**CUSTOMS ACT 1901 - PART XVB**

# STATEMENT OF ESSENTIAL FACTS
# NO. 216

## ALLEGED DUMPING OF PREPARED OR PRESERVED PEACH PRODUCTS

## EXPORTED FROM SOUTH AFRICA

**28 October 2013**

# CONTENTS

# ABBREVIATIONS

| | |
|---|---|
| $ | Australian dollars |
| ACBPS | Australian Customs and Border Protection Services |
| ADN | Australian Dumping Notice |
| The Act | *Customs Act 1901* |
| ADN | Ant-Dumping Notice |
| The applicant | SPC Ardmona Operations Ltd |
| CFR | Cost and freight |
| COGS | Cost of goods sold |
| Commission | Anti-Dumping Commission |
| CTM | Cost to make |
| CTMS | Cost to make & sell |
| CTS | Cost to sell |
| CY | Calendar year |
| FOB | Free On Board |
| FY | Financial year |
| GAAP | Generally accepted accounting principles |
| NIP | Non-injurious Price |
| PAD | Preliminary Affirmative Determination |
| SEF | Statement of Essential Facts |
| the goods | the goods the subject of the application (also referred to as the goods under consideration or GUC) |
| the Minister | the Minister for Industry |
| USP | Unsuppressed Selling Price |

# 1 SUMMARY AND RECOMMENDATIONS

## 1.1 Introduction

Investigation 216 is in response to an application lodged by SPC Ardmona Operations Ltd (SPCA) in relation to the allegation that dumped prepared or preserved peach products exported to Australia from South Africa caused material injury to the Australian industry producing like goods.

This statement of essential facts (SEF) sets out the preliminary findings of the Anti-Dumping Commission (the Commission) subject to any further submissions received in response to this SEF.

## 1.2 Findings

The Anti-Dumping Commission has preliminarily found that goods exported from South Africa during the investigation period were dumped but the dumping margin was negligible.

Based on these preliminary findings, and subject to any submissions received in response to this SEF, the delegate proposes to terminate the investigation.

## 1.3 Application of law to facts

### 1.3.1 Authority to make decision

Division 2 of Part XVB of the *Customs Act 1901* (the Act) sets out, among other matters, the procedures to be followed and the matters to be considered by the Commissioner in conducting investigations in relation to the goods covered by an application.

### 1.3.2 Application

On 17 June 2013, an application was lodged by SPC Ardmona Operations Limited (SPCA) requesting that the relevant Minister (the Minister) publish a dumping duty notice in respect of prepared or preserved peach products exported to Australia from South Africa.

The Commissioner was satisfied that the application was made in the prescribed manner by a person entitled to make the application.

### 1.3.3 Statement of essential facts

The Commissioner must, within 110 days after the initiation of an investigation, or such longer period as the Minister allows, place on the public record a statement of the facts on which the Commissioner proposes to base a recommendation in relation to the application.

In formulating the SEF the Commissioner must have regard to the application concerned, any submissions concerning publication of the notice that are received by the

Commission within 40 days after the date of initiation of the investigation and any other matters considered relevant.

The initiation notice advised that the SEF for the investigation would be placed on the public record by 28 October 2013.

## 1.4 Preliminary findings and conclusions

The Commission has made the following preliminary findings and conclusions based on available information at this stage of the investigation.

### 1.4.1 The goods and like goods (Chapter 3 of this report)

Locally produced prepared or preserved peach products are like to the goods the subject of the application.

### 1.4.2 Australian industry (Chapter 4 of this report)

There is an Australian industry producing like goods, comprising of one Australian producer of prepared or preserved peach products.

### 1.4.3 Market (Chapter 5 of this report)

The Australian market for prepared or preserved peach products is predominately supplied by locally produced prepared or preserved peach products and imports from the nominated country, with a small volume of imports from other countries.

### 1.4.4 Dumping (Chapter 6 of this report)

The Commission has preliminarily assessed that prepared or preserved peach products exported to Australia from South Africa during the investigation period were dumped by a negligible margin.

The Commission has found the following preliminary dumping margins:

| Manufacturer | Dumping margin |
|---|---|
| Langeberg & Ashton Foods Pty Ltd | 1.8% |
| Rhodes Food Group Pty Ltd | 1.2% |

**Figure 1: Preliminary dumping margins**

### 1.4.5 Injury Assessment (Chapter 7 of this report)

The Commission is satisfied that the Australian industry suffered material injury in the form of:

- loss of sales volume;
- price suppression;
- reduced profits;
- reduced profitability;

- reduced revenues; and
- reduced capacity utilisation.

### 1.4.6 Has dumping and subsidisation caused material injury (Chapter 8 of this report)

The Commission is not satisfied that the Australian industry has suffered material injury as a result of dumped imports from South Africa.

# 2 BACKGROUND

## 2.1 Initiation

On 10 July 2013, following consideration of the application, the Commissioner decided not to reject the application and the Commission initiated the dumping investigation. Public notification of initiation of the investigation was made in *The Australian* newspaper on 10 July 2013.

In respect of this investigation:

- the investigation period[1] for the purpose of assessing dumping is 1 July 2012 to 30 June 2013; and
- the injury analysis period for the purpose of determining whether material injury has been caused to the Australian industry is from 1 January 2009.

## 2.2 Previous cases

In February 1992, the then Minister for Customs accepted the recommendations of an Anti-Dumping Authority (ADA) report (No 57 of January 1992) and imposed countervailing duties on canned peaches from Greece and Spain and dumping duties on canned peaches from Greece and China.

In September 1992, an importer, Jewel Food Stores Pty Ltd, sought a revocation of the countervailing duties on canned peaches from Greece and Spain and of the dumping duties on canned peaches from Greece and China. In its subsequent report (No 88 of December 1992), the ADA recommended to the Minister that he not revoke the measures. The Minister accepted the recommendation.

In August 1996, the Canned Fruits Industry Council of Australia (CFICA) made an application for the continuation of the measures. In its report (Report No 163 of December 1996) the ADA recommended that the Minister take no action to continue the dumping duties applying to exports from Greece and China and countervailing duties applying to exports from Spain. The Minister accepted the recommendations which in effect left countervailing measures against canned peaches from Greece only.

The ADA also recommended in report No 163 that the portion of the countervailing duty applicable to the sugar rebate subsidy paid to producers of Greek canned peaches be allowed to lapse. This recommendation was also accepted by the Minister.

A subsequent continuation enquiry with regard to countervailing measures imposed in relation to the goods was undertaken by the then Australian Customs Service in December 2001. Pursuant to the recommendations of the inquiry (Trade Measures Report No. 47 refers), countervailing measures were extended for a further five years.

The countervailing measures expired on 19 February 2007.

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[1] As defined by section. 269T(1).

## 2.3 Responding to this SEF

This SEF sets out the essential facts gathered by the Commission during the course of the investigation.

This SEF represents an important stage in the investigation. It informs interested parties of the facts established and allows them to make submissions in response to the SEF.

It is important to note that the SEF may not represent the final views of the Commission.

Interested parties have 20 days to respond to the SEF. The Commission will consider these responses in determining whether the investigation should be terminated or whether a report should be prepared for the Minister.

Responses to this SEF should be received by the Commission no later than **18 November 2013**. The Commission is not obliged to have regard to any submission made in response to the SEF received after this date if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Minister.

If the investigation is not terminated the Commissioner must report to the Minister by **12 December 2013**.

Submissions should preferably be emailed to operations2@adcommission.gov.au

Alternatively, they may be sent to fax number +61 2 6275 6990, or posted to:

Director Operations 2
Anti-Dumping Commission
Level 5 Customs House
5 Constitution Ave
CANBERRA ACT 2601
AUSTRALIA

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the Public Record.

A guide for making submissions is available at the Commission's web site www.adcommission.gov.au.

The Public Record contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's visit reports and other publicly available documents. It is available by request in hard copy in Canberra (phone 1300 884 159 to make an appointment), or online at www.adcommission.gov.au

Documents on the Public Record should be read in conjunction with this SEF.

# 3 THE GOODS AND LIKE GOODS

## 3.1 Preliminary finding

The Commission considers that locally produced prepared or preserved peach products are like to the goods the subject of the application (the goods).

## 3.2 Legislative framework

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

In making this assessment, the Commissioner must firstly determine that the goods produced by the Australian industry are "like" to the imported goods. Subsection 269T(1) defines like goods as:

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

An Australian industry can apply for relief from injury caused by dumped or subsidised imports even if the goods it produces are not identical to those imported. The industry must however, produce goods that are "like" to the imported goods.

Where the locally produced goods and the imported goods are not alike in all respects, the Commission assesses whether they have characteristics closely resembling each other against the following considerations:

i. physical likeness;

ii. commercial likeness;

iii. functional likeness; and

iv. production likeness.

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

## 3.3 The goods

The goods the subject of the application (the goods) are:

> Prepared or preserved peach products either whole (peeled or unpeeled) or in pieces (including halves, slices, diced), with or without added sugar or other

sweetening matter or spirit, prepared or preserved in container sizes from 300 grams up to and including 1.5 kilograms.

Goods excluded from this application are:

- Individually packed prepared or preserved peach products of less than 300g which are sold for snacking purposes;
- Peaches mixed with other fruit types such as pears, apples or nectarines;
- Sizes greater than 1.5kg, which are more common in the food service channel; and
- Multiple packs of individual packs of prepared or preserved peach products, each less than 300g, which are sold together to aggregate to greater than 300g.

The imported prepared peach products can be labelled with a generic, house brand or private label for the retailer or a proprietary label. The imported prepared or preserved peach products that are the subject of the application cover all imported prepared or preserved peach products regardless of how labelled.

## 3.4 Tariff classification

The goods are classified to the following tariff subheading 2008.70.00 in Schedule 3 to the *Customs Tariff Act 1995* with statistical code 51.

The general rate of duty is currently 5 per cent for goods imported from South Africa.

## 3.5 SPCA's claims

SPCA stated that it produces peaches matching the goods in that they are identical to, or very closely resemble the imported multi-serve peaches. The basis for this claim is that:

- The products have similar composition and ingredients;
- The products are directly substitutable;
- The products compete directly in the same markets; and
- The products have the same end-uses.

SPCA submitted that:

(a) Physical likeness

SPCA's peaches and imported peaches are available in the same size packaging range. The majority of products are available in sizes 400g, 800g, and 1kg packaging. Both imported products and SPCA's peaches are available in the same cuts with the majority of peaches being in the sliced format.

SPCA's locally produced peaches and the imported goods are processed using the same key ingredient – fresh peaches - and the preserving liquids are also similar, such as juice, syrup or water.

SPCA produces peaches in the form of slices, halves, and diced products. 95% of the current products in the category are sliced. SPCA's peaches are currently packed into cans and in rigid plastics.

Packaging does not alter the essential characteristics of the product. Imported products are similar to SPCA's products as they have a similar functional and commercial likeness.

(b) Commercial likeness

Australian industry peaches compete directly with imported products in the same retail sales channels in the Australian market (discussed further below) and are purchased by similar end users – individual consumers for home consumption. SPCA claim that consumers switch between SPCA's products and imported products with the key purchase criterion being price. SPCA provided a copy of the shelving layout plan for one of the major supermarkets showing placement of its products in comparison with other ranges of prepared or preserved peach products.

(c) Functional likeness

Both the locally produced and imported peaches have comparable or identical end-uses and are interchangeable. Both domestic and imported peaches are used by consumers in similar occasions and for similar meal types. SPCA provided a summary table of consumer uses of their products by occasion and packing type as part of their application.

## 3.6 The Commission's assessment

The Commission has examined the evidence presented during verification visit to the applicant and considers the Australian industry produces like goods to the goods the subject of the application, as defined in section 269T(1) of the Act.

Based on the information verified by the Commission, it is satisfied that the applicant has demonstrated that:

- the primary physical characteristics of imported and locally produced goods are similar;
- the imported and locally produced goods are commercially alike as they are sold to common end users;
- the imported and locally produced goods are functionally alike as they have a similar range of end-uses;
- the imported and locally produced goods are manufactured in a similar manner; and
- SPCA conducts one or more substantial process in the production of prepared or preserved peach products in Australia.

# 4 THE AUSTRALIAN INDUSTRY

## 4.1 Preliminary finding

The Commission has preliminarily found that:

- there is an Australian industry producing like goods;
- the like goods were wholly manufactured in Australia; and
- there is an Australian industry consisting of SPCA that produce like goods in Australia.

## 4.2 Legislative framework

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

## 4.3 Production process

The production process in relation to prepared or preserved peach products is standardised for all products with marginal differences made to specific production stages depending on specific product variables (such as cut profile and container type).

SPCA provided a production flow diagram, which the Commission examined, together with a factory layout diagram to understand the production process. The flow of production can be summarised as follows:

<u>1. Raw material delivery</u>

The growers deliver the raw peaches to the processors on the same day they are picked. The processors aim to process the fresh peaches to the bright can stage as close as possible to within 24 hours of delivery time.

<u>2. Sorting</u>

The first process within the factory is to sort the fresh peaches by size and colour, damaged and undamaged stock. Fruit unsuitable for canning is used for juice or pulped for use in other products.

<u>3. Washing, peeling and second sorting</u>

After sorting, the peaches are transported on conveyor belts to a machine which halves and de-stones the fruit. The peaches are washed with caustic soda to remove the skins. Further sorting and inspection ensures the correct quality of product is produced.

4. Filling and liquid adding

Perfect halves of peaches are canned immediately and the remaining peaches are sliced and diced. The peaches are put into cans, plastic jars or cups of various sizes then a ‘liquid medium’ of natural juice, light juice, light syrup, water or other juices and syrups are added.

5. Cooking, cooling and labelling

Once filled to product specifications, cans are sealed and cooked to provide commercial sterility and to maintain the eating texture and preserve the product.

Once cooled, all unlabelled cans are moved to a warehouse until time of sale.

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

This same production process was described by prepared or preserved peach product manufacturers in South Africa.

# 5 AUSTRALIAN MARKET

## 5.1 Preliminary Finding

The Commission estimates that in the investigation period the size of the Australian market for prepared or preserved peach products was approximately 17,500 tonnes (T). Data analysis shows that the market share of Australian product versus imports has remained relatively constant over the injury analysis period with the main changes occurring between the imported product origins.

## 5.2 Background

The Australian market is divided into two main segments. The first main segment is sales to major supermarkets and the second main segment is sales to smaller food stores, green groceries and distress channels. A greengrocer is a retail trader in fruit and vegetables. Distressed channels are clearance stock stores where excess supply of particular products is often sold.

The goods are purchased by these main channels for on-sale to consumers. In addition there is a small proportion of sales to the food service industry. The Commission identified only a small volume of the goods being sold to the food service market segment.

## 5.3 Importers

The Commission performed a search of the Australian Customs and Border Protection Services (ACBPS) import database and identified importers of prepared or preserved peach products.

The Commission undertook visits to the following importers and prepared reports following the visits:

- Grocery Holdings Pty Ltd (Coles);
- Woolworths Limited;
- GAF Foods Australia Pty Ltd; and
- Metcash Pty Ltd.

These importers account for approximately 90% of prepared or preserved peach products imported from South Africa in the investigation period.

Visit reports for the above importers can be found on the electronic public record available on the Commission website at http://www.adcommission.gov.au/

## 5.4 Market supply and structure

SPCA indicated that the market segment can be considered by either product type (whole, sliced or diced) or by label type (private or proprietary). A private label is a product manufactured and sold with the label of the retailer, whereas generally the proprietary label is the manufacturer’s own label.

### 5.4.1 Label segmentation

Within the retail market of the major supermarkets, there are three identifiable tiers based on retail selling price. At the high end of price (tier 3) are the Australian industry products, next are the private labels of the major retailers (tier 2), and the bottom level in price are the tier 1 private label brands.

### 5.4.2 Product Segmentation

The peach product market contains three cut styles – halves, diced, and sliced peaches. In terms of volume, 825g sliced peaches in a can is the most popular, with the 1 kilogram plastic container of sliced peaches being the next most popular product by sales volume.

### 5.4.3 Marketing and distribution

SPCA indicated that the majority of goods sold are to four major retailers via the grocery sales channel. For private label sales, a tender process is usually undertaken. For proprietary label sales it is a discussion around price point, volume and marketing strategy.

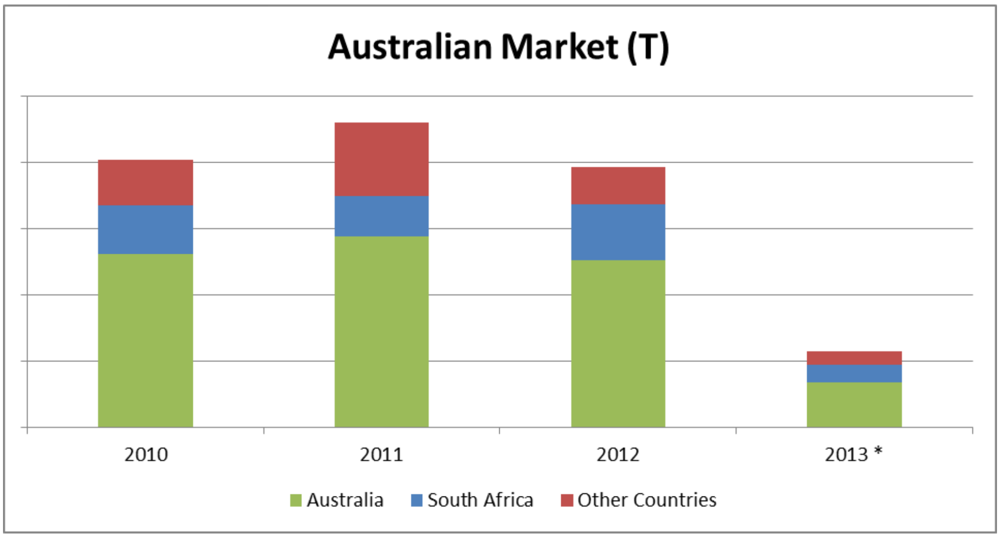
The lead time between production forecast and delivery can be as much as two years. During the budgeting process manufacturers estimate production volume and standard cost to help them determine the cost of manufacture and to assist with tender process bids.

A similar process was described by South African manufacturers when describing their involvement in tenders and supply to local retailers and overseas buyers. The lead time between budgeting and delivery was also up to two years. However, the Commission notes that the two exporters visited by the Commission do not produce their own proprietary labelled products.

### 5.4.4 Market Size

The Commission considers the data in ACBPS' import data base, which was cross checked during the importer and exporter verification visits and the verified sales data provided by SPCA provide a reasonable estimate of import volumes.

The following graph depicts the Commission's estimate of the Australian market size for peaches using data from ACBPS import database and SPCA's sales data by calendar year. The Commission estimates that in the 2013 financial year, being the investigation period, the size of the Australian market for peaches was approximately 17,500 tonnes.




- 2013 figures for six month period, January to June 2013 only

# 6 DUMPING INVESTIGATION

## 6.1 Preliminary Findings

Preliminary dumping margins for the investigation period were calculated by comparing weighted average export prices with the corresponding weighted average normal values. Preliminary dumping margins are summarised in the following table:

| Manufacturer / exporter[2] | Dumping margin |
|---|---|
| Langeberg & Ashton Foods Pty Ltd | 1.8% |
| Rhodes Food Group Pty Ltd | 1.2% |

**Figure 2: Dumping margins**

The Commissioner is required to terminate an investigation of a particular exporter if the dumping margin is less than 2%[3] and terminate the investigation as it relates to a country if the total volume of goods exported to Australia is negligible[4], that is, less than 3% of total Australian import volume. Pending any submissions that require further investigation, the delegate proposes to terminate the investigation as it relates to Langeberg & Ashton Foods Pty Ltd (LAF) and Rhodes Food Group Pty Ltd (Rhodes) due to negligible dumping margins and terminate the remainder of the investigation due to negligible volumes exported by the remaining exporters.

## 6.2 Introduction

Dumping occurs when a product from one country is exported to another country at a price less than its normal value. The export price and normal value of goods are determined under sections 269TAB and 269TAC of the Act respectively.

This chapter explains the preliminary results of investigations by the Commission into whether prepared or preserved peach products were exported from South Africa at dumped prices during the investigation period.

## 6.3 Exporters

At the commencement of the investigation, eight potential exporters of prepared or preserved peach products from South Africa were identified. Questionnaires were forwarded to all known exporters. Of the eight potential exporters, five identified themselves as exporting quantities less than ½ tonne each during the investigation period, one advised that it was not an exporter of the goods and the remaining two entities notified the Commission that they would cooperate with the investigation.

The Commission received questionnaire responses, which were assessed by the Commission as being substantially complete, from LAF and Rhodes.

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[2] The manufacturers / exporters listed in figure 1 may supply the goods directly or indirectly through traders.
[3] S.269TDA(1)(ii)
[4] S.269TDA(3)

The verification visit reports for each of the exporters are available at the Commission's website http://www.adcommission.gov.au/ and provide additional detail to what is discussed below.

### 6.3.1 Langeberg & Ashton Foods Pty Ltd

**Export Prices**

Export prices for LAF were established under s.269TAB(1)(a) of the Act being the price paid or payable by the importer less any part of the price that represents a charge in respect of transport of the goods or in respect of any other matter arising after exportation.

**Normal Value**

The Commission found that sales to LAF's parent company, Tiger Consumer Brands, were non-arms' length and so have been excluded from normal value calculations. These excluded sales account for the majority of LAF's domestic sales volumes. Remaining OCOT sales to unrelated parties were in sufficient quantities for consideration. Normal values were determined under s. 269TAC(1) using LAF's domestic selling prices to its two unrelated domestic customers. The following adjustments were made to the normal value in accordance with s.269TAC(8) of the Act:

- Credit terms – export terms to Australia were at terms of days greater than those sales to the domestic market, an upward adjustment to normal values for the additional cost of credit incurred in relation to export sales;

- Inland freight – a downwards adjustment was made for the actual cost of domestic inland freight and an upwards adjustment was made for export inland freight to the port;

- Export fees and charges – it was found that export sales incur certain fees and charges that are not incurred on domestic sales. An upwards adjustment to the normal value was made for handling and other charges, harbour service fees and terminal handling charges;

- Commissions – export sales incur sales commission whereas domestic sales do not. An upwards adjustment to the normal value was made accordingly;

- Physical differences – there were certain export models for which there were insufficient domestic sales in the ordinary course of trade. For these models, similar domestic models were used and appropriate adjustments made to account for the physical differences between the export and domestic models;

- Plastic jars – the margin achieved on sales of 1kg plastic jar exports to Australia and other countries was considerably higher than on canned products. The normal value for plastic jars was based on the domestic selling price for a canned product (with adjustments for physical differences) therefore a further upwards adjustment was made based on the difference in profitability.

The dumping margin was determined by comparing the weighted average export price over the whole of the investigation period with the weighted average normal value over the whole of the investigation period. The dumping margin for LAF is 1.8%.

### 6.3.2 Rhodes Food Group Pty Ltd

**Export Prices**

Export prices for Rhodes were established under s.269TAB(1)(a) of the Act being the price paid or payable by the importer less any part of the price that represents a charge in respect of transport of the goods or in respect of any other matter arising after exportation.

**Normal Value**

Normal values were determined under s. 269TAC(1) using Rhodes' domestic selling prices of both 825g and 410g canned peaches, standard grade, in slices and halves, in syrup. The following adjustments were made to the normal value in accordance with s.269TAC(8) of the Act:

- Credit terms – export terms to Australia were at terms different to those sales to the domestic market, a downward adjustment was made to domestic selling prices for domestic credit terms, and an upward adjustment is required to arrive at a normal value that takes account of export credit terms;

- Inland freight – a downwards adjustment was made for the actual cost of domestic inland freight and an upwards adjustment was made for export inland freight to the port;

- Export fees and charges – it was found that export sales incur certain fees and charges that are not incurred on domestic sales. An upwards adjustment to the normal value was made for handling and other charges, harbour service fees and terminal handling charges;

- Commissions – domestic sales incur sales commission whereas export sales do not. A downwards adjustment to the normal value was made accordingly;

- Physical differences – there were certain export models for which there were insufficient domestic sales in the ordinary course of trade. For these models, similar domestic models were used and appropriate adjustments made to account for the physical differences between the export and domestic models.

The dumping margin was determined by comparing the weighted average export price over the whole of the investigation period with the weighted average normal value over the whole of the investigation period. The dumping margin for Rhodes is 1.2%.

### 6.3.3 All other exporters

The volume of prepared or preserved peach products exported to Australia from South Africa by all other exporters during the investigation period was 0.02% of the total volume exported.  The delegate must terminate if negligible volumes of dumping are found.  In this case, even if all other exporters were exporting prepared or preserved peach products to Australia at dumped prices, the total volume is negligible.

# 7 ECONOMIC CONDITION OF THE INDUSTRY

## 7.1 Preliminary finding

The Commission has preliminarily assessed that, based on verified information and data, the Australian industry (SPCA) appears to have experienced injury in respect of its sales of prepared or preserved peach products, however the findings do not support all injury claims by the applicant.

## 7.2 Injury claims

SPCA alleges it has suffered material injury caused by prepared or preserved peach products exported to Australia from South Africa at dumped prices.

SPCA claims it has been injured through:

- loss of sales volume;
- reduced market share;
- reduced revenues;
- price depression;
- price suppression;
- reduced profits;
- reduced profitability;
- reduced return on investment and loss of economies of scale associated with processing operations; and
- reduced capacity utilisation

## 7.3 Approach to injury analysis

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

SPCA provided production, cost and sales data for prepared or preserved peach products (as covered by the goods descriptions).

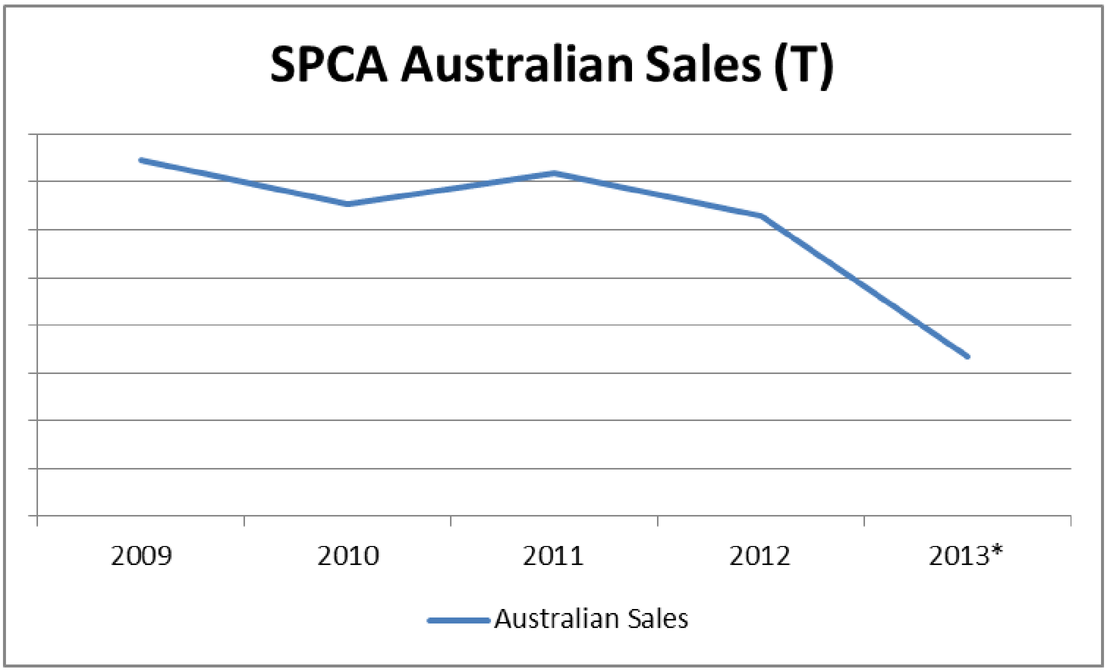
The Commission examined injury based on tonnes produced and sold by the Australian industry and tonnes exported to Australia. The range of products included in the investigation included different sizes, ranging from 410g cans to 1kg plastic containers. Each can or plastic jar size can contain a different style of peach cut, either sliced, diced or halves. SPCA provided its sales and cost data based on tonnes. At the verification visit the Commission checked the conversion SPCA used to provide the data based on tonnes instead of the unit of measurement, known as BQs or basic cartons, generated by SPCA's accounting system. The Commission was satisfied that the quantities and values had been correctly converted to tonnes and recorded.

The Commission converted any data that was not recorded by that same measurement, into tonnes to enable proper comparison and formulate the following injury analysis.

## 7.4 Volume effects

### 7.4.1 Sales Volume

The following graph demonstrates SPCA's domestic sales volumes for peaches for calendar years (CY) 2009 to 2013 showing the steady decline since 2011.




* 2013 figure has been annualised as data obtained only available to June 2013.

### 7.4.2 Market Share

The following graph shows movements in market shares, including SPCA's market share, in the Australian market for prepared or preserved peach products for the 2009 to 2013 calendar years.

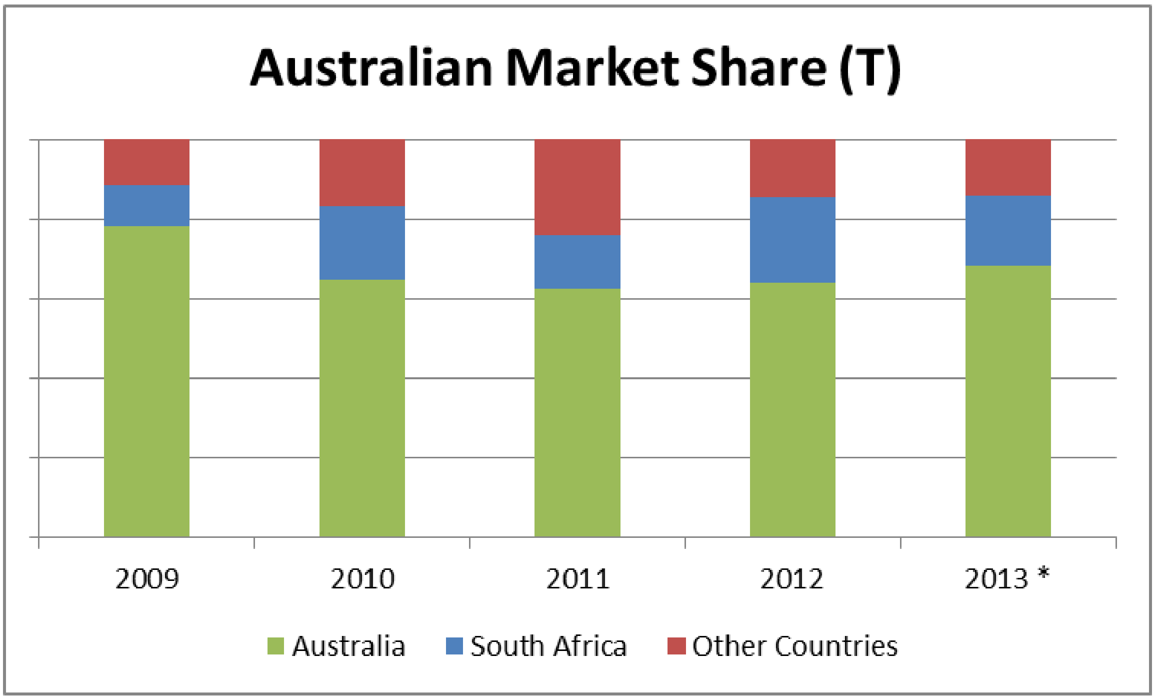



**Figure 3: Australian Market Share (T) for the period 2009-2013 calendar years**

* 2013 data for period January 2013 to June 2013 only

Figure 3 demonstrates that SPCA's market share has remained relatively constant after an initial drop from 2009 to 2010, as exports from South Africa have fluctuated over the same period.

### 7.4.3 Market size

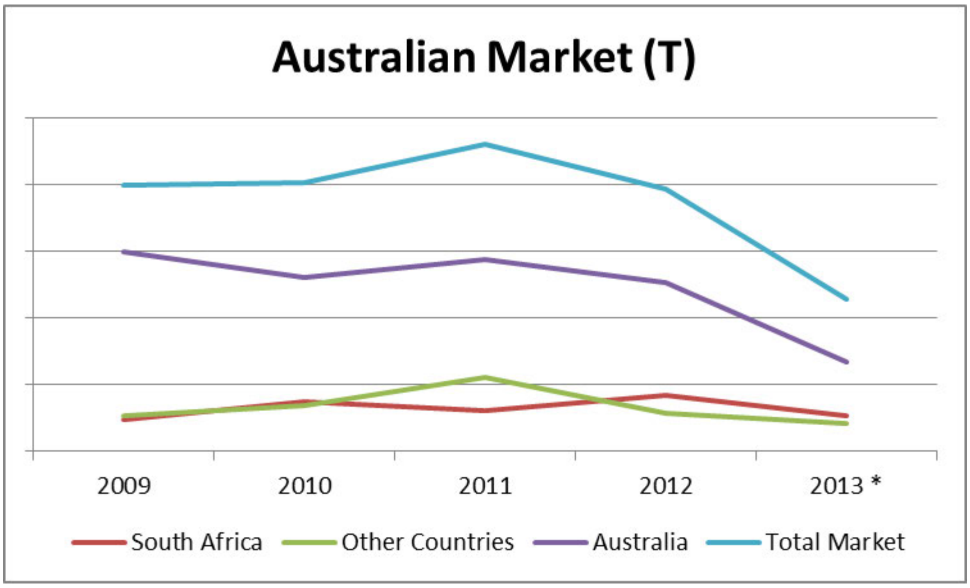



**Figure 4: Australian market for peaches: 2009-2013 calendar years**

* 2013 data has been annualised

Figure 4 shows that after an overall decrease from 2009 to 2010 the total Australian market size for peaches increased from 2010 to 2011 but experienced a decline from 2011 to 2013. Even when 2013 figures are annualised, there is an overall decrease in market size of 24% from 2012 to 2013.

Further, the table above reflects that notwithstanding the overall decline of the Australian market, total imports from South Africa have fluctuated over the period, losing some market share in 2011 but gaining market share from other imports from 2012.

In 2013 imports from all countries have been found to account for approximately 32% of the Australian market, a decrease of 4 percentage points from 2012. Import volumes are predominantly comprised of goods originating from South Africa during 2012 and 2013, whilst in previous years import volumes were predominately from other countries.

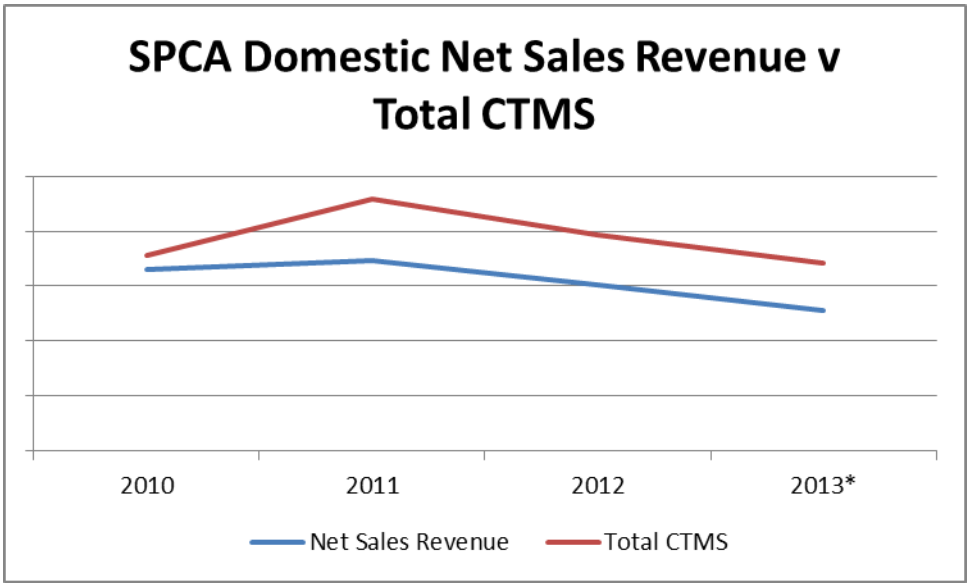
The Commission's estimate of the Australian market for peaches is at **Confidential Appendix 1**.

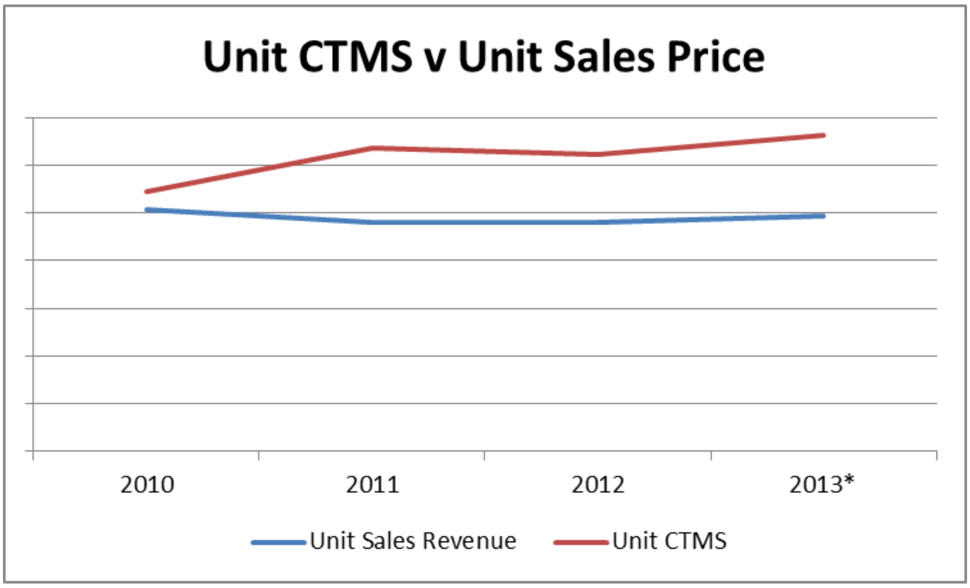
## 7.5 Price suppression and depression

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

The following graphs show movements in SPCA's total and unit revenues and costs in respect of prepared or preserved peach products for CY 2010 to 2013.

The following graphs show the movements and relationships of SPCA's net revenue and cost to make and sell (CTMS) for peaches from CY 2010 to 2013. SPCA provided CTMS data for the period 2010 to 2013. The Commission did not seek further CTMS data for the 2009 calendar year. The first graph depicts total net revenues and total CTMS, while the second shows unit prices and unit CTMS.



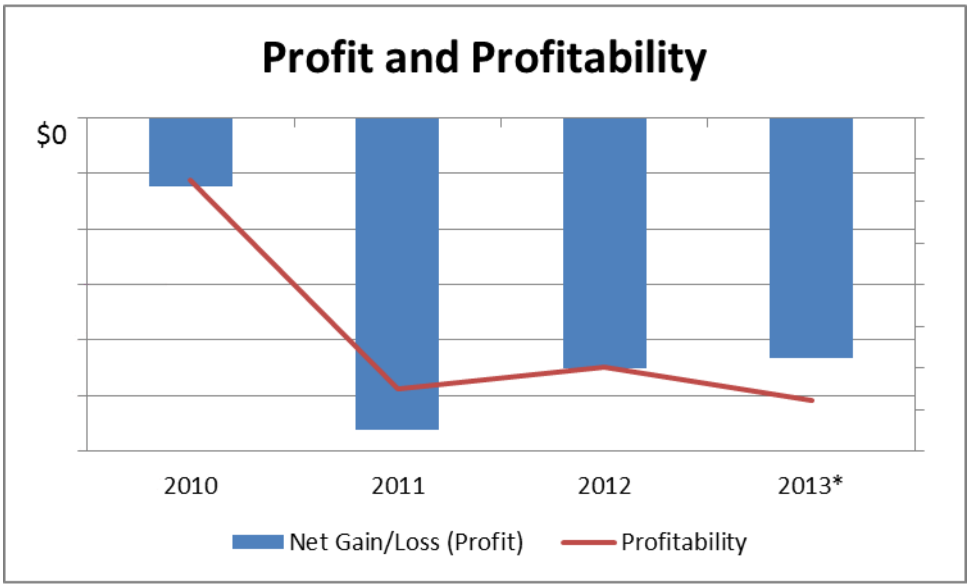



*2013 figures have been annualised as data was only available to 30 June 2013.

The graphs show that unit prices have remained relatively constant over the investigation period while total net revenues have fallen. Unit costs have increased and total costs have remained in excess of total revenue. The graphs support SPCA's claims of price suppression, however, given the relatively stable unit price demonstrated in the graph above, the Commission cannot conclude a preliminary finding of price depression on this basis.

## 7.6 Profits and profitability

The following graph shows movements in SPCA's total profits and profitability (profits measured as a percentage of revenue) for peaches from CY 2010 to 2013.




* Note that 2013 figures have been annualised as the data provided was to June 2013

This graph shows a significant increase in SPCA's losses between calendar years 2010 and 2011 with some improvement in 2012 and 2013. Profitability has declined in 2013.

## 7.7 Summary of major injury indicators

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

- loss of sales volume;
- price suppression;
- reduced profits; and
- reduced profitability

## 7.8 Other economic factors

SPCA completed an Appendix A7 as part of its application for prepared or preserved peach products from calendar years 2010 to 2012. SPCA claims that it has experienced injury in respect of other economic/injury factors. The Commission has reviewed Confidential Appendix A7 and identified the following trends for other injury factors in respect of sales of prepared or preserved peach products.

### 7.8.1 Assets

The value of assets decreased each calendar year 2010-2012 substantially over the three year period. The value of the assets presented in the Appendix A7 represents the whole company. Whist the Commission can see a reduction of assets from a company-wide perspective; SPCA could not separate the specific assets for the production of the goods. Accordingly the Commission cannot confirm if injury has occurred in the form of reduced assets.

### 7.8.2 Capital investment

Capital investment in prepared or preserved peach products decreased over the calendar years 2010-2012.

The value of the capital investment presented in the Appendix A7 represents the whole company. Whist the Commission can see a reduction in capital investment from a company-wide perspective; SPCA did not separate the specific components for the production of the goods. Accordingly the Commission cannot confirm if injury has occurred in the form of reduced capital investment.

### 7.8.3 Revenue

Revenue from prepared or preserved peach products increased slightly from CY 2010 to CY 2011 before decreasing in CY 2012.

### 7.8.4 Capacity

The production capacity in relation to prepared or preserved peach products remained constant over CY 2010-2012.

### 7.8.5 Capacity utilisation

Capacity utilisation in relation to production of peaches fluctuated over the period CY 2010-2012 but decreased overall.

### 7.8.6 Employment

SPCA advised that is has substantially decreased its staffing levels per shift due to increased efficiency and increased reliance on automated sorting technology. In 2011, an additional number of permanent staff were made redundant as a result of restructuring operations.

### 7.8.7 Stock

SPCA indicated decreasing stock values since 2010. SPCA explained that it has been forced to write off increasing levels of stock over the injury analysis period.

### 7.8.8 Conclusion – other injury factors

In terms of other injury factors, the data indicates that SPCA suffered injury through reduced revenues and reduced capacity utilisation.

# 8 HAS DUMPING CAUSED MATERIAL INJURY?

## 8.1 Preliminary Findings

The Commission has preliminarily found only negligible dumping margins at this stage of the investigation and therefore cannot conclude that dumping is the cause of injury to the Australian industry.

## 8.2 Factors other than dumping

The Commission found that there are a range of factors that might be affecting the economic performance of the Australian industry for prepared or preserved peaches.

Exchange rate

SPCA indicated that the exchange rate has had an impact on its sales volumes. A stronger Australian dollar has made it more attractive for retailers to seek supply from overseas. SPCA considered that the import volume from countries other than South Africa has declined due to the competitive pricing of the South African prepared or preserved peach products. ACBPS' import data indicates that whilst imports from other countries increased at the expense of South African imports during 2011, imports from South Africa regained those sales volumes from other countries during 2012.

Consumer sensitivity and demand

Sales of peaches at the retail level are highly sensitive to price movements. Customer's decisions to purchase a particular peach product are directly related to price movements according to data analysis provided by SPCA (**confidential attachment 1**). When SPCA runs a promotional special, data indicated there is an immediate increase in sales volumes. Consumers will wait until products are advertised at a promotional price before purchasing or shifting between price tiers. Prices are set by the retailers and promotional specials run to influence consumer spending patterns. The availability of low priced imports has caused SPCA to increase its promotional spend, a direct expense to SPCA, in order to offer the discounts that increase sales volume.

It was also noted during the investigation process that there has been a general decline in consumer demand for canned fruit products. The availability of quality of fresh fruit and increased health awareness has seen consumer move away canned products opting for fresh produce instead.

Retailer supply strategies

The major retailers noted that their supply strategy is based on customer demands. They advised that the reason they source cheaper product from overseas is because that is what the consumer demands from them. There is a base product line that needs to be supplied, that the Australian industry has either not sought to supply previously or not been able to supply at a reasonable price. Domestic cost factors such as rising wages and increased production costs add to the inability of the Australian industry to provide supply of these products at the price level required.

Weather conditions

During the investigation, parties noted that extreme weather conditions can negatively affect the growers of raw peaches and therefore the production output level of the Australian canning industry. At times when supplies have run low, retailers have been forced to find other sources of supply outside of Australia to compensate for lack of Australian product available. Continuity of supply is an issue retailers must be aware of when selecting sources of products.

Price Undercutting

Price undercutting occurs when imported product is sold at a price below that of the Australian manufactured product.

In terms of the pricing structure, sales in the Australian market are broken into three tiers as described at paragraph 5.4.1, with the SPCA proprietary labels being the highest and supermarket 'own' brands the lowest:

- Premium (SPCA proprietary labels)
- Private Labels (Woolworths Select, and Coles)
- Black and Gold, Smart Buy and Homebrand

SPCA supplies products to the top two tiers, which are sold for higher prices by retailers as demonstrated in the graph below. Most imported product supplies the lowest tier and therefore the subsequent retail price will always significantly undercut the price of SPCA products as SPCA does not produce a product for sale in that price tier. During the verification process, the major supermarkets advised that their sales strategy is to supply a base priced product as an option for consumers, and until recently, SPCA did not tender for supply of these lower level products.

SPCA noted that they were unable to increase their sales prices in line with cost of production increases due to the pressure placed upon sales by lower cost retail products sold in tier 1 which was the cause of the price suppression they were experiencing.

## 8.3 Non-injurious price

To further assist the assessment of whether the alleged dumping from South Africa caused injury to the Australian industry the Commission sought to compare export prices from South Africa to an estimate of a non-injurious price (NIP) for the year ending 30 June 2013.

SPCA submitted that the suitable basis for establishing a USP is to use the Australian industry's CTMS and then add an appropriate margin for profit. The Commission considers that it is most reasonable to rely on SPCA's current costs plus a profit margin to derive a USP. SPCA provided a profit margin estimate based on a risk adjusted expected rate of return for the peaches category of its business.

Consequently, the Commission has calculated the USP for SPCA for the year ending June 2013 as:

- SPCA's weighted average cost to make and sell for the goods under consideration for the 2012 calendar year; plus
- the rate of profit calculated by SPCA which the Commission considers reasonable.

The Commission then deducted amounts from that USP for a reasonable estimate of 'into-store' costs and overseas freight based on information in the ACBPS import database and data obtained at the importer verification visits. These calculations provided for a NIP at an FOB level, which is suitable for comparison to an FOB export price.

The Commission then compared this NIP with the weighted average export price for the year ended June 2013 using export data from the two participating exporters from South Africa. This comparison showed that the weighted average export prices for the year were below the NIP.

This analysis supports SPCA's claims of price undercutting as a source of injury to the Australia industry, even though the Commission has found negligible dumping margins.

Calculations of the USP and NIP, and its comparison with the FOB export price, form **Confidential Appendix 2**.

# 9 APPENDICES AND ATTACHMENTS

| | |
|---|---|
| **Confidential Appendix 1** | Australian market calculations |
| **Confidential Appendix 2** | NIP & USP calculations |
| **Confidential Attachment 1** | NAT Woolworths scan data showing correlation between price reductions and increased sales volumes |