# 2 Assessing the case for safeguard measures

Safeguard measures can only be recommended if a World Trade Organisation (WTO) member country has determined that increased imports have *caused* or are threatening to cause *serious* injury to the domestic industry that produces ‘like’ or ‘directly competitive’ products. When factors other than increased imports are causing injury to the domestic industry at the same time, such injury should not be attributed to increased imports. These matters are assessed in the following sections.

## 2.1 Which Australian industry produces like or directly competitive products?

The WTO Agreement on Safeguards defines the ‘domestic industry’ as comprising the producers as a whole of ‘like or directly competitive products’, or the producers whose collective output constitutes a major proportion of the total domestic production of those products. Therefore, the first step is to establish which domestically produced products are like, or directly competitive with, the products under reference.

### Products under reference

The terms of reference requested the Commission to undertake an inquiry into:

… whether safeguard action is warranted against imports of processed tomato products falling within tariff subheading 2002.10.00.60 of the Australian Customs Tariff.

The Commission notes that the ten‑digit number in the terms of reference is not a ‘subheading’ as defined in the *Customs Tariff Act 1995* (Cwlth). The subheading is the first eight digits (2002.10.00 — tomatoes prepared or preserved otherwise than by vinegar or acetic acid: tomatoes whole or in pieces). The subheading is further broken down into two ‘statistical codes’ that are administered by the Australian Bureau of Statistics (ABS) to meet the requirements of users of import data.

* 60 — in packs not exceeding 1.14 litres.
* 61 — in packs exceeding 1.14 litres.

The Commission has considered the terms of the Agreement on Safeguards and the relevant jurisprudence. The Commission’s assessment is that it is not precluded from carrying out an inquiry into whether safeguard action is warranted against imports falling within the tariff subheading *and* statistical code as specified in the terms of reference. That is, it is not inconsistent with the Agreement on Safeguards for the Australian Government to designate a product for investigation in the terms of reference that is narrower in scope than the eight‑digit tariff subheading. However, the Commission does have to ensure that the domestic industry producing the like or directly competitive product is properly defined.

#### Products covered and not covered by the inquiry

The products under reference include whole, chopped, diced and crushed tomatoes in packs not exceeding 1.14 litres. Although most processed tomato products imported under this subheading are packaged in cans, other packaging types are also used, including jars, pouches and tetra packs. Some products that consist of tomatoes with a small amount of flavouring such as salt, herbs or added tomato paste also come under this tariff subheading.

A number of imported processed tomato products come under other tariff subheadings, and are not covered by the inquiry, including:

* tomatoes (whole or in pieces) with additives or seasonings such as olives, capsicum, onion, celery, garlic, or chilli
* tomatoes with added tomato sauce
* tomato ketchup and other tomato sauces
* tomato paste
* tomato passata
* tomato juice
* dried tomatoes.

Fresh tomatoes come under another subheading, and are not covered by the inquiry.

### What are like and directly competitive products?

‘Like product’means a product which is identical, that is, *alike in all respects* to the product under reference, 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 reference (Commonwealth of Australia Special Gazette No. S 297, 1998).

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)).

The products under reference for this inquiry comprise retail‑size packs of tomatoes, whole or in pieces, including tomatoes with a small addition of herbs, salt or tomato paste. They are typically sold to household consumers through supermarkets and other retail outlets. Domestically produced processed tomatoes, whole or in pieces, in packs not exceeding 1.14 litres are considered like imported products.

Tomato products with the addition of a small amount of vegetables could be competitive with imported processed tomato products. Household consumers could be expected to substitute readily between these products in response to changes in relative prices. Such products are considered directly competitive for the purposes of defining the domestic industry.

Tomatoes in packs exceeding 1.14 litres are covered under a different statistical code of the tariff subheading (2002.10.00.61). The most common packaging size is three kilogram cans. Some important characteristics of these products suggest that household consumers are not likely to readily substitute between the products under reference and the larger packs.

* The products are usually sold to different consumers — smaller packs to household consumers and larger packs to the food service industry.
* The products are usually sold through different channels — smaller packs through retail outlets (primarily supermarkets) and larger packs directly to the food service industry (sometimes through contracts involving competitive tender).

Other processed tomato products (including tomato paste and tomato sauces) are also sold to household consumers through retail outlets. Although there is some substitution between these products, the Commission considers that these products are not directly competitive for the purposes of defining the domestic industry.

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

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

SPC Ardmona is the major producer of products that are like and directly competitive with the products under reference. Its output constitutes almost the entire domestic production of these products. It produces its own branded products and private label products for supermarkets. Simplot Australia produces one product under its Edgell brand that would meet the definition of directly competitive (the only Australian‑made product sold in supermarkets that the Commission has identified that is not produced by SPC Ardmona). Two other tomato processing companies were identified — Kagome Australia and Billabong Produce — and neither produces similar products in containers of 1.14 litres or less (box 2.1). No other domestic producers were identified in the course of this investigation.

#### Tomato growers do not produce like or directly competitive products

Growers are significantly affected by the business decisions and performance of tomato processing companies. Almost all tomatoes that are grown in Australia for processing (into paste, passata, or diced or whole tomatoes for canning or further processing) are grown or purchased by Kagome Australia. Kagome Australia supplies raw and processed tomatoes to SPC Ardmona, and in 2013 supplied about 28 000 tonnes (either as raw tomatoes or diced) (Kagome Australia, sub. 12). Clearly the interests of growers are aligned with the interests of the domestic tomato processing industry.

However, the Agreement on Safeguards sets a different threshold for being considered a domestic producer. The WTO appellate body has previously determined that a ‘substantial coincidence of economic interests’ is not sufficient on its own to be considered a domestic producer (*US — Lamb* (DS 177, 178)). Some inquiry participants submitted that, for this reason, growers should not be considered part of the domestic industry for the purposes of the safeguards investigation (for example, ANICAV, sub. 27).

As noted earlier, the Commission has determined that fresh tomatoes are not like or directly competitive with the processed tomato products under reference. As such, tomato growers are not part of the domestic industry as it is defined according to the Agreement on Safeguards. Raw tomatoes that are destined for processing are purchased by processors as an intermediate input and at that point growers’ involvement in the production process terminates. Nevertheless, any injury to SPC Ardmona could potentially have a flow‑on impact on growers, as well as on other suppliers and the broader Shepparton region (Essential Economics 2013). Likewise, factors leading to a severe reduction in raw tomato supply would have adverse effects on SPC Ardmona.

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| Box 2.1 Kagome Australia and Billabong Produce |
| Kagome Australia  Kagome Australia (formerly Cedenco, and based in Echuca, Victoria) is the largest Australian processor of raw tomatoes. It processed 182 000 tonnes in 2013, of which 100 000 tonnes were grown by the company and the remainder sourced from contract growers.  Kagome Australia produces tomato paste, passata and diced tomatoes. These are sold to other food processors (such as manufacturers of pasta sauces) and the food service sector. Kagome Australia does not directly supply retail markets. In 2013, Kagome Australia supplied about 18 000 tonnes of raw tomatoes, and about 7500 tonnes of processed diced tomatoes, to SPC Ardmona.  Billabong Produce  Billabong Produce grows and processes tomatoes at Jerilderie, NSW. In 2013, it processed about 8000 tonnes of raw tomatoes. The company manufactures:   * passata for sale in ALDI supermarkets (under a private label brand) * branded passata and pasta sauce products for sale in specialty retail shops * diced tomatoes in 3 litre cans and large aseptic bags (of 5 litres or more) for sale to the food service sector and to SPC Ardmona (Billabong does not sell these products directly to the retail market).   In 2013, Billabong Produce supplied diced tomatoes to SPC Ardmona, equivalent to 573 tonnes of unprocessed raw tomatoes. |
| *Sources*: Billabong Produce (pers. comm., 23 July 2013); Kagome Australia (sub. 12). |
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## 2.2 Have imports increased?

Under the Agreement on Safeguards, safeguard measures can only be imposed if a product is being imported ‘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’ (Article 2.1). The Agreement sets two tests for assessing the increase in imports: an absolute increase in imports, or an increase in imports relative to domestic production. Satisfying either of these tests is sufficient to warrant further investigation of whether the industry is suffering injury and whether the injury was caused by increased imports.

The requirement that imports be entering ‘in such increased quantities’ has been interpreted by the WTO appellate body as a requirement that ‘the increase in imports must have been recent enough, sudden enough, sharp enough, and significant enough, both quantitatively and qualitatively, to cause or threaten to cause “serious injury”’ (*Argentina – Footwear* *(EC)* (DS 121), para. 131).

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, and has examined earlier data to help it to understand trends in imports of the relevant products.

The Commission’s analysis of import volumes used data from the ABS. These data are available on the Commission’s website. The Commission has also used confidential data provided by SPC Ardmona on its production volumes. SPC Ardmona expressed concern about the Commission’s decision to report evidence drawn from these data in the Accelerated Report.

The Commission has taken care to respect the confidentiality of the SPC Ardmona data. It did not publish any of the confidential numbers provided by SPC Ardmona. Instead, data were reported in ways that preserved their confidentiality, such as removing values and units of measurement from the vertical axes of charts, and reporting data in percentage changes or indexes. Where possible, publicly available data were used to support the inferences drawn from the confidential information and to provide interested parties with publicly available information relevant to understanding the Commission’s assessment.

Throughout this report, data on prices and values are reported in nominal terms.

### Imports in absolute terms

The Commission focused on the period from July 2008 to September 2013 (approximately five years) for its analysis of whether imports have increased in a way that would satisfy the requirements of Article 2.1 of the Agreement on Safeguards. Longer‑term trends in imports over the period July 2003 to September 2013 are also noted.

Imports of processed tomato products fluctuate from month to month and from year to year. To account for the potential effects of monthly and seasonal fluctuations, data are presented in several formats, including import volumes by:

* month
* calendar year and financial year
* moving annual total (a 12‑month total calculated monthly)
* trends.

In the five years to June 2008, monthly import volumes increased by approximately 32 tonnes per month on a trend basis, equivalent to an increase in annual imports of 4.6 kilotonnes per year (figure 2.1). Annual imports increased from 21.4 kilotonnes in financial year 2003‑04 to 41.2 kilotonnes in 2007‑08 — equivalent to a compound annual growth rate of about 18 per cent.

The growth in imports has subsequently slowed. From July 2008 to September 2013, monthly import volumes increased by 13 tonnes per month on a trend basis, equivalent to an increase in annual imports of 1.8 kilotonnes per year. This slower trend growth is reflected in the moderately positive slope of the trend line in the lower panel of figure 2.1. Imports in financial year 2012‑13 totalled 45.7 kilotonnes, equivalent to a compound annual growth rate of about 3 per cent since 2008‑09.

#### The Commission’s assessment

Over the period July 2008 to September 2013, the trend increase in annual imports was about 1.8 kilotonnes per year. This is a significantly slower growth rate than over the five years to June 2008. For various shorter periods within the five years to September 2013, imports grew at faster or slower rates. However, in the Commission’s view, any conclusion that is based on selecting start and end points that yield the maximum possible increase in imports would not be consistent with WTO jurisprudence.

On balance, examination of the trend in imports over the past five years leads to the conclusion that the absolute volume of imports has not increased in a way that satisfies the requirement of being recent sudden, sharp or significant.

Figure 2.1 Import volumes, monthly and moving annual total**a**

Tariff subheading 2002.10.00 (statistical code 60)

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| This figure shows the volume of imports in two charts: July 2003 to September 2013 and July 2008 to September 2013. Volumes are presented as monthly data, moving annual totals and trend lines. Monthly data are variable and range from around 1 kilotonne to around 6.5 kilotonnes. Moving annual totals rise and fall, following the patterns of the monthly data. Over time they increase from around 17 kilotonnes in the year to July 2003 to around 47 kilotonnes in the year to September 2013. The trend lines indicate that imports increased over the ten year period, with the rate of increase slower from July 2008 to September 2013 than for July 2003 to June 2008. |

a The trend lines were estimated, allowing for a break in the trends, by regressing monthly import volumes (for July 2003 to September 2013) on the monthly time period, a binary variable (indicating the period July 2008 onwards) and the product of the time period and binary variable.

*Sources*: ABS (unpublished); Productivity Commission estimates.

### Imports relative to domestic production

Even though there was no surge in the absolute volume of imports of processed tomato products in the period under investigation, the Agreement on Safeguards permits a country to implement safeguard measures if imports have increased relative to domestic production (Article 2.1).

To assess whether this test was met for processed tomato products, the Commission calculated the ratio of imports to domestic production over the period 2009–2013. It used ABS data on import volumes and confidential data provided by SPC Ardmona on its production of processed tomato products on an annual basis for the period 2009–2013.[[1]](#footnote-1) The Commission requested data for 2008, but SPC Ardmona did not provide it. Although these data could not be corroborated against independent data sources, they are the only data available to assess trends in imports relative to domestic production. The Commission is aware that SPC Ardmona may import some processed tomato products and sell them under SPC Ardmona branding (SAFVCA, sub. AR43), or possibly as private label products. Any such imports would be included in the import data but not included in production volumes by the company.

The ratio of imports to domestic production can contribute to the analysis of whether imports have increased in a way that would meet the requirements of the Agreement on Safeguards. SPC Ardmona questioned the reliability of examining imports relative to domestic production. It submitted that this ratio would not take account of the carryover of stock from year to year, stock write‑offs and differences in timing between domestic production, imports and the sale of goods (SPC Ardmona, sub. AR38). The Commission agrees that there are reasons to interpret the ratio with caution, as set out in box 2.2. However, it has included the ratio in its analysis in order to meet the requirement of the Agreement on Safeguards to assess trends in imports relative to domestic production.

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| Box 2.2 Interpreting the ratio of imports to domestic production |
| The ratio of import volumes to domestic production is sensitive to several factors that should be taken into account when interpreting changes in the ratio over time.   * Import volumes are highly variable from month to month, and over years. As such, the ratio of imports to domestic production is sensitive to the period chosen. * There is a high degree of natural variability in the supply of processing tomatoes. This reflects variability in growing conditions. For example, severe flooding in the tomato growing region of Victoria significantly decreased SPC Ardmona’s production in 2011. Imports in 2011 were only slightly higher than in 2010, but the impact of the floods caused a ‘spike’ in the ratio of imports to domestic production. Production recovered in 2012, and the ratio of imports to domestic production decreased. |
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| Box 2.2 (continued) |
| * 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 (as is the case for processed tomatoes), small changes in domestic production can lead to comparatively large changes in the ratio of imports to domestic production. * The fact that SPC Ardmona is itself an importer of processed tomato products means that yearly fluctuations in the ratio can be affected by SPC Ardmona’s commercial decisions. For example, SPC Ardmona imported about 5000 tonnes of processed tomatoes to meet a contract in 2009 (SPC Ardmona, sub. 17), and also imported processed tomatoes in 2011 (the year of the floods) to meet its commitments to customers (SPC Ardmona cited in SAFVCA sub. 36, att. 1). This would affect the ratio of imports to domestic production in those years. |
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SPC Ardmona’s production of processed tomato products decreased by approximately 33 per cent between 2009 and 2013 (figure 2.2). This is equivalent to an average decrease of 8 per cent of 2009 production levels each year. Over the period July 2008 to June 2013, imports increased by an average of about 1.5 kilotonnes per year — equivalent to a compound annual growth rate of about 3 per cent. The net effect of these two trends was that the ratio of imports to domestic production increased by about 70 per cent over the period 2009–2013. About three quarters of the increase in the ratio can be attributed to the reduction in domestic production (figure 2.3).

Figure 2.2 Imports and SPC Ardmona processed tomato production**a**

Index values

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| This figure shows import volumes and SPC Ardmona production volumes on an annual basis from 2008 to 2013. All values are indexed relative to 2009. Imports are shown for calendar and financial years, with a trend line for financial years indicating that import volumes were around 114 per cent of 2009 volumes in 2013. A trend line for SPC Ardmona production indicates that production decreased to about 67 per cent of 2009 volumes over the same period. |

a Financial‑year data represent the financial year ending in the year marked on the axis. b SPC Ardmona did not provide production data for 2008. c The import trend line is the same as in figure 2.1, drawn through the trend values for July in each year, then converted to index values. d The SPC Ardmona production trend line was calculated by regressing annual production on the year and a binary variable to capture the effects of the 2011 floods, which led to lower production levels. This was then converted to index values.

*Sources*: ABS (unpublished); SPC Ardmona (confidential); Productivity Commission estimates.

Figure 2.3 Index of the ratio of imports to domestic production**a,b**

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| This figure shows the ratio of imports to domestic production for 2009 to 2013 (in calendar and financial years), including a trend line for the financial year ratio. All values are indexed relative to 2009. The ratio was highest in 2010-11. Over the period, the ratio increased by around 70 per cent. |

a The trend line was calculated by regressing the ratio of imports to domestic production for financial years on the year and a binary variable to capture the effects of the 2011 floods, which led to lower production. This was then converted to index values. b The trend in the ratio for calendar years was not statistically significant.

*Sources*: ABS (unpublished); SPC Ardmona (confidential); Productivity Commission estimates.

#### The Commission’s assessment

The Commission examined the evidence on imports relative to domestic production in accordance with the Agreement on Safeguards. Bearing in mind the limitations of this indicator that were set out in box 2.2, the evidence indicates that over the period under analysis the ratio of imports of processed tomato products to domestic production increased in a way that meets the standard of a ‘recent, sudden, sharp and significant’ increase in imports relative to domestic production.

Finding 2.1

There has not been a sufficient increase in import volumes of the products under reference to satisfy the requirement under Article 2.1 of the Agreement on Safeguards. However, there is evidence that imports have increased relative to domestic production, sufficient to meet the WTO standard. This change was largely driven by changes in domestic production.

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

Case law 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’, an increase in imports causes or threatens 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 2.3).

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| Box 2.3 GATT Article XIX — critique of meaningfulness of the clause |
| In his critique of WTO jurisprudence on safeguard measures, 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, pp. 277–8). |
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SPC Ardmona has submitted that a number of unexpected events resulted in the increased imports of processed tomato products.

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

### Appreciation of the Australian dollar

Over the past five years the Australian dollar has appreciated against the Euro (by about 40 per cent), and against the US dollar (by about 38 per cent) (figure 2.4). Such appreciation would, other things being equal, reduce the price of imported processed tomatoes relative to domestically produced products, making the domestic products less competitive on the domestic market.

One question for this inquiry is whether the appreciation of the Australian dollar should be considered an ‘unforeseen development’. 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. However, it seems reasonable to conclude that the extent of the appreciation, and the persistence of the appreciation, were unforeseen in 1994.

Figure 2.4 Australian dollar exchange rate

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| This figure shows the exchange rate of the Australian dollar against the US dollar and Euro from July 2003 to September 2013. The Australian dollar appreciated against both currencies over the period. Against the US dollar the Australian dollar appreciated from about 70 to 80 US cents to parity and above, before falling to around 90 US cents in the past several months. Against the Euro the Australian dollar appreciated from about 60 Euro cents to about 80 Euro cents, before falling to around 70 Euro cents in the past several months. |

*Source*: RBA (2013).

### Dumping

The domestic tomato processing industry has faced competition from imported products for many years, and has at various times successfully applied for anti‑dumping and countervailing duties. In 1992, anti‑dumping duties were imposed on canned tomato imports from Italy and China, and countervailing duties were imposed on imports from Italy, Spain and Thailand (Anti‑Dumping Commission 2013a). These duties were in place for five years. The duties on Italian imports were removed in June 1993 following a court case, but reinstated in 1994. In 1997, anti‑dumping and countervailing duties on Italian imports were extended for a further five years (Anti‑Dumping Commission 2013a).

In November 2013, the Anti‑Dumping Commission made a Preliminary Affirmative Determination that certain prepared or preserved tomato products had been exported from Italy at less than their ‘normal’ value, and imposed ‘provisional dumping securities’ on imports sourced from some Italian manufacturers and exporters (Anti‑Dumping Commission 2013b). These securities range from 6.5 to 9.11 per cent (on an *ad valorem* basis) across Italian producers, with no securities imposed on imports from two producers that were found to have a negligible dumping margin. The Commission understands that one of the Italian producers found to have a negligible dumping margin (not subject to provisional dumping securities) is a major supplier of private label products to Australian supermarkets.

The Anti‑Dumping Commission’s investigation is still underway and is not required to be completed until 30 January 2014. In any event, the anti‑dumping and safeguard systems are intended to deal with different circumstances — a finding that measures are warranted under one system would not automatically lead to the same finding under the other system.

### Supermarket private label strategies

Supermarket sales of private label products have increased in recent years. Increased private label sales could lead to reduced demand for domestically produced products, if supermarkets use imported products for their private label brands. The availability of private label products could also have a ‘price capping’ effect on other branded products, reducing the ability of producers to maintain or increase their margins without losing sales and market share. This is discussed further in section 2.5.

The growth of private label sales was to some extent foreseeable in 1994. Private label products have been sold in Australia since the 1960s and the domestic processing tomato industry has faced an increasing market share of such products for many years. For example, the market share of private label brands increased from about 37 per cent in 1989 to 49 per cent in 1990 (Pritchard and Burch 2003).

Overall, although some of the factors cited by SPC Ardmona 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.

Notwithstanding this assessment, the Commission suggests that judgements on such a narrow ‘unforseen developments’ 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. 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.

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

The WTO Agreement on Safeguards defines ‘serious injury’ to mean ‘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 (chapter 1).

The Agreement does state 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 (EC)* (DS 121), *US – Wheat Gluten* (DS 166), *US – Steel* (DS 248, 249, 251, 252, 253, 254, 258, 259)). In cases where a Competent Authority has failed to evaluate all of the listed factors, WTO Panels and the appellate body 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.[[2]](#footnote-2)

### Data sources

SPC Ardmona submitted evidence relating to its claims of serious injury. This was supplemented with data from official sources and other evidence provided by industry organisations and Aztec Australia, a commercial data provider.

The data provided by Aztec Australia cover retail sales by Coles, Woolworths and Metcash supermarkets, but do not include sales by ALDI, Costco and other retailers (box 2.4). In response to the Commission’s Accelerated Report, SPC Ardmona (sub. AR38, p. 5) argued that excluding sales by ALDI would understate the growth of private label sales, and if ALDI sales were included this would increase ‘the level and rate of import penetration increasing the justification for safeguards’.

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| Box 2.4 Supermarket sales data |
| The Commission purchased data on supermarket sales of canned tomatoes from Aztec Australia, a commercial data provider. These data contain retail quantities and values, by month and brand, for Woolworths, Coles and Metcash supermarkets from January 2008 to April 2013. Sales by ALDI, Costco and other retailers are not included.  The data have been aggregated such that individual product lines, pack sizes and the individual retailer of private label products cannot be identified (‘private label’ is classified as one brand). The dataset was restricted to product lines that would fall under tariff subheading and statistical code 2002.10.00.60, drawing on advice provided by the Australian Customs and Border Protection Service. This was done by classifying individual ‘stock keeping units’ (SKUs) provided in a separate list by Aztec Australia.  The Commission also used the list of SKUs to request data disaggregated by the source of products (Australian or imported), as indicated by the websites of supermarkets and importers. Where a SKU’s origin could not be determined, that product was coded as ‘unsure’. However, data in this category were subsequently split between the Australian and imported categories based on a list of SKUs provided by SPC Ardmona (which identified the source of products). Sales of ‘unsure’ private label products were divided between the categories based on sales data for these products provided by SPC Ardmona.  Since private label products could not be disaggregated by retailer or SKU in the data, the estimates for these products are sensitive to the way they were classified as Australian or imported. This classification was based on product origins at a particular point in time (July 2013), with the implication that the data do not reflect past changes in the sources used for individual SKUs. For example, if a particular private label product was sourced from Australian production in some years but from imports in others, and recorded as ‘imported’ in the dataset, sales for that product in all time periods will also be classified to ‘imports’. Similarly, all SPC Ardmona products were classified as Australian produced. Even though the company has imported canned tomatoes in some years (SAFVCA, sub. AR43; SPC Ardmona, sub. 17), information was not available on the relevant volumes and source countries over recent years.  A summary of the data and a description of how the data were transformed are available from the Commission’s website. |
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The Commission agrees that the supermarket data used in its analysis do not provide complete coverage of the retail market or other sales channels (such as sales to the food service industry). However, comparable data on retail sales through ALDI and other channels were not available. As such, even though the data used by the Commission are likely to cover a significant proportion of retail sales, they can only provide an estimate of the trends occurring in the retail sector as a whole.

Nevertheless, inclusion of data on these sales would not change the Commission’s findings on serious injury. The non‑inclusion of ALDI data would tend to understate the total retail sales of private label products (ALDI only sells private label processed tomatoes). The accelerated report concluded that the domestic industry was suffering serious injury. Including ALDI in the data might strengthen this conclusion, but would not change it. The effect on other conclusions is discussed later in this chapter.

### SPC Ardmona’s claims of serious injury

SPC Ardmona (sub. 17) submitted that sales volumes of domestically manufactured canned tomatoes decreased by 27 per cent from 2009 to 2012. It also submitted that the decrease in sales led to:

* reduced economies of scale and higher costs of manufacturing per unit
* the discounting of products and increased expenditure on promotions as strategies to attempt to protect market share against import competition (SPC Ardmona, sub. 17).

The company considered that these factors contributed to decreased profitability of its tomato processing operations. It argued that if the trend continues, it will ‘put the viability of the tomato operations under threat’ (SPC Ardmona, sub. 17, p. 37). Specifically, it submitted that continued loss of market share would reduce the value of its Ardmona brand, and that ‘the current and prospective returns to the business do not justify additional capital investment which is required to make the operations competitive’ (SPC Ardmona, sub. 17, p. 11).

### Changes in market share

SPC Ardmona (sub. 17) submitted that the market share of imports sold in supermarkets increased from 63 per cent in 2009 to 82 per cent in 2012.

The Commission’s analysis of Aztec Australia data covering Coles, Woolworths and Metcash supermarkets suggests that in 2008‑09 about 70 per cent of sales were imported products (figure 2.5). The corresponding share for 2012‑13 (to April) was about 79 per cent, broadly in line with SPC Ardmona’s submission. This increase coincided with a rise in sales of private label imported products (from 42 per cent of sales to 52 per cent). The market share of branded imports was initially about 28 per cent, then increased until late 2010 (peaking at about 33 per cent), before it decreased back to about 27 per cent in 2013.

Figure 2.5 Processed tomato products — supermarket sales

Monthly data (LHS) and moving annual totals (RHS)

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| This figure shows the volume of monthly supermarket sales of processed tomato products in Coles, Woolworths and Metcash supermarkets, by source (Australian produced or imported) from January 2008 to April 2013. The left panel shows monthly data, which exhibit a significant degree of seasonal variation (higher volumes of processed tomatoes are sold in the winter months). The right panel shows moving annual totals, with the first data point for December 2008. Sales of Australian produced products gradually decreased and sales of imported products gradually increased, while total sales have been relatively steady over the period. |

*Sources*: Aztec Australia (unpublished); Productivity Commission estimates.

### Changes in domestic sales

SPC Ardmona (sub. 17) submitted that its sales decreased over the period 2009 to 2012.

* Sales by supermarkets of its SPC Ardmona branded canned tomatoes decreased from 8975 tonnes to 6619 tonnes (a 26 per cent decrease)
* The value of retail sales of SPC Ardmona products decreased from $30 million to $24 million (a 20 per cent decrease).
* The number of SPC Ardmona product lines (known as Stock Keeping Units) sold in supermarkets decreased.

SPC Ardmona provided confidential information on its sales volumes. The data referred to ‘ex‑factory sales of domestically produced goods’. The data show that over the period 2009–2012:

* SPC Ardmona’s sales of branded tomatoes (including Ardmona and other brands) decreased by 21 per cent.
* SPC Ardmona’s sales of private label products decreased by 42 per cent.

Commission analysis of data covering Coles, Woolworths and Metcash supermarkets confirms that supermarket sales of domestically produced processed tomato products decreased over the period 2009–2012 (in calendar years).

* Sales of SPC Ardmona branded products decreased by 19 per cent.
* Sales of Australian‑produced private label products decreased by 71 per cent.

### Production levels

SPC Ardmona’s production levels decreased by 33 per cent over the period 2009–2013 (figure 2.6). Production decreased by 40 per cent in 2011 compared to 2010, and recovered somewhat in 2012. This reflects the impacts of flooding in the tomato‑growing region of Victoria in the 2010‑11 season.

Figure 2.6 SPC Ardmona production of processed tomato products**a**

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| This figure shows annual SPC Ardmona production of processed tomato products, with a trend line, from 2009 to 2013. There are no numbers on the vertical axis for confidentiality reasons. Production trended down over the period, with a significant decrease in 2011 due to floods. |

a The trend line is the same as in figure 2.2.

*Sources*: SPC Ardmona (confidential); Productivity Commission estimates.

### Capacity utilisation and productivity

SPC Ardmona provided confidential data on its production capacity and capacity utilisation for the period 2009–2013. The data indicate that SPC Ardmona’s production capacity was constant over the period. Accordingly, capacity utilisation increased and decreased in line with production levels. The trend over the five‑year period was for decreasing capacity utilisation, driven by the decreasing production volumes shown in figure 2.6.

SPC Ardmona also provided confidential data on labour productivity in tomato processing. The data indicate that labour productivity related to the production of the relevant tomato products increased from 2009 to 2013.

### Profits and losses

SPC Ardmona provided confidential financial information covering the period 2010 to 2013. The data indicate that profit margins — calculated as earnings before interest and tax divided by sales revenue (net of discounts) — were positive but decreased slightly every year over the period.

The data also indicate that the reduction in profit margins was driven largely by increased finance charges and indirect expenditures over the period. Per kilogram of processed tomato product, sales revenue (net of discounts) increased by a small amount and the cost of goods sold decreased by a similar amount (with some fluctuation year to year).

### Employment

SPC Ardmona currently employs 840 staff on a full‑time equivalent basis (SPC Ardmona, sub. 17). It also provided the Commission with confidential data on the hours worked in its tomato processing operations over the period 2009–2013. The data show that the number of labour hours used in the production of processed tomato products decreased by 47 per cent over the period 2009–2013. (Over the same period production decreased by approximately 33 per cent.) The Commission was not able to attribute the decrease in hours worked to permanent employees and seasonal employees. Independent sources of information which can fully corroborate the data have not been found. Overall, the Commission accepts that there has been a substantial decrease in employment in SPC Ardmona’s tomato processing operations.

### The Commission’s assessment

There is compelling evidence that SPC Ardmona’s tomato processing operations have suffered serious injury in recent years.

## 2.5 Have imports caused the 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, safeguard measures may be permitted under the terms of the WTO Agreement on Safeguards.

In the case of the tomato processing industry, imports did not increase significantly in absolute terms. However, the ratio of imports to domestic production increased over the period 2009–2013. The test for safeguard measures is therefore whether the relative increase in imports caused the injury. The Commission sought to identify the factors that caused the injury to SPC Ardmona, and to assess whether the increase in the ratio of imports to domestic production was a cause of injury. The evidence indicates that a combination of long‑term trends and recent acute events caused injury. One aspect of the injury was decreased domestic production, and this explains the majority of the observed increase in the ratio of imports to domestic production. The various causes of injury are summarised in box 2.5 and examined in more detail in the following sections. The role of imports is discussed below.

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| Box 2.5 Causes of the injury to the domestic industry |
| The injury to the domestic tomato processing industry coincides with, and has been caused by, a combination of long‑term industry and market trends as well as recent acute events (including floods and appreciation of the Australian dollar).  Long‑term trends   * Processed tomatoes are an internationally traded product, Australia is a minor producer and other countries have a comparative advantage in tomato processing. * Imports have been a source of significant competitive pressure for at least the past two decades. * Increased promotion of private label brands by supermarkets and increased consumer acceptance of private label products have reduced the premiums that producers of branded products can charge without losing market share.   Recent acute events over the past five years   * Floods in 2011 reduced the supply of processing tomatoes by two thirds, and significantly decreased SPC Ardmona’s production of processed tomatoes. * Decreased domestic supply and the appreciation of the Australian dollar led retailers to source private label products from imports. Sales of domestically produced private label products have not recovered to date. * Exports of Australian processed tomatoes have decreased significantly over the past five years, coinciding with the appreciation of the Australian dollar. |
|  |
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### Requirements for evaluating the causes of the injury

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

First, the Agreement specifies that the investigation 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, the 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 safeguard measures can only be applied when imports are entering ‘*under such conditions* as to cause or threaten to cause serious injury to the domestic industry’ (Article 2.1) [emphasis added]. Various panel and appellate body interpretations of the italicised 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. As the Australian Manufacturing Workers’ Union (sub. AR40) submitted, case law suggests that increased imports, together with other factors, can be found to cause serious injury (*US – Wheat Gluten* (DS 166), *US – Lamb* (DS 177, 178)). It is sufficient for the increased imports to be a contributor to the injury after other factors have been netted out, provided that ‘there is a genuine and substantial relationship of cause and effect’ between increased imports and the injury (*US – Wheat Gluten* (DS 166)).

Finally, guidance from WTO case law is that in order to attribute the cause of the injury to imports, there should be, at the very least, a ‘coincidence of trends’ between the injury and any increase in imports (*Argentina – Footwear (EC)* (DS 121)).

### Key mechanisms through which imports can cause injury

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

First, imports could reduce or suppress 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, production costs could rise due to loss of 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 avoidable 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.

There is evidence that the availability of substitutes in the world market and the conditions of competition in the domestic market have limited SPC Ardmona’s ability to increase its prices without losing market share. Decreasing production volumes have reduced economies of scale leading to an increase in the unit cost of production.

### Some key facts for understanding the causes of the injury

#### Demand has been relatively flat and imports have gradually increased market share

Domestic consumption of processed tomato products has been relatively flat over the past five years. Over the same period, the composition of the market has gradually changed (figure 2.7). Sales of domestically produced tomatoes in Coles, Woolworths and Metcash supermarkets were relatively steady until the end of 2010, then decreased until the middle of 2012. Since mid‑2012, sales of domestic product have at best increased slightly. Sales of imported products increased from late 2009 until mid‑2012, and have flattened off or slightly decreased since then. While it is unclear how much sales of each product type would increase if data on sales by ALDI and other supermarkets were included, it is likely that overall sales of SPC Ardmona products have declined in line with reduced production.

Figure 2.7 Processed tomato products — supermarket sales**a**

Moving annual totals

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| This figure shows the moving annual total volume of monthly sales of processed tomato products in Coles, Woolworths and Metcash supermarkets, by source (Australian produced or imported) from January 2008 to April 2013. The first data point is for December 2008. Sales of Australian produced products decreased and sales of imported products increased, while total sales have been relatively steady over the period. |

a This figure is based on the assumption that all SPC Ardmona branded products were Australian produced.

*Sources*: Aztec Australia (unpublished); Productivity Commission estimates.

#### The supermarket unit value of SPC Ardmona branded products has increased

The average unit value of SPC Ardmona branded products sold in Coles, Woolworths and Metcash supermarkets was higher than the supermarket unit value of imports in all months from January 2008 until April 2013.[[3]](#footnote-3) The gap became significantly wider from 2009 (figure 2.8). This was driven by higher SPC Ardmona branded product unit values and lower import unit values. The increasing gap coincided with decreasing sales of SPC Ardmona products (figure 2.9).

Figure 2.8 Processed tomato products — supermarket and import unit values

Moving annual averages

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| This figure shows the moving annual average of monthly unit values (in dollars per kilogram) in Coles, Woolworths and Metcash supermarkets. There are four series: SPC Ardmona branded products, branded imports, Australian-produced private label products and imported private label products. The figure covers the period from January 2008 to April 2013, with the first data point for December 2008. Average unit values for SPC Ardmona branded products increased over the period, while average unit values for branded imports decreased. Average unit values for private label products (Australian produced and imported) increased during 2009 then were relatively steady over the remainder of the period. |

*Sources*: ABS (unpublished); Aztec Australia (unpublished); Productivity Commission estimates.

Figure 2.9 Processed tomato products — supermarket sales

Monthly data (LHS) and moving annual averages (RHS)

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| This figure shows the volume of monthly sales of processed tomato products in Coles, Woolworths and Metcash supermarkets from January 2008 to April 2013. There are four series: SPC Ardmona branded products, branded imports, Australian-produced private label products and imported private label products. The left panel shows monthly data, which exhibit a significant degree of seasonality. The right panel shows moving annual totals, with the first data point for December 2008. Over the period, sales of SPC Ardmona branded products and Australian produced private label products decreased, most noticeably since 2011. Sales of imported private label products increased significantly from 2011, with a reduction in sales of branded imported products. |

*Sources*: Aztec Australia (unpublished); Productivity Commission estimates.

#### The appreciating Australian dollar reduced the unit value of imports

One mechanism that could lead to increased imports would be a reduction in the price of imports due to changes in the world price.

The decreased retail unit value of imported processed tomato products from 2009 to 2013 coincided with a decreasing free on board (FOB) value of imports (figure 2.8). This appears to be driven mainly by the appreciation of the Australian dollar. FOB values expressed in Euros — the currency of the major source country for imports (Italy) — did not change significantly over the period. This suggests that the appreciation of the Australian dollar, rather than any significant development in the world market for processed tomato products, was the main factor behind the decrease in FOB and supermarket unit values.

SPC Ardmona (sub. AR38) submitted that the Commission implied in its Accelerated Report that supermarket strategies did not cause injury because the price of imports did not vary when expressed in Euros. This was not the Commission’s finding. Rather, the FOB unit value of imports expressed in Australian dollars decreased over the period 2009–2013, almost entirely due to the appreciation of the Australian dollar. In turn, this may have been a relevant factor in supermarkets’ procurement decisions for private labels, as discussed further below.

#### SPC Ardmona’s market share has decreased

The increased gap between the supermarket unit value of SPC Ardmona’s branded products and the unit value of imports coincided with the decrease in SPC Ardmona’s market share (figure 2.9). This has occurred in a context of flat demand overall for processed tomato products in Coles, Woolworths and Metcash supermarkets.

#### The 2011 floods led to significant changes in the market

Flooding around the tomato growing areas of Victoria reduced the quantity of processing tomatoes harvested in the 2010‑11 season by approximately two thirds. SPC Ardmona’s production decreased significantly. This coincided with a number of changes in sales in Coles, Woolworths and Metcash supermarkets.

* Sales of domestic private label products decreased.
* Sales of imported private label products increased.
* Sales of imported branded products (not private label) decreased.
* Sales of SPC Ardmona branded products decreased (albeit less so than sales of domestic private label products and imported branded products).

Sales of domestic private label products have not recovered to their pre‑flood levels.

### Long‑term import competition has driven industry consolidation

The Australian processed tomato industry (defined broadly to include the manufacture of tomato pastes, sauces and other products, as well as the processed tomato products under reference) is small by world standards. Australian growers produced 184 000 tonnes of tomatoes in 2012 (figure 2.10). In the same year, US growers produced 11.9 million tonnes, Italian growers produced 4.5 million tonnes, and Chinese growers produced 3.2 million tonnes (WPTC 2013).

Figure 2.10 Tomatoes harvested for processing in Australia

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| This figure shows the volume of raw tomatoes harvested for processing each year from 1990 91 to 2012 13. Volumes increased from the start of the period, peaked in 2000 01 and then steadily declined. However, there can be significant fluctuation year to year. For example, production volumes dropped significantly in 2010 11 due to floods in growing areas, and recovered the following year. |

*Source*: APTRC (sub. 15, att. 1).

Over the past several decades, there has been significant consolidation among Australian tomato processors and growers. The number of processing companies has fallen from at least 14 in 2000‑01 to three in 2013 (Kagome Australia, sub. 12). The number of growers of raw tomatoes for processing has fallen from 95 in 1993 to 12 in 2013 (APTRC, sub. 15, att. 1). The average size of farms has generally increased over time. This is likely to reflect commercial pressures to improve efficiency.

The availability of low‑priced imported products was a significant source of competitive pressure that has driven the consolidation of the industry. This competitive pressure is not a recent development. The domestic industry has previously commented on and sought relief from import competition. For example:

* increased imports in the early 1990s from China, Thailand and the European Union were considered a major threat to the domestic industry (Pritchard and Burch 2003). Australia imposed anti‑dumping and/or countervailing duties on imported canned tomatoes from China, Thailand and Spain from 1992 to 1997, and on imports from Italy from 1992 to 2002 (and, more recently, provisional dumping securities on imports from Italy from November 2013)
* in 2001, SPC and Ardmona (prior to the companies merging) applied to the Australian Customs Service (2003a, 2003b) for the extension of countervailing duties on Italian imports (the application was unsuccessful)
* during 2002, SPC Ardmona reported that domestic retail sales in its tomato category were ‘quite difficult’, in part due to competition from low‑priced Italian imports that were promoted by supermarkets (SPC Ardmona 2003)
* in 2006, SPC Ardmona’s parent company Coca‑Cola Amatil (2007) reported that trading conditions in the tomato category were difficult as low‑priced imports were putting pressure on margins.

The available evidence on the industry over the long term suggests that numerous industry participants have experienced ‘injury’ over the past two decades. The challenges facing the industry have included inefficient scale and ongoing competitive pressure from the availability of imports. It is likely that the accumulation of the long‑term competitive pressures has culminated (alongside other factors set out below) in the difficult commercial situation that SPC Ardmona currently faces.

#### The ‘price‑capping’ effect of long‑term import competition is not a justification for safeguards

Competition from imports has been a long‑term phenomenon. The domestic industry has faced import competition for at least several decades and has made adjustments over time.

The availability of imports can restrict the ability of companies to increase prices (of the same products and close substitutes) in response to higher domestic costs of production. This ‘price capping’ effect is an inherent feature of competition in trade‑exposed markets and is to be expected. For example, the availability of imported processed tomato products to Australian supermarkets constrains the ability of SPC Ardmona to raise the prices of its own brand and private label ranges offered to supermarkets (such as in response to higher processing costs). Any price premium achievable by SPC Ardmona for its products will be related to the import price.

Although the impact of price capping can vary depending on the level of import prices (and may become stronger when import prices fall), the price‑suppressing effect of the *availability* of imports over a long time period does not necessarily mean that any recent *increase* in import volumes must have been the cause of serious injury.

The original rationale of the safeguard clause in Article XIX of the GATT was to act as a safety valve when the impact of import competition following trade concessions is more serious for a domestic industry than initially expected. It was not intended to shield industries from the long‑term effects of import competition. Moreover, imports are expected to increase competition in domestic markets and thus keep consumer prices low. As the Commission has previously argued, the price‑suppressing effects of import competition are the source of the gains of trade, and any move to penalise imports because of their ‘price capping’ effects would effectively undermine trade liberalisation (PC 2008).

### Supermarket private label strategies have increased competition

Private label products compete with branded products, reducing the ability of domestic producers to achieve premium prices for their own branded products. For example, the potential for a supermarket to switch its supply of private label products to imports could assist it in negotiating lower prices from domestic suppliers of private label products. Increased competition between the major supermarket chains, and the entry of new competitors (such as ALDI and Costco), has intensified this pressure on brand premiums.

Supermarkets have sold private label products in a range of categories since the 1960s. Supermarkets use private label products for multiple reasons, including to:

* offer consumers competitively priced alternatives to branded products
* increase margins
* build customer loyalty by offering products that are not available in competitors’ stores
* have greater control over supply through the use of long‑term contracts
* reduce or counter the influence of highly concentrated branded manufacturers and correspondingly improve supermarkets’ buying power (ACCC 2008).

The market share of private‑label products overall is relatively low in Australia compared to many other countries, including the United States and United Kingdom (ACCC 2008; Klug and Queck 2013). However, private‑label products have constituted a significant proportion of the market for processed tomatoes for many years. For example, Pritchard and Burch (2003) reported that private labels accounted for 37 per cent of sales in 1989 and 49 per cent in 1990. In 2011‑12, the market share of private label tomato products was about 53 per cent across Coles, Woolworths and Metcash supermarkets.

Australian supermarkets have strong incentives to diversify their sources of supply of processed tomatoes. Australian growers of processing tomatoes are geographically concentrated in northern Victoria and southern New South Wales, and as such are particularly susceptible to periods of low production due to bad weather (such as drought in 2006‑07 and 2007‑08, and the 2011 floods). In addition, SPC Ardmona’s status as the single domestic producer of the relevant processed tomato products gives supermarkets an incentive to diversify their supplies of processed tomatoes.

More recently, supermarkets have begun to offer several tiers of private label products across a greater number of categories, at different quality and price levels (ACCC 2008). Some consumers may regard the ‘premium’ private label products as substitutes for branded products, such as those produced by SPC Ardmona. These private label products could take market share from branded products, and could effectively ‘cap’ the prices that SPC Ardmona can achieve for its branded products without losing market share. In any competitive market, such developments have the potential to cause injury to producers of incumbent brands, depending on the market outcomes of competition.

#### Private label strategies can cause injury irrespective of imports

It is important to note that developments in supermarket private label strategies could cause injury to the domestic industry without any increase in imports. Supermarkets use a mix of domestically produced and imported products for their private label brands. For example, SPC Ardmona processes tomatoes for its own branded products and for supermarket private labels. It appears that there is a significant difference in retail prices for these products, and in prices received by processors for them, even though the direct costs of production for the products would be expected to be similar. It is likely that any supermarket strategy that leads to consumers switching from SPC Ardmona’s branded products to domestically sourced private label products would reduce SPC Ardmona’s margins and its profitability. Any such injury would not be attributable to increased imports, but rather to choices made by supermarkets about branded and private label products, and by consumers.

#### Recent trends

Sales of processed tomato products are seasonal — sales tend to be higher in winter months than in summer. This can complicate the task of identifying the underlying trends. The discussion below refers to changes in the moving annual total of sales in in Coles, Woolworths and Metcash supermarkets, a measure that smooths seasonal changes and helps reveal long‑term trends.

Supermarket sales of private label processed tomato products increased over the period from January 2008 to April 2013 (figure 2.11). Sales of domestic private label products were relatively steady until 2011. Floods in the 2010‑11 growing season restricted supply, and caused a change in the trend — from positive to negative. From 2012 to at least April 2013, sales of domestic private label products did not increase.

Figure 2.11 Processed tomato products — supermarket sales

Moving annual totals

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| This figure shows the moving annual total of monthly sales volumes of processed tomato products in Coles, Woolworths and Metcash supermarkets. There are four series: SPC Ardmona branded products, branded imports, Australian-produced private label products and imported private label products. The figure covers the period from January 2008 to April 2013, with the first data point for December 2008. Over the period, sales of SPC Ardmona branded products and Australian produced private label products declined, most noticeably since 2011. Sales of imported private label products increased significantly from 2011, with a reduction in sales of branded imported products. |

*Sources*: Aztec Australia (unpublished); Productivity Commission estimates.

The initial trend in sales of imported private label products was steady and flat. Following the floods, sales of imported private label products increased significantly as supermarkets chose to respond to the restricted domestic supply by sourcing imports for their private label products. The appreciation of the Australian dollar which provided the opportunity for supermarkets to reduce the prices they charged for imported products, may well have supported such a step.

The increased sales of imported private label products also coincided with a reduction in sales of imported branded products. Between financial years 2010‑11 and 2011‑12, the volume of imported private label products sold in Coles, Woolworths and Metcash supermarkets increased by 2.3 kilotonnes, while the volume of branded imported tomatoes decreased by 1.5 kilotonnes. This is consistent with the analysis of ABS data on imports (section 2.2), which shows that absolute import volumes did not increase significantly over this period.

#### Injury to the domestic industry

Increased private label sales could cause injury to the domestic industry by restricting its ability to achieve premium prices, thereby reducing profit margins. Access to imports could increase the extent to which private label strategies can cause price suppression.

Over the period 2008–2013, unit values of private label products sold in Coles, Woolworths and Metcash supermarkets were consistently and significantly lower than the unit values of SPC Ardmona branded products (figure 2.12). Over this period the unit value of SPC Ardmona branded products increased and its market share decreased as consumers responded to relative price differences. The concurrence between the consistent (and increasing) gap in unit values and the reduction in SPC Ardmona’s branded product market share suggests that the presence of private label products has been a source of injury to SPC Ardmona.

However, as detailed in section 2.2, the period of the injury did not coincide with a recent and sharp increase in the volume of imports. Rather, the evidence points to changes in supermarket private label retailing and procurement strategies as being the main drivers of these trends.

The data that were used to draw these conclusions relate only to sales by Coles, Woolworths and Metcash supermarkets. The absence of ALDI and other retailers from the available data means that the data understate total retail sales of private label products (ALDI only sells private label brand processed tomato products). Specifically, total retail sales of private label processed tomato products (from both imported and domestic sources) would be higher than indicated in figure 2.11. However, the absence of these data does not affect the conclusions drawn about the causes of injury to the industry.

If anything, including ALDI in the data would *strengthen* the conclusion that it was the expansion of private label strategies by Australian supermarkets and the increased consumer acceptance of these products that caused the injury to the domestic industry, not a recent, sudden, sharp and significant increase in imports.

Figure 2.12 Processed tomato products — supermarket unit values

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| This figure shows the average unit value (in dollars per kilogram) of sales in Coles, Woolworths and Metcash supermarkets, by month. There are three series: SPC Ardmona branded products, Australian-produced private label products and imported private label products. The figure covers the period from January 2008 to April 2013. Average unit values for SPC Ardmona branded products increased over the period, and were higher than the unit value of private label products in all months. Since 2009, the average unit value of private label products (Australian produced and imported) was relatively steady. The unit value of Australia-produced private label products increased around 2011, and remained at a higher level since. |

*Sources*: Aztec Australia (unpublished); Productivity Commission estimates.

### Export volumes have decreased in recent years

ABS data show that Australian exports of processed tomato products (of all pack sizes) decreased by 45 per cent between 2008‑09 and 2010‑11 (figure 2.13). It is likely that the appreciation of the Australian dollar, as well as the impacts of the floods in 2010‑11, contributed to this decrease.

Although SPC Ardmona did not provide the Commission with information on its export volumes, it is likely that it was the source of most Australian exports of processed tomatoes over recent years. (Kagome Australia (sub. 12) has indicated that the diced tomatoes it does not sell to SPC Ardmona are converted to tomato paste rather than exported.) Any decrease in exports could potentially contribute to injury by reducing throughput and increasing overhead costs per tonne of tomatoes processed by SPC Ardmona.

SPC Ardmona (sub. AR45) questioned the Commission’s conclusion in the Accelerated Report that reduced exports were a cause of injury. The company submitted that exports accounted for less than 0.3 per cent of its total sales of processed tomatoes in 2008. As such, the extent of any injury caused by reduced export volumes would be small.

Figure 2.13 Processed tomato product export volumes**a**

Moving annual total

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| This figure shows the volume of exports of processed tomato products from July 2004 to September 2013 as a moving annual total of monthly exports. In volume terms, exports peaked in financial year 2005 06 and have fallen steadily since, with the lowest volumes occurring in 2012 13. |

a The export data are for classification 20021000 of the Australian Harmonized Export Commodity Classification. The data are not collected on the basis of pack size (there are no lower level statistical codes) and thus cannot be disaggregated.

*Source*: ABS (unpublished).

### The injury to the domestic industry was caused by the combined effect of these developments

The Australian market for processed tomatoes has been highly competitive for many years. Processed tomatoes are a globally traded product with limited opportunities for product differentiation, and Australia is a small producer on a global scale. Long‑term competition from imports and the price­‑capping effect of this competition have contributed to ongoing consolidation among growers and the closure of processors. Operators that have high costs of production or inefficient scale are particularly susceptible to competitive pressures.

Developments in supermarket private label strategies have added to the competitive pressure. Supermarkets have changed the way they market their private label products, and consumers have come to regard some private label products as substitutes for branded products. This has further reduced the ability of producers of branded products to achieve premium prices without losing market share.

In the context of these ongoing competitive pressures, a number of specific developments have combined to cause injury to the domestic industry. First, the retail unit value of SPC Ardmona branded products across Coles, Woolworths and Metcash supermarkets increased from 2009, which contributed to a loss of market share. This was exacerbated by the floods in 2011, which caused lower production and a loss of market share for domestic private label products supplied by SPC Ardmona. The ready availability of imported products — assisted by the concurrent appreciation of the Australian dollar — made it possible for supermarkets to increase their use of imports for private label brands and to choose to pass reductions in import prices on to consumers, or to increase their margins. At the same time, exports of processed tomato products decreased, probably as a result of the appreciation of the Australia dollar.

The combined effect of these developments has been a reduction in SPC Ardmona’s production, revenues and profits. SPC Ardmona’s initial submission (sub. 17), and confidential evidence that it has provided, suggest that it might no longer be producing processed tomatoes at an efficient scale. Undoubtedly this qualifies as injury to the domestic industry. However, this injury has been the result of long‑term trends, exacerbated by specific recent developments, and not a recent, sudden, sharp and significant increase in imports.

Finding 2.2

Increased imports of the processed tomato products under reference have not caused serious injury to the domestic industry producing like or directly competitive products. Instead, the injury has resulted from a combination of factors, including:

* sustained competitive pressure from imports
* supermarket private label strategies, facilitated by the appreciation of the Australian dollar
* extreme weather events.

Therefore, safeguard action under the WTO Agreement on Safeguards is not warranted.

1. Processing tomatoes are harvested and processed from January to March in Australia. This means that the calendar‑year production data that SPC Ardmona provided can also be considered as financial‑year data (and compared with financial‑year import data). For example, production for the 2012 calendar year was also production for the 2011‑12 financial year. [↑](#footnote-ref-1)
2. 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. [↑](#footnote-ref-2)
3. 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. These values do not necessarily correspond with shelf prices for individual products. [↑](#footnote-ref-3)