



Australian Government
Productivity Commission

Safeguards Inquiry into the Import of Processed Fruit Products

Productivity Commission
Accelerated Report

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18 September 2013

The Hon Joe Hockey MP
Treasurer
Parliament House
CANBERRA ACT 2600

Dear Treasurer

In accordance with Section 11 of the *Productivity Commission Act 1998*, we have pleasure in submitting to you the Commission's accelerated report on *Safeguards Inquiry into the Import of Processed Fruit Products*.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Peter Harris'.

Peter Harris
Presiding Commissioner

A handwritten signature in black ink, appearing to read 'Paul Barratt'.

Paul Barratt
Associate Commissioner

Terms of reference

SAFEGUARDS INQUIRY INTO THE IMPORT OF PROCESSED FRUIT PRODUCTS

Productivity Commission Act 1998

I, David Bradbury, Assistant Treasurer, pursuant to Parts 2 and 3 of the Productivity Commission Act 1998, hereby request that the Productivity Commission undertake an inquiry into whether safeguard action is warranted against imports of the following processed fruit products of the Australian Customs Tariff:

- 2008.30.00 Citrus fruit;
- 2008.40.00 Pears;
- 2008.50.00 Apricots;
- 2008.70.00 Peaches, including nectarines;
- 2008.97.00 Mixtures;
- 2008.99.00 Other.

The inquiry is to be undertaken in accordance with the World Trade Organization (WTO) safeguard investigation procedures published in the Gazette of S297 of 25 June 1998, as amended by No. GN 39 of 5 October 2005.

The Commission is to report on:

- whether conditions are such that safeguard measures would be justified under the WTO Agreement;
- if so, what measures would be necessary to prevent or remedy serious injury and to facilitate adjustment; and
- whether, having regard to the Government's requirements for assessing the impact of regulation which affects business, those measures should be implemented.

In undertaking the inquiry, the Commission is to consider and provide an accelerated report on whether critical circumstances exist where delay in applying measures would cause damage which it would be difficult to repair. If such circumstances exist, and pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury, the Commission is to recommend what provisional safeguard measures (to apply for no more than 200 days) would be appropriate.

The Commission is to provide the accelerated report to the Government as soon as possible but not later than 3 months and a final report within 6 months of receipt of this reference. The reports will be published as soon as practicable.

The Commission is to consult widely, hold hearings and call for submissions for the purpose of the inquiry.

David Bradbury
Assistant Treasurer

Received 25 June 2013

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1 About the inquiry

1.1 What the Commission has been asked to do

On 21 June 2013, the Australian Government asked the Commission to inquire into whether safeguard action under World Trade Organization (WTO) rules is justified against imports of selected processed fruit products falling within subheading 2008 of the Australian Customs Tariff. The subheading is defined as:

Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included.

As specified in the terms of reference, the inquiry covers products under the following tariff classifications:

- 2008.30.00 (citrus)
- 2008.40.00 (pears)
- 2008.50.00 (apricots)
- 2008.70.00 (peaches)
- 2008.97.00 (mixtures)
- 2008.99.00 (other).

The terms of reference are reprinted at the beginning of this report.

Safeguard action is temporary, ‘emergency action’ (using tariffs, tariff-quotas or quotas) implemented in situations where a surge of imports causes or threatens to cause serious injury to a domestic industry. Safeguard measures may be applied for up to four years, and may be extended for a further four years, subject to several conditions (Commonwealth of Australia Special Gazette No. S 297, 1998).

The Commission is to provide a report to the Australian Government by 20 December 2013 on whether safeguard measures are justified. In addition, the Commission is to provide an ‘accelerated report’ by 20 September 2013, as to whether *provisional* safeguard measures should be put in place.

According to Article 6 of the WTO Agreement on Safeguards, provisional measures may be implemented:

[i]n critical circumstances where delay would cause damage which it would be difficult to repair ... pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury.

The terms of reference require the Commission to conduct the safeguards inquiry in line with the criteria set out in the Commonwealth of Australia Special Gazette No. S 297, as amended by No. GN 39 (reprinted in appendix B). These criteria largely mirror the terms of the Agreement on Safeguards. They stipulate that before recommending any safeguard measures, the Commission must:

- determine whether safeguard measures would be justified under the WTO Agreement and, if so,
- consider what measures would be necessary to prevent or remedy serious injury and to facilitate adjustment.

Australia's procedures for safeguards inquiries go beyond what is essential under the WTO Agreement. In assessing whether measures should be implemented, the Commission must also have regard to the Government's requirements for assessing the impact of regulation which affects business. This requires the Commission to subject any proposed measures to a regulatory impact assessment of the community-wide costs and benefits, before making a recommendation.

Under WTO rules, a government can only take safeguard action (whether final or provisional) if its 'competent authority' finds that action is justified. Although the government can choose not to act, if it does take action it cannot impose measures greater than those considered appropriate by the authority (in this case, the Productivity Commission).

1.2 Background

This inquiry, together with the concurrent safeguards inquiry into the import of processed tomato products, was prompted by industry concern about the impact of import competition. Specifically, it follows a request by SPC Ardmona (a food processing company) to the Australian Government to apply safeguard measures to the import of certain processed fruit products.

SPC Ardmona also applied for anti-dumping measures on prepared or preserved peach products imported from South Africa. An investigation was initiated by the Anti-Dumping Commission on 10 July 2013.

Anti-dumping measures are distinct from safeguard measures. Anti-dumping duties can be applied in circumstances where products are sold into the domestic market at ‘dumped’ prices and this is causing or threatening to cause *material* injury to the domestic industry. Safeguard measures can be applied if imports have increased rapidly, and this increase is causing or threatening to cause *serious* injury to the domestic industry. For safeguard measures, there is no requirement that the increased imports are being ‘dumped’. Although the WTO Agreement on Safeguards provides no clear guidance on what constitutes serious injury, it is consistently interpreted as being a more demanding test than the material injury test applying in anti-dumping.

Following investigations, anti-dumping and countervailing duties (which can be applied to offset the trade effects of subsidies paid by foreign governments) have been applied to processed peach and pear products in the past (box 1.1).

Box 1.1 Anti-dumping measures applied to processed fruit imports

- **November 1991:** Anti-dumping duties were applied to imports of canned pears from China. (Under Australia’s anti-dumping legislation, anti-dumping measures automatically expire after five years, unless they are revoked earlier or an application for continuation is accepted.)
 - In 1996, the Canned Fruits Industry Council of Australia, acting on behalf of Ardmona Foods Limited and SPC Limited, applied to have the anti-dumping duties on canned pears from China continued for another five years from November 1996. The Anti-Dumping Authority found that such a continuation was not warranted, and (following ministerial acceptance of its recommendation) the duty expired in November 1996.
- **February 1992:** Anti-dumping duties were applied to imports of canned peaches from Greece and China, and countervailing duties were applied to imports of canned peaches from Greece and Spain.
 - In 1996, the Canned Fruits Industry Council of Australia applied for the continuation of these measures. The Anti-Dumping Authority found that such a continuation was not warranted, except in the case of the countervailing measures against canned peaches from Greece, and so the other measures expired in February 1997.
 - In 2001, another continuation inquiry was undertaken by the Australian Customs Service in relation to the countervailing measures against canned peaches from Greece. The measures were extended for a further five years, and expired in February 2007.
- **June 2013:** SPC Ardmona applied for anti-dumping duties on prepared or preserved peach products exported from South Africa, and the Anti-Dumping Commission subsequently initiated an investigation on 10 July 2013.

Sources: Anti-Dumping Commission (2013); Australian Customs Service (1996).

This safeguards inquiry relates only to imports of processed fruit products falling within the tariff subheadings nominated in the terms of reference. These subheadings are defined in detail as follows:

- 2008.30.00 — citrus fruit (prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included)
- 2008.40.00 — pears (prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included)
- 2008.50.00 — apricots (prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included)
- 2008.70.00 — peaches, including nectarines (prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included)
- 2008.97.00 — mixtures (prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included)
- 2008.99.00 — other (prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included), **not** including
 - 2008.20.00 (pineapples)
 - 2008.60.00 (cherries)
 - 2008.80.00 (strawberries)
 - 2008.91.00 (palm hearts)
 - 2008.93.00 (cranberries).

The specified individual tariff subheadings are the highest level of disaggregation at which the Commission may conduct its analysis for the purpose of determining the relevant domestic producers or the injury.

Importantly, the tariff classifications under reference do not specify the size or type of packaging of the product (in contrast to the classifications for the tomato safeguards inquiry). The majority of prepared or preserved fruit products sold at retail level are packed into cans and rigid plastic containers ranging in size from single-serve (typically between 90 and 150 grams) to multi-serve containers of up to 1.5 kilograms (SPC Ardmona, sub. 39). Processed fruit products are also sold in bulk packaging directly to the food service industry.

In its submission to this inquiry, SPC Ardmona sought to have safeguards applied to a different subset of products — ‘multiserve fruit’. However, for reasons set out in

box 1.2, the Commission considers that the relevant domestic products for this inquiry must align with the tariff classifications and hence encompass all corresponding processed fruit irrespective of the nature or size of packaging.

Box 1.2 Can the definition of products under reference be changed?

SPC Ardmona sought safeguard action only on processed fruit in multi-serve cans and plastic containers of sizes 300 grams to 1.5 kilograms. For processed peaches, this narrower subset is consistent with the product definition in SPC Ardmona's anti-dumping application currently before the Anti-Dumping Commission.

As is the case in the concurrent safeguard inquiry into processed tomato products, the Commission's assessment is that it is not inconsistent with the Agreement on Safeguards for the **terms of reference** to refer to a product that is narrower in scope than the eight-digit tariff heading so long as the domestic industry producing the like or directly competitive product is properly defined. However, for this inquiry, the definition of the products under consideration is as specified in the **terms of reference**.

In addition, any attempt to narrow the product description in the World Trade Organization notification and in the **terms of reference** would raise issues for two key aspects of the safeguards investigation, namely:

- obtaining clear evidence of changes in imports (given that the Australian Bureau of Statistics does not separately identify imports at this level of detail)
- defining 'like or directly competitive' products (those products would not necessarily be restricted to the narrower product description).

Sources: SPCA (sub. 39).

At present, imports of mixtures and citrus fruit have no tariff applied to them. There is also no tariff on imports from New Zealand, Singapore, the United States, Thailand, Chile, Forum Island Countries (including Papua New Guinea) and ASEAN countries. Imports from countries defined as 'Developing Countries' or 'Least Developed Countries' in Schedule 1 of the Australian Customs Tariff also enter free of duty under certain conditions. The tariff rate on the remaining imports is currently set at **5 per cent**. (The tariff rate for most imports into Australia is either zero or 5 per cent.)

Processed fruit products falling within the relevant tariff subheading are imported mostly from South Africa and China, with Greece and Turkey being key source countries for peaches and apricots respectively. Over the five years to June 2013:

- South Africa supplied 29 per cent of imported processed pears, 48 per cent of apricots, 45 per cent of peaches and 24 per cent of mixtures
- China supplied 66 per cent of imported processed citrus products, 47 per cent of pears, 19 per cent of apricots, 29 per cent of peaches and 40 per cent of mixtures

-
- Greece supplied about 15 per cent of imported processed peaches
 - Turkey supplied 30 per cent of imported processed apricots.

1.3 Inquiry procedures and consultation

The WTO Agreement on Safeguards requires safeguards inquiries to be conducted in an open and transparent manner, with opportunities for interested parties to present their views and to respond to the views of others. Reflecting these requirements, Commonwealth of Australia Special Gazette No. S 297 states that:

- reasonable public notice must be given to all interested parties in accordance with section 14 of the *Productivity Commission Act 1998* (Cwlth)
- the inquiry must involve public hearings or other appropriate means in which importers, exporters and other interested parties can present evidence and their views, including the opportunity to respond to the presentations of other parties and to submit their views, *inter alia*, as to whether or not the application of a safeguard measure would be in the public interest.

These requirements accord with Productivity Commission public inquiry procedures.

Public notification

The Australian Government commissioned the inquiry on 21 June 2013 and formally notified the WTO of the safeguards investigation on 2 July 2013. Countries that account for large shares of Australian imports were formally notified by the Department of Foreign Affairs and Trade.

The inquiry was advertised in the *Age*, *Australian*, *Shepparton News* and *Weekly Times* newspapers following receipt of the terms of reference. In early July 2013, an email circular was sent to individuals and organisations that had registered their interest or were considered likely to have an interest in the inquiry. The advertisements and circular outlined the nature of the inquiry and invited parties to register their interest. An issues paper setting out matters about which the Commission was seeking comment and information was released on 4 July 2013. The issues paper was sent to interested parties and was placed on the Commission's website.

Informal consultation

Informal meetings and visits were conducted in the early stages of the inquiry with SPC Ardmona, Coles Supermarkets and Australian Government departments. The Commission also held an informal roundtable in Shepparton on 12 July 2013, with representatives from the processing industry, fruit growers and others. Appendix A contains the full list of those consulted.

Data provision

Key data used by the Commission in its analysis were placed on its website to enable feedback and to facilitate their use by participants in the inquiry.

Submissions

Given the timeframe for the accelerated report, participants were requested to provide initial submissions by 18 July 2013. Sixty-one submissions were received and all non-confidential submissions were posted on the Commission's website as soon as possible (box 1.3). Where submissions contained commercial-in-confidence information, however, the relevant sections were not published or were redacted. Appendix A lists all submissions received.

A number of foreign governments stated in their submissions and at the initial public hearing that they did not have adequate information to make a submission to the inquiry by the due date. In particular, they stated that the decision by SPC Ardmona not to provide a non-confidential summary of its application for safeguard measures limited the ability of interested parties to respond to the specifics of the claim.

SPC Ardmona's initial submission to this inquiry was confidential and lodged at the deadline. A non-confidential summary of the submission was provided on 22 July 2013, and was available to interested parties on 23 July 2013. In the interests of fairness and due process, the Commission made efforts to accommodate interested parties that were affected by SPC Ardmona's delay in providing public information about its claims, including by accepting submissions after the due date.

Initial public hearing and transcripts

A public hearing was held in Canberra on 30 July 2013. Participants are listed in appendix A and a transcript is available on the Commission's website.

Box 1.3 **An overview of participants' views**

Normally in its inquiry reports, the Commission extensively cites views put to it in submissions and at public hearings. In the time available, this has not been possible for this accelerated report, although all submissions have been read and taken into account.

- Of the 61 submissions received to date, about half (31) were from industry participants and suppliers to SPC Ardmona (including 21 from fruit growers and grower organisations). Virtually all argued that increased imports were the principal cause of reduced profitability and losses, and most supported safeguard measures to reduce imports.
- Individuals and consumer groups, local governments, trade unions and members of parliament generally supported the case for safeguard action, arguing that the closure of SPC Ardmona's facilities would have significant flow-on impacts on the region.
- Supermarket companies provided evidence on the retail performance of Australian and imported processed fruit and the performance of the processed fruit category as a whole (as well general information on policies to source products domestically where possible), without arguing for or against safeguard measures.

Eighteen submissions were received from representatives of industries in countries that export to Australia and their governments, with most arguing that the circumstances of the Australian industry did not satisfy the safeguard criteria. Some governments submitted that exports from their country were eligible to be excluded from the application of any safeguard measures.

Release of report

This accelerated report on provisional measures is a report in its own right (not a draft report). The terms of reference state that both the accelerated and final reports will be published as soon as practicable after their delivery to government.

Next steps

This report presents the Commission's assessment as to whether *provisional* safeguard measures should be put in place for up to 200 days. The final safeguards report, due by 20 December 2013, will determine whether there is a case for definitive safeguard measures (which can apply for up to four years) and will consider further a number of issues raised in this accelerated report.

1.4 What are the requirements for provisional measures?

As set out in the terms of reference, provisional measures can be recommended only where it is found that ‘critical circumstances’ exist such that delay in applying measures would cause damage that would be difficult to repair (box 1.4). Although this is a necessary condition, it is not a sufficient condition for the imposition of provisional measures. A recommendation for provisional measures also requires a preliminary determination that there is *clear evidence* that increased imports have *caused* or are threatening to cause *serious* injury to the domestic industry.

Box 1.4 Requirements for provisional measures

In undertaking the inquiry, the Commission is to consider and provide an accelerated report on whether critical circumstances exist where delay in applying measures would cause damage which it would be difficult to repair. If such circumstances exist, and pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury, the Commission is to recommend what provisional safeguard measures (to apply for no more than 200 days) would be appropriate.

Sources: Terms of Reference; Commonwealth of Australia Special Gazette No. S 297 (1998).

A high standard of evidence and analysis is required to determine the case for provisional safeguard measures. Determinations that are not based on a high standard of evidence and analysis could be vulnerable to challenge by other nations under WTO dispute resolution procedures (see, for example, *EC – Provisional Steel Safeguards* (DS 260)). If provisional safeguard measures are revoked following a successful challenge or because the findings in the final report on definitive safeguards do not support ongoing safeguards, the value of the measures (tariff revenue) must be refunded to importers.

Applying a high standard is consistent with the stated position of the Australian Government, which as a member of the ‘Friends of Safeguards Procedures’ group of WTO member countries, has stated that it has concerns with the poor quality of some countries’ determinations on provisional safeguards (WTO 2012).

Accordingly, the Commission considers that a preliminary determination requires that all matters relevant to a safeguards inquiry need to be considered. However, given the accelerated nature of the investigation and its preliminary status, such considerations are to a lesser extent than those of the full investigation.

What requirements must the Commission's analysis adhere to?

Safeguards investigations and measures must comply with rules and criteria established under the WTO Agreement on Safeguards (1994) and the GATT Article XIX on emergency action (1994), and have regard to subsequent WTO panel and appellate body decisions interpreting those requirements.

Member countries can only impose safeguard measures if the competent authority determines that safeguard measures are justified under the WTO Agreement. Australia's procedures for safeguards inquiries are set out in the Commonwealth of Australia Special Gazette No. S 297. In line with the Agreement on Safeguards, this requires that:

... the product under reference is being imported into Australia in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products. (Commonwealth of Australia Special Gazette No. S 297, 1998)

As clarified in subsequent WTO panel and appellate body decisions, these conditions must be read in conjunction with GATT Article XIX, which provides that action can only be taken if increased imports have occurred as a result of 'unforeseen developments'.

To assess the case for provisional safeguard measures, the Commission has partitioned the WTO criteria into five distinct and sequential steps.

1. Define the domestic industry that produces 'like' or 'directly competitive' products.
2. Assess whether there has been an increase in imports of the product under reference in absolute terms, or relative to domestic production.
3. Establish whether the increase in imports was due to unforeseen developments.
4. Establish whether the relevant industry is suffering serious injury, or serious injury is being threatened.
5. Establish whether the increased imports *caused* or are *threatening to cause* serious injury.

The Commission will also examine whether the aforementioned 'critical circumstances' required for provisional measures (box 1.4) exist.

The determination must also be in accordance with the Productivity Commission Act, which requires that the Commission be guided by the interests of the community as a whole, not just those of any particular industry or group. In

addition, before safeguard measures can be implemented in Australia, the terms of reference require that regard must be given to the Government's requirements for assessing the impact of regulation which affects business.

2 Assessing the case for provisional measures

Provisional safeguard measures can only be recommended subject to a preliminary determination that there is *clear evidence* that increased imports have *caused* or are threatening to cause *serious* injury to the domestic industry, and that ‘critical circumstances’ exist such that delay in applying measures would cause damage which would be difficult to repair. These matters are assessed in the following sections.

2.1 Which Australian industry produces ‘like’ or ‘directly competitive’ products?

The World Trade Organization (WTO) Agreement on Safeguards defines the ‘domestic industry’ as comprising the producers as a whole of ‘like or directly competitive products’, or whose collective output constitutes a major proportion of the total domestic production of those products. Thus, a first step is to establish which domestically manufactured products are *like*, or *directly competitive* with, the products specified in the terms of reference.

Products under reference

The inquiry covers selected processed fruit products within subheading 2008 of the Australian Customs Tariff. The subheading is defined as:

Fruit, Nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included.

The following products fall within the Tariff subheadings specified in the terms of reference:

- 2008.30.00 — Citrus fruit (prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included)

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- 2008.40.00 — Pears (prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included)
 - 2008.50.00 — Apricots (prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included)
 - 2008.70.00 — Peaches, including nectarines (prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included)
 - 2008.97.00 — Mixtures (prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included)
 - 2008.99.00 — Other (prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included). This category comprises various processed fruit products, including (among others):
 - preserved apples and apple blends
 - plums and prunes preserved in syrup
 - berries (excluding cherries, strawberries and cranberries)
 - tropical fruit, such as mango and passionfruit (but excluding pineapples)
 - other exotic fruit, such as lychees, longan, rambutan, jackfruit, guava, papaya and figs.

For the remainder of the report, the Commission has referred to the products under reference by the type of fruit covered by the Tariff subheading, rather than their respective Tariff subheadings.

What are ‘like’ and ‘directly competitive’ products?

‘**Like product**’ means a product which is identical, i.e. *alike in all respects* to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics *closely resembling* those of the product under consideration (Commonwealth of Australia Gazette, S 297) [italics added].

The term ‘**directly competitive products**’ has not been defined in the Agreement on Safeguards or Article XIX of the GATT. However, it has been interpreted, on occasion, by the WTO as including products that are not identical, provided they compete in the same market (for example, *Japan – Alcoholic Beverages II* (DS 8, 10, 11)).

Preliminary assessment — processed citrus products

The Commission has examined retail data of supermarket sales of processed fruit products over the past five years and has found that this Tariff subheading comprises a narrow band of products, consisting primarily of processed mandarin and grapefruit segments (Aztec unpublished). The volume of imports under this Tariff subheading is significantly smaller than those of other products under reference, and so far the Commission has not found any domestically produced products that would fall within it. Moreover, neither the applicant for safeguard measures, nor any other interested party submitted that the import of products under this Tariff subheading is causing or threatening to cause serious injury to domestic producers. Therefore, the Commission has concluded that provisional safeguard measures for imported products under the Tariff subheading 2008.30.00 are not warranted.

FINDING 2.1

Provisional safeguard measures are not warranted for processed citrus products, because there appears to be no domestic industry producing like or directly competitive products.

Preliminary assessment — processed pears, apricots and peaches

The Commission has determined that for each type of fruit, the domestic products and imported products that fall within the same Tariff subheading are like or directly competitive products.

The imported and domestically produced products have a similar composition and ingredients, consisting primarily of the relevant fruit and similar preserving liquids (water, syrup or juice). The products are also available in the same cuts (whole, halves, slices and diced) and similar types and sizes of packaging (SPC Ardmona, Aztec unpublished).

Preliminary assessment — processed mixtures

This Tariff subheading covers a heterogeneous group of mixed fruit products, including (among others):

- various combinations of peaches, pears and apricots
- tropical and exotic fruit mixtures
- fruit and berry mixtures.

Analysis of supermarket sales data indicates that for most of the products imported under this Tariff subheading, there are domestically manufactured products comprising similar packaging types and sizes and similar or identical combinations of fruit. The Commission has determined that the imported and domestically manufactured products within this Tariff subheading are like or directly competitive with each other.

Preliminary assessment — other processed fruit

This Tariff subheading is a ‘residual’ category for processed fruit and is broad and heterogeneous. Analysis of retail data indicates that some of the products imported under this Tariff subheading are also manufactured domestically, and would be like or directly competitive with the corresponding imported products. These include:

- processed apple products
- processed blueberries
- processed plums and prunes
- processed mangoes.

However, several products are not produced domestically at a reportable volume. These include most tropical and exotic fruit, such as passionfruit, lychees, figs and guava, as well as some processed berries.

The Commission has determined that only some of the imported products under Tariff subheading 2008.99.00 have like or directly competitive products that are domestically produced.

Fresh fruit is not ‘like or directly competitive’ with the products under reference

The Commission has examined the case for fresh fruit being like or directly competitive with the products under reference.

Although processed and fresh fruit products are to some degree substitutable and in competition with each other, the relationship is insufficiently close for fresh fruit to be considered ‘directly competitive’. Fresh fruit and processed fruit have distinct physical characteristics and involve different production processes. The processing of fruit typically involves cutting and cooking the fruit and materially transforms the fruit from its original state. Second, the potential end uses of the two products are not identical, with fresh fruit allowing a broader range of applications.

Who are the domestic producers of the like and directly competitive products?

Processed pears, apricots and peaches

The only party that has registered an interest in this inquiry as a domestic producer is SPC Ardmona. This is consistent with the Commission's examination of national supermarket sales data and other investigations to date, which have identified SPC Ardmona as the only domestic producer of these products. SPC Ardmona produces own brand and private label products in these categories. The preliminary assessment is that SPC Ardmona's production constitutes a major proportion of the total domestic production of processed pears, apricots and peaches.

Processed mixtures

Analysis of national supermarket sales data has revealed three domestic producers other than SPC Ardmona — Golden Circle, Kidsnak and Rafferty's Garden. Those producers collectively accounted for about 15 per cent of the *domestic share* of supermarket sales of fruit mixtures in 2012-13, and less than 10 per cent of total retail sales of fruit mixtures. Golden Circle, Kidsnak and Rafferty's Garden did not register an interest in the inquiry. The Commission has determined that SPC Ardmona's production, which is sold under both own and private label brands, constitutes a major proportion of the domestic production of the products under this subheading.

FINDING 2.2

SPC Ardmona accounts for a major proportion of the domestic production of processed pear, apricot, peach and fruit mixture products.

Other processed fruit

Analysis of supermarket sales data in this category also identified three domestic producers other than SPC Ardmona — Rafferty's Garden, Kidsnak and Riverina Grove. Those producers collectively accounted for about 3 per cent of the *domestic share* of retail sales of 'other' fruit in 2012-13, and less than 2 per cent of total retail sales of 'other' fruit. The Commission has determined that SPC Ardmona's production constitutes a major proportion of the *domestic production* of the products under this subheading.

SPC Ardmona has advised that products under this Tariff subheading are a minor part of its business and are not of significance to the domestic industry (SPC Ardmona, Melbourne, pers. comm., 7 August 2013). Consequently, the imports of those products have little potential to contribute to any injury to the domestic industry. The Commission has determined that safeguard measures for products under this Tariff subheading are not warranted.

FINDING 2.3

Provisional safeguard measures are not warranted for ‘other’ processed fruit products. The domestically produced products that are like or directly competitive with the imported products appear to be an insignificant part of the domestic industry’s business. Therefore, there is little potential for imports of processed other fruit to be a contributor to any injury suffered by the domestic industry.

Domestic producers who are not selling through retail channels

Preliminary analysis has not identified any domestic producers that sell their product entirely through non-retail channels. This category could include, for example, processors supplying their product in bulk to the food services industry, as well as processors supplying other processors with ingredients for further processing.

In the issues paper it was indicated that such processors would form part of the domestic industry. However, no submissions have been received to indicate their existence. Subsequent consultations with stakeholders have also failed to identify whether such processors exist.

On the basis of the above information, the domestic industry comprises producers identified in the preceding sections.

Fruit growers do not produce like or directly competitive products for safeguards purposes

Some growers are significantly affected by the business decisions and performance of the producers of processed fruit. The Commission has received many submissions and has evidence from other sources to that effect. In some cases, reductions in the contract quotas offered by the processor have necessitated the termination or significant restructure of the affected grower’s business (box 2.1).

Box 2.1 **Impact on fruit growers**

The Commission received more than a dozen initial submissions from growers of fruit for processing, as well as from industry organisations and local government. Most growers described similar circumstances: after operating for several decades (often as a family business), they have faced reductions in demand for their fruit, and as a consequence have reduced their plantings and have concerns for their future viability.

According to the Australian Canning Fruitgrowers Association (sub. 41), 61 growers lost their entire peach and pear quotas with SPC Ardmona (SPCA), while 53 growers would continue to supply the cannery in 2014. For many growers, their supply to SPCA generates between 80 and 100 per cent of their income (subs. 3, 5, 8, 9, 11, 14, 19, 42), and so the reduced processing fruit intake has a large impact upon their businesses. For others, SPCA is responsible for a lesser proportion (between 20 and 60 per cent) of their income (subs. 7, 12, 15, 16), as they also supply fresh fruit markets, or undertake other income-generating activity.

Growers have generally responded to the reduced fruit intakes by removing trees. Some indicated that the varieties they grow are unsuitable for fresh markets (subs. 1, 34), although others noted that diversion of excess fruit to fresh markets has contributed to oversupply and depressed prices (subs. 2, 13, 34). The Australian Canning Fruitgrowers Association claimed that there has been an oversupply of fresh pears for the past three years due to the increase in processing pears on the market. However, the Association commented that attempts to divert clingstone (processing) peaches to fresh markets have been unsuccessful due to consumer preferences for freestone peaches (trans., pp. 11–12).

Many fruit growers have experienced decreased profitability, reductions in workforce and difficulty meeting financial obligations (subs. 14, 16, 19, 41). According to a survey by the Australian Canning Fruitgrowers Association of 65 growers in the region, nearly half are failing to pay their trade creditors on time; less than one quarter expect to make a profit in 2013-14; and of the 80 per cent that have some level of debt, half have debt greater than 50 per cent of their equity value (sub. 41).

Greater Shepparton City Council submitted that SPCA's withdrawal of production from the region would increase the unemployment rate from 8.6 per cent to 11 per cent (sub. 10). Growers also face the critical decision of whether to remove unprofitable trees before they begin to bud (late winter to early spring). Some expressed concern about being unable to afford tree removal costs, potentially putting other fruit growers and horticultural producers in the region at risk of pests and diseases, such as fruit fly (subs. 34, 41, 44).

SPCA has remarked that it has cut back to about 50 growers chosen for their superior financial capacity, growing techniques and scale; and that in the case of an industry recovery, the company would increase its intake 'through those 50 growers that we have kept' (trans., pp. 50–51).

However, the Agreement on Safeguards sets a different threshold for being considered a domestic producer. The WTO appellate body in *US – Lamb* (DS 177, 178), in looking at whether producers of live lambs are part of the lamb meat industry, determined that a ‘substantial coincidence of economic interests’ is not sufficient to be considered a domestic producer.

The Commission has determined that fresh fruit is not a like or directly competitive product with processed fruit. The fresh fruit is purchased by the processor as an intermediate input and at that point the grower’s involvement in the production process terminates. Consequently, fruit growers are considered not to be part of the domestic industry as it is defined in the Agreement on Safeguards and case law.

Nevertheless, growers have a stake in the outcome. Choices by growers about whether to produce fruit are challenging because of the:

- upfront establishment costs of orchards
- long lead time between establishment and production
- high cost of maintaining productive orchards.

Growers supply a necessary input into the production of processed fruit products and factors leading to a termination or severe reduction in fresh fruit supply would have adverse effects on the processor. Any factors impacting upon growers can have indirect effects on fruit processing businesses. Similarly, factors that impact on processors and their demand for fruit can have consequences for fruit growers.

The Commission has considered the impact on fruit growers in the context of the flow-on injury to domestic producers of processed fruit in subsequent sections.

2.2 Have imports increased?

Under WTO requirements, provisional safeguard measures can only be imposed if there is clear evidence that imports of the processed fruit products under reference have increased either in absolute terms or relative to domestic production. Although a timeframe for the increase in imports is not specified in the Agreement on Safeguards, a rule of thumb is to focus on the last five years for which data are available, and to assess both the trend rate of increase and absolute quantities of imports (Sykes 2003). Analysis of this period is considered in this report. The Commission has also considered shorter and more recent periods of import activity within the last five years.

Further, a WTO appellate body has ruled that ‘the increase in imports also must be recent enough, sudden enough, sharp enough and significant enough’ (*Argentina – Footwear* (EC) (DS 121)).

In its analysis, the Commission has used data on import volumes from the Australian Bureau of Statistics. These data are available on the Commission’s website. The Commission has also drawn on data provided by SPC Ardmona on its production volumes and on previously published data. Throughout this report, data on prices and values are reported in nominal terms.

The Commission has analysed the changes in import volumes, and in import volumes relative to production, separately for processed pears, apricots, peaches and mixtures.

Preliminary assessment — Pears

Import volumes

To account for the potential effects of monthly and seasonal fluctuations in import volumes, the data are presented in several time formats, including import volumes by:

- month
- calendar year
- financial year
- moving annual total (a 12-month total calculated monthly)
- trends.

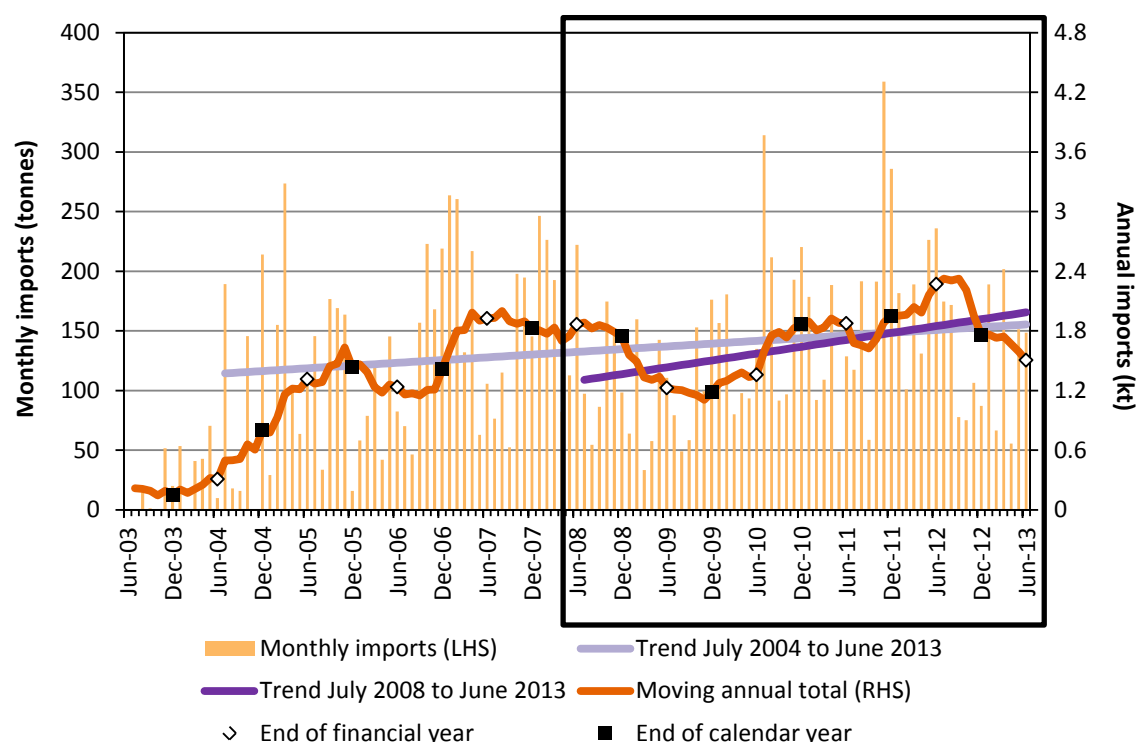
The import volumes of processed pears are volatile over time, and annual figures and inferences about recent trends are sensitive to the time format of the analysis. Taken by calendar year, annual volumes have increased by about 1 per cent between 2008 and 2012 (figure 2.1).

The volume of imports for the year to 30 June 2013 was about 23 per cent above the volume for the year to 30 June 2009. The average annual compound growth rate for the period was 5.2 per cent. However, the annual volume of imports has decreased by about 34 per cent over the past financial year.

The Commission notes that the trend growth in imports of processed pears has been somewhat steeper in recent years (figure 2.1). However, it does not appear as a sharp difference, and is driven mostly by relatively low import volumes in 2008-09.

In sum, there does not appear to be clear evidence of a sufficiently large increase in the absolute volume of imports for processed pear products.

Figure 2.1 Import volumes — Pears, 2003 – 2013^a



^a Trend lines were constructed by regressing monthly import volumes on a constant and the time period.
Sources: ABS (unpublished); Commission estimates.

Imports relative to domestic production

The ratio of imports to domestic production should be examined with caution. It is highly sensitive to changes in its components, which are themselves dependent on states of nature and other influences and can fluctuate substantially over time (box 2.2). To take this into account, linear trends of the ratio have also been examined.

Box 2.2 The ratio of imports to domestic production — some issues with the indicator

It can be difficult to draw strong conclusions based on an analysis of the ratio of imports to domestic production. The ratio has a range of zero to infinity and can change sharply from year to year. A cautious approach is required for a number of reasons.

First, import volumes are highly variable from month to month and across seasons, and as such, are sensitive to the period chosen (for example, the ratio calculated for financial years might be substantially different from that for calendar years).

Second, there may be a high degree of natural variability in the production of raw fruit. This reflects variability in growing conditions in particular years and locations. In the case of fruit, production levels can also reflect past decisions by growers to expand or shrink the size of their orchards, or adjust yields.

Third, the base level of domestic production relative to imports will influence the measure. As domestic production is the denominator in the ratio, where domestic production is substantially lower than import volumes, small changes in domestic production lead to comparatively large changes in the ratio of imports to domestic production.

SPC Ardmona provided confidential data on annual production volumes for products under all relevant tariff subheadings for calendar years 2009–12 and the first half of calendar year 2013. Production data for a longer timeframe have also been obtained from presentations by SPC Ardmona representatives at world Deciduous Canned Fruit Conferences (CANCON) in the past (CFICA 2009, 2010, 2012). The two datasets are not identical because of timing and product allocation differences. However, they can be reconciled in terms of total production over time across the Tariff subheadings (box 2.3), and so the trends indicated by each source are broadly consistent.

Box 2.3 **Domestic production — data sources**

The Commission has used two sets of production data in its analysis of imports relative to domestic production:

- confidential data on annual production volumes for calendar years 2009 to 2012 across the relevant Tariff subheadings, supplied by SPC Ardmona (SPCA)
- publicly reported data on annual production volumes for financial years 2004-05 to 2011-12 across the relevant Tariff subheadings, obtained from presentations by SPCA representatives to world Deciduous Canned Fruit Conferences (CANCON) in 2009, 2010 and 2012.

The two sets of data are not identical, with the differences explained by two factors:

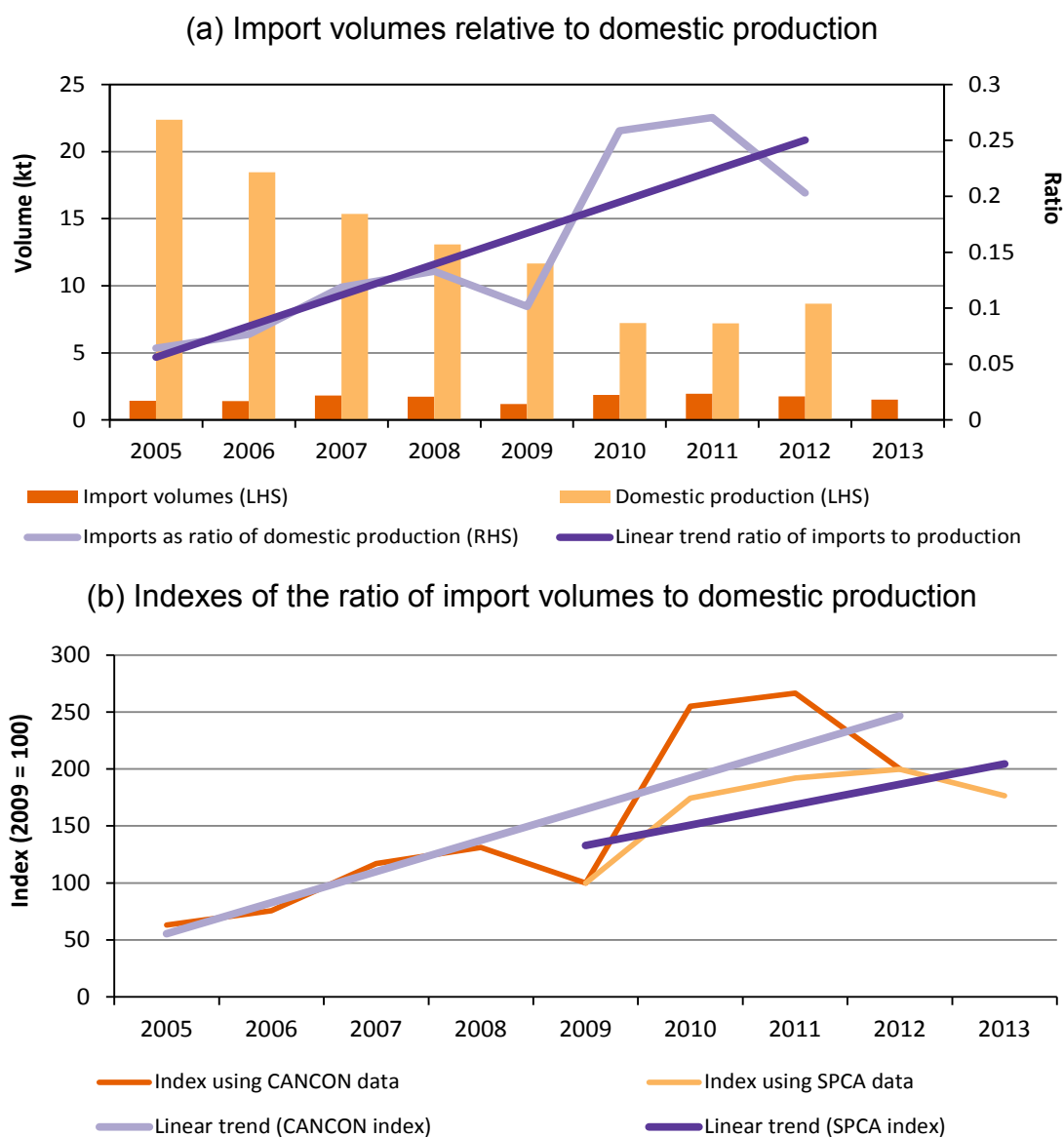
- discrepancies between financial-year and calendar-year figures — most deciduous processed fruit production occurs in the first half of each calendar year (January to June), but production might occasionally run into the second half of the year
- in a given period, discrepancies between volumes under certain Tariff subheadings — specifically, SPCA figures for peach production are consistently much lower than CANCON figures, but SPCA figures for production of mixtures are consistently higher than in the CANCON data.

Sources: CFICA (2009, 2010, 2012); Commission estimates; SPCA (unpublished).

To assess imports relative to domestic production, both sets of production figures have been used. The CANCON data have been used to present actual domestic production volumes and ratios of imports to domestic production. The confidential data have been used to construct indexes of the relevant indicators.

There is little question that the ratio of imports to domestic production has substantially altered over time, albeit from a low base, and its current value is still about 0.2 (Panel A, figure 2.2). In recent times, for example from 2010, the ratio has not moved significantly. The average annual rate of growth of the trendline over the past five years was in the range of 10.8 per cent (according to SPC Ardmona data) to 15.9 per cent (CANCON data) (Panel B, figure 2.2).

Figure 2.2 Import volumes relative to domestic production — Pears^{a, b, c}



^a Domestic production data used in panel (a) are CANCON data, and refer to marketing years. SPCA production data used for computations in panel (b) are for calendar years. Imports for the period 2005–12 are for the respective calendar years. Imports for 2013 are for the year ended 30 June 2013. ^b Trend lines were constructed by regressing index ratios on a constant and the time period. ^c Ratios of imports to production were converted into indexes, using 2009 as the base year. Trend lines were fitted through the index values.

Sources: ABS (unpublished); CFICA (2012); Commission estimates; SPCA (unpublished).

FINDING 2.4

The evidence of a recent increase in import volumes of processed pear products appears insufficient to meet the requirement under Article 2.1 of the Agreement on Safeguards. The ratio of import volumes to domestic production has increased substantially over time, growing from a low base, but recently at a slower rate than the longer term trend. This calls into doubt whether the WTO standard can be met.

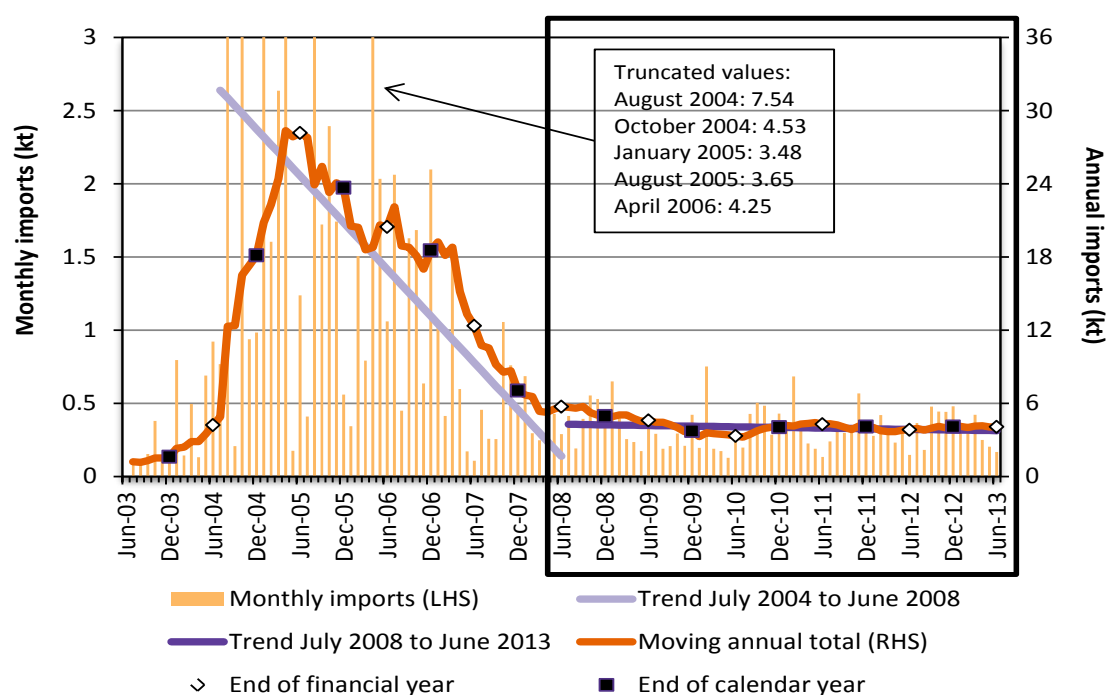
Preliminary assessment — Apricots

Import volumes

The volume of imports of processed apricot products decreased over the relevant period and in the longer term.

- The annual volume of imports decreased by 17 per cent between calendar years 2008 and 2012.
- The volume of imports for the year to 30 June 2013 was about 11 per cent below the volume for the year to 30 June 2009 and the average annual compound growth rate for the period was -2.9 per cent (figure 2.3).

Figure 2.3 Import volumes — Apricots, 2003 – 2013^{a, b}



^a Import volumes for apricots comprise Tariff subheadings 2008.50.00.33, 2008.50.00.34 (and 2008.50.00.30 (which replaced subheading 2008.50.00.33)). Quantities of 2008.50.00.33 were converted into kilograms on the basis that one tonne is equivalent to 50 basic cartons. ^b Trend lines were constructed by regressing monthly import volumes on a constant and the time period.

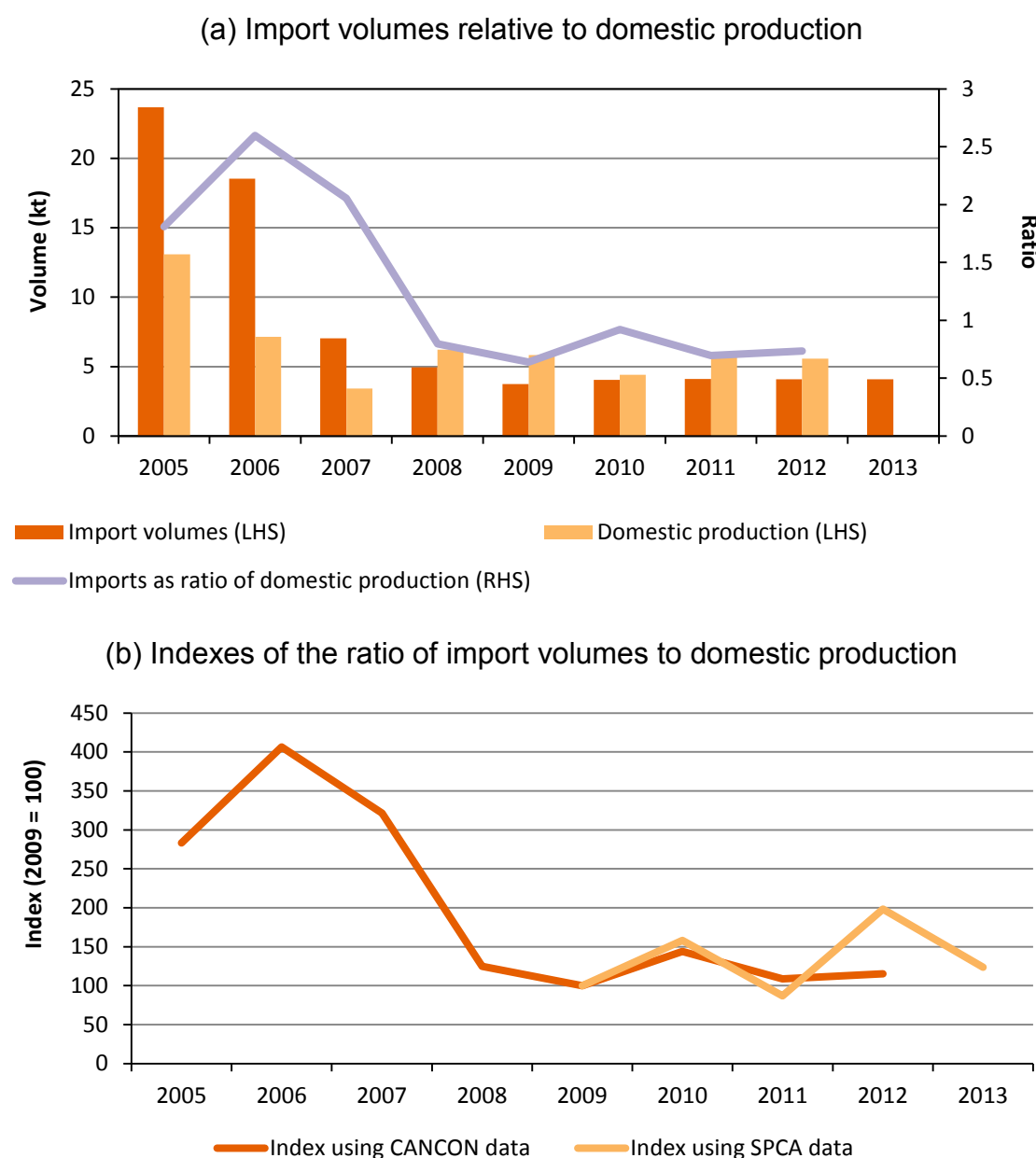
Sources: ABS (unpublished); Commission estimates.

Imports relative to domestic production

The ratio of imports to domestic production increased by about 24 per cent between 2009 and 2013 (figure 2.4). However, the ratio has not increased consistently

between 2009 and 2013, but has fluctuated, driven by significant variability in annual domestic production levels.

Figure 2.4 **Import volumes relative to domestic production — Apricots^{a, b}**



^a Domestic production data used in panel (a) are CANCON data, and refer to marketing years. SPCA production data used for computations in panel (b) are for calendar years. Imports for the period 2005–12 are for the respective calendar years. Imports for 2013 are for the year ended 30 June 2013. ^b Ratios of imports to production were converted into indexes, using 2009 as the base year.

Sources: ABS (unpublished); CFICA (2009, 2010, 2012); Commission estimates; SPCA (unpublished).

The evidence of recent shifts in the ratio of imported apricots to domestic production is inconsistent. On balance, it does not meet the test under the Agreement on Safeguards.

FINDING 2.5

The import volumes of processed apricot products have fallen in absolute terms over the past five years, and more recently volumes have been steady, rather than growing notably. The evidence in relation to an increase in imports relative to domestic production is inconsistent in recent periods. On balance, the requirement under Article 2.1 of the Agreement on Safeguards has not been satisfied.

Preliminary assessment — Peaches

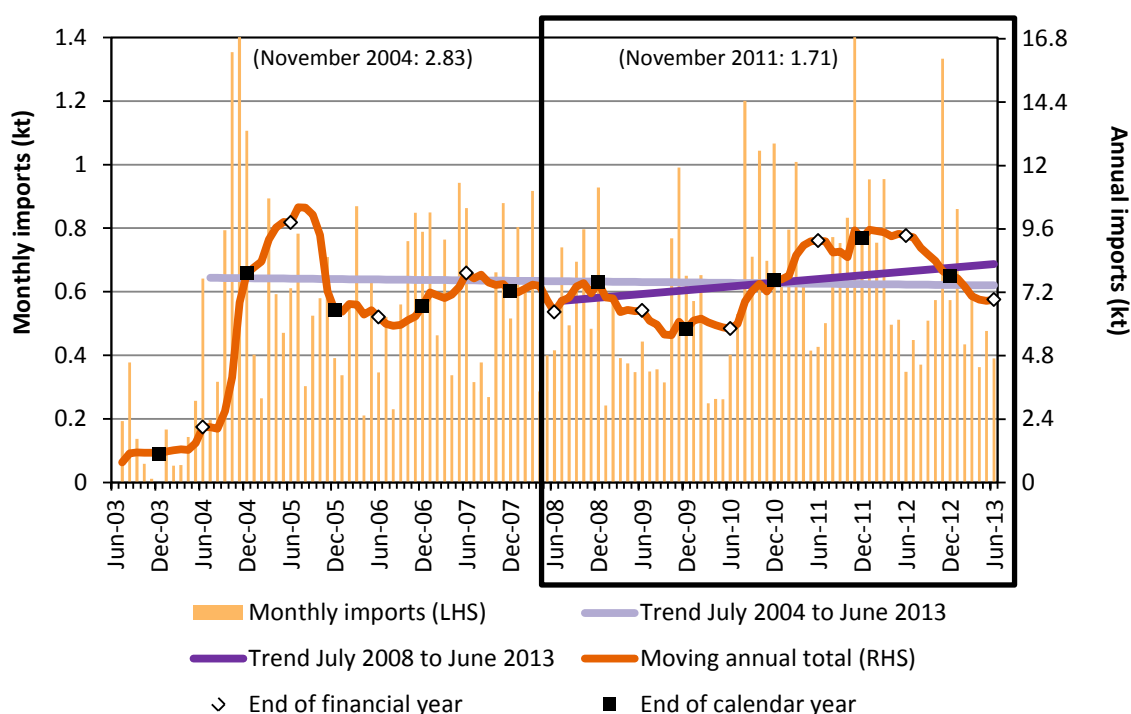
Import volumes

Taken by calendar year, annual import volumes increased by about 3 per cent between 2008 and 2012 (figure 2.5). The volume of imports for the year to 30 June 2013 was about 6 per cent higher than the volume for the year to 30 June 2009. The average annual compound growth rate over the period was 1.6 per cent.

The annual volume of imports in the year to 30 June 2012 was the highest in the past five financial years, but it was about 5 per cent below the annual volume of imports in the year ended 30 June 2005.

Aggregating the volume of imports for the three most recent years shows a substantial volume increase. However, whether this would meet the test under the Agreement on Safeguards is arguable. Most recently, imports have fallen.

Figure 2.5 Import volumes — Peaches, 2003 – 2013^a



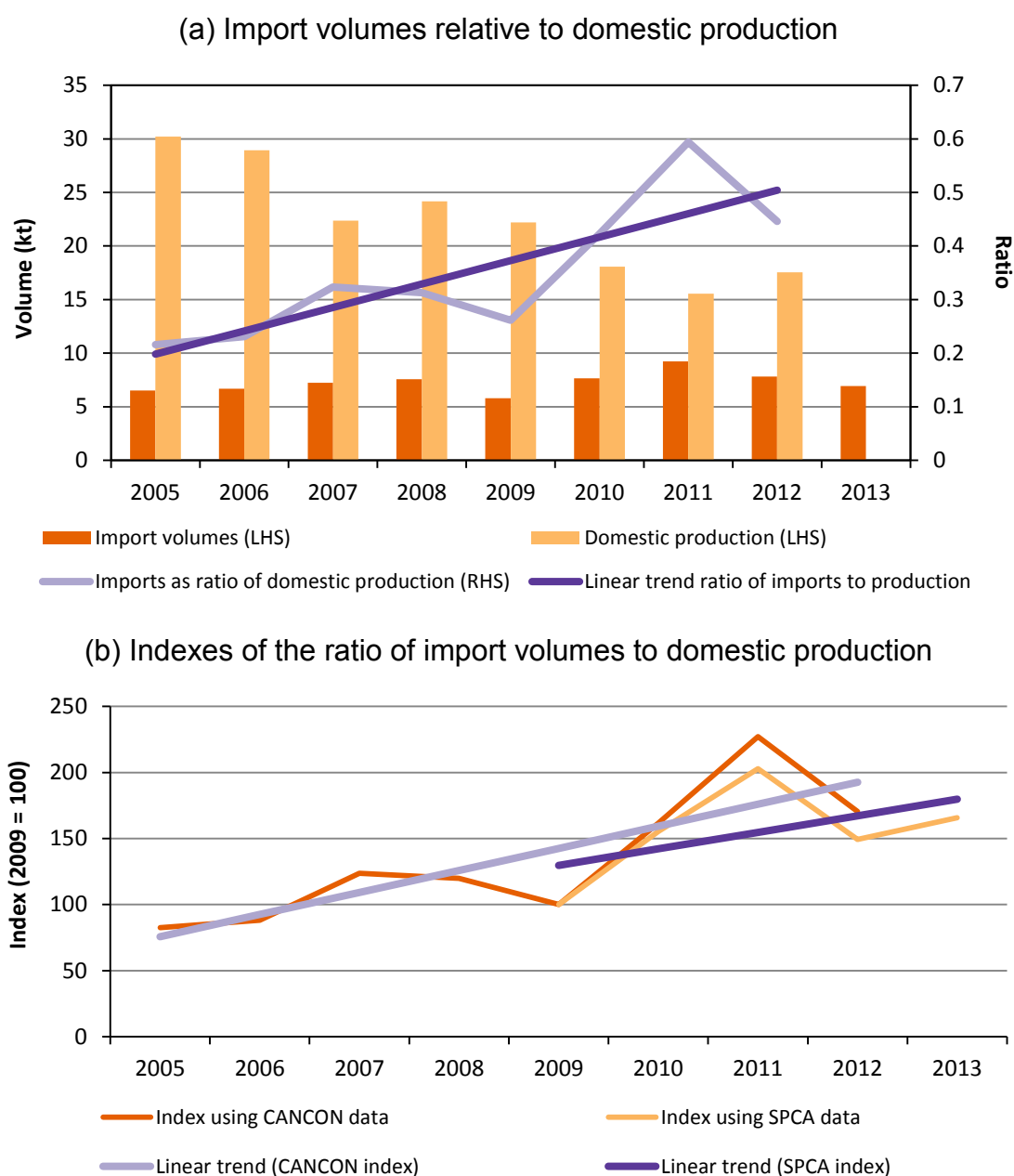
^a Trend lines were constructed by regressing monthly import volumes on a constant and the time period.

Sources: ABS (unpublished); Commission estimates.

Imports relative to domestic production

The index of the ratio of imports to production has increased by about 65 per cent between 2009 and 2013 (panel B, figure 2.6). However, the rate of growth of the ratio was slower than that for the longer term trend. The average annual rate of growth of the trendline over the past five years was in the range of 7.7 per cent (according to SPC Ardmona data) to 10.6 per cent (CANCON data).

Figure 2.6 Import volumes relative to domestic production — Peaches^{a, b, c}



^a Domestic production data used in panel (a) are CANCON data, and refer to marketing years. SPCA production data used for computations in panel (b) are for calendar years. Imports for the period 2005–12 are for the respective calendar years. Imports for 2013 are for the year ended 30 June 2013. ^b Trend lines were constructed by regressing index ratios on a constant and the time period. ^c Ratios of imports to production were converted into indexes, using 2009 as the base year. Trend lines were then fitted on the index values.

Sources: ABS (unpublished); CFICA (2009, 2010, 2012); Commission estimates; SPCA (unpublished).

FINDING 2.6

The evidence of a sufficient increase in import volumes of processed peach products is at best arguable, based on the choice of statistical periods. The ratio of import volumes to domestic production has increased, but grew at a slower rate recently than the longer term trend. Overall, the Commission's preliminary assessment is that the evidence is not strong enough to meet the requirement under Article 2.1 of the Agreement on Safeguards.

Preliminary assessment — Mixtures

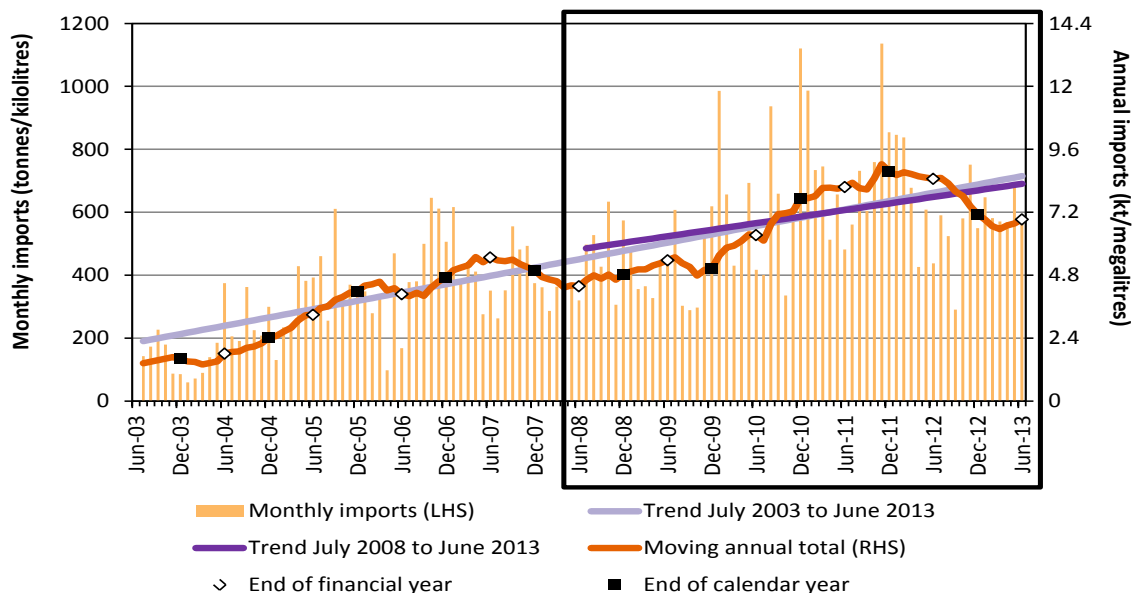
Import volumes

Annual import volumes of processed mixtures have increased by:

- 47 per cent between calendar years 2008 and 2012
- 29 per cent between the years ended 30 June 2009 and 30 June 2013 (figure 2.7).

However, at their peak, annual import volumes in 2011 were about 21 per cent higher than in 2012-13.

Figure 2.7 Import volumes — Mixtures, 2003 – 2013^{a, b}



^a Import volumes prior to January 2012 are measured in litres (and correspond to Tariff subheading 2008.92.00.40). In constructing the moving annual total, it has been assumed that one litre of mixtures is equivalent to one kilogram of mixtures. ^b Trend lines were constructed by regressing monthly import volumes on a constant and the time period.

Sources: ABS (unpublished); Commission estimates.

The Commission also notes that recent trends in volumes are less steep than the longer term trend (table 2.1).

Table 2.1 **Growth in import volumes — Mixtures**
2003-04 to 2012-13

<i>Period</i>	<i>Compound annual growth rate</i>	<i>Average annual increase in import volumes</i>
	Per cent	Kilotonnes
2003-04 to 2008-09	24	0.71
2008-09 to 2012-13	7	0.39
2003-04 to 2012-13	16	0.57

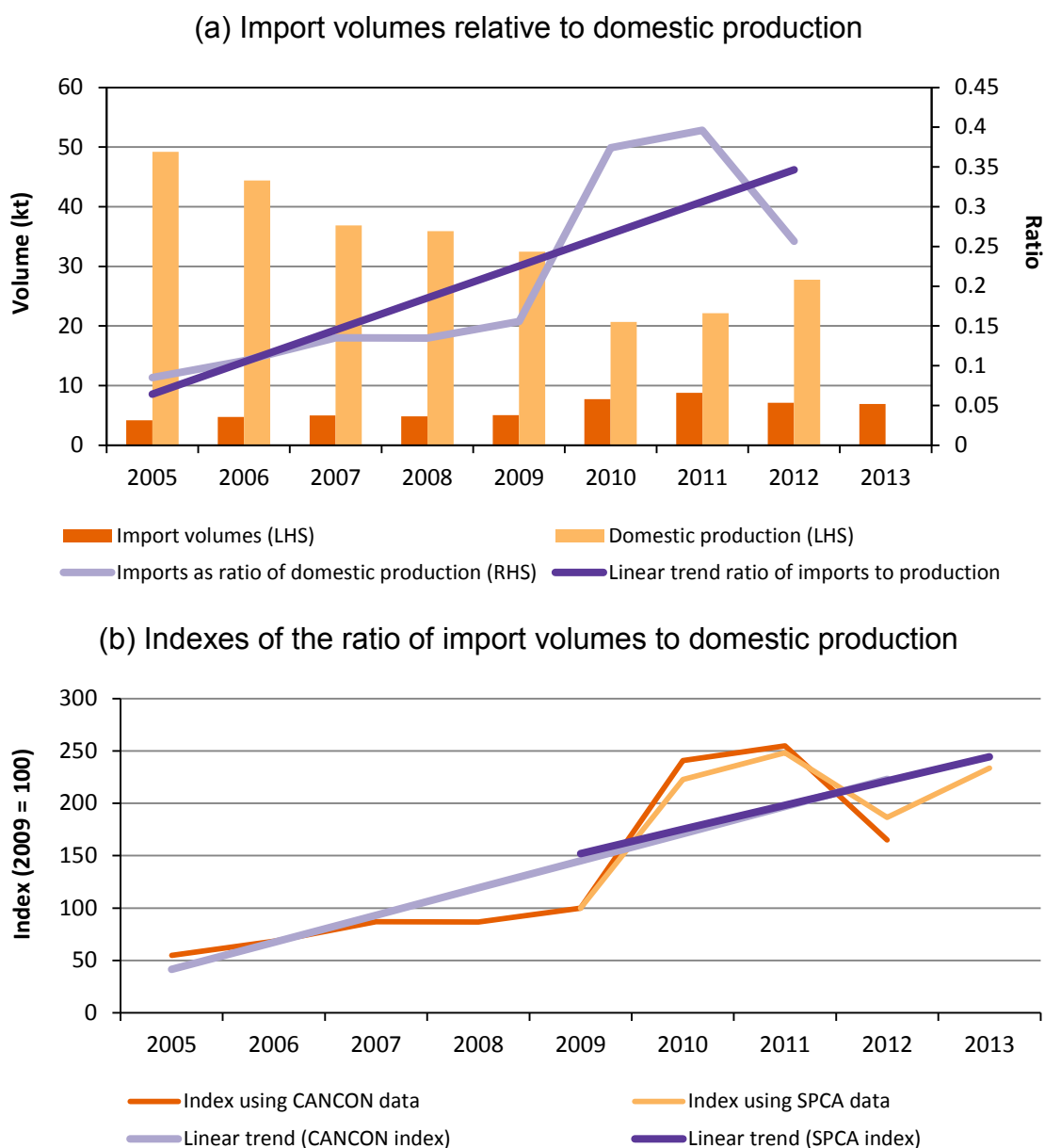
Sources: ABS (unpublished); Commission estimates.

This suggests that the increase has not been ‘sudden’ in the context of past trends. Nevertheless, the Commission considers that the increase in import volumes over the relevant period in this category has been significant.

Imports relative to domestic production

The ratio of imports to domestic production increased between 2009 and 2013 (figure 2.8). The rate of growth of the ratio was lower in the past five years than in the preceding five years. The average annual rate of growth of the trendline over the past five years was in the range of 12.2 per cent (according to SPC Ardmona data) to 17.4 per cent (CANCON data) (Panel B, figure 2.8).

Figure 2.8 Import volumes relative to domestic production — Mixtures^{a, b, c}



^a Domestic production data used in panel (a) are CANCON data, and refer to marketing years. SPCA production data used for computations in panel (b) are for calendar years. Imports for the period 2005–12 are for the respective calendar years. Imports for 2013 are for the year ended 30 June 2013. ^b Trend lines were constructed by regressing index ratios on a constant and the time period. ^c Ratios of imports to production were converted into indexes, using 2009 as the base year. Trend lines were then fitted through the index values.

Sources: ABS (unpublished); CFICA (2009, 2010, 2012); Commission estimates; SPCA (unpublished).

On balance, imports of processed fruit mixtures have increased in absolute and relative terms.

FINDING 2.7

The recent increase in import volumes may not be ‘sudden enough’ in the context of past trends. Nevertheless, import volumes over the relevant period have increased significantly. The increase in imports relative to domestic production has also been significant. Overall, the Commission’s preliminary assessment is that the evidence may be sufficient to meet the requirements of the Agreement on Safeguards.

2.3 Was the increase in imports a result of unforeseen developments?

Case law since the inception of the WTO in 1994 has affirmed that the original GATT Article XIX and the WTO Agreement on Safeguards comprise a ‘package’ of requirements — that is, the Agreement on Safeguards does not supplant GATT Article XIX, but clarifies and reinforces it. Consequently, the requirements of both must be met.

Although the Agreement on Safeguards is silent on the matter, Article XIX provides that WTO members may only take emergency action if, as a result of ‘unforeseen developments and the effect of obligations incurred by a WTO member’, imports cause or threaten serious injury.

Case law has interpreted this to mean that a requirement for the imposition of safeguard measures is that the trading developments could not reasonably have been foreseen or expected by negotiators when the obligations under the GATT were incurred; in this case, in 1994.

The problems associated with applying Article XIX of the GATT in practice have been prominent in commentary on safeguard measures (box 2.4).

SPC Ardmona has submitted that a number of unexpected events resulted in the increased imports of processed fruit products.

- The appreciation of the Australian dollar.
- The dumping of imported products.
- Supermarkets using low-cost imports to advance their private label product strategies.

Other stakeholders (for example, the Australian Canning Fruit Growers Association, sub. 41) have also argued that the Global Financial Crisis led to a contraction of world demand for processed fruit and excess stocks of processed peaches.

Box 2.4 GATT Article XIX — critique of the clause’s meaningfulness

In his critique of WTO jurisprudence on safeguard measures, Alan Sykes identified several practical application issues arising from Article XIX of the GATT:

The difficult interpretive issues that the clause raises in a long-lived agreement, which led to its irrelevance in GATT practice, might also have been noted as a basis for letting it remain dormant.

Having embraced the opposite view, the appellate body might at least undertake to explain coherently what Article XIX(1), first clause, now requires. At what point in time must the events in question have been unforeseen — the time of the last tariff concession? What if the last concession on the product in question was decades ago — could anything today have been foreseen? What if the product has been the subject of numerous tariff concessions over time — are expectations associated with the last concession the only relevant ones? ... How does one establish the expectations of trade negotiators as an evidentiary matter? What if there are many negotiators and their accounts of their expectations are incongruent? What if most of them are dead? This list of questions is assuredly incomplete, and the appellate body has yet to afford any meaningful guidance regarding the answers.

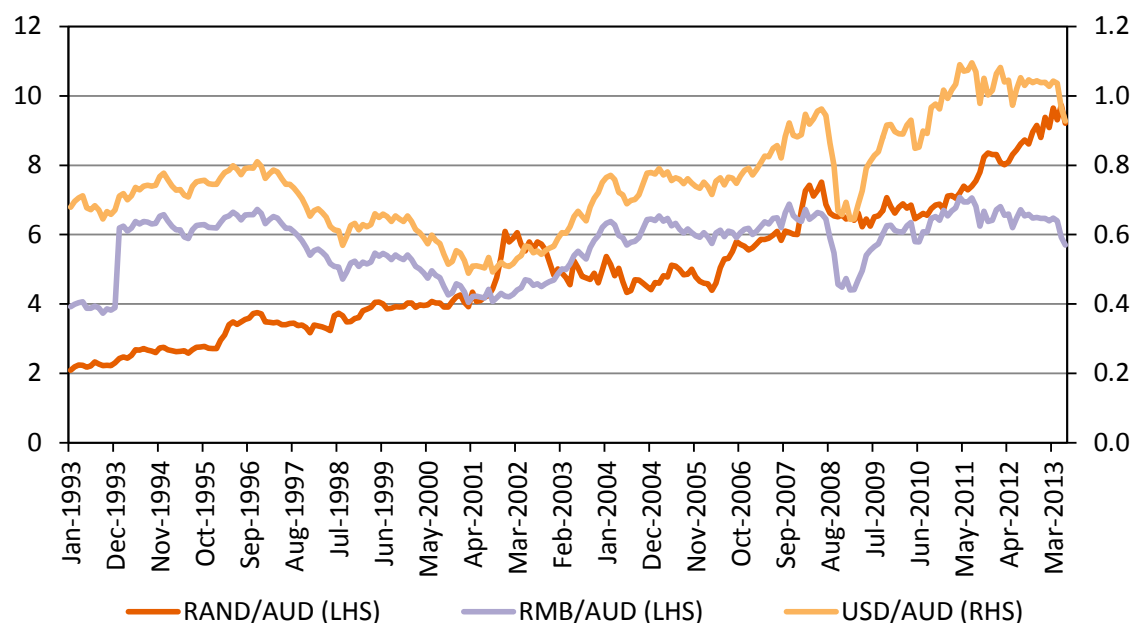
Source: Sykes (2003).

Appreciation of the Australian dollar

All else equal, an appreciation of the Australian dollar against another currency can reduce the price (in AUD) of imports from the other country.

On an annual average basis, the Australian dollar appreciated by about 40 per cent against the South African rand between 2008-09 and 2012-13 (figure 2.9). During that period, it also appreciated by 38 per cent against the US dollar and 26 per cent against the Chinese renminbi. In 2011, the Australian dollar also reached its highest level against the US dollar since being floated.

Figure 2.9 Australian dollar exchange rate
Units of foreign currency per Australian dollar^a



^a The RAND/AUD exchange rate prior to January 2010 was computed with a cross rate using the British Pound.

Sources: Bank of England (2013); Commission estimates; RBA (2013).

There is some evidence that the possible future appreciation of the Australian dollar was foreseen to have an adverse effect on SPC Ardmona's operations. In its 2004–2009 strategic plan, the Canned Fruits Industry Council identified several threats to the industry. These included: imports from the US replacing the Ardmona brand; potential imports from China; and unfavourable currency movements.

Furthermore, the Australian dollar was floated in 1983 and the fluctuation of the currency would have been foreseeable in 1994. Moreover, the appreciation of the Australian dollar commenced several years before the relevant period for this investigation.

While the potential appreciation of the Australian dollar may have been foreseeable, the extent of the appreciation may not have been. However, the Commission suggests that judgments on such a narrow test should take into account the wider ramifications for public policy generally, and the international trading systems in which Australia is an active player, in particular.

Dumping

SPC Ardmona submitted that the dumping of processed peaches by South African suppliers was one of the unforeseen events that contributed to the rise of imports. An application for anti-dumping and countervailing duties for those products is currently before the Anti-Dumping Commission and a determination has not been made to date.

SPC Ardmona's claim covers one source of imports for one of the product categories. Furthermore, the dumping of the relevant products is not a new concern for the industry. It has faced competition from imported products over several decades, and has at various times successfully applied for anti-dumping and countervailing duties (Anti-Dumping Commission 2013; Australian Customs Service 1996). Measures have been in place on:

- processed peaches from Greece (duties applied for the period 1992–2007), and Spain and China (1992–97)
- processed pears from China (1991–96).

Supermarket private label strategies

SPC Ardmona argued:

The major supermarket chains, which traditionally claimed publicly that they supported Australian produce, moved strongly from 2010 to import products cheapened by the exchange rate appreciation and, unknowingly to them cheapened also by dumping, for their strategy of developing private label products. (sub. 39, p. 35)

Private brand products have been sold in Australian supermarkets since the 1960s, although sales volumes were historically low and have grown in the past decade (ACCC 2008).

The Commission has obtained supermarket data from a commercial provider (box 2.5).

Box 2.5 Supermarket sales data

The Commission purchased data on supermarket sales of processed fruit from Aztec Australia, a commercial data provider. These data, drawn from grocery sales across Woolworths, Coles and Metcash supermarkets, represent aggregated retail quantities and values, by month and brand, for the period January 2008 to April 2013.

Prior to providing the data to the Commission, Aztec aggregated the seasonal data in a way that individual product lines, pack sizes and the retailer of private label products could not be identified ('private label' is classified as a single category). The Commission was able to advise Aztec on how to restrict the dataset of stock keeping units to product lines that would fall within particular Tariff subheadings under reference, drawing on advice provided by the Australian Customs and Border Protection Service.

Analysis of supermarket sales data indicates that over the past five years, the share of private label products in aggregate sales of products within the relevant Tariff subheadings has increased by about 20 per cent, but still constitutes less than half of total supermarket sales (table 2.2).

Table 2.2 **Shares of private label products in supermarket sales volumes**
Per cent

<i>Tariff subheading</i>	<i>2008-09</i>	<i>2012-13</i>
Pears	40	49
Peaches	35	42
Mixtures	24	29

Sources: Aztec (unpublished); Commission estimates.

Furthermore, although private label products are often imported, there is no automatic link between private brand products and imports. Supermarkets appear to stock local products, including as part of their private labels, if these are more profitable and can be supplied reliably.

Supermarkets also have various corporate policies to buy Australian-sourced products where possible. One example is the recent Woolworths agreement with SPC Ardmona to use SPC Ardmona sourced fruit in a range of 'Woolworths Select' products (Woolworths Limited, sub.31). In September 2013, the company announced an extension of this arrangement such that by September 2014, 'all of [its] own brand canned deciduous fruit [would be] Australian sourced' (Woolworths Limited 2013). Another is the Coles Group's 'Australian First' buying policy. In its submission, Coles Group stated that 90 per cent of Coles branded packaged products are Australian made and that several of its private label product lines are currently sourced from SPC Ardmona (sub. 45).

Nonetheless, access to imported private label products places competitive pressure on the price at which SPC Ardmona might supply private label products using Australian fruit. Furthermore, SPC Ardmona submitted confidential evidence for the period 2009–12 that showed that the share of imported private label products in total private label sales of the relevant products has increased by 10–20 percentage points. A number of factors are likely to have contributed to this, including supermarkets seeking to capture some of the margin accruing to SPC Ardmona as the dominant producer in the Australian market. This is discussed further in section 2.5.

The Global Financial Crisis and oversupply of processed fruit

The Australian Canning Fruit Growers Association submitted:

The World Deciduous Canned Fruits Conferences are the primary source of information exchange for the World Group, with each country presenting a formal country report ... The October 2008 Paris meeting was attended by representatives from Greece, Spain, USA, China, Argentina, Chile, South Africa and Australia. These representatives compared production and demand. They agreed on an estimate that the world supply and demand was in balance.

Six months later in March 2009, Cancon09 was held in Shepparton Australia and the same exercise was repeated. It revealed that there had been a dramatic change in circumstances with approximately one million cartons of peaches available on the world market surplus to demand. (sub. 41, p. 2)

The above estimate of global oversupply of processed peaches equates to about 1.5 per cent of global annual production in that year. An oversupply of this magnitude is unlikely to have significantly influenced world prices; an assessment supported by the import unit values presented in section 2.5 (figure 2.14).

Other factors

The Commission has also looked at other factors that could influence import volumes, including recent changes to domestic regulatory settings and changes in the trade policies of Australia's trading partners. Its preliminary analysis did not reveal any factors that would be likely to directly lead to a surge in imports of the relevant products.

Overall, although some of the cited factors would have been foreseeable, the *extent* of the developments as well as their combined effect would in principle be unlikely to have been fully foreseeable at the time Australia's obligations under the GATT were incurred. However, the Commission reiterates that satisfaction of this requirement is not a sound basis for policy decisions, both because this would not

take into account broader implications for the Australian economy and because the test itself is inherently ineffective.

FINDING 2.8

Over the past five years there have been several developments that could have influenced an increase in imports that could not have been foreseen at the time Australia's obligations under the GATT were incurred in 1994.

2.4 Is the industry suffering 'serious injury', or is it threatened?

The WTO Agreement on Safeguards defines 'serious injury' as meaning 'a significant overall impairment in the position of a domestic industry' (Article 4.1(a)). The Agreement provides no clear guidance about what constitutes serious injury, although it is consistently interpreted as being a more demanding test than the 'material' injury test applying in anti-dumping and countervailing cases.

The Agreement states that in investigating whether imports have caused or are threatening to cause serious injury, the Competent Authority (the Commission) shall evaluate 'all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry' (Article 4.2(a)). The Agreement lists eight factors that must be considered in the analysis:

... the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment. (Article 4.2(a))

Subsequent WTO rulings have affirmed that this list constitutes a 'bare minimum' of the factors that must be evaluated in every case (*Argentina – Footwear, US – Wheat Gluten, US – Steel*). In cases where a Competent Authority has failed to evaluate all of the listed factors, WTO Panels and Appellate bodies have found that the safeguards investigation, and any determination that increased imports have caused serious injury, are inconsistent with Article 4 of the Agreement on Safeguards.¹

¹ Such a finding will generally result in a recommendation that the Dispute Settlement Body request that the nation applying the safeguard measures bring them into conformity with its obligations under the Agreement on Safeguards and GATT. Typically this would be by removing the measures, but the WTO only requires that the Member 'take such reasonable measures as may be available to it' to ensure the observance of its obligations.

SPC Ardmona submitted evidence relating to its claims of serious injury (sub. 39). The Commission was unable to draw on some of that evidence because it was presented with reference to ‘multi-serve processed fruit products’, rather than the Tariff subheadings under the terms of reference. SPC Ardmona subsequently provided confidential evidence that aligned with the Tariff subheadings under reference. The evidence was provided in reference to calendar years 2009–12 and 2013 to date. Consequently, some of the analysis in this section is based on the period until 2012.

The confidential information has been used in the analysis, supplemented with data from official sources and other evidence provided by industry organisations as well as supermarket sales data obtained from a commercial provider.

Changes in domestic sales

SPC Ardmona submitted confidential evidence of its domestic sales for calendar years 2009–12. The evidence indicates that its aggregate sales of products under the relevant subheadings decreased between 2009 and 2012, primarily due to decreases in retail sales (table 2.3).

Table 2.3 Change in SPC Ardmona’s sales volumes, 2009–2012
Per cent

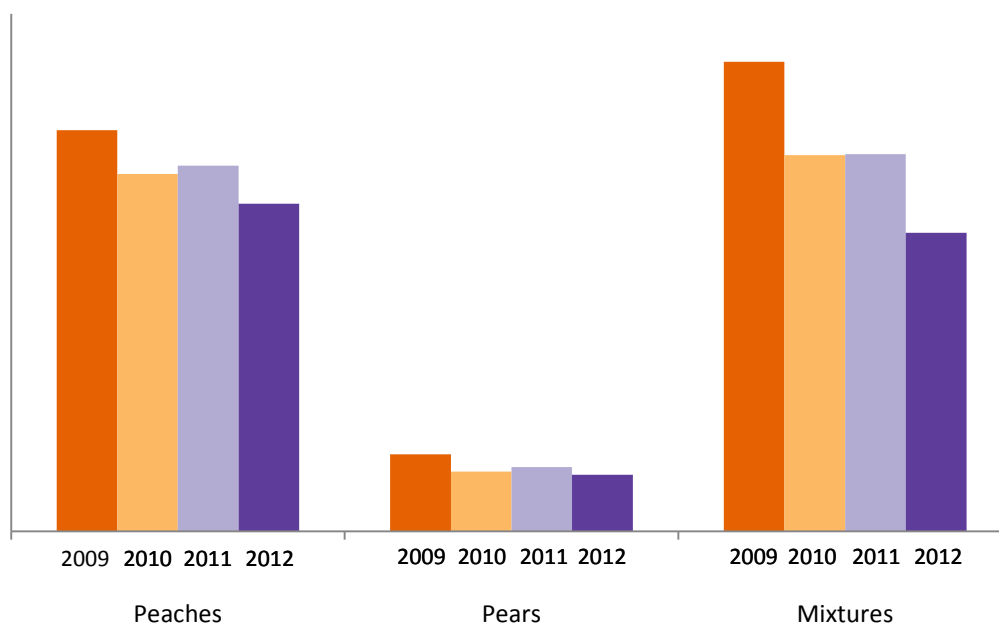
<i>Sale channel</i>	<i>Peaches</i>	<i>Pears</i>
Retail	-22	-31
Food services	-15	7
Total	-18	-10

Source: SPCA (unpublished).

The Commission has not been able to verify the data fully. However, the retail sales data generally accords with the supermarket sales data the Commission has acquired independently (figure 2.10).

Figure 2.10 Supermarket sales of domestically produced processed fruit, selected Tariff subheadings

Annual total sales



Sources: Aztec (unpublished); SPCA (unpublished).

Changes in market share

Coca-Cola Amatil factbooks published between 2006 and 2011 reported market shares for SPC Ardmona branded products indicating that the reductions are part of a longer term trend (table 2.4).

Table 2.4 SPC Ardmona branded products — market share in selected product categories

Year	Packaged fruit	Fruit snacks	Spreads
2006	66	90	29
2007	62	88	26
2008	57	74	25
2009	59	79	29
2010	50	75	21
2011	57	79	27

Sources: CCA (various).

The Commission has also analysed national supermarket sales data over the period 2008–2013. The market share of SPC Ardmona branded products has remained relatively constant in that period (table 2.5).

Table 2.5 Market shares by fruit type
Share of market volume and market revenue^a

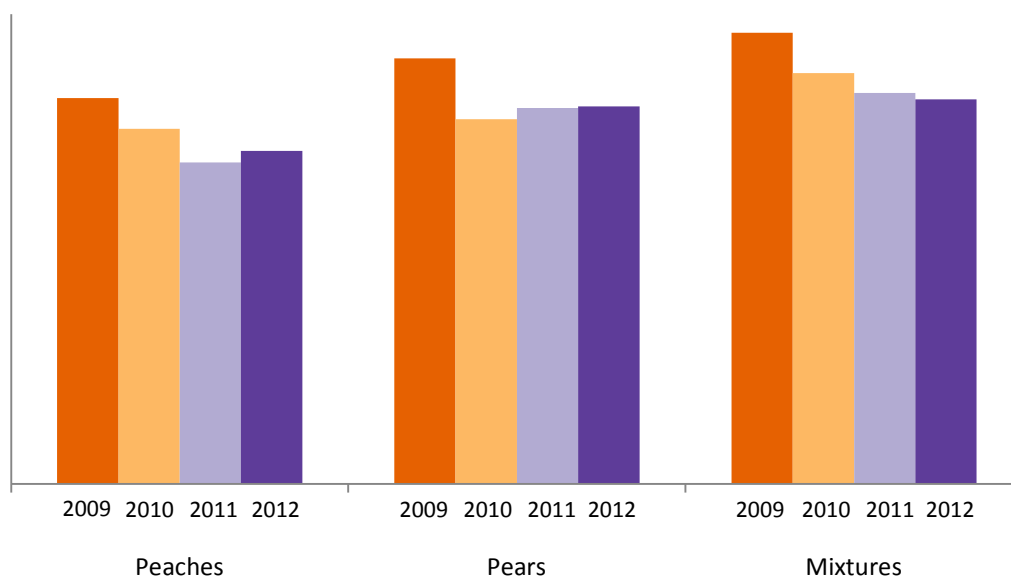
	<i>Peaches</i>		<i>Pears</i>		<i>Mixtures</i>	
	2008	2013	2008	2013	2008	2013
By volume						
SPC Ardmona	61	56	55	51	49	50
Private label	36	44	42	49	31	38
Other	3	1	2	0	20	12
By revenue						
SPC Ardmona	69	67	67	65	59	61
Private label	27	32	31	35	22	27
Other	5	1	2	0	19	12

^a Figures for 2013 are based on monthly data for January to April 2013 only.

Sources: Aztec (unpublished); Commission estimates.

With regard to SPC Ardmona's aggregate market share, incorporating its contribution to the private label categories, the Commission is unable to disclose specific figures for confidentiality reasons. However, the evidence indicates that its market share decreased slightly, driven largely by a shift away from domestic sourcing of private label products (figure 2.11).

Figure 2.11 Domestic shares of supermarket sales volumes, selected Tariff subheadings
Based on annual sales volumes, 2009 to 2012



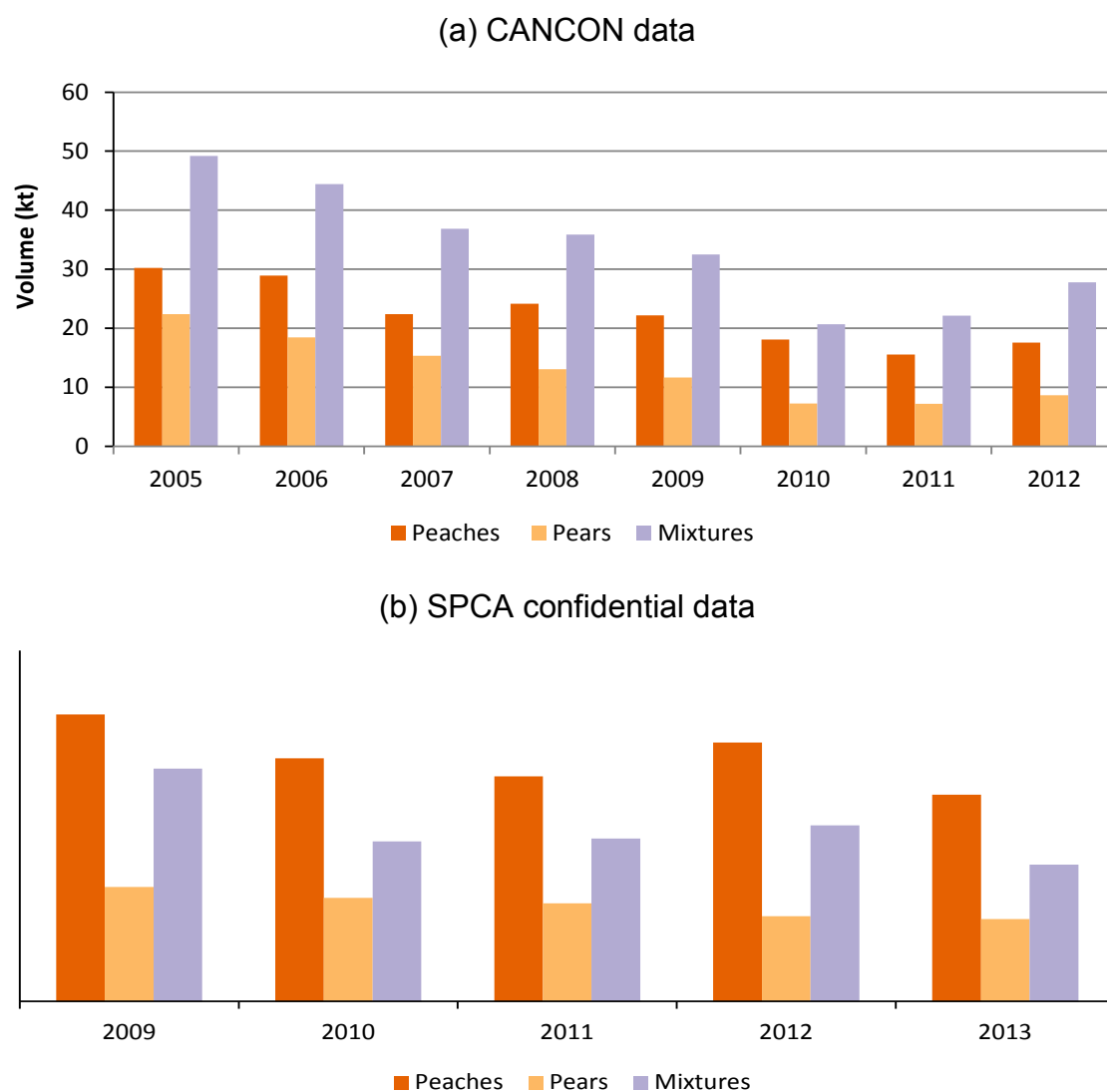
Sources: Aztec (unpublished); SPCA (unpublished).

Even so, domestic producers continue to have a market share of the order of 70 to 80 per cent of supermarket sales of the relevant products, by volume and value.

Production levels

The Commission has used evidence on production levels from two sources — figures previously reported by the Canned Fruits Industry Council of Australia, and the confidential data provided by SPC Ardmona to this inquiry. Although there are some differences between the two sets of data (as described earlier in box 2.3), they reconcile in aggregate over time. Both data sets indicate a decrease in production volumes for the three fruit categories (figure 2.12).

Figure 2.12 **Changes in domestic production volumes**



Sources: CFICA (2009, 2010, 2012); SPCA (unpublished).

Capacity utilisation and productivity

The Commission has received ambiguous evidence on changes in capacity utilisation over the relevant period.

In August 2011, Coca-Cola Amatil announced the closure of SPC Ardmona's Mooroopna manufacturing plant and the consolidation of the production at the two remaining sites in Shepparton and Kyabram. Closures of such plants could improve the efficiency of processing and lower the overall avoidable costs of production. CCA's managing director stated that the review which prompted the decision was undertaken 'in order to right-size the SPC Ardmona business' and that 'by proactively restructuring the SPC Ardmona business we believe we can lower its cost base to help regain its competitive position in the market place' (CCA 2011, p. 1). The consolidation was to have taken place on a staged basis over 12 months. Such plant closures could be injurious to SPC Ardmona in the sense that they might lead to the write-down of asset values.

In 2012, the Chairman of the Canned Fruits Industry Council of Australia reported production capacity and production figures indicating that capacity utilisation had increased between 2008-09 and 2011-12 (table 2.6). This was driven primarily by reductions in production capacity between 2010 and 2011.

Table 2.6 Changes in production capacity, volumes and utilisation^a
Tonnes, per cent

	<i>Processed pears</i>		<i>Processed peaches</i>		<i>Processed mixtures</i>	
	<i>2009</i>	<i>2012</i>	<i>2009</i>	<i>2012</i>	<i>2009</i>	<i>2012</i>
Production capacity	28 000	18 000	32 000	20 000	52 000	40 000
Production volume	11 659	8 661	22 195	17 559	32 483	27 757
Capacity utilisation	41.6	48.1	69.4	87.8	62.5	69.4

^a Year ended June.

Source: CFICA (2012).

On the other hand, SPC Ardmona made a confidential submission to this inquiry showing constant production capacity over the period 2010–13 and decreases in capacity utilisation of 25 percentage points for pears and 30 percentage points for peaches. However, those data only related to capacity utilisation at its Shepparton plant and did not take into account the closure of the Mooroopna plant.

In addition, SPC Ardmona has not provided information that would enable the Commission to reconcile or explain the differences between the data in table 2.6 and its confidential submission. On balance, the Commission is unable to make a

finding on changes to capacity utilisation. Further examination of this area will be considered in the report on definitive safeguard measures.

SPC Ardmona has also provided confidential data on changes in labour productivity across product lines. The data did not show a consistent pattern — labour productivity improved for some products and declined for others.

Profits and losses

SPC Ardmona has provided the Commission with confidential evidence on profit margins for the period 2010–13 for its products under each of the relevant Tariff subheadings. For self-evident reasons, these data could not be corroborated with information from an independent source.

The data indicate that for each type of fruit, profit margins² were negative from 2011 and have fallen over the period.

- For processed pears, profitability decreased by 24 percentage points.
- For processed peaches, profitability decreased by 26 percentage points.
- For processed mixtures, profitability decreased by 23 percentage points.

The data provided by SPC Ardmona indicate that the reduction in profit margins between 2010 and 2013 was driven largely by increasing costs of production.

- Sales revenue (net of discounts) per unit of product sold decreased by 1–2 per cent.
- The unit cost of goods sold increased by 16–22 per cent.

Employment

SPC Ardmona submitted that it currently employs 840 staff on a full-time equivalence basis. It has also provided the Commission with confidential data on changes in employment levels across all production sites for the period 2008–13. The data show that the number of casual workers employed on a weekly basis has decreased by about 30 per cent, while the number of salaried employees has decreased by about 19 per cent. Independent sources of information to fully corroborate that data have again not been found. Attributing decreases in employment across reduced production of the products within the relevant Tariff subheadings is likely to be impractical.

² Calculated as earnings before interest and tax divided by sales revenue (net of discounts).

Overall, the Commission accepts that there has been a substantial loss of employment.

Decrease in fruit intakes and impact on fruit growers

The Australian Canning Fruit Growers Association has submitted evidence of SPC Ardmona's decreasing fruit intakes from domestic growers. The intake of peaches and pears proposed for 2014 is 50 per cent below this year's level (table 2.7).

Table 2.7 SPC Ardmona peach and pear intakes

	<i>Peaches</i>		<i>Pears</i>		<i>Total</i>	
	Tonnes	Percentage change	Tonnes	Percentage change	Tonnes	Percentage change
2008	40 227		31 242		71 519	
2009	39 160	-3	28 499	-9	67 659	-5
2010	31 843	-19	19 152	-33	50 995	-25
2011	27 851	-13	19 046	-1	46 987	-8
2012	30 751	10	24 251	27	55 002	17
2013	25 852	-16	16 947	-30	42 799	-22
2014 (forecast)	13 000	-50	9 000	-47	22 000	-49

Source: Australian Canning Fruit Growers Association (sub. 41).

Although these decreases may indicate a temporary rebalancing of production levels to account for past over-production (relative to sales), they may also signal a more lasting impact on the domestic fruit processing industry. Specifically, the sharp reduction in proposed fruit intakes for 2014 could imply an anticipated permanent adjustment in future production levels by SPC Ardmona.

A number of fruit growers making submissions to this inquiry have argued that the reduction in fruit intakes would make their businesses unviable and would force them to destroy their trees. This could lead to reductions in production capacity that would be irreversible in the short term. Some growers (and SPC Ardmona) also argued that the financial stress on some growers could lead to them being unable to meet their biosecurity obligations, which could, in turn, lead to broader damage on horticultural production in the region (box 2.1).

The Commission has considered the impacts on growers in the context of whether any safeguard measures could address those impacts, and also whether safeguards are the most appropriate mechanism to address them. This is discussed in section 2.6.

FINDING 2.9

Based on the evidence available, the Commission is satisfied that there is sufficient cumulative evidence of actual or threatened serious injury to SPC Ardmona.

2.5 Have imports caused the injury?

Requirements for evaluating the causes of injury

Having established that the domestic industry has suffered serious injury, it is necessary to identify and attribute the causes of that injury. If it can be shown that the injury was *caused* by increased imports, provisional safeguard measures may be permitted under the terms of the Agreement on Safeguards.

Neither the Agreement on Safeguards, nor the subsequent case law specifies strict tests for how the Commission should evaluate the causes of the injury to the domestic industry. However, the Agreement and the case law do provide some guidance, and set some minimum requirements for the analysis.

First, the Agreement specifies that the Commission is required to consider ‘all relevant factors’ that could have contributed to the injury. The Agreement does not specify which other factors should be considered. However, a WTO appellate body interpreted the term to mean that the analysis should not be limited to factors that were raised by an interested party (*US – Wheat Gluten* (DS 166)).

Second, the Agreement on Safeguards stipulates that imports must be entering ‘*under such conditions* as to cause or threaten to cause serious injury to the domestic industry’ [emphasis added]. Various panel and appellate body interpretations of the highlighted phrase suggest this requires analysis of the conditions of competition in the domestic market (for example, *Argentina – Footwear* (EC) (DS 121), Panel Report).

Third, the Agreement requires that any injury that was caused by factors other than increased imports must not be attributed to increased imports.

Finally, guidance from WTO case law is that in order to attribute the cause of the injury to imports, there should be, at a minimum, a ‘coincidence of trends’ between the injury and the increase in imports.

Key mechanisms through which imports can cause injury

There are two key inter-related mechanisms through which imports could cause injury to the domestic industry.

First, imports could drive down market prices. Initially, this could reduce profitability in the domestic industry, inducing a decrease in production until and if profitability is restored at the lower price. In short, lower import prices expand the domestic market, but also crowd out higher-cost domestic production.

Second, to the extent that the demand for local products and domestic production volumes decrease, imports could affect production costs by reducing any economies of scale previously harnessed by the domestic industry. In this case, the industry may continue to produce using its existing plant and equipment for as long as it can cover the cost of producing the product, irrespective of the capital attributed to the production process. However, any new capital investment (for example, to replace obsolete plant) may not be commercially justifiable in the new market circumstances.

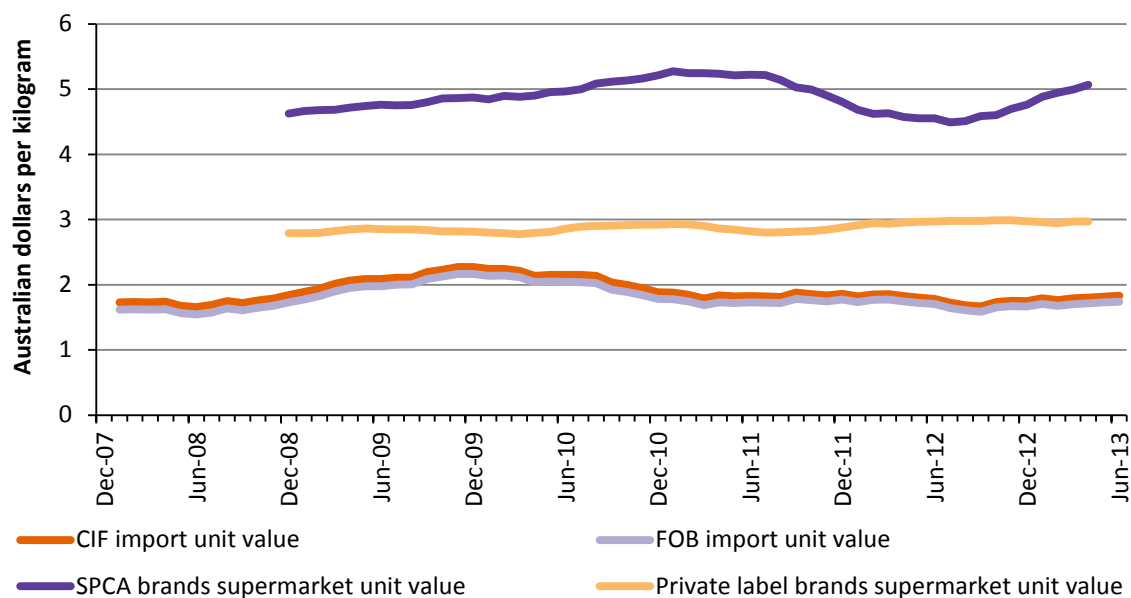
Unit values of imports and domestic retail prices

The unit values of imports for each Tariff subheading have generally remained stable and there is no evidence of a material decrease over the past five years (figures 2.13–2.15).³ Similarly, the supermarket unit values of private label products (the retail channel for the majority of imports) have remained relatively steady.

The unit values of SPC Ardmona branded products have fluctuated slightly around a constant trend. Consequently, the persistent unit value gaps between SPC Ardmona's private branded products and both imports and private label products have fluctuated largely due to the changes in the retail prices for SPC Ardmona's products, not prices of imports.

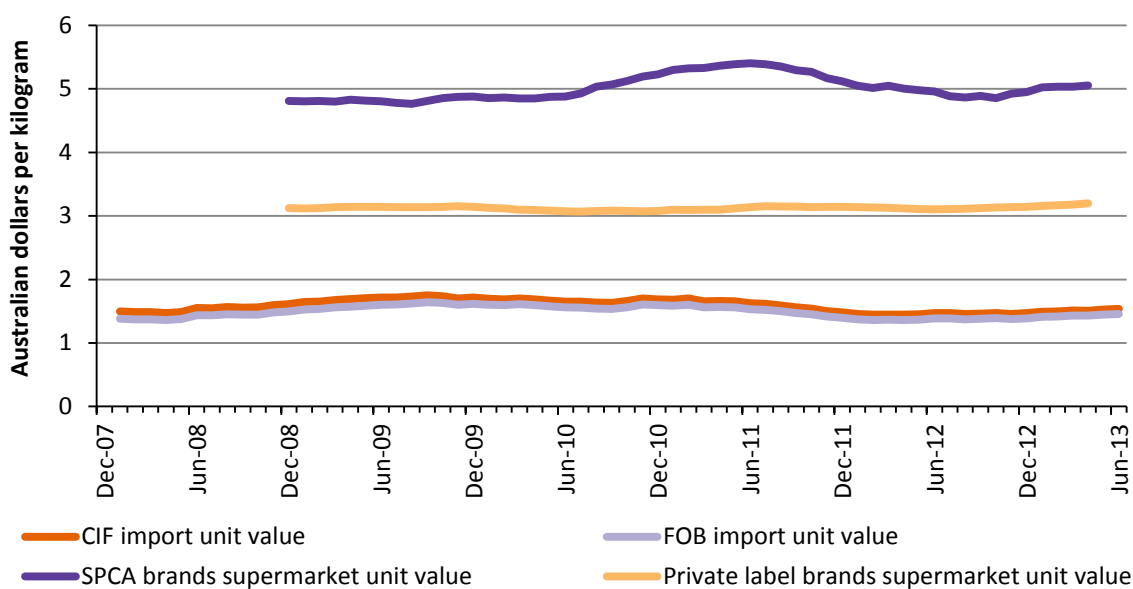
³ Numerous processed fruit products that are covered by this provisional safeguards inquiry are produced locally, imported and sold. Unit values represent an 'average' price of the products, which is derived by dividing the sum of the value of all products sold by the total weight (in kilograms) of the products.

Figure 2.13 Unit values of pears
Moving annual averages



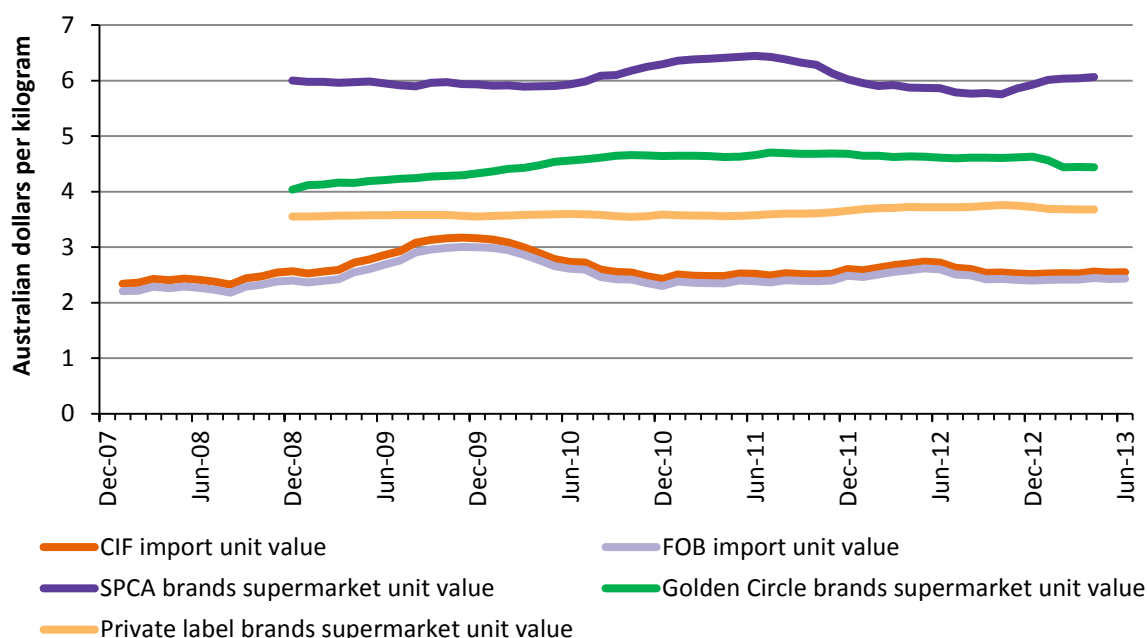
Sources: ABS (unpublished); Aztec (unpublished); Commission estimates.

Figure 2.14 Unit values of peaches
Moving annual averages



Sources: ABS (unpublished); Aztec (unpublished); Commission estimates.

Figure 2.15 Unit values of mixtures
Moving annual averages



Sources: ABS (unpublished); Aztec (unpublished); Commission estimates.

The average unit values presented above do not account for any differences or changes in product composition within each category. In discussions with the Commission, SPC Ardmona suggested that supermarkets might be lowering the retail price of specific imported private label stock keeping units, for which SPC Ardmona makes its largest margins. It is possible that increased imports of such products could be reducing SPC Ardmona's prices and margins and/or sales volumes with disproportionate impacts on overall revenue and profitability. However, if those items represented a significant proportion of SPC Ardmona's business, the impacts would be observable in changes to the unit values of SPC Ardmona's sales over time, or as decreases in sales and market share. In the evidence obtained to date, such trends are not evident.

In any event, import data at such a detailed level are not available and the Commission is required under its terms of reference to examine the Tariff subheadings in their entirety. On the available data, there is limited evidence of decreasing prices for imported products.

This is consistent with the limited available evidence on production levels and costs for the key source countries of Australia's imports of processed fruit, which does not indicate recent material changes in production levels and costs (box 2.6).

Box 2.6 World production of processed deciduous fruits

US Department of Agriculture Reports highlight production and trading conditions in the world's major producers of processed deciduous fruits.

In 2010, South Africa experienced adverse weather conditions, which reduced the volume of crops available for processing. Fruit deliveries for processing were anticipated to increase by four per cent in the 2011-12 marketing year. The US Department of Agriculture noted that the South African industry has faced challenges in remaining competitive and that input costs for sugar, cans and electricity had increased in recent years.

For the 2011-12 marketing year, the US Department of Agriculture forecast a significant decrease in Greek peach production due to hailstorms, as well as grower transition to growing other crops. Additionally, Greek peach producers received no aid or emergency income support in 2009 and 2010, and this was expected to accelerate the transition by peach growers to other horticultural production. The report stated that the Greek processed peach industry had faced difficult circumstances and was in transition.

As a result, production volumes and exports of the world's major processed deciduous fruit producers have tended to be relatively flat (Greece), or declined (South Africa and China) over the past few years. For instance, Greek processed peach exports were expected to be a little over 302 200 tonnes in the 2011-12 marketing year, compared with 300 000 tonnes in the previous year and 280 000 tonnes in 2009-10. Further, South Africa's exports of processed pears were 30 per cent lower in 2011-12 than in 2008-09, while China's exports of processed pears in 2012-13 are expected to be about 20 per cent lower than their 2008-09 level.

Sources: USDA (2009, 2010, 2011, 2012, nd).

The preliminary conclusion that there has been little increase in price pressure on SPC Ardmona from decreasing world prices of imported products is also consistent with the evidence provided to the Commission for the period between 2010 and 2013. Specifically, SPC Ardmona's sales revenue (net of discounts) per unit of the relevant products has decreased by between 1 and 2 per cent.

On the other hand, cost pressures have increased for SPC Ardmona (discussed below).

Decrease in SPC Ardmona's profit margin — production volumes and costs

As discussed in section 2.4, SPC Ardmona has submitted evidence of falling profit margins for the relevant products. The decreases appear to have been driven mostly

by costs of production, which increased by between 16–22 per cent across the three Tariff subheadings.

SPC Ardmona submitted:

The decline in sales volumes caused by the imported canned Multi serve fruit has resulted in SPCA experiencing higher costs to make and sell during the period from 2010 to 2013 with average cost to make and sell increasing by 19%. This was due to loss of critical economies of scale which in turn lead to poor overhead recovery. (sub. 39, p. 18)

There is some evidence that the increase in SPC Ardmona's costs of production was driven partly by increased variable costs, in particular factory labour costs. SPC Ardmona previously reported that labour costs had been rising and reached approximately \$33 per hour in 2012 (CFICA 2012). The Canned Fruits Industry Council of Australia also previously reported that growers have experienced increased labour costs, due in part, to legislative changes related to orchard labour (CFICA 2012).

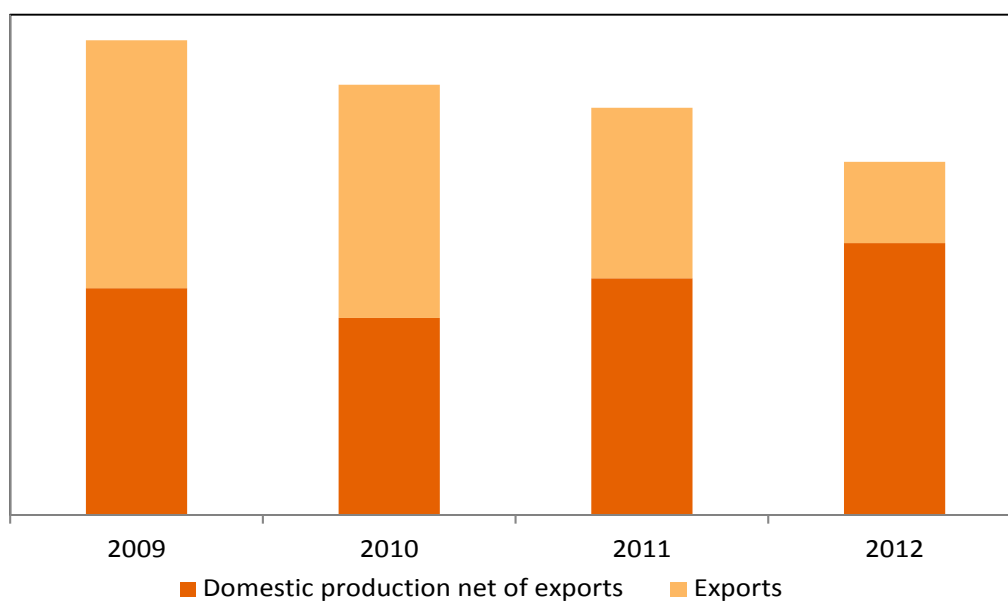
With regard to declining economies of scale, as discussed in section 2.4, the Commission has not been presented with clear evidence of a decrease in capacity utilisation over the period referred to by SPC Ardmona. SPC Ardmona claimed that capacity utilisation had fallen. On the other hand, there is some possibility that capacity utilisation may have *increased* due to rationalisation and consolidation of processing plants and a recovery in production levels in 2012.

Nevertheless, even if the increase in production costs is largely attributable to decreasing economies of scale, the proposition that the decreases in production levels have been caused by increased imports is not supported by the evidence to date.

First, as discussed in section 2.2, with the exception of imports of processed fruit mixtures, the evidence needed to meet the relevant tests of a recent increase in imports in absolute or relative terms is not strong. And, as indicated earlier in this section, there is not an apparent downward trend in import unit values, putting pressure on prices.

Second, there is evidence that the decreases in domestic production have been driven in part by factors outside of the domestic market, specifically a reduction in export volumes (figures 2.16–2.18).

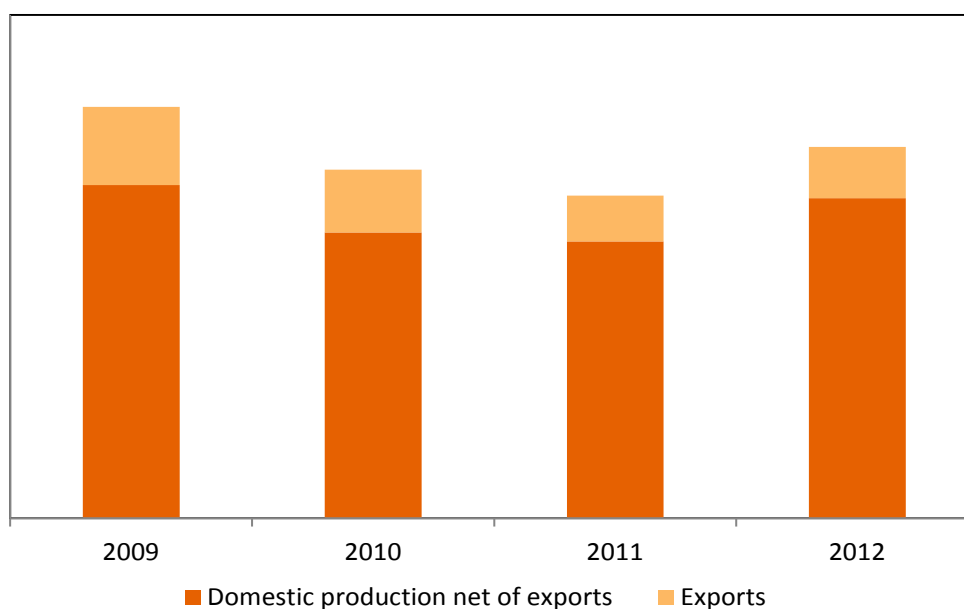
Figure 2.16 Domestic production and export volumes — Pears^a



^a Domestic production is domestic production of processed pears by SPC Ardmona. Exports are aggregate exports of processed pears.

Sources: ABS (unpublished); SPC Ardmona (unpublished).

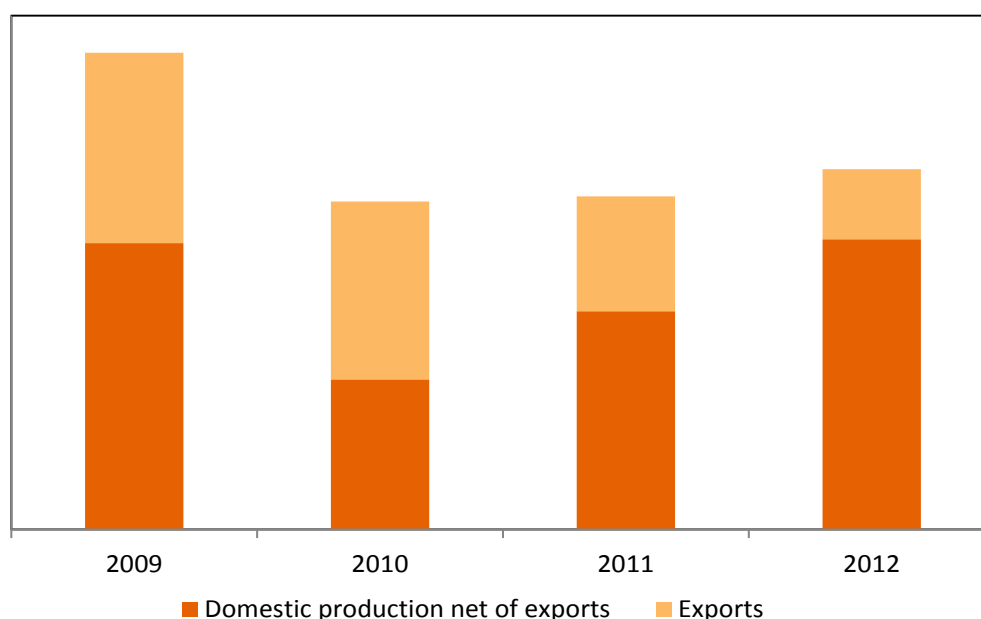
Figure 2.17 Domestic production and export volumes — Peaches^a



^a Domestic production is domestic production of processed peaches by SPC Ardmona. Exports are aggregate exports of processed peaches.

Sources: ABS (unpublished); SPC Ardmona (unpublished).

Figure 2.18 Domestic production and export volumes — Mixtures^a



^a Domestic production is domestic production of processed mixtures by SPC Ardmona. Exports are aggregate exports of processed mixtures.

Sources: ABS (unpublished); SPC Ardmona (unpublished).

However, this evidence of decreasing export volumes should be considered in conjunction with evidence of SPC Ardmona's corporate strategy to use its processing plants overseas to supply the company's branded products in export markets (Hattersley, Isaacs and Burch 2013; South African Fruit and Vegetable Canners' Association, trans., p. 74, sub. 59).

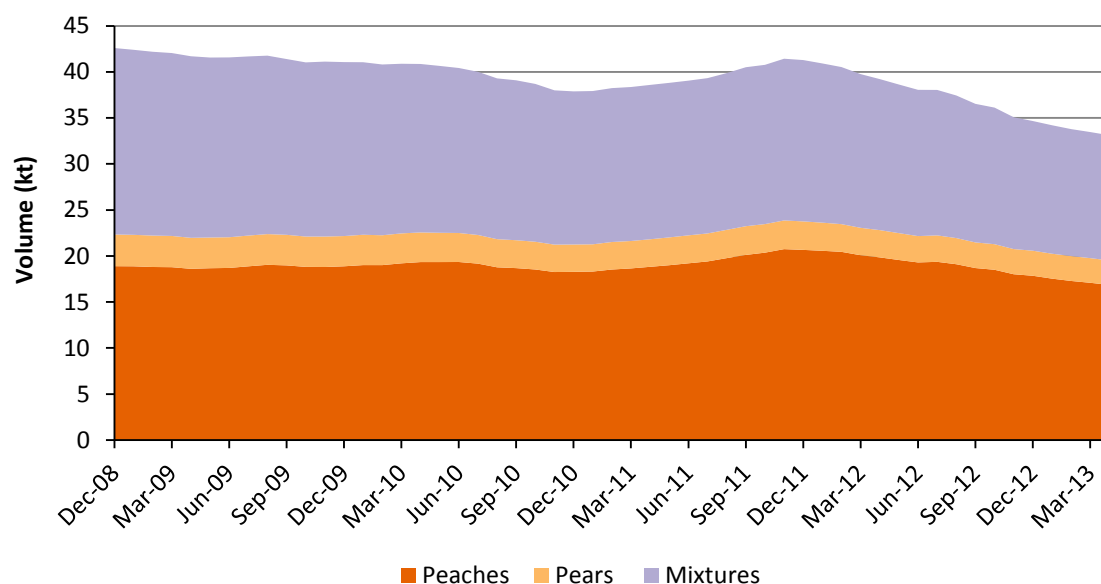
Third, an important contributing factor to the decreases in domestic production is reduced domestic demand for the relevant products (discussed below).

Decrease in demand for processed fruit

There is evidence of a long-term reduction in overall consumer demand for processed fruit, whether imported or domestically produced (figure 2.19).

In 1986, the Bureau of Agricultural Economics reported that Australian per capita consumption of processed deciduous fruit fell by 45 per cent between 1970 and 1986. It attributed the decrease to several factors, including changing consumer tastes and improvements in the availability of fresh fruit substitutes, and predicted that the trend would continue in the future (BAE 1986).

Figure 2.19 Supermarket sales of processed pears, peaches and mixtures
Moving annual total



Source: Aztec (unpublished).

In the most recent five years, retail quantities sold of the processed fruits under consideration (in aggregate) fell from about 43 000 tonnes to 33 000 tonnes (on a moving annual total basis) (figure 2.19). The decrease is greater on a per-capita basis: as a point of reference, Australia's population grew by 1.4 million, or 6.7 per cent, between December 2008 and December 2012 (ABS 2013).

While determined not to be a relevant element of the analysis in section 2.1 related to directly competitive products, substitutability of the fresh product for the processed product is part of a plausible market trend over time (box 2.7).

Box 2.7 Are consumers shifting away from processed and toward fresh fruit?

Based on data from several sources, the Commission has estimated that between 2002 and 2012, *apparent* per capita domestic consumption of processed deciduous fruit decreased by about 37 per cent. Over the same period, per capita consumption of fresh fruit for which data are available — apples, cherries, peaches, nectarines, grapes, oranges and pears — increased by about 14 per cent.

IBISWorld (2013) observed that increased demand for fresh fruit has been driven by increased consumer health concerns as well as by greater availability and improved quality of fresh fruit. The study noted improvements in storage and transportation methods, and the expansion of seasonal availability due to the introduction of new varieties of fruit.

In its submission to this inquiry, Coles argued that consumers perceive the relative per-kilogram value of fresh fruit as more attractive than processed equivalents. It further observed:

... fresh fruit is mostly available all year round in good volumes and quality at prices consumers can afford. There are a small number of seasonal windows where Australian fruit is unavailable and substituted by imports. This increased year round availability and improved quality has seen, over time, consumer preferences switch to fresh produce at the expense of preserved fruit products, particularly in cans. (sub. 45, p. 2)

Sources: ABS (2013; unpublished); CFICA (2009, 2010, 2012); IBISWorld (2013); USDA (2013); USITC (2007).

Coles also argued that there may have been reduced demand for packaged foods among some consumers, due to environmental concerns. It pointed to some schools implementing ‘no packaging’ lunchbox rules that have contributed to increased preference for fresh foods.

There is also some evidence of changes in consumer preferences across processed fruit products. IBISWorld (2013) and Coles (sub. 45) observed that consumers have been switching toward other forms of processed products that have health and/or convenience advantages, including:

- ‘snack packs’
- ‘breakfast’ or ‘health-food’ bars with some fruit content and minimally-processed fruit products such as frozen fruit and cut or diced fresh fruit in packages.

In its December 2012 update on the 2013 season, SPC Ardmona stated:

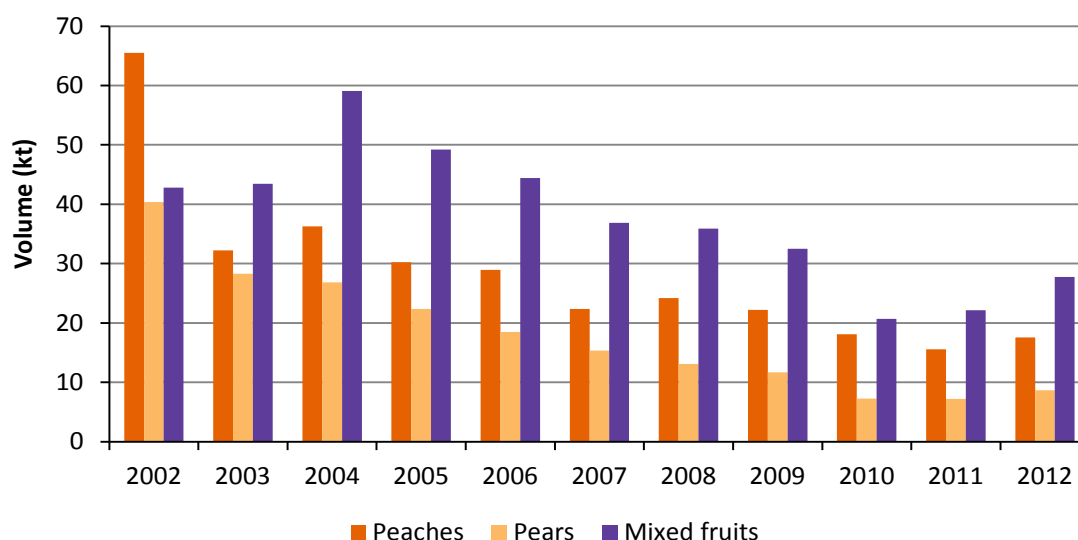
While we have grown our market share the reality is that demand for packaged fruit has been declining and our fruit intake for the 2013 season reflects this ... The reality is that Australians are not consuming our canned fruit products in the same quantities that

they have in the past ... The company is working with their key customers to reverse declining trends and deliver products that consumers want ... The simple truth is that consumer tastes have changed and if we are to survive we must adapt and transform the way we do business ... (SPCA 2012a)

Long term decrease in domestic production

There is clear evidence that the decrease in domestic production of processed fruit over the past five years is part of a longer term trend and that the largest reductions appear to have occurred before 2009 (figures 2.20, 2.21).

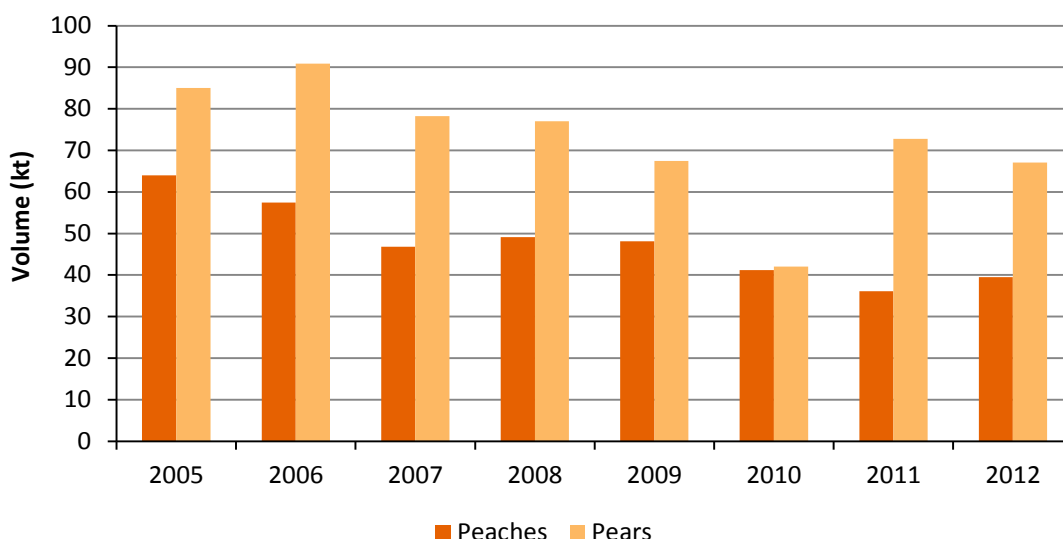
Figure 2.20 Domestic production of processed fruit
2002 to 2012^{a, b}



^a Years ended June. ^b Data from 2005 onwards are taken from the Canned Fruits Industry Council of Australia's presentations to the World Canned Deciduous Fruit Conferences in 2009, 2010 and 2012. This allows a longer time period to be represented in this chart (2005 to 2012, compared with 2009 to 2012 for the SPCA-supplied data); it also avoids splicing incompatible data series, as the SPCA-supplied data are by calendar year whereas the CFICA data are by marketing year.

Sources: CFICA (2009, 2010, 2012); USITC (2007).

Figure 2.21 Domestic agricultural production of processing peaches and pears
2005 to 2012^a



^a Years ended June. Total production of processing varieties only.

Sources: CFICA (2009, 2010, 2012).

Part of the decrease is attributable to falling domestic demand for processed fruit discussed above. The industry was also affected by several adverse climatic events over the past decade (box 2.8).

Box 2.8 Weather-related events affecting processed fruit production

Over the past decade, a number of weather-related factors have affected growers' ability to produce processing fruits and supply these to SPC Ardmona.

- **2004** — processing fruit intakes, particularly peaches and apricots, were affected by frost damage.
- **2006 and 2007** — processing fruit intakes were again affected by frost damage, resulting in a reduction in processing intakes for apricots and peaches.
- **2008 and 2009** — a continuation of drought conditions across the Murray Darling Basin led to high water costs and a reduction in tree numbers, affecting cannery intakes.
- **2010** — hot conditions at about the time of the 'Black Saturday' bushfires in 2009 resulted in low pear yields.
- **2011** — In its annual report, Horticulture Australia (2011, p. 1) reported: 'Prolonged drought throughout 2010, followed by the wettest season on record, caused significant damage and crop losses to stone fruit in particular'.

Sources: CFICA (2009); HAL (2009, 2010, 2011).

Supermarket strategies — private label products

SPC Ardmona submitted that one of the causes for the decreases in its production, sales volumes and market share was that:

... the major supermarket chains, which traditionally claimed publicly that they supported Australian produce, moved strongly from 2010 to import products cheapened by the exchange rate appreciation and, unknowingly to them cheapened also by dumping, for their strategy of developing private label products. (sub. 39, p. 21)

Supermarkets using countervailing power in the market for processed fruit

As discussed earlier, growth in private label product sales is not equivalent to growth in imports, although the availability of imports can affect supermarket and domestic manufacturers' pricing strategies (box 2.9).

Box 2.9 The link between imports and private label prices

Import competition inevitably constrains domestic prices of substitutable products.

The availability of imported processed fruit to Australian retailers constrains the ability of SPC Ardmona to raise the prices of its own brand and private label ranges offered to retailers (for example, in response to higher processing costs). Any price premium achievable by SPC Ardmona for its products will be tied to the import price. The potential for a retail chain to switch their supply of private label products to imports could assist it in negotiating lower prices for SPC Ardmona's private label products.

Nevertheless, the evidence indicates that import unit values have remained relatively stable over the past five years, as have retail unit values of private label brands. In this context, any *changes* in the wholesale prices offered to SPC Ardmona for its private label products relate to consumer demand for the local product and the decisions made by the retailers with respect to their own margins.

Supermarkets rely on both domestic and imported sources for their private label brands and are motivated by a range of factors in their choice of suppliers (Coles, sub. 45; Woolworths Limited, sub. 31; ALDI, pers. comm., 24 July 2013).

In its inquiry into the Competitiveness of Retail Prices for Standard Groceries, the ACCC (2008, p. 371) observed:

... one of the reasons that retailers sell private label products is an attempt to reduce the influence of suppliers of proprietary brands. If successful, this would increase the bargaining power of the retailer and thus may increase their buyer power.

Following the merger of SPC and Ardmona in 2002, SPC Ardmona became the sole domestic producer of most processed fruit. The import volumes of the relevant

products in 2002-03 were less than 15 per cent of their levels in 2012-13. In 2009, SPC Ardmona's share of supermarket sales volumes of peaches, pears and mixtures was still of the order of 80–90 per cent. This dominant market position and the perceived ability to raise market prices would typically create an environment that encourages the entry of competitors into the market. The promotion of private labels by supermarkets is one manifestation of increased competition in the market.

In 2011, 'industry sources' were quoted in the Foodnews information service stating that the increase in imported private label products was a response to the effects of reduced competition in the processing sector:

The fact is that when you create a monopoly someone is always going to do something about competing with you ... Prior to the merger of Ardmona and SPC ten years ago, we never saw imported deciduous fruit. Now we have South African, Greek, Chilean and Chinese. ... In the four years immediately after the merger, prices of canned/preserved (jars & snacks) fruit rose in excess of 45% ... This coincided with [a] marked increase in private label brands (Murray 2011)

Similarly, Ken Wilson (an Australian importer of processed fruit, appearing at the Commission's public hearing as part of the South African Fruit and Vegetable Canners' Association) stated:

It perhaps goes back to a historic thing as to when the merger happened between Ardmona and SPC. At that time they had a market dominance position. They were the only manufacturer. For the two years immediately after the merger the prices went up in Australia by 40 per cent. The supermarkets didn't like that, so they looked for an alternative, and that alternative was obviously external to Australia. (trans., p. 77)

The South African Fruit and Vegetable Canners' Association argued:

SPC Ardmona's (or at least its owners) strategy is also at odds with the retailers' strategies. SPC Ardmona's strategy is to push its own brands, whereas retailers are pushing their own private labels ... Until recently SPC Ardmona did not want to supply a product (branded) as required by the retailers. South African canners were initially contacted by the retailers to supply them with their own private labels as SPC Ardmona did not want to supply them with private labels. (sub. 59, p. 10)

Confidential evidence from SPC Ardmona lends weight to the assessment that the promotion of private label products by supermarkets is primarily an issue of competition between a domestic producer and domestic retailers, rather than between domestic and foreign producers. The evidence indicates that in 2009, SPC Ardmona held a majority share of private label sales of processed pears, peaches and mixtures. While that share fell over the next four years, in 2012 SPC Ardmona still had a majority share for two of the three categories.

Furthermore, as discussed earlier, there is no clear evidence of decreasing prices of imports in the past five years. In this context, the decrease in SPC Ardmona's share of private label sales is more likely to be due to rising costs of production and the prices it is seeking for the supply of private label products.

Supermarkets using private labels in response to competition pressures within the retail sector

The ACCC (2008, pp. 360–61) observed that the recent growth of private label products was partly driven by increased competition within the retail market:

The inquiry was told by a number of parties that ALDI's entry into the Australian market in 2001 fundamentally altered the role of private labels in Australian grocery retailing and the private label strategies that the MSCs [major supermarket chains] had adopted. This was because ALDI predominantly supplied its own private label products that were pitched directly at the branded products offered by the existing retailers. ALDI's entry prompted the MSCs to reconsider their private label strategies, with Coles and Woolworths increasing their focus on private labels and introducing 'tiered' private label ranges to compete with ALDI's everyday low price ... strategy.

The Commission was informed by ALDI that SPC Ardmona was the major supplier of its private label processed fruit products (ALDI, pers. comm., 24 July 2013). This is further evidence that the injury to SPC Ardmona from the growth of private label products was caused by domestic competition factors.

Supermarkets using imports to supplement shortfalls in domestic production and increase reliability of supply

There is some evidence that the decision by supermarkets to source imported private label products is partly motivated by the objective of improving the reliability of supply through diversification of suppliers, as well as by the need to address shortfalls in domestic production.

As discussed earlier (box 2.9), Australian production of processed fruit is geographically concentrated and susceptible to adverse weather events. Hattersley, Isaacs and Burch (2013) reported a shift by supermarkets to international suppliers for their private label products to ensure the reliability of supply after severe frost in the Goulburn Valley destroyed most of the 2004 harvest. The Commission was also presented with evidence at its public hearing that SPC Ardmona was at various times an importer of processed fruit products.

In this context, an increase in imports is not a cause of the injury to the domestic industry, but a response to the injury to the domestic producer that was caused by domestic factors.

The evidence available to date suggests that any injury suffered by SPC Ardmona from supermarket private label strategies has not been caused by changes in import volumes or lower import prices. Instead, the injury has resulted from the interplay of three factors.

- Increased competition between the domestic retailers and between the domestic private brand products and SPC Ardmona branded products.
- Rising costs of domestic production that made it more difficult for SPC Ardmona to supply products in the private label segment at previous price levels.
- Issues with reliability of domestic supply, which drove supermarkets to substitute and diversify their supply sources.

Overall, the Commission's preliminary view is that the injury to SPC Ardmona has not been caused by an increase in imports of processed pears, peaches and fruit mixtures.

FINDING 2.10

Based on the evidence and analysis to date, the injury to the domestic industry has not been caused by an increase in imports of processed pears, peaches and fruit mixtures. It appears to have resulted from a combination of the following factors:

- *reduced export volumes*
- *rising costs of domestic production, driven by increased labour costs, and by declining economies of scale due substantially to reduced export volumes*
- *long-term reductions in the domestic demand for processed fruit products*
- *domestic retailers promoting private label brand products to compete with the sole domestic producer and with each other, as well as to improve reliability of supply and meet the shortfalls in domestic production.*

2.6 Do critical circumstances exist that would warrant provisional safeguard measures?

The Agreement on Safeguards stipulates that a member country may only apply *provisional* safeguard measures under 'critical circumstances' (Article 6). These circumstances must be such that any delay in taking safeguard action would result in damage to the domestic industry that would be difficult to repair.

SPC Ardmona has submitted that critical circumstances exist both for fruit growers and for itself as the manufacturer:

At the farm level, trees are a long-term crop and as a result of the damage caused by imports, some trees will be removed which would not need to be removed if a safeguard tariff at an appropriate level is in place ... An urgent decision on safeguards is required to prevent this long-term damage to productive capacity ...

At the plant level, SPCA is facing a critical decision on whether to continue its operations ... Closure of SPCA's facilities is in prospect unless provisional safeguards provide a "breathing space", followed by full safeguards measures accompanied by an adjustment plan. (sub. 39, pp. 3–4)

Circumstances of growers

The Commission has received a large number of submissions from fruit growers stating that those growers will exit the industry if provisional safeguard measures are not taken. Many growers described as critical the decision to remove surplus fruit trees before they begin to blossom in late winter to early spring, noting that although this is a costly process, failure either to spray or pull out these trees could put all horticultural producers in the region at increased risk of pest and disease (subs. 34, 41, 44). However, it should be noted that the time for implementing such decisions has now passed for the forthcoming harvest. The Commission was also presented with the results of a survey of growers conducted by the Australian Canning Fruit Growers Association in May 2013 (sub. 41) (box 2.1).

The Commission considers that there is strong evidence of many growers suffering severe financial hardship. This hardship is partly attributable to the decreases in fruit intakes by SPC Ardmona and partly to factors affecting production. The latter includes a sequence of adverse weather events that occurred in recent years, increasing labour costs, as well as the general regulatory burden on growers (subs. 2, 25, 43, 44, 47; Growcom 2011).

However, the Commission's assessment is that this does not constitute clear evidence of critical circumstances for SPC Ardmona, nor does it seem likely that imposing tariffs under provisional safeguards would directly assist growers under most financial pressure.

First, the injury to growers is already 'locked in' for this year and, therefore unlikely to be reversed by provisional safeguard measures because SPC Ardmona has already negotiated contracts for the 2013-14 production year, retaining about 50 growers.

Second, at the Commission’s public hearing for this inquiry, SPC Ardmona stated that it had selected growers with what it saw as greater capability to expand in case of a recovery of the industry. SPC Ardmona commented that if future circumstances were to favour increased production, it would be able to ‘recover that growth again through those 50 growers that we have kept’ (trans., p. 51). It also observed that ‘we could have taken our entire peach requirement for next year from six growers but instead we’re taking it from 50 growers’ (trans., p. 50). These comments suggest that growers who have lost their contracts would not have them reinstated. For the remaining growers under contract, there also is no certainty that an increase in domestic processed fruit prices in supermarkets (arising from a tariff on imports) would lead to across-the-board increases in fruit intakes by processors. Price rises might be absorbed through lower margins by supermarkets and other suppliers or higher margins by SPC Ardmona. The strength of the increase in sales of domestically processed fruit is something that would result from the interplay of consumers and suppliers in the marketplace.

Consequently, safeguard measures for processed fruit are likely to be an ineffective way of assisting growers.

It is noted that other, more direct measures are available, and some have already been implemented (box 2.10).

Box 2.10 Current assistance available to the processing fruit industry and fruit growers

There are several government programs currently in operation that provide assistance to the processing fruit industry and fruit growers.

In July 2013, the Victorian Government announced the Goulburn Valley Industry and Employment Plan, underpinned by the Goulburn Valley Industry and Infrastructure Fund. \$5 million has initially been allocated to the fund, the purpose of which is to provide support to a long term plan for the Goulburn Valley Region. The Victorian Government has also introduced the Fruit Industry Employment Program, a \$2 million, 12-month program which will provide paid work for fruit growers and orchard workers for projects such as weed and pest management and fencing work. Further, in 2012, the Victorian Government promised a contribution of \$4.4 million towards capital investments undertaken by SPC Ardmona to its Shepparton and Mooroopna facilities.

(Continued next page)

Box 2.10 (continued)

The Australian Government, in July 2013, committed to provide \$60 million over two years to farmers to provide debt assistance. Under the Farm Finance scheme, eligible farm businesses will be able to access conditional loans of up to \$650 000. Also, in November 2012, the Australian Government announced the Murray-Darling Basin Regional Economic Diversification Program. This program, which has been allocated \$100 million, will fund community-driven projects to assist Murray-Darling Basin communities adjust to the Basin Plan.

SPC Ardmona is also currently seeking further assistance from the Australian Government. Coca-Cola Amatil reported that ‘SPCA has also applied for a government grant to support restructuring, cost out and for future packaged fruit and vegetable innovation’. SPC Ardmona’s Managing Director further stated:

Coca-Cola Amatil, SPC Ardmona and the Federal Government are coming up for a transition plan for our industry ... and that would involve a significant investment in innovation. It would be a substantial plan to transition the business during the period of the [safeguard] protection.

Sources: DRALGAS (2012); Export Victoria (2013); Napthine (2013a, 2013b); SPCA (2012b).

SPC Ardmona’s short-term business plans

SPC Ardmona has not provided the Commission with compelling evidence to support its contention that its manufacturing facilities would be closed if provisional safeguards were not applied.

The company still supplies the majority of processed fruit products sold in Australia and has recently signed contracts with growers for the 2014 season.

Some of the recent developments also indicate a likely easing of the pressures over the coming months. Specifically, import volumes have fallen over the past year and the recent depreciation of the Australian dollar could drive a further decrease in imports and an increase in export volumes. In addition, there is some evidence of a shift by Australian retailers toward domestic sourcing of private label products (for example, South African Fruit and Vegetable Canners’ Association, sub. 59; Woolworths Limited, sub. 31).

Furthermore, SPC Ardmona’s position as a subsidiary of Coca-Cola Amatil — a listed company which reported net profit after tax of \$215.9 million for the six months ended 30 June 2013 (CCA 2013) — suggests that a three month delay pending a definitive safeguards determination is unlikely to lead to circumstances that would be difficult to repair.

It is also unclear that a provisional safeguard measure operating for a maximum of 200 days could significantly affect the position of the domestic industry. To the extent that some of the supermarket decisions are locked in, in the form of existing contracts, those measures would have a limited time window of application. More importantly, any future investment decisions by the domestic industry would require an assessment of long-term returns and a short-term measure would be unlikely to have a material effect.

FINDING 2.11

Although the industry is suffering serious injury, there is no compelling evidence of critical circumstances that could warrant a provisional safeguard measure.

For the report on definitive safeguards, the Commission will address the question of whether safeguard measures would remedy the injury to the domestic industry and facilitate adjustment. Relevant considerations could include analysis of how safeguard measures would affect consumers, the effects of safeguard measures on investment and production decisions, and the potential impacts of safeguard measures on supermarket strategies.

2.7 Concluding remarks

This Accelerated report represents the Commission's assessment as to whether provisional safeguard measures should be put in place for up to 200 days. The Safeguards (final) report (to be completed by December 20) will determine whether there is a case for full safeguard measures, which can be applied for up to four years.

The retail market for processed fruit in Australia as specified in the inquiry's terms of reference is generally characterised by:

- one large domestic producer (SPC Ardmona), which still has a dominant share of the domestic market
- major supermarkets that have a small number of product lines (private labels) supplied mostly from imported sources.

The proactive sourcing by supermarkets of private labels appears to be an important characteristic of this market.

Markets for processed fruit have generally been declining slowly over time, other than where product diversification and innovation attracts a new class of consumer.

Australian fruit growers that supply the domestic processing industry have sought to increase efficiency and have accepted minimal price increases over an extended period, in circumstances of declining purchases from SPC Ardmona. This has resulted in hardship for many growers. Although for the specific purposes of this inquiry growers are not part of the relevant domestic industry, they have a stake in the outcome.

The Commission has found that recent increases in imports of processed citrus, pears, apricots and ‘other fruits’ are unlikely to be sufficient to meet the terms of Article 2.1 of the Agreement on Safeguards.

The Commission has found that recent increases in imports of mixtures and arguably of peaches may meet the terms of Article 2.1. Further data are required to reach a firm conclusion, which will be available in the final report.

Three other tests must be applied in order to satisfy the requirements of Article 2.1. These are whether the import increase was unforeseen; whether the industry has suffered actual or threatened serious injury; and if so, whether the injury was caused by the imports.

The Commission’s preliminary view is that the first two of these three tests are likely to be met. The Commission notes that the test of whether an event is unforeseen is archaic — being rooted in the circumstances of 1994 — and will increasingly be so, but this has not influenced its judgment.

The Commission then examined causation. The Commission’s view at this time is that the damage to the domestic industry was caused by a range of factors. Loss of exports, reduced consumer demand and higher costs including labour costs are relevant. Private label strategies are also relevant. Imports enabled certain supermarket pricing strategies to take place, but imports themselves did not vary downwards in price. Supermarket decisions on pricing strategies and product sourcing were made domestically, rather than being caused by changes in the world market for processed fruit products.

For this accelerated report, the Commission has not received compelling evidence of the existence of critical circumstances sufficient to justify the application of immediate provisional safeguard measures. The available evidence suggests that waiting a few months for a decision, until completion of the final safeguards report in December, is unlikely to cause injury to the domestic industry that would be difficult to repair.

The Commission seeks comment on all aspects of this accelerated report as part of its process for preparing the final safeguards report and will propose further public

hearings to allow those responses to be heard. The Commission will seek further data on recent import trends and on private label strategies. The Commission also seeks comment from interested parties on its present views on ‘causation’.

A Conduct of the inquiry

This appendix lists parties the Commission consulted with through:

- submissions received (table A.1)
- visits (table A.2)
- a roundtable (table A.3)
- a public hearing (table A.4).

The Commission received the terms of reference for this inquiry on 25 June 2013. Following receipt of the terms of reference, the Commission placed notices in the press and on its website inviting public participation in the inquiry. Information about the inquiry was also circulated to people and organisations likely to have an interest in it. The Commission released an issues paper in July 2013 to assist inquiry participants with preparing their submissions. The Commission received 61 submissions.

A roundtable was held in Shepparton on 12 July 2013 and a public hearing was held in Canberra on 30 July 2013.

The Commission consulted with a range of organisations, individuals, industry bodies and government departments and agencies.

Table A.1 Submissions received^a

<i>Individual or organisation</i>	<i>Submission number</i>
Routley, Ivan	1
Yosifofski & Sons Pty Ltd	2
G & M Parris & Sons Pty Ltd	3
Morey, Robert	4
DP & HL Stephens	5
Limbrick, Wayne	6
VJS Orchards Pty Ltd	7
M & E Mete	8
Brown, Doug	9
Greater Shepparton City Council	10
J & D Grasso	11
V & D Zurcas Holdings Pty Ltd	12
RJ Cornish & Co Pty Ltd	13
Orrvale Orchards Pty Ltd	14
HW Pogue & Co	15
Calimna Orchard	16
Summer, Fern	17
Profel — European Organisation of Fruit and Vegetable Processors #	18
IR & YA Puckey	19
Chilealimentos Asociacion Gremial	20
South African Fruit and Vegetable Canners Association	21
Government of Mexico	22
Department of Trade and Industry — South Africa	23
Ministry of Economy — Republic of Turkey	24
Victorian Peach and Apricot Growers Association	25
Stone, Sharman (MP)	26
Embassy of the Argentine Republic — Ministry of Foreign Affairs of the Argentine Republic	27
European Commission	28
Ministry of Foreign Affairs — Chile	29
Department of Foreign Affairs — Thailand	30
Woolworths Limited	31
Australian Manufacturing Workers' Union	32
Petrovski & Sons Pty Ltd	33
MJ Hall & Sons Pty Ltd	34
Taipei Economic and Cultural Office in Australia	35
Amcor Packaging (Australia) Pty Ltd	36
Sugar Australia	37
Bean Growers Australia *	38
SPC Ardmona	39
McKenzie, Bridget (Senator)	40
Australian Canning Fruit Growers Association	41
M & R Scarcella	42

(Continued next page)

Table A.1 (continued)

<i>Individual or organisation</i>	<i>Submission number</i>
Turnbull Bros Orchards Pty Ltd	43
Apple and Pear Australia Limited	44
Coles	45
Trevaskis Engineering Pty Ltd	46
National Farmers' Federation	47
Drives for Industry Pty Ltd	48
Croci, Patrick	49
Ministry of Industry and Foreign Trade — Egypt	50
Embassy of the Republic of Chile	51
SPC Ardmona *	52
Brazilian Government	53
BuyAustralianMade	54
Moiria Shire Council	55
Consulate General of Egypt	56
Gouge Linen and Garment Services	57
NSW Farmers' Association	58
South African Fruit and Vegetable Canners' Association	59
Ministry of Economy — Republic of Turkey	60
South African Fruit and Vegetable Canners' Association *	61

^a An asterisk (*) indicates that the submission contains confidential material NOT available to the public.
A hash (#) indicates that the submission includes attachments.

Table A.2 Visits

Organisation

ACT

Department of Agriculture, Fisheries and Forestry

Department of Foreign Affairs and Trade

Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education

Department of the Prime Minister and Cabinet

Treasury

Victoria

Coles

SPC Ardmona

Table A.3 Roundtable participants, Shepparton 12 July 2013

<i>Name of participant</i>	<i>Organisation</i>
Tom Hale	Australian Manufacturing Workers' Union
Robert Rendell	Australian Processing Tomato Research Council
Caroline Smith	Department of State Development, Business and Innovation (Vic)
John Wilson	Fruit Growers Victoria
Gary Godwill	
Peter Hall	
James Cornish	
Jim Geltch	
Neil Geltch	
Geraldine Christou	Greater Shepparton City Council
Peter Ryan	Goulburn Valley Fruit Growers Strategic Stakeholders Group
Bradley Mills	Horticulture Australia
Jim O'Connor	Regional Development Australia (Hume)
John Brady	Kagome Australia
Peter Kelly	SPC Ardmona
Denis Gerrard	SPC Ardmona
Shalini Valecha	SPC Ardmona
Selwyn Heilbron	SPC Ardmona
Sharman Stone (MP)	

Table A.4 Public hearing, Canberra 30 July 2013

<i>Individual or organisation</i>	<i>Transcript page numbers</i>
Australian Canning Fruitgrowers Association and Fruit Growers Victoria	5–16
Moiria Shire Council	17–21
Sharman Stone (MP)	22–31
Kagome Australia	32–38
SPC Ardmona	39–61
Greater Shepparton City Council	62–66
South African Department of Trade and Industry	67–71
South African Fruit and Vegetable Canners' Association and Jamieson Trading	72–78
Delegation of the European Union to Australia	79–87
Italian National Industry Association of Conserved Vegetables	88–97
Embassy of the Republic of Chile	98–101

B Commonwealth Gazettes and GATT Article XIX

This appendix consists of:

- the *Commonwealth of Australia Gazette*, 'Establishment Of General Procedures For Inquiries By The Productivity Commission Into Whether Safeguard Action Is Warranted Under The Agreement Establishing The World Trade Organization', No. S 297, Thursday, 25 June 1998
- the *Commonwealth of Australia Gazette*, 'Amendment of general procedures for inquiries by the Productivity Commission into whether safeguard action is warranted under the Agreement establishing the World Trade Organization', No. GN 39, 5 October 2005
- GATT 1994 Article XIX.



Commonwealth
of Australia

Gazette

No. S 297, Thursday, 25 June 1998

Published by AusInfo, Canberra

SPECIAL

**ESTABLISHMENT OF GENERAL PROCEDURES FOR INQUIRIES BY THE
PRODUCTIVITY COMMISSION INTO WHETHER SAFEGUARD ACTION IS
WARRANTED UNDER THE AGREEMENT ESTABLISHING THE WORLD
TRADE ORGANIZATION**

1. In order to comply with the requirements of the Agreement Establishing the World Trade Organization (WTO Agreement), and in particular the Agreement on Safeguards (Safeguards Agreement) and Article XIX of the General Agreements on Tariffs and Trade 1994 (GATT 1994), this notice establishes the general procedures for inquiries into safeguard action by the Productivity Commission (Commission) in respect of a reference under Parts 2 and 3 of the *Productivity Commission Act 1998*.

2. A reference under Parts 2 and 3 of the *Productivity Commission Act 1998* in respect of safeguard action will designate the product being imported and request an inquiry and report by the Commission on:

- (a) whether the conditions are such that safeguard measures would be justified under the WTO Agreement;
- (b) if so, what measures would be necessary to prevent or remedy serious injury and to facilitate adjustment; and
- (c) whether, having regard to the Government's requirements for assessing the impact of regulation which affects business those measures should be implemented.

3. A "**safeguard measure**" means a measure provided for in Article XIX of GATT 1994, the rules for which are established by the Safeguards Agreement. A safeguards measure would be in the form of a quota, a tariff quota, or an increased level of tariff.

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Conditions

4. The Commission is to report on whether the product under reference is being imported into Australia in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.
5. Safeguard measures have to be applied to a product being imported irrespective of its source, except:
- (a) product determined to be of New Zealand origin pursuant to the Australia New Zealand Closer Economic Relations Trade Agreement, which shall be excluded from the inquiry; and
 - (b) product originating in a developing country Member of the WTO shall be exempted from such measures as long as its share of imports of the product concerned does not exceed 3%, provided that developing country Members of the WTO with less than 3% import share collectively account for not more than 9% of total imports of the product.

Inquiry

6. Reasonable public notice must be given to all interested parties in accordance with section 14 of the *Productivity Commission Act* 1998. The inquiry must involve public hearings or other appropriate means in which importers, exporters and other interested parties can present evidence and their views, including the opportunity to respond to the presentations of other parties and to submit their views, *inter alia*, as to whether or not the application of a safeguard measure would be in the public interest.
7. In accordance with section 12 of the *Productivity Commission Act* 1998 a report shall be published promptly setting forth the Commission's findings and reasoned conclusions reached on all pertinent issues of fact and law. The report will include a detailed analysis of the case under inquiry as well as a demonstration of the relevance of the factors examined. All factors specified in these procedures must be considered.
8. Any information which is by nature confidential or which is provided on a confidential basis shall, upon cause being shown, be treated as such by the Commission. Such information shall not be disclosed without permission of the party submitting it. Parties providing confidential information may be requested to furnish non-confidential summaries thereof or, if such parties indicate that such information cannot be summarized, the reasons why a summary cannot be provided. However, if the Commission find

that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, it may disregard such information unless it can be demonstrated to its satisfaction from appropriate sources that the information is correct.

Determination of Serious Injury or Threat Thereof

9. **"Serious injury"** means a significant overall impairment in the position of a domestic industry.

10. **"Threat of serious injury"** means serious injury that is clearly imminent, in accordance with the provisions of paragraphs 13 and 14. A determination of the existence of a threat of serious injury shall be based on facts and not merely on allegation, conjecture or remote possibility.

11. In determining injury or threat thereof, a **"domestic industry"** means the producers as a whole of the like or directly competitive products operating in Australia, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products.

12. **"Like product"** means a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

13. In the inquiry to determine whether increased imports have caused or are threatening to cause serious injury to a domestic industry, the Commission shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular, the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment.

14. The determination referred to in paragraph 13 shall not be made unless this inquiry demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the product concerned and serious injury or threat thereof. When factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports.

Application of Safeguard Measures

15. A safeguard measure can only be applied to the extent necessary to prevent or remedy serious injury and to facilitate adjustment. If a quantitative restriction is used, such a measure shall not reduce the quantity of imports below the level of a recent period which shall be the average of imports in the last three representative years for which statistics are available, unless clear justification is given that a different level is necessary to prevent or remedy serious injury.

Provisional Safeguard Measures

16. A reference can also be made to the Commission for an accelerated report to determine whether critical circumstances exist where delay in applying measures would cause damage which it would be difficult to repair. The Commission will report to the Minister on whether there is clear evidence that increased imports have caused or are threatening to cause serious injury. If the Commission finds that such circumstances exist, then it will also recommend what provisional measures would be appropriate for up to 200 days. Such measures should take the form of tariff increases unless that would not be sufficient to prevent serious injury. The provisional measures would be revoked when the Government reached a decision on the imposition of safeguard measures following the receipt of the report by the Commission.

Duration and Review of Safeguard Measures

17. The Commission shall also make recommendations about the duration of the measures up to a four year period. The period is to include any period where provisional measures have been in place.

18. Where safeguard measures are imposed, the Minister may refer to the Commission for inquiry and report the question of the extension of the period for safeguard measures beyond four years and up to eight years.

19. The inquiry by the Commission to advise whether the safeguard measure continues to be necessary to prevent or remedy serious injury and whether there is evidence that the industry is adjusting shall be in conformity with the procedures set out above. A measure so extended is not to be more restrictive than it was at the end of the initial period, and should continue to be liberalized.



Amendment of general procedures for inquiries by the Productivity Commission into whether safeguard action is warranted under the Agreement establishing the World Trade Organization

In order to comply with the requirements of the Singapore Australia Free Trade Agreement, the Australia United States **Free Trade** Agreement and the Thailand Australia Free Trade Agreement, this notice amends the General procedures for inquiries by the Productivity Commission into whether safeguard action is warranted under the Agreement establishing the World Trade Organization Instrument.

Note The general procedures were published in Commonwealth *Gazette* No S 297 of 25 June 1998, and notified to the World Trade Organization. The general procedures relate to inquiries into safeguard action by the Productivity Commission in respect of a reference under Parts 2 and 3 of the *Productivity Commission Act* 1998.

Amendments

(section 3)

[1] **Paragraph 5 (a)**

omit

which shall be excluded from the inquiry; and

insert

which shall be excluded; and

[2] **Paragraph 5 (b)**

omit

imports of the product.

insert

imports of the product; and

[3] **After paragraph 5 (b)**

insert

(c) product determined to be of Singapore origin pursuant to the Singapore Australia Free Trade Agreement, which shall be excluded; and

(d) product determined to be of United States origin pursuant to the Australia United States Free Trade Agreement, which may be excluded if those imports are not a substantial cause of serious injury, **or threat thereof**; and

(e) product determined to be of Thai origin pursuant to the Thailand Australia Free Trade Agreement, which may be excluded if those imports are not a cause of serious injury **or threat thereof or of serious damage or actual threat thereof**.

GATT 1994 Article XIX

Emergency Action on Imports of Particular Products

1. (a) If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession.

(b) If any product, which is the subject of a concession with respect to a preference, is being imported into the territory of a contracting party in the circumstances set forth in sub-paragraph (a) of this paragraph, so as to cause or threaten serious injury to domestic producers of like or directly competitive products in the territory of a contracting party which receives or received such preference, the importing contracting party shall be free, if that other contracting party so requests, to suspend the relevant obligation in whole or in part or to withdraw or modify the concession in respect of the product, to the extent and for such time as may be necessary to prevent or remedy such injury.

2. Before any contracting party shall take action pursuant to the provisions of paragraph 1 of this Article, it shall give notice in writing to the Contracting Parties as far in advance as may be practicable and shall afford the Contracting Parties and those contracting parties having a substantial interest as exporters of the product concerned an opportunity to consult with it in respect of the proposed action. When such notice is given in relation to a concession with respect to a preference, the notice shall name the contracting party which has requested the action. In critical circumstances, where delay would cause damage which it would be difficult to repair, action under paragraph 1 of this Article may be taken provisionally without prior consultation, on the condition that consultation shall be effected immediately after taking such action.

3. (a) If agreement among the interested contracting parties with respect to the action is not reached, the contracting party which proposes to take or continue the action shall, nevertheless, be free to do so, and if such action is taken or continued, the affected contracting parties shall then be free, not later than ninety days after such action is taken, to suspend, upon the expiration of thirty days from the day on which written notice of such suspension is received by the Contracting Parties, the

application to the trade of the contracting party taking such action, or, in the case envisaged in paragraph 1 (b) of this Article, to the trade of the contracting party requesting such action, of such substantially equivalent concessions or other obligations under this Agreement the suspension of which the Contracting Parties do not disapprove.

(b) Notwithstanding the provisions of sub-paragraph (a) of this paragraph, where action is taken under paragraph 2 of this Article without prior consultation and causes or threatens serious injury in the territory of a contracting party to the domestic producers of products affected by the action, that contracting party shall, where delay would cause damage difficult to repair, be free to suspend, upon the taking of the action and throughout the period of consultation, such concessions or other obligations as may be necessary to prevent or remedy the injury.

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