export value had not been adjusted for inland freight to determine an ex-works value for the purposes of comparison.

The Commission calculates the dumping margin at 82 per cent after adjusting the FOB back to ex works selling terms. See **Confidential Appendix 4**

5.4.1 The Commission's assessment

The Commission is satisfied that, based on the information submitted in the application, SPCA has demonstrated that there appear to be reasonable grounds that prepared or preserved tomatoes have been exported to Australia from Italy at dumped prices.

6 REASONABLE GROUNDS – MATERIAL INJURY CAUSED BY DUMPED IMPORTS

6.1 Findings

Having regard to the information contained in the application and to other information considered relevant, the Commission is satisfied that SPCA appears to have experienced injury in terms of:

- loss of sales volumes;
- loss of market share;
- price depression;
- price suppression;
- reduced revenues;
- reduced profits;
- reduced profitability;
- declining return on investment;
- reduced capacity utilization;
- declining assets employed; and
- reduction in capital investment

6.2 Legislative framework

Subsection 269TC(1) requires that the Commissioner must reject an application for a dumping duty notice or a countervailing duty notice if, *inter alia*, the Commissioner is not satisfied that there appears to be reasonable grounds for the publication of such notices. Under s.269TG of the Act, one of the matters that the Minister must be satisfied of to publish a dumping duty notice is that because of the dumping, material injury has been or is being caused or is threatened to the Australian industry producing like goods.

6.1 Approach to injury analysis

The injury analysis detailed in this section is based on the financial information submitted by SPCA and import data from the ABS and from the ACBPS's import database.

The data was provided in yearly periods from January 2009 to December 2012 with cost to make and selling values provided up until March 2013.

SPCA sells an insignificant portion of goods on the export market. The analysis unless otherwise stated refers to domestic sales and production.

6.2 Applicant's injury claims

In respect of prepared or preserved tomatoes, SPCA claimed that the Australian industry has been injured through:

- loss of sales volumes;
- loss of market share;

- price depression;
- price suppression;
- reduced revenues;
- reduced profits;
- reduced profitability;
- declining return on investment;
- reduced capacity utilization;
- declining assets employed; and
- reduction in capital investment

6.3 Commencement of injury

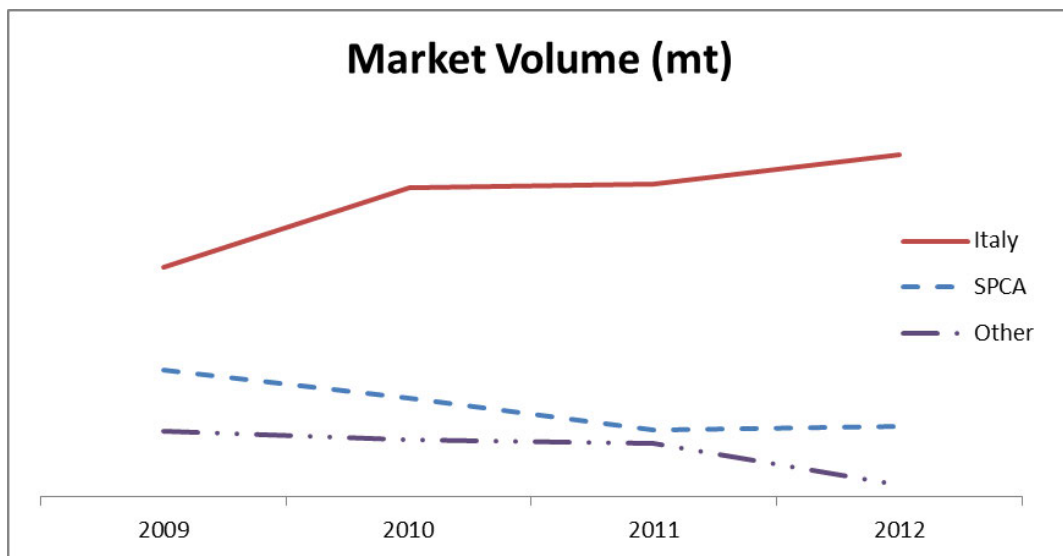
SPCA indicated that since 2009 “there has been significant increase in imported prepared or preserved tomato products entering the Australian Market”.

6.4 Volume effects

6.4.1 Sales volumes

SPCA provided AZTEC market data which provides point of sale records from the major retailers. This data is rounded into 19.8kg volume packets and SPCA needed to make an estimation to calculate the market volume from the major retailers. The Commission considers SPCA’s calculation has omitted a portion of the market that whilst small needs to be considered in the overall context of the Australian volume for prepared or preserved tomatoes. To this end the Commission has used data from ACBP’s import database.

The following graph shows SPCA’s domestic sales volumes for prepared or preserved tomatoes compared to the imported Italian goods and those from other countries during the period January 2009 to December 2012.



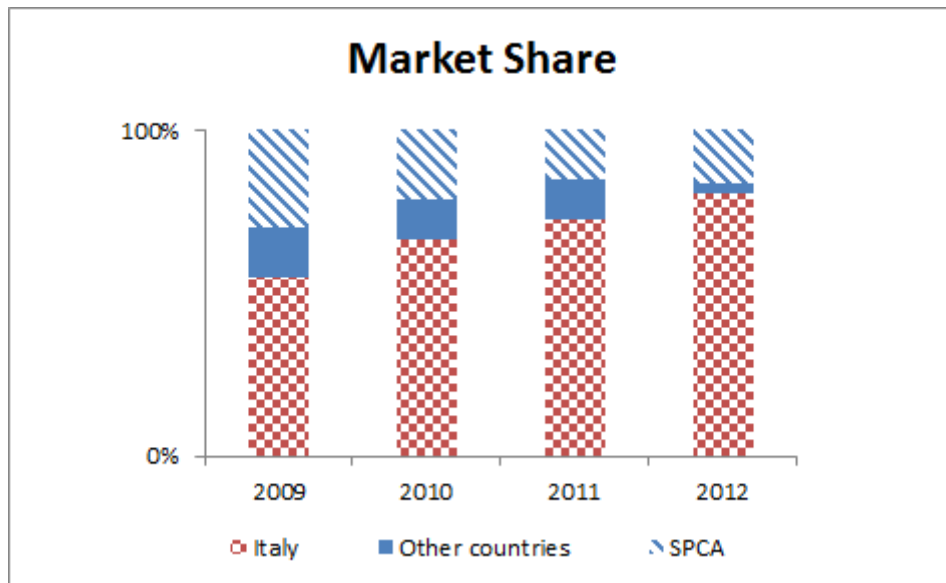
This graph shows that SPCA’s domestic sales volumes of prepared or preserved tomatoes decreased significantly from 2009 to 2011, before a slight increase being experienced in 2012. The decrease coincided with a steady growth in the volume of

Italian prepared or preserved tomatoes. Also notable is the decline in the volume of prepared or preserved tomatoes from other countries.

On face value, there appears to be sufficient evidence to demonstrate that allegedly dumped imports from Italy contributed to the reduced sales volumes by SPCA.

6.4.2 Market shares

Using the point of sale market data, the following graph shows movements in market shares, including SPCA's share, in the Australian market for prepared or preserved tomatoes from year ending 2009 to 2012.



The graph shows that SPCA's market share in the Australian market for prepared or preserved tomatoes decreased each year between 2009 and September 2011, with a slight improvement occurring in 2012. The data indicates that SPCA's market share has decreased approximately 29 per cent whilst the market share for imported goods, with the majority of the import volume being mainly from Italy, has increased by approximately eight per cent over the four year period. In the most recent period, the information shows that SPCA and Italian imports have grown their share of the market at the expense of other import sources.

It is reasonable to consider that SPCA's lost sales volume that can be attributed to allegedly dumped imports from Italy also impacted on its market share. This is supported by the steady reduction in SPCA's share of the market compared to the inverse situation shown for the Italian imports.

6.4.3 Conclusion – volume effects

Based on this analysis, there appear to be reasonable grounds to support the claim that dumped imports have caused injury to the Australian industry in the form of lost sales volume and market share by displacing the sales volume of the Australian industry.

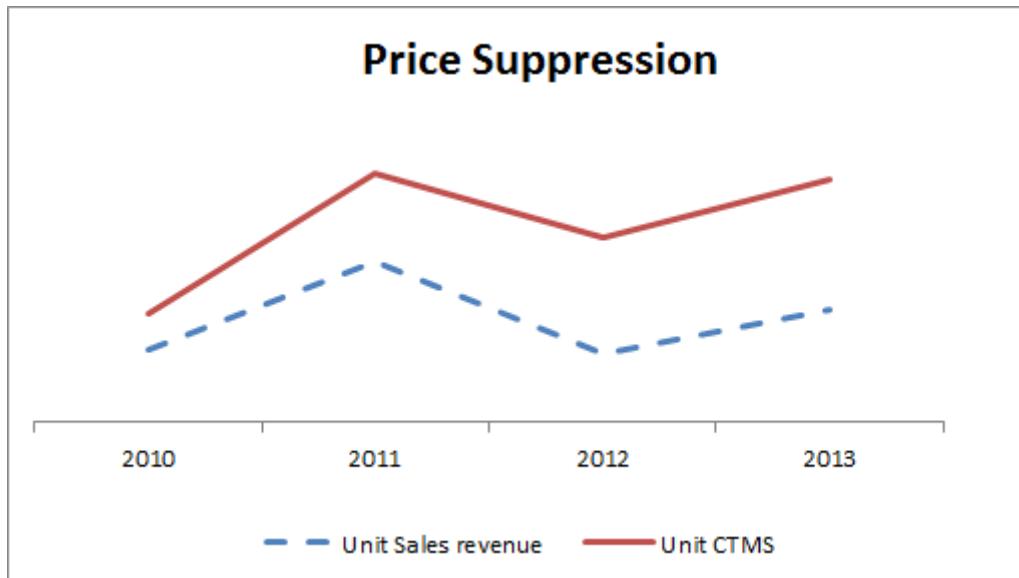
6.5 Price effects

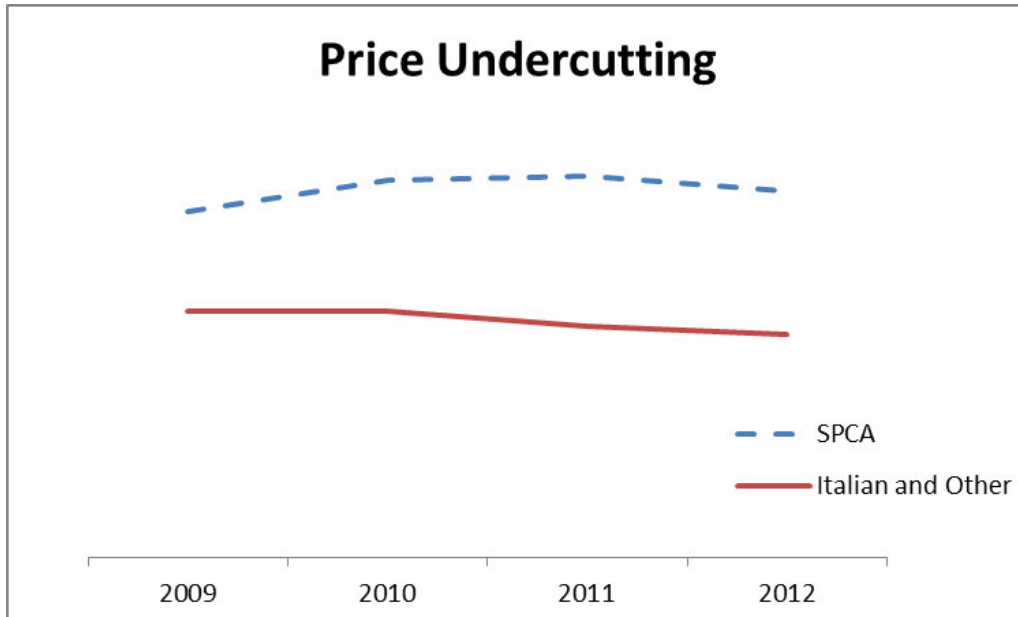
6.5.1 The Commission's assessment

SPCA provided cost to make and sell information from January 2010 to March 2013.

Price depression occurs when a company, for some reason, lowers its prices. Price suppression occurs when price increases, which otherwise would have occurred, have been prevented. An indicator of price suppression may be the margin between revenues and costs.

The following graphs show the movements and relationships of SPCA net revenue and cost to make and sell (CTMS) for prepared or preserved tomatoes from January 2010 to March 2013. The graph below shows that the unit cost to make and sell is increasing at a greater rate than the growth in the unit selling price. More importantly, the data shows that SPCA is unable to recover its costs.





Price undercutting is a key indicator and tool for examining whether a causal link exists between competing products. The graph above uses point of sale data provided in SPCA's application to show the retail selling prices achieved by the major retailers for various prepared or preserved tomato products. The Commission considers that retail shelf prices to be a reasonable indicator of the price competition between suppliers selling their product to the retailers.

The graph indicates that SPCA's selling prices are considerably higher and from 2011 its prices have followed the movements of the sales prices of the imported prepared or preserved tomatoes. Importantly, the data shows that when SPCA was increasing its prices, its volume decreased reflecting the substitutability of the Australian industry's products with the imported products and also the likelihood that price was a primary factor in consumer purchasing decisions.

Following an examination of the price suppression and undercutting graphs, the Commission considers SPCA is unable to increase its selling prices to retailers due to the strong price competition from imported products on the retail shelves of those retailers. Accordingly SPCA has not been able to increase its selling prices to its customers to match the increasing costs to make and sell the goods.

6.5.2 Conclusion – price effects

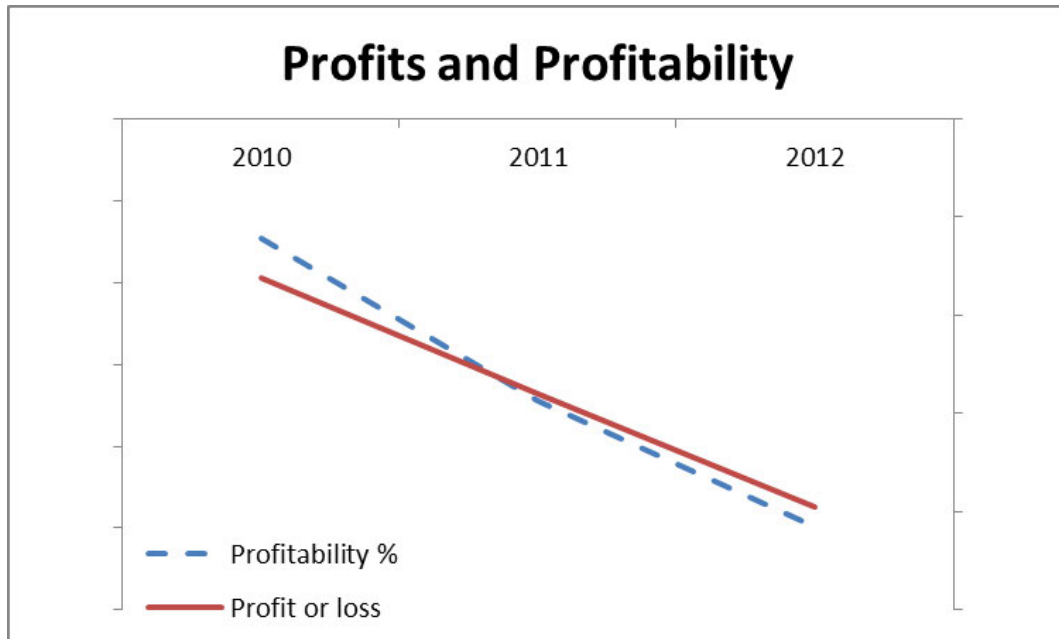
Based on this analysis, there appears to be reasonable grounds to support the claim that dumped imports have caused injury to the Australian industry in the form of price suppression by undercutting the applicant's selling prices.

The graphs support SPCA claims of price depression and price suppression.

6.6 Profit effects

6.6.1 The Commission's assessment

The following graph shows movements in SPCA total profits and profitability (profits measured as a percentage of revenue) for prepared or preserved tomatoes between January 2010 to December 2012.



This graph shows significant decreases in SPCA profitability over the period. SPCA has recorded an improvement of its profit to March 2013 however the Commission considers that this result is not fully representative as it is only for a three month period. Despite the 2013 result, from 2009 to 2012 profit has decreased in respect of prepared or preserved tomatoes. The decrease in profits and profitability is a function of higher costs and falling volumes. Due to the substitutability of the goods, SPCA is not able to increase its prices without a corresponding negative effect on the sales volumes of its prepared and prepared or preserved tomatoes.

6.6.2 Conclusion – profit and profitability effects

Based on this analysis, there appears to be reasonable grounds to support the claim that dumped imports have caused injury to the Australian industry in the form of reduced profits and profitability.

6.6.3 Other economic factors SPCA claims

SPCA completed a Confidential Appendix A7 for prepared or preserved tomatoes for the period 2010 to March 2013. SPCA claims that it has experienced injury in respect of the following other injury factors:

- Reduced assets for the production of prepared or preserved tomatoes
- Reduced capital investment;
- reduced domestic revenues;

- reduced capacity;
- reduced capacity utilization;
- reduced inventory; and
- reduced accounts receivable.

The Commission has reviewed the data contained in Confidential Appendix A7 and identified, in respect of prepared or preserved tomatoes, the following trends for other injury factors.

- Assets: The value of assets used in the production of prepared or preserved tomatoes decreased over the period.
- Capital investment: The level of capital investment in relation to the production of prepared or preserved tomatoes decreased over the period.
- Revenue: The revenue in relation to sales of prepared or preserved tomatoes decreased over the period.
- Capacity: The production capacity in relation to prepared or preserved tomatoes reduced marginally in 2010 and has remained stable since.
- Capacity utilisation: Capacity utilisation in relation to production of prepared or preserved tomatoes decreased from 2010 to 2011 with a slight improvement in 2012.
- Inventory: Finished goods inventory in relation to production of prepared or preserved tomatoes decreased from 2010 to 2011 with a slight improvement in 2012.
- Accounts receivable: The level of accounts receivable in relation to the production of prepared or preserved tomatoes decreased over the period.

6.6.4 The Commission's assessment – other economic / injury factors (including revenue effects)

Based on the information contained in the application there appear to be reasonable grounds to support the claim that SPCA has experienced injury in the form of:

- Reduced assets for the production of prepared or preserved tomatoes
- Reduced capital investment;
- reduced domestic revenues;
- reduced capacity;
- reduced capacity utilization;
- reduced inventory; and

6.7 Comparison of export price and non-injurious price

The Commission has undertaken a preliminary calculation of the non-injurious price and compared that to the FOB export price.

To calculate the non-injurious price, the Commission used SPCA's 2012 cost to make and sell from Appendix A.6 of the application and compared that to the FOB value derived from the ABS.

The Commission found the NIP to be significantly higher than the FOB price into Australia. **Confidential Appendix 5**

6.8 Conclusion on material injury caused by dumped imports

Based on the preliminary analysis detailed above, there appear to be reasonable grounds to support the claim that SPCA has experienced injury in the form of:

- loss of sales volumes;
- loss of market share;
- price depression;
- price suppression;
- reduced revenue;
- reduced profits; and
- reduced profitability.

The degree of injury experienced by SPCA in terms of volume, price and profit factors appears to be material.

The Commission's assessment of the economic condition on the Australian prepared or preserved tomatoes industry is at **Confidential Appendix 5**.

On the available information, the injury caused by the alleged dumping appears to be material and caused by imported prepared or preserved tomato products exported to Australia from Italy.

7 CONCLUSION

The Commission has examined the application and is satisfied that:

- the application complies with subsection 269TB(4); and
- there is an Australian industry in respect of like goods; and
- there appear to be reasonable grounds for the publication of dumping duty notice in respect of the goods the subject of the application.

For the purposes of the investigation:

- the investigation period to determine whether dumping and/or subsidisation has occurred will be from 1 July 2012 to 30 June 2013; and
- The Commission will examine the Australian market and the economic condition of the industry from 1 January 2009 to 30 June 2013 for the purposes of injury analysis.

Accordingly, the delegate of the Commissioner has not rejected the application for the publication of a dumping duty notice under subsection 269TB(1).

8 APPENDICES AND ATTACHMENTS

APPENDIX	Title
Appendix 1	Public notice
Confidential Appendix 2	the Commission's estimate of the Australian market for prepared or preserved tomatoes
Confidential Appendix 3	Comparison of SPCA's and the Commission's import volumes and unit values
Confidential Appendix 4	the Commission's dumping margin calculations
Confidential Appendix 5	Assessment of the economic condition of the Australian preserved tomatoes industry