

SPC ARDMONA



**SUBMISSION TO THE AUSTRALIAN PRODUCTIVITY
COMMISSION SAFEGUARDS INQUIRY**

FOR THE

AUSTRALIAN CANNED TOMATO INDUSTRY

Date: July 2013

CONTENTS

1. Executive summary	.....	3
2. Introduction	.....	4
3. The distinction between provisional and safeguards measures	.....	5
3.1 Different requirements for provisional and safeguards measures		
3.2 Additional requirements Asserted by the PC		
4. The Case for Provisional Safeguards	.....	8
4.1 Introduction		
4.2 Critical circumstances where delay will cause damage difficult to repair		
4.3 Preliminary determination of increased imports having caused or threatened serious damage		
5. SPCA's requested measure	.....	22
ATTACHMENTS	.....	24
1. Questions and Answers – Productivity Commission Issues Paper		
2. XXXX		
3. XXXX		
4. XXXX		
5. XXXX		
6. XXXX		
7. XXXX		

1. EXECUTIVE SUMMARY

SPC Ardmona (SPCA) herewith requests the application of a provisional safeguard tariff of a minimum of 30% to be applied to specified canned tomato products for 200 days consistent with the WTO Safeguards Agreement followed by a full safeguard tariff at the same level phased out over three years while SPCA undertakes an adjustment plan that aims to enable the industry to be competitive against imports without the tariff. Although a higher level of tariff could easily be justified to ensure the safeguard measure has a full impact in remedying damage.

The canned tomato industry in which SPCA is now the sole Australian processor of retail products has been hit by a “perfect storm” in recent times.

Firstly there was a rise in the Australian dollar to record levels which fuelled imports to record levels. Exchange rate movements are international factors affecting the industry that are inherently unpredictable.

Secondly SPCA submits that canned tomatoes have been even further cheapened by being dumped in Australia. The Anti-Dumping Commission has agreed that SPCA has a prima facie case and has agreed to investigate this, a process that is currently underway.

Thirdly, the major supermarket chains, which traditionally claimed publicly that they supported Australian produce, moved strongly from 2010 to import products cheapened by the exchange rate appreciation and, unknowingly to them cheapened also by dumping, for their strategy of developing private label products. These products took market share from SPCA, reducing sales volumes and increasing unit costs of production, and simultaneously reduced net sales revenues, as SPCA was forced to provide promotional payments in a desperate attempt to maintain its shelf space and market share and prevent even further market share losses.

Driven by these developments, imports have risen in both absolute and relative terms in recent years, causing serious damage to SPCA, who is the only significant processor in the industry.

Other factors such as seasonal conditions were far less significant for the industry – SPCA’s costs of production were mainly affected by the reduction in sales volumes and revenues caused by imports, not by higher raw material costs. Imports as a consequence are the key driver of the damage that has taken place and threatens to take place to the industry.

As a result of the imports, SPCA’s profitability has diminished. A continuation of recent import trends threatens to overwhelm the industry. There are critical circumstances facing the industry, with decisions having to be made now at the farm and plant levels.

The damage will be irreversible, as farmers leaving the industry will be unlikely to undertake the long term investment required again, and no one will invest on SPCA’s scale again in this industry. Closure of SPCA’s facilities is a prospect unless provisional safeguards provide “breathing space”, followed by full safeguards measures accompanied by an adjustment plan. This is precisely the purpose of the WTO Safeguards Agreement.

2. INTRODUCTION

The way in which the WTO Safeguards Agreement has been implemented in Australia (via Government Gazette notice establishing general principles for inquiries and the nature of references to the Productivity Commission) conflates and confuses the process for dealing with two types of safeguards allowed for under the WTO Safeguards Agreement – provisional safeguards and safeguards measures.

It does this in two ways:

- It requires the Productivity Commission (PC) to undertake an Inquiry for both provisional and safeguard measures, whereas the Agreement only requires an Inquiry for safeguard measures proper. The Agreement allows an executive decision to be made by a competent authority, which is a Minister in Australia's case.
- It requires a report not on the outcomes of an Inquiry into provisional safeguards but instead requires an "accelerated report" on the full safeguards Inquiry. Effectively a request for the Australian Government to provide provisional safeguard measures faces the challenge of effectively having to persuade the PC as to the justification for full safeguards.

By contrast, the WTO Agreement clearly views provisional safeguards as a temporary measure to be subject to a preliminary determination to deal with a situation of urgency and to avoid permanent damage, which does not require an inquiry and can be granted by a responsible Minister, whilst an inquiry is underway to determine the justification for safeguard measures of a longer-term nature.

This policy decision results in the undermining of the efficacy of provisional safeguards as a legitimate trade measure by Government which is not consistent with the WTO Agreement, and it has the effect of imposing an additional and onerous burden on those requesting the Australian Government to apply provisional safeguards which is not required in the WTO Agreement. The key feature of provisional safeguards is that they are required to keep the patient alive while fuller investigations are undertaken.

This submission therefore begins with an analysis of the difference between provisional and full safeguards. It then sets out the case for the application of provisional safeguards reflecting this analysis, including the basis for calculating the requested provisional tariff measure.

Then it addresses the questions identified by the PC in its Issues Paper which the Commission states must be satisfied for safeguards measures (without distinguishing between provisional and safeguards measures). This section is being provided because of the conflated requirements for the two types of measures discussed above. SPCA reserves the right to provide additional information in respect of safeguards measures in a subsequent submission.

A confidential version of this submission containing confidential company information and a non-confidential version suitable for public dissemination are provided.

3. THE DISTINCTION BETWEEN PROVISIONAL AND SAFEGUARDS MEASURES

3.1 Different requirements for provisional and safeguards measures

The WTO Safeguards Agreement states in Article 6 concerning “Provisional Safeguard Measures”: “In critical circumstances where delay would cause damage which it would be difficult to repair, a Member may take a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury.”

There are a number of key requirements inherent in this provision:

- That there are critical circumstances
- Where delay would cause damage difficult to repair
- A preliminary determination is required
- There is clear evidence
- That imports have caused or are threatening to cause serious injury.

These are the only requirements that must be met.

Provisional safeguards and safeguards measures are different in four distinct and fundamental ways:

ONE: Provisional safeguards are “provisional”. They are not final. They are meant to be put in place in critical circumstances pending a decision on final safeguard measures. This provision suggests that something else can or should take place before a final measure is applied. Not surprisingly this leads to the second key difference.

TWO: The determination is preliminary – a whole range of factors can be identified and information gathered to be taken into account in a final determination but not necessarily in a preliminary one. It is a judgment call as to whether enough evidence has been collected to satisfy the conclusion reached in the emergency circumstances.

THREE: And that is why the process is different too – and that’s why no formal inquiry required as per Article 3, which states that “A Member may apply a safeguard measure (note not a provisional safeguard measure) only following an investigation by the competent authorities of that Member pursuant to procedures previously established and made public in consonance with Article X of GATT 1994. This notably refers to safeguards as distinct from provisional safeguards.

FOUR: The measure in provisional safeguards in itself is different. Only tariffs can be applied for provisional measures, and the duration and conditions of full safeguards differ from provisional safeguards e.g. the period for which they can be applied, the need to prove adjustment, and to progressively liberalise safeguards measures as opposed to provisional safeguards.

3.2 Additional Requirements Asserted by the PC

The PC Issues paper identifies a number of requirements which it states must be taken into account in determining a case for safeguards, based on WTO Case law. It makes no distinction as to whether these are requirements for provisional or

safeguards measures, and hence implies without justification that these must be applied in the case of provisional safeguards also.

Two such instances in particular are:

- Requirement for unforeseen developments.
- Requirement for imports to have been “recent enough, sudden enough, sharp enough and significant enough”.

Unforeseen developments

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

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

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

The Issues Paper then implies that the following questions have to be satisfied for provisional safeguards to be possible – i.e. “what are the unforeseen developments that have led to increased imports of processed tomato products? When did they occur? Why could they not have been foreseen?”

The first point that must be made as a general principle is that there is no stated basis of this assertion as to precedence – that is, why this case law necessarily constitutes a binding precedent that must be followed in all subsequent cases. Any precedent or series of precedents, to be applicable, must be relevant to the circumstances of the case being heard. It is not clear whether this applies here. Moreover in any event precedent is not sacrosanct if there is justification under the agreement for a different course of action that can subsequently be defended and prosecuted.

Even if one does accept the precedence of the case law as cited in the Issues Paper, negotiators could not possibly have foreseen in 1994 the extraordinary events in the Australian processed fruit industry and economy (i.e. Australia becoming effectively a reserve currency, the mining boom and the printing of money on a gigantic scale by overseas Central Banks which served to raise the Australian currency to record levels some two decades later).

Moreover if the basis of “unforeseen” under GATT 1994 is that the trading developments could not reasonably have been foreseen or expected by negotiators when the obligations under the GATT (1994) were incurred, then one would anticipate that is the question that the Issues Paper would ask, in contrast to the different and broader question of “*What are the unforeseen developments that have*

led to increased imports of processed tomato products? When did they occur? Why could they not have been foreseen?"

Recent enough

The Issues paper cites a WTO Appellate Body decision in an Argentinean footwear case to assert that imports have to have been "recent enough, sudden enough, sharp enough and significant enough".

The same comments apply here with respect to the issue of precedence as is identified above in relation to unforeseen developments. It is not indicated in the Issues Paper whether the case cited applies in the circumstances of SPCA's application.

Indeed each of the terms "recent, sudden" etc. is open to multiple interpretations and definitions - for example, the term "recent". In the WTO *US — Line Pipe case*, the Panel found that the word "recent" implies a "retrospective analysis"; but that it does not imply an analysis of the conditions immediately preceding the authority's decision nor does it imply that the analysis must focus exclusively on conditions at the very end of the period of investigation. The case goes on to say that "The word 'recent' — which was used by the Appellate Body in interpreting the phrase 'is being imported' — is defined as 'not long past; that happened, appeared, began to exist, or existed lately'".

In other words, the word 'recent' implies some form of retrospective analysis. It does not imply an analysis of the conditions immediately preceding the authority's decision. Nor does it imply that the analysis must focus exclusively on conditions at the very end of the period of investigation.

Despite the above features of the Issues paper's treatment of safeguards with which SPCA disagrees, SPCA's submission addresses the questions raised in the Issues Paper in the relevant section dealing with Questions and Answers. SPCA however reserves the right to address the specific requirements of provisional as distinct from safeguards measures in the body of this submission, in accordance with the requirements of the WTO Safeguards Agreement.

4. THE CASE FOR PROVISIONAL SAFEGUARDS

4.1 Introduction

SPCA's request is for tariffs of 30% to be applied to the following products for 200 days consistent with the WTO Safeguards Agreement.

Definition of goods: The goods subject of the application are tomatoes (peeled or unpeeled) prepared or preserved otherwise than by vinegar or acetic acid, either whole or in pieces (including diced, chopped or crushed) with or without other ingredients (including vegetables, herbs or spices) in packs not exceeding 1.14 litres (canned tomatoes). The following tomato products do not form part of this application: pastes, purees, sauces, pasta sauces, juices and sundried tomatoes.

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

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

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

The goods are classified within tariff subheading 2002100060 Tomatoes, whole or in pieces, prepared or preserved otherwise than by vinegar or acetic acid, in packs not exceeding 1.14 litres in Schedule 3 of the Customs Tariff Act 1995.

The current rate of duty is 5% except where appropriate for US, Thai, Chilean and AANZ originating goods which are free of duty.

The canned tomato products produced by SPCA are identical to, or very closely resemble, the imported canned tomato retail products. The basis for this is that:

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

The WTO Agreement says in Article 6 that "In critical circumstances where delay would cause damage which would be difficult to repair a [WTO] Member may take a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury".

There are therefore two key criteria for provisional safeguards:

1. That circumstances are critical and delay would cause damage difficult to repair; and
2. A preliminary determination can be made that there is clear evidence of increased imports having caused or threatening to cause serious injury.

4.2 Critical circumstances where delay will cause damage difficult to repair

4.2.1 Information on SPCA and its role in the processing industry

SPC Ardmona is an Australian company that produces processed fruit and vegetable products at a canning factory in Shepparton, Victoria. It was formed in 2002 by the merger of the former Shepparton Preserving Company and Ardmona Foods Limited. The Shepparton Preserving Company traces its history to 1917. Ardmona Foods Limited was established as a food co-operative in 1921. The two companies merged in 2002 to become SPC Ardmona Limited. SPC Ardmona was acquired by Coca-Cola Amatil in 2005. SPC Ardmona owns iconic Australian food brands SPC, Goulburn Valley, Ardmona, IXL and Taylors.

SPC Ardmona, located in Victoria's Goulburn Valley is one of the largest food processors in the Australia and its continued operation is critical for the region. SPC Ardmona has 840 full-time-equivalent staff and its economic activity indirectly supports more than 2,700 additional jobs in the Goulburn Valley.¹ SPCA directly injects about \$63 million into the local economy through salaries and wages and provides apprenticeships, training programs, work experience programs and graduate student programs to young people in the region.

SPC Ardmona sources most of its raw product from local fruit and vegetable growers and other suppliers in the region so the entire regional supply chain depends on SPCA remaining competitive and financially viable. In recent years SPCA utilised the products from more than 200 contract growers and suppliers of semi-processed fruit and vegetable products such as fruit juice and tomato pulp. SPC Ardmona buys up to 150,000 tonnes of fruit and vegetables worth \$32 million each year from contract growers who, along with suppliers employ about 1,868 workers in the region.

SPC Ardmona obtains raw materials for its retail processed tomato product from Kagome Australia Pty. Kagome in turn purchases around half its requirements from contracted growers and the remainder from its company-owned tomato farm. SPC Ardmona's tomato intake has averaged around 45,000 tonnes per annum since it was formed and Kagome has purchased an average of around 160,000 tonnes per annum over the past 7 years in which it has operated.

Together the two companies purchase around 70 per cent of total Australian processed tomato production. In 2010 (the latest year for which total industry production data is available), the two companies accounted for just over 80 per cent of total production. The number of processed tomato growers has declined from 75 in 1995 to just 11 in 2013.

¹ Source: REMPLAN (2012), based on data sourced from the Australian Bureau of Statistics (ABS), 2001 & 2006 census data.

4.2.2 Profitability performance

The rise in market share of imported canned tomatoes, has caused, and threatens to continue to cause, serious injury to the domestic canned tomatoes industry.

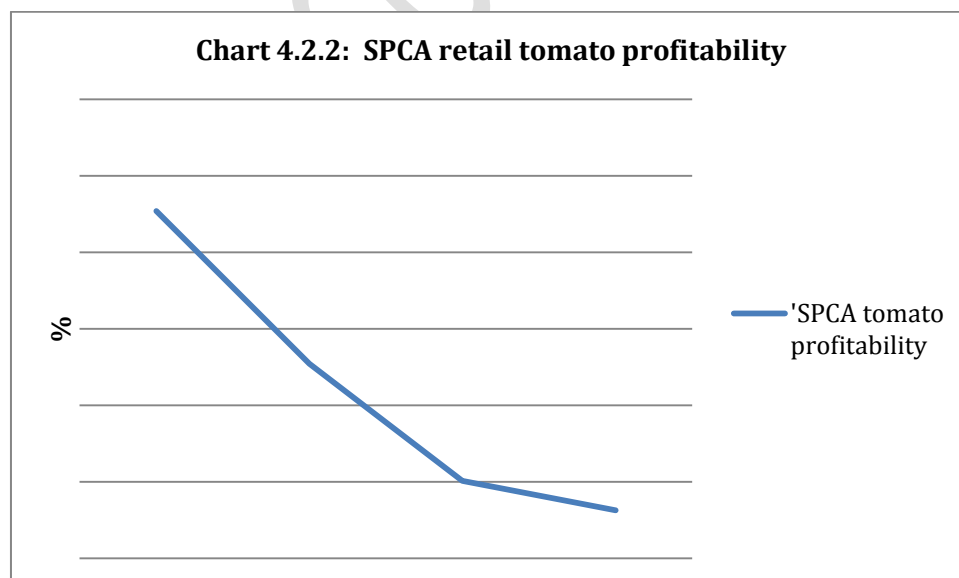
In 2009 the market share of the imported canned tomatoes (excluding SPCA imports) in supermarkets was 63% and by 2012 this share has risen to 82% of the total sales through major supermarkets in Australia. As the volume of imported products increased by 35% from 2009 to 2012, sales of locally produced products fell by 27% during this time.

This led to:

- Loss of critical economies of scale for SPCA and resultant increase in cost of goods of 11% between 2010 and 2013. This will worsen materially in 2014 unless Safeguard action is taken.
- Loss of its relative market share position in the prepared tomato category.
- Retail sell price of the imported products has also been declining from 2009.
- Retail sell price of imported products was \$2.60/kg in 2009 and \$2.30/kg in 2012.
- Imported products are available at significantly lower prices than the Australian SPCA's products; this in turn meant that SPCA had to compete for sales by discounting its prices and increasing promotional spend.
- SPCA's discounts and rebates as a per cent of Gross sales revenue increased from 21% in 2010 to 24% in 2012.

The above factors have led to decline in SPCA's profit margins from XX% in 2010 to XX% in 2013 YTD. (Refer Chart 4.2.2)

Canned tomato products account for a significant amount of capital employed in the SPCA business and a decline in profitability is significant to the business.



4.2.3 Continuation of the current situation is simply not sustainable.

The current level of profitability is unsustainable for the business. Continued loss of market share will have an irreparable impact on brand loyalty to 'Ardmona' and eventually 'Ardmona' brand value.

Given a continuation of import pressure, earnings will deteriorate further.

The current and prospective returns to the business do not justify additional capital investment which is required to make the operations competitive.

4.2.4 Impacts of adverse decision (direct and flow-on)

If the flood of imports is not contained, the viability of SPCA's tomato operations will come under threat.

This will have flow on impacts to the SPCA business as a whole, and to SPCA's suppliers.

4.2.5 Permanence of the outcomes

SPCA's parent company, Coca-Cola Amatil, has indicated that it will not be able to support further major investment unless SPCA can generate adequate returns.

Coca Cola Amatil has invested \$170m in SPCA since 2005. It has been a leading innovator in product and process development not only in respect of the processed fruit and vegetable industry but also the Australian processed food industry as a whole. As recently as January 2012 SPCA announced a major upgrade of its plant in the Goulburn Valley.

4.3 PRELIMINARY DETERMINATION OF INCREASED IMPORTS HAVING CAUSED OR THREATENING SERIOUS DAMAGE

As discussed in the Introduction, a *preliminary* determination is required for provisional safeguards. The information and analysis required to satisfy a *preliminary* determination is not going to be as extensive as that required for a final determination.

SPCA's case for provisional safeguards is based on the company having been hit by a "perfect storm" caused by:

- 4.3.1 Imports have increased strongly
- 4.3.2 Imports caused the damage
- 4.3.3 Imports were cheapened by unexpected increase in high exchange rate
- 4.3.4 The further cheapening of imported products through dumping
- 4.3.5 The supermarkets used those cheap imports to advance their private label product strategies
- 4.3.6 Imports threaten to cause further serious injury.

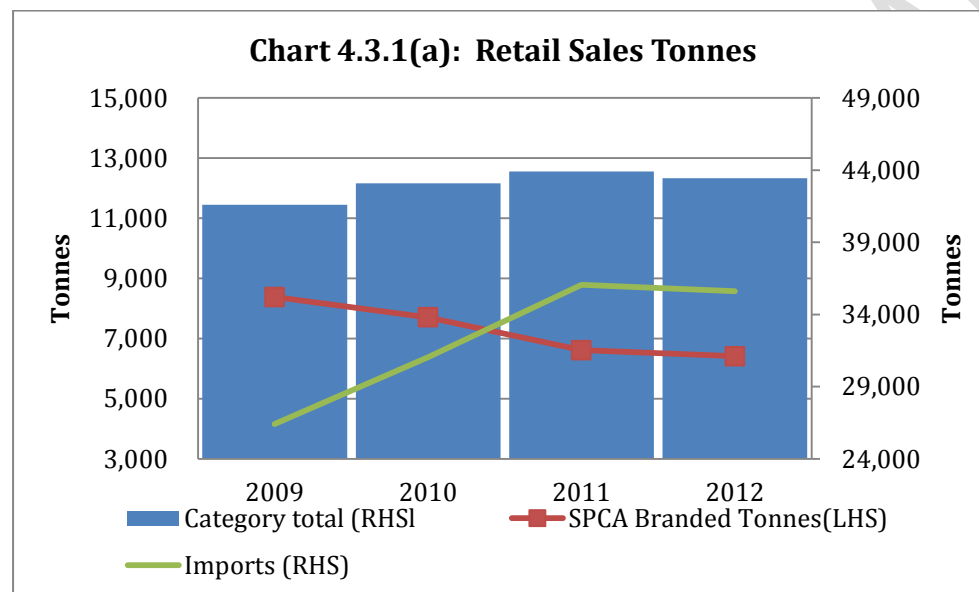
4.3.1 Imports have increased strongly

Imports of canned tomatoes have increased in absolute and relative terms over the period from 2010-2012 and into 2013

Absolute terms

Chart 4.3.1 (a) highlights the rise in sales of canned tomatoes imports in absolute terms.

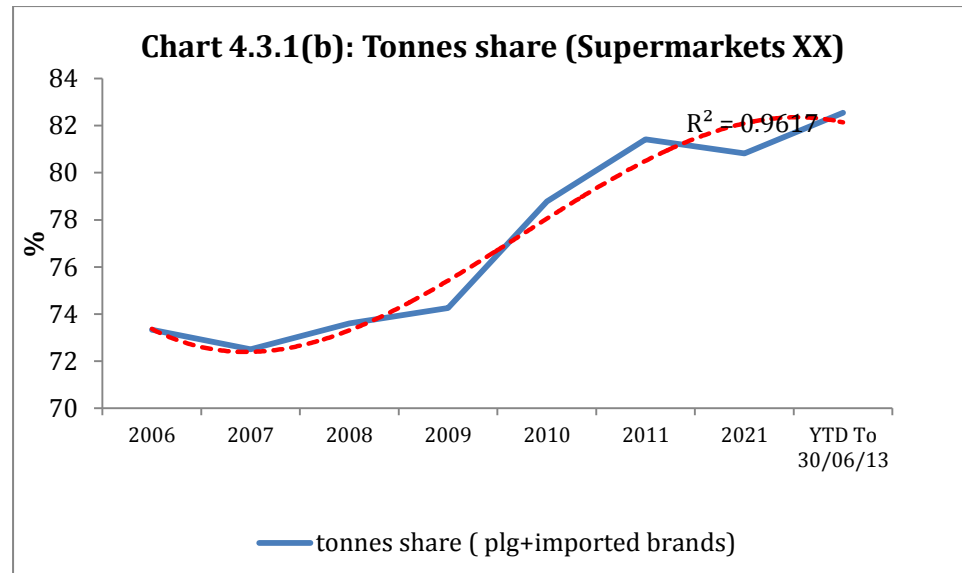
In 2009 SPCA had to import approximately 5,000 tonnes of canned tomatoes to meet a contractual agreement. Imports by SPCA have reduced to less than 400 tonnes in 2012. The volume of imported canned tomatoes (excluding imports by SPCA) however increased from 26,405 tonnes in 2009 to 35,609 tonnes in 2012. During the same time period SPCA's branded sales fell from 8,975 tonnes to 6,619 tonnes.



Source: Aztec scan data and internal data to include all major supermarkets

As can be seen from the Chart 4.3.1(b), the imports have increased strongly from 2010. Volume share of private label and imported brands in the top three supermarkets (XXXX) stores were relatively stable until 2009 and then increased substantially from the period 2010 compared to years prior to that (2006-2010).

XXXXXXXXXX



Source: Aztec scan data

Relative terms

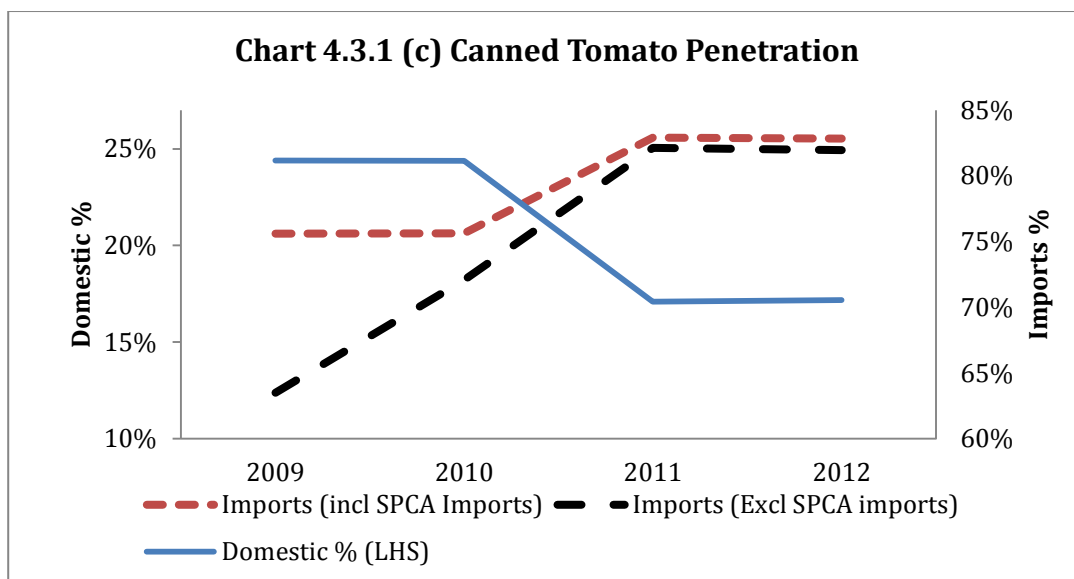
Canned tomato category volumes sold through major retailers have been relatively stable. Total sales volume was 41,596 tonnes in 2009 and 43,439 tonnes in 2012.

The volume of imported canned tomatoes sourced for private label and proprietary brands, however increased from 26,405 tonnes in 2009 to 35,609 tonnes in 2012. Therefore the volume share of these imported products (excluding SPCA imports) increased from 63% in 2009 to 82% in 2012.

During the same period, SPCA's branded sales fell from 8,975 tonnes to 6,619 tonnes, this meant losing volume share from 22% to 15%. 2013 YTD June market share for SPCA has declined further to 14%.

SPCA has also supplied some private label products in the past. In 2009 1,770 tonnes of private labelled canned tomatoes were manufactured by SPCA. This volume reduced by 41% to approx. 1,043 tonnes in 2012.

Chart 4.3.1 (c) shows relative penetration of domestic and imported canned tomatoes.



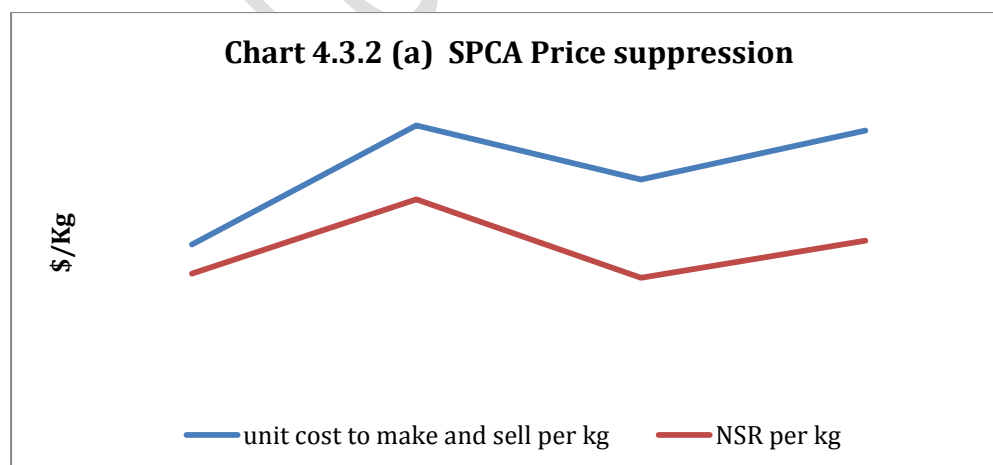
Source: Aztec scan data and SPCA estimate

4.3.2 Imports caused the damage

The rise in imports has caused serious damage.

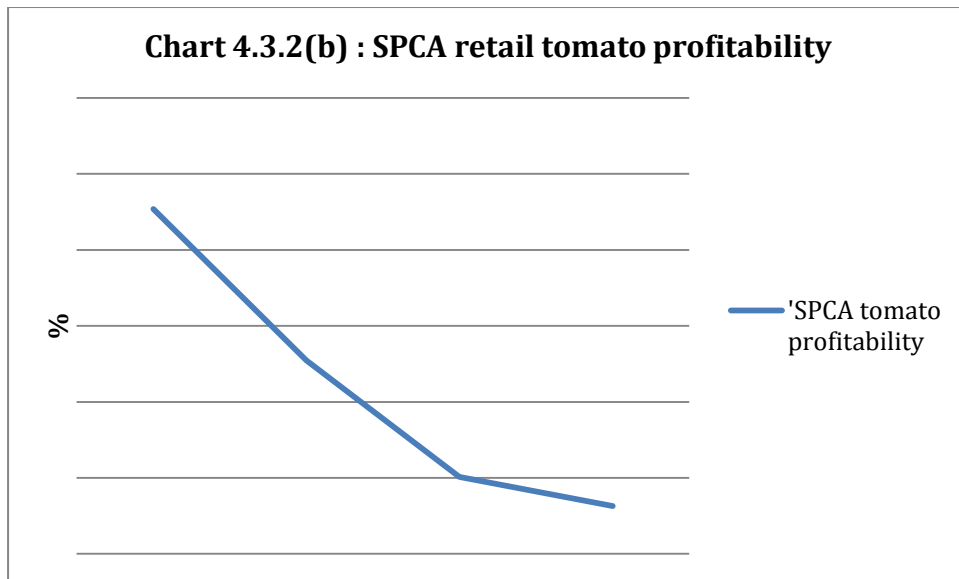
The decline in sales volumes caused by the imported canned tomatoes has resulted in SPCA experiencing higher costs to make and sell during the period from 2010 to 2013 with average cost to make and sell increasing by 11%. This was due to loss of critical economies of scale which in turn lead to poor overhead recovery.

The increased price competition from imports has prevented SPCA from raising prices to a level required to recover its increased costs to make and sell and increased promotions and discounting to retain volume in the market, resulting in price suppression, which in turn has eroded profits and profitability.



Source: SPCA analysis

SPCA's profitability of prepared or preserved tomatoes has declined from XX% in 2010 to XX% in 2013 (YTD Apr).



Source: SPCA analysis

Demand for raw tonnes of tomatoes has declined from 25,000 tonnes in 2009 to 14,000 tonnes in 2012. This is forecast to decline further if the trend continues. SPCA's reduced demand impacts upstream tomato production in a number of ways:

- SPCA's demand for processed tomatoes supplied by XXXX has reduced in volume terms
- SPCA's demand is for premium whole and diced products, meaning XXX is forced to rely on sales of lower value paste products, which has not only reduced XXX's profitability but also reduced the payments that XXX
- can pay its growers.
- Due to the flow on impact of imports, the number of tomato growers has been declining in the industry. Only 11 independent growers produced the crop in 2013.

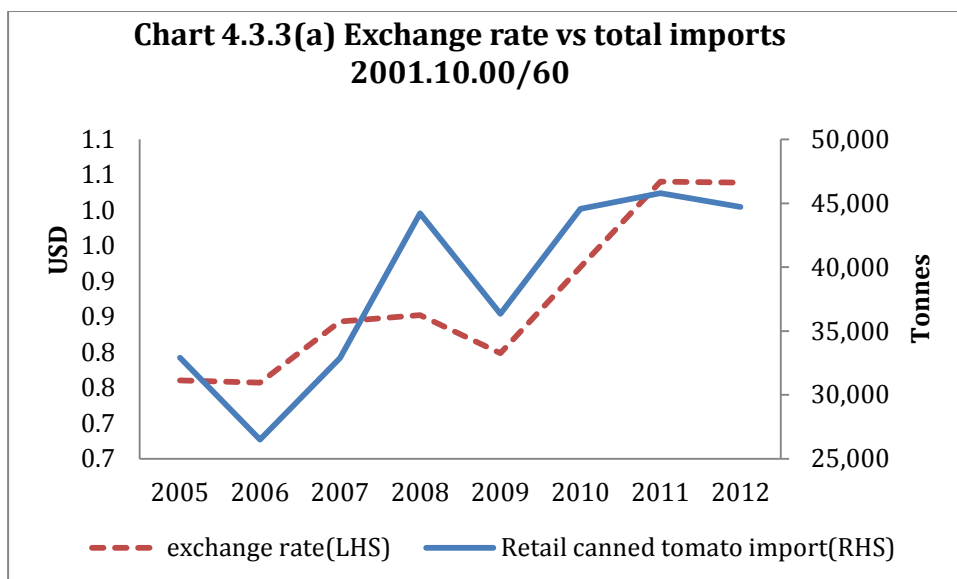
The decline in the number of growers and volume of production has been a long term trend. However there has been acceleration in the economic damage caused to the industry as a result in the acceleration in imports and the damage caused to SPCA's profitability in recent years.

The losses suffered by SPCA as a result of the imports have meant there is no capacity by SPCA to raise investment capital for the operations or for innovation.

This would mean SPCA re-evaluating its position as the only Australian manufacturer of prepared or preserved tomato products.

4.3.3 Imports were cheapened by unexpected increase in high exchange rate

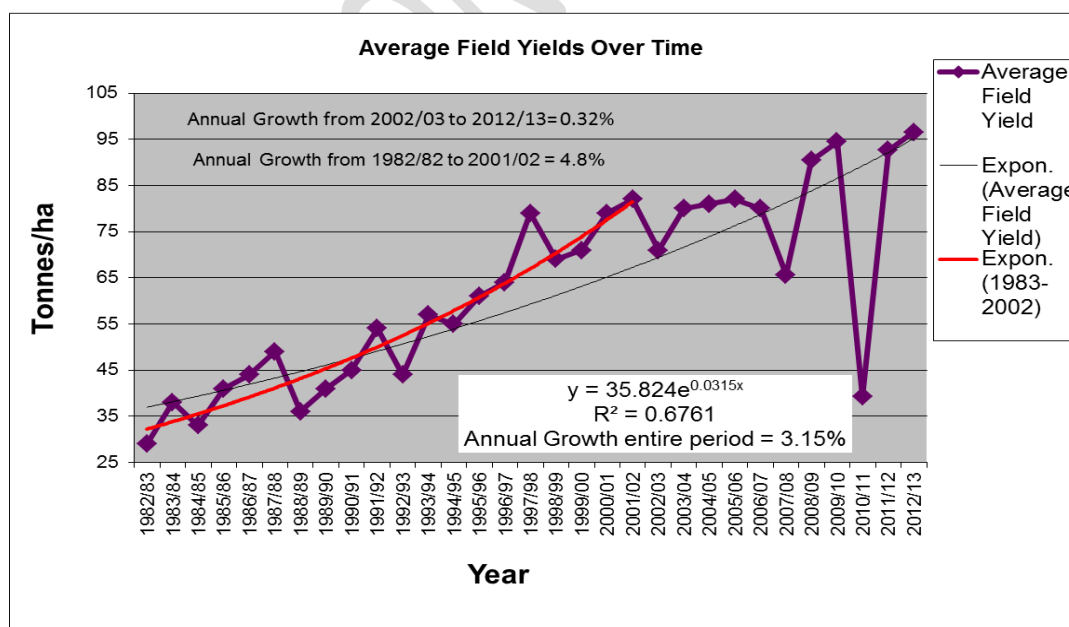
The chart 4.3.3(a) illustrates the relationship. The rise in the exchange rate is inherently unpredictable and the rise in the exchange rate to record levels in recent years was unforeseen.



Source: ABS data

The PC itself has previously acknowledged that exchange rate movements are an international factor that may contribute to damage (Pigmeat Safeguards Inquiry Report 2008). Recent developments with Australia becoming effectively a reserve currency, the mining boom and the printing of money on a gigantic scale by overseas Central Banks which served to raise the Australian currency to record levels.

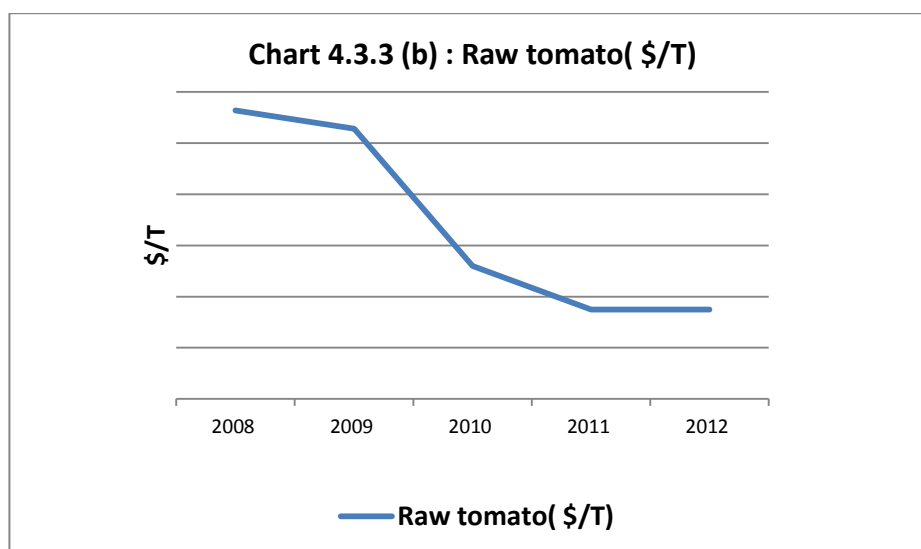
Other factors such as natural events of drought and floods have contributed to past injury but have not revealed over the full period of import increase, which is therefore the key driver. Imports have continued to rise despite the return of normal conditions.



Source: APTRC

The above chart, Average Field Yields Over Time illustrates how yields fell significantly during 2007/08 as the drought hit and then in 2010/11 due to floods, but have since recovered to normal levels.

The price of raw tomatoes has been declining since 2008 and therefore is not the cause of the injury as indicated in the chart 4.3.3(b)



It should also be noted that imports do not have to be the sole cause of damage to the industry. A determination of serious injury under the WTO Safeguards Agreement cannot be made unless there is objective evidence of the existence of a causal link between increased imports of the product concerned and serious injury. Further, when factors other than increased imports are causing injury to the domestic industry at the same time, such injury must not be attributed to increased imports.

As the WTO points out however, *“The criterion of a causal link falls short, however, of proposals made during the Uruguay Round that would have required imports to be the “principal cause” of injury”²*.

4.3.4 The further cheapening of imported products through dumping

SPCA considers that the products that are the subject of this submission have also been dumped in Australia. The Anti-Dumping Commission has agreed to initiate investigations into SPCA’s claims

4.3.5 The supermarkets used those cheap imports to advance their private label product strategies

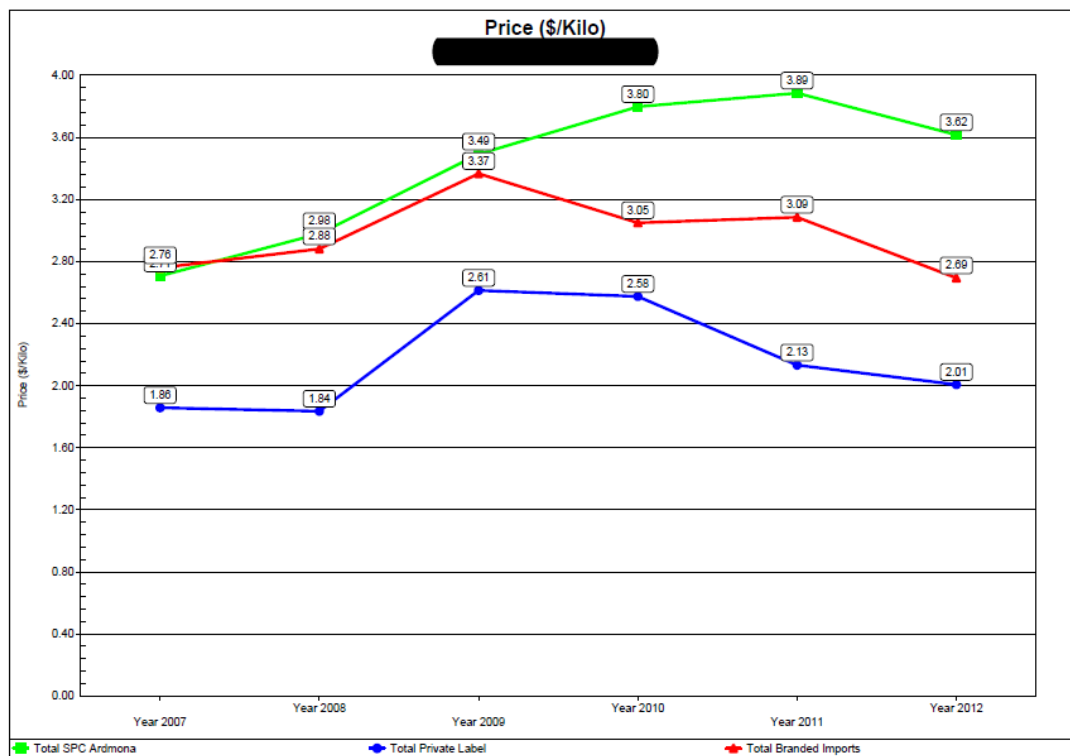
The major supermarket chains, which traditionally claimed publicly that they supported Australian produce, moved strongly from 2010 to import products cheapened by the exchange rate appreciation and, unknowingly to them cheapened also by dumping, for their strategy of developing private label products

Aggressive pricing strategies used since 2010 for imported private label products

Chart 4.3.5(a) and Chart 4.3.5(b) indicate the aggressive pricing strategies from 2010 by supermarket XX and supermarket XX respectively.

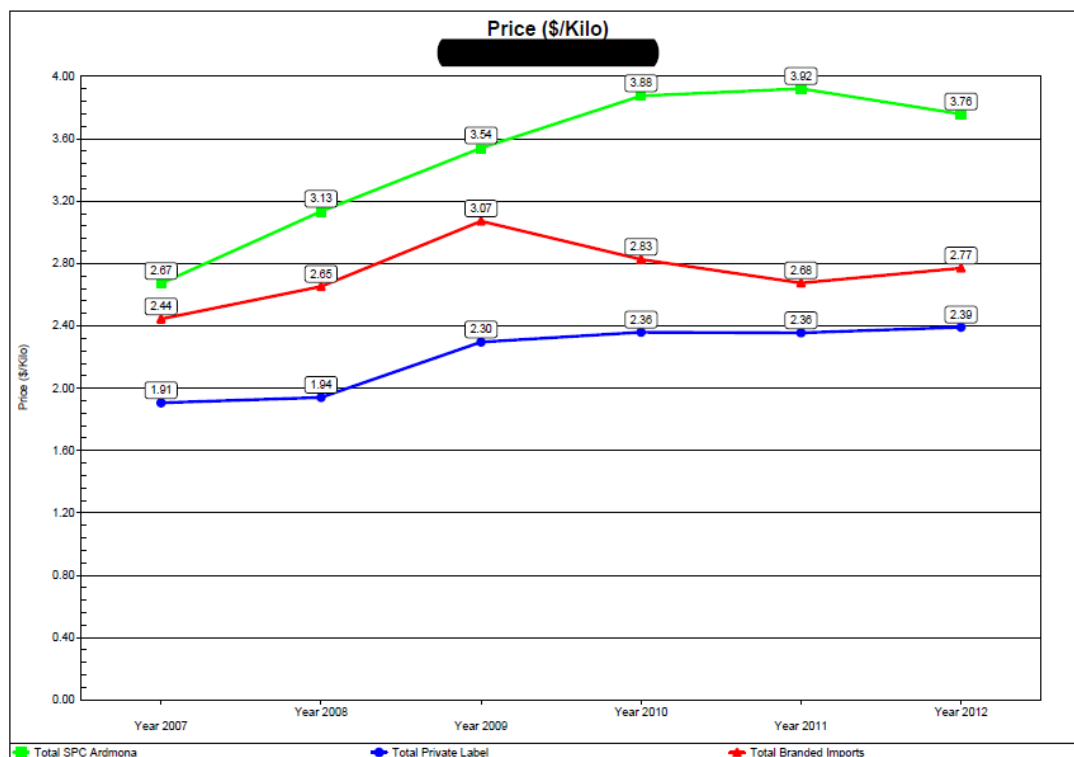
² World Trade Organisation, Safeguard Measures: Technical Information, *Technical Information on Safeguard Measures*
http://www.wto.org/english/tratop_e/safeg_e/safeg_info_e.htm

Chart 4.3.5(a)



Source: Aztec scan data

Chart 4.3.5(b)

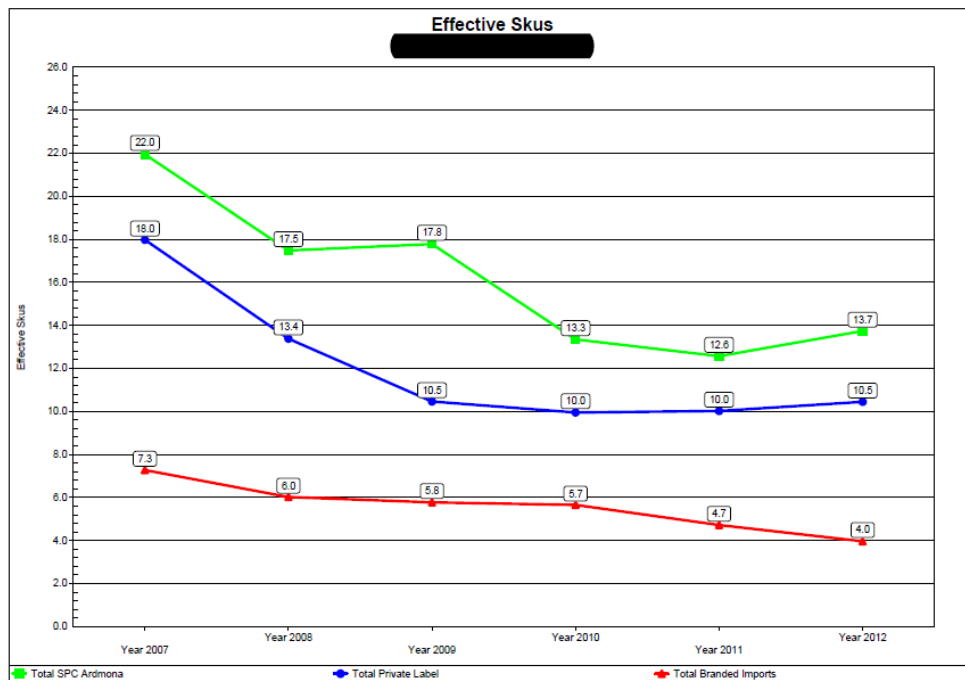


Source: Aztec scan data

Reduced depth of distribution for SPCA portfolio

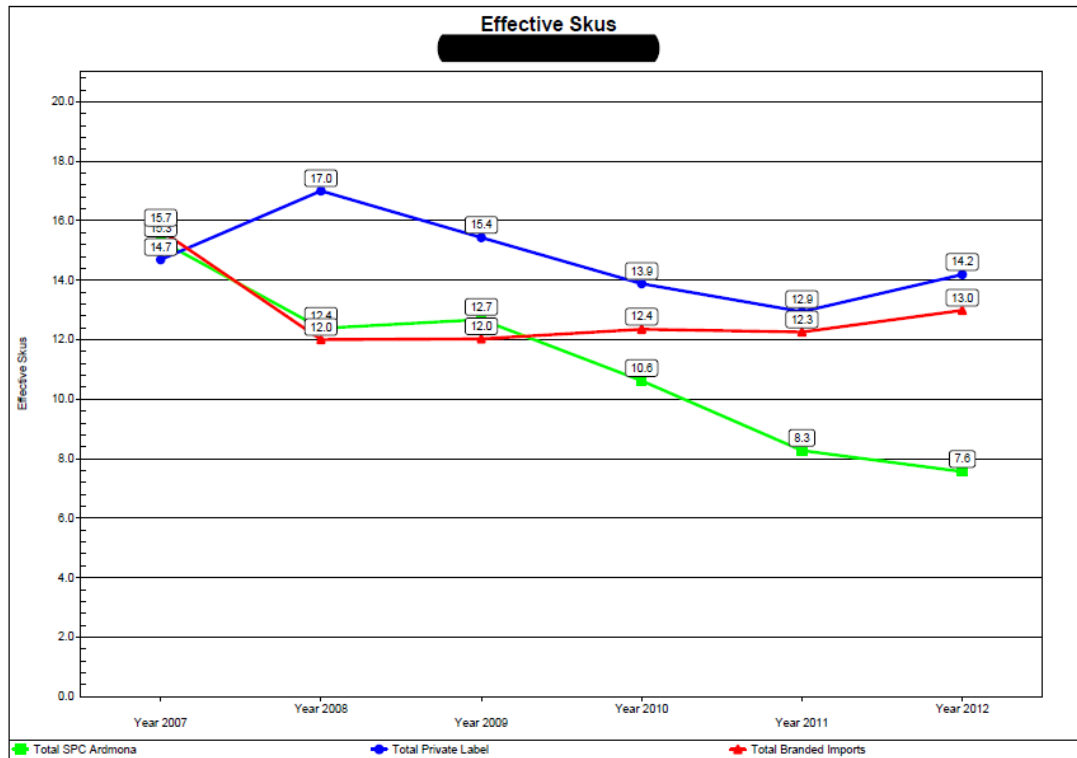
Depth of distribution is measured as number of skus (Stock Keeping Units) per 100 stores. This is referred to as 'Effective Skus'. As is indicated in Chart 4.3.5(c) and Chart 4.3.5(d), the number of SPCA skus per 100 stores in the market reduced from 2009 due to deletions.

Chart 4.3.5(c) indicates decreased number of skus in Supermarket XX



Source: Aztec scan data

Chart 4.3.5(d) indicates decreased number of skus in supermarket XX



Source: Aztec scan data

Imported private labels taking over priority shelves

Aside from the previous points, supermarkets have increasingly used shelf spacing and layout to support private label brands and imported brands. Confidential Appendix 4.3.5(a) shows comparison of the layouts in supermarkets XX in 2009 vs. 2012.

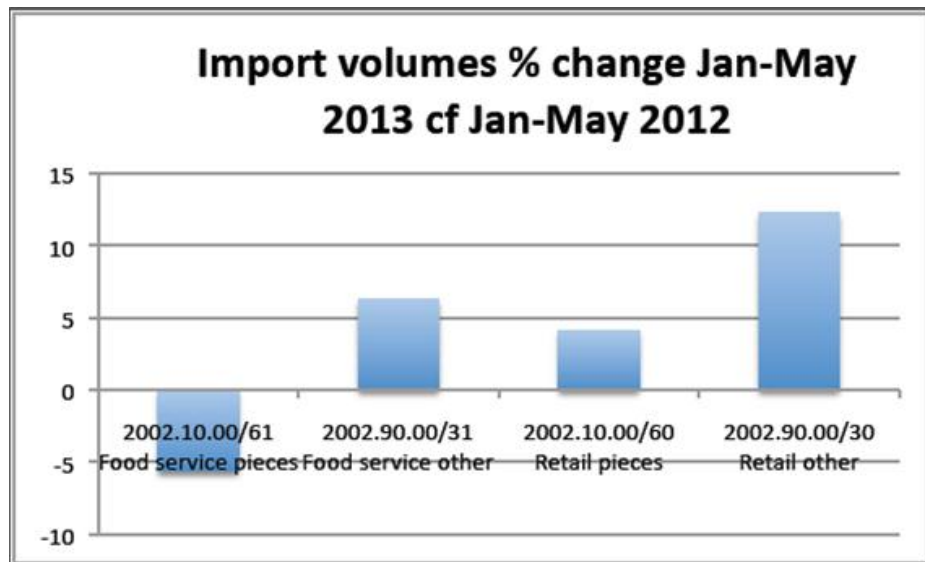
All of the points above have led to increased share of imports in Supermarket XX and supermarket XX. Confidential Appendix 4.3.5(b) shows the absolute and relative position of imports in supermarkets XX

Confidential Appendix 4.3.5(c) shows further evidence on supermarkets strategies.

4.3.6. Imports threaten to cause further serious damage

A continuation of current conditions is not sustainable for SPCA's operations.

- The fall in the exchange rate in the past month is insufficient to address damage caused.
- SPCA has to make critical capital investment decisions now and current profitability does not support continued investment.
- Import penetration has continued strongly into 2013. YTD market share of SPCA products has declined to 14%. ABS data on imports indicate continued rise in imports of retail prepared tomatoes.

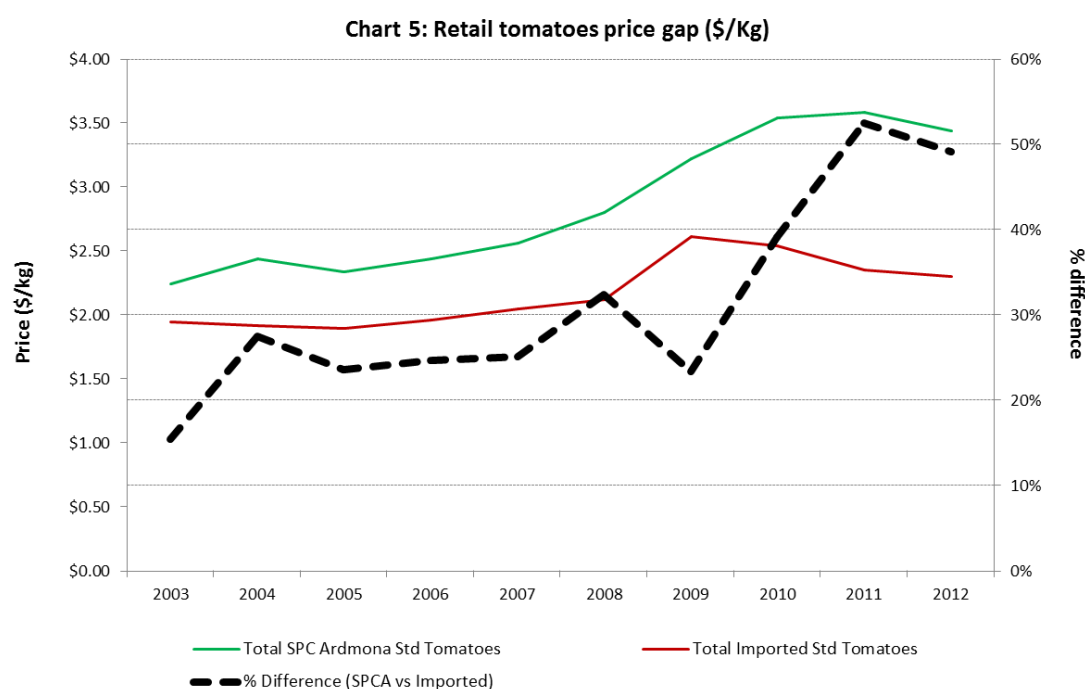


Source: ABS

5. SPCA'S REQUESTED MEASURE

Other than the general requirement that safeguard measures be applied only to the extent necessary to remedy or prevent serious injury and to facilitate adjustment, the Agreement provides no guidance as to how the level of a safeguard measure in the form of an increase in the tariff above the bound rate should be set.

By raising the import price of competing products to the extent that the reduced volume of imports in the marketplace can then be fulfilled by increased domestic production. In doing so the measure will reduce the threat of injury caused to the domestic canned tomato industry. The difference in price between imported and SPCA brand products is shown in Chart 5.



Source: SPCA analysis from Aztec

While the price difference between the imported canned tomatoes and SPCA products in the past three years has averaged around 50%, the price difference has averaged around 30% from 2003 – 2009.

A tariff set at a minimum of 30% would erase the average difference in price between imported and SPCA retail canned tomato products. Although a higher level of tariff could easily be justified to ensure the safeguard measure has a full impact in remedying damage.

If maintained for a full year, one could assume that imports might be fully replaced by the effects of a 30% tariff that is an additional 45,000 tonnes of demand would become available to the Australian industry for canned retail tomatoes.

An increase in demand of this magnitude would provide for economies of scale to be realized in the Australian industry and lead to substantially lower production costs.

The imposition of a 30% emergency tariff should be continued under full safeguards but should be phased out over three years while SPCA undertakes an adjustment

plan that aims to enable the industry to be competitive against imports without the tariff.

NON CONFIDENTIAL

Attachment 1

Questions and Answers – Productivity Commission Issues Paper

Introduction

This attachment addresses the questions identified by the Productivity Commission in its Issues Paper as being key to the satisfaction of safeguards requirements under Australian procedures for applying safeguards. The Commission does not distinguish these questions by whether they apply to provisional or safeguards measures, and hence can be presumed to apply to safeguards measures. As is pointed out in the section of this Submission dealing with provisional and safeguards measures, this distinction needs to be made and recognised.

Processed tomato products specified in the terms of reference and tomato products that are outside the terms of reference

This safeguards inquiry relates to imports of processed tomato products falling within tariff subheading 2002.10.00.60 of the Australian Customs Tariff. The definition of this subheading is:

*Tomatoes prepared or preserved otherwise than by vinegar or acetic acid:
Tomatoes, whole or in pieces, in packs not exceeding 1.14 L.*

Preliminary analysis suggests that the following products fall within this subheading:

- canned tomatoes (including whole, chopped, diced and crushed)
- goods labelled 'pizza sauce' that consist solely of crushed tomatoes, salt and basil
- preserved or prepared tomato products (whole or pieces) with or without salt, citric acid and/or an incidental quantity of basil, oregano or the like, provided such additions do not materially alter the flavour, aroma, texture and consistency of the tomato component or the overall identification of the product as being 'tomatoes'.

Analysis of the Australian Customs Tariff identified a number of tomato products that do not fall within this subheading:

- fresh tomatoes (0702.00.00)
- tomatoes, whole or in pieces, in packs exceeding 1.14 litres (tariff subheading 2002.10.00.61)
- tomato paste and puree (2002.90)
- tomato ketchup and other tomato sauces (2103.20.00)
- tomato juice (2009.50.00)
- dried tomatoes (0712.90.90.45).

Question 1: Defining the industry: who are producers of 'like' or 'directly competitive' goods?

Imported canned tomatoes are the like goods

The goods subject of the application are tomatoes (peeled or unpeeled) prepared or preserved otherwise than by vinegar or acetic acid, either whole or in pieces (including diced, chopped or crushed) with or without other ingredients (including vegetables, herbs or spices) in packs not exceeding 1.14 litres (prepared or preserved tomatoes). The following tomato products do not form part of this application: pastes, purees, sauces, pasta sauces, juices and sundried tomatoes.

These products are suitable for purchase from retailers by individual consumers

The common container sizes of the imported prepared or preserved tomatoes the subject of this application are 300grams to 850grams, but the application covers all container sizes up to and including 1.14 litres. The majority of SPCA's and imported products in the supermarkets are in 400g and 800g size cans however consumers switch between these based on prices.

SPCA's prepared or preserved tomatoes are currently packed into cans. Imported products currently competing with SPCA's products are also in cans. The imported goods could be packaged in different containers such as cans, glass jars, pouches or Tetra packs. These products would be similar to SPCA's products as they would have similar functional and commercial attributes. The package does not alter the essential characteristics of the product.

The imported prepared or preserved tomatoes can be labeled with a generic, a house brand/private label for retailer or a proprietary label. The imported prepared or preserved tomatoes (the subject of this application) covers all imported prepared or preserved tomatoes regardless of how labeled.

The prepared tomato products produced by SPCA are identical to, or very closely resemble, the imported processed tomato retail products imported into Australia. The basis for this is that:

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

Physical likeness:

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

Commercial likeness:

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

Functional likeness:

- Both imported products and SPCA's products are used by consumers for preparing meals and are interchangeable.

Directly competitive products

Canned tomatoes are used in preparation of meals at home by the consumer. Other processed tomato products are products like passata, tomato paste and tomato sauce. These are used differently to canned tomatoes and are not directly competitive products.

Canned tomatoes are used for cooking whereas fresh tomatoes are predominantly used for fresh consumption in foods such as salads and sandwiches. Therefore fresh tomatoes are not directly competitive products.

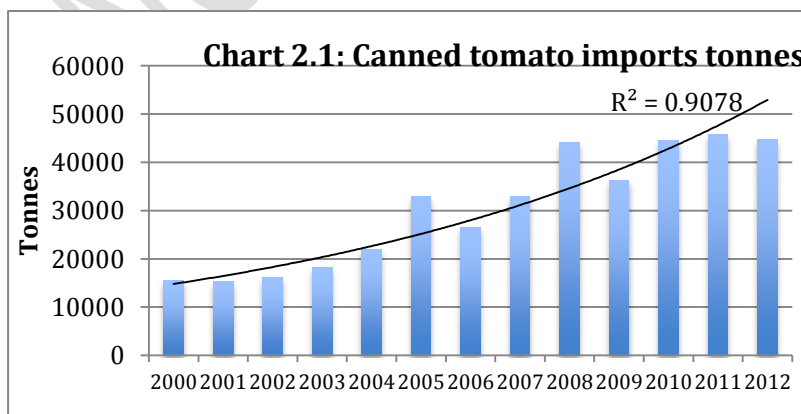
Which businesses are involved in the production of the like or directly competitive products and what are their contributions to the industry production?

SPCA is the only Australian manufacturer of the products which are the subject of this application. Billabong is the other canned tomato manufacturer but operates predominantly in pack sizes greater than 1.14 litre or in packaging passata/paste. Both of these are not goods subject to this application.

Question 2: Have imports increased?

What have been the trends in the volume and value of imports of the products under the relevant tariff subheading? Has there been a recent increase in imports?

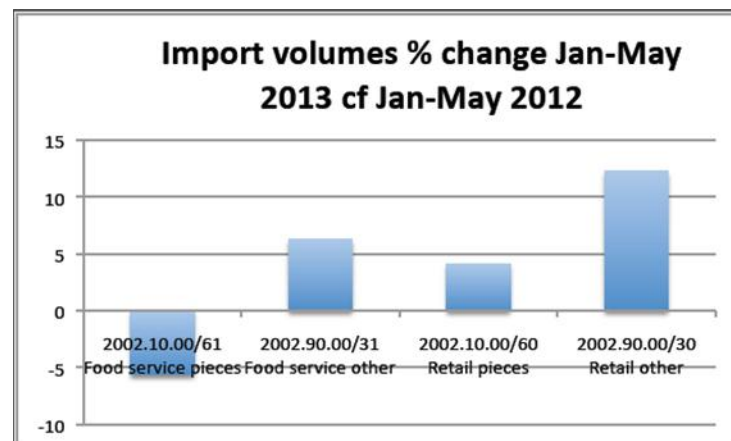
Chart 2.1 below highlights the rise in imports of canned tomatoes.



Source: ABS data

As stated earlier the majority of the retail packs are sold through supermarket chains as either private label brands or in proprietary brands. The rise in imports of canned tomatoes continues in 2013. Year to date May 2013 import tonnages of canned tomatoes were 4% higher than they were for the same duration in 2012 as is indicated in chart 2.2.

Chart 2.2



Source: ABS data

What is likely to happen to import volumes over the next few months and in the longer term and what would be the key factors affecting these trends?

Growth in private label brands is the key corner stone of the supermarket chain's strategy. The imported canned tomatoes are used as house brand/private label brands by the retailers. These are usually purchased under longer term contractual agreements and are likely to continue if nothing changes.

Virtually all (98%) of the imported canned tomatoes sold through the supermarket chains are sourced from Italy. Forecasts for production of processed tomato products in Italy (the dominant supplier of imports into Australia) are forecast to remain high in 2012/13 according to the US Department of Agriculture.

If the trend continues cheap imported canned tomatoes will continue to facilitate the rise in market share of private label canned tomatoes further diminishing the presence of domestic brands and domestic economies of scale.

What have been the trends in the volume and value of domestic consumption of the relevant products? How has the share of imports in domestic consumption changed?

The majority of the retail sized canned tomatoes are sold through the supermarket channel (XXXX).

Aztec scan data and internal information has been used as a source to highlight trends in the sales of different products and to establish the market size.

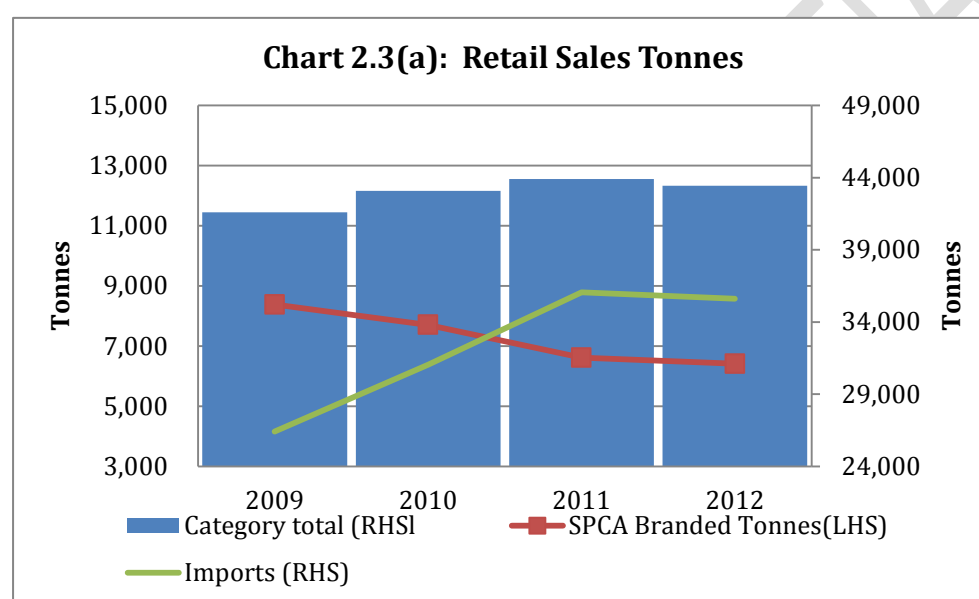
- XXX
- XXX

Canned tomato volumes sold through major retailers have been relatively stable. Total retail sales volume of the canned tomatoes category was estimated 41,596 tonnes in 2009 and estimated 43,439 tonnes in 2012.

In 2009 SPCA had to import approximately 5,000 tonnes of canned tomatoes to meet a contractual agreement. Imports by SPCA have reduced to less than 400 tonnes in 2012 (1% of the total imports). The volume of imported canned tomatoes (excluding imports by SPCA) however increased from 26,405 tonnes in 2009 to 35,609 tonnes in 2012. During the same time period SPCA's branded sales fell from 8,975 tonnes to 6,619 tonnes

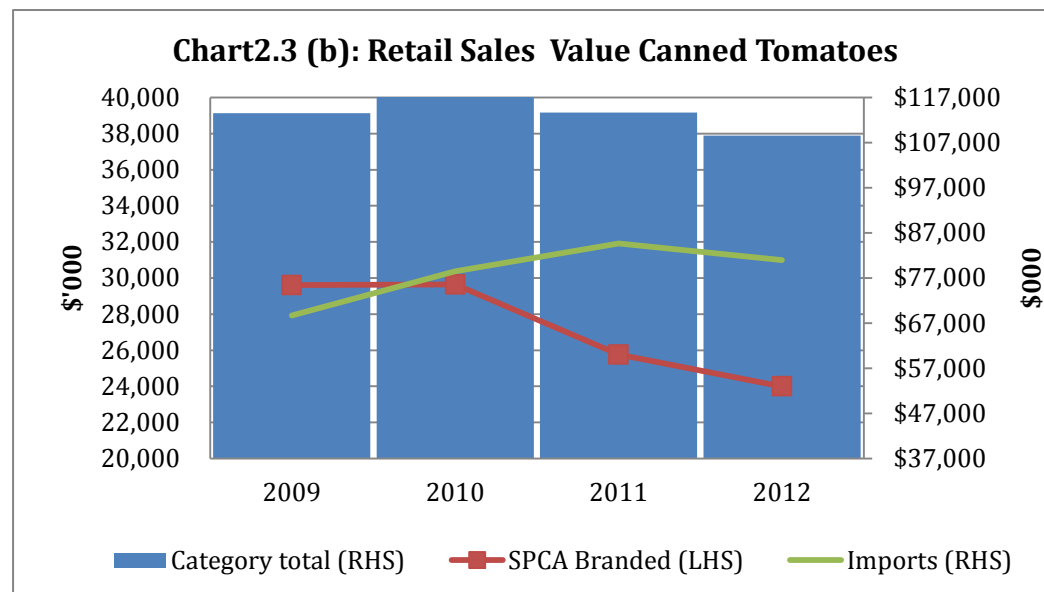
Therefore the volume share of imports (excluding SPCA imports) increased from 63% in 2009 to 82% in 2012.

During the same period, SPCA's branded product sales fell from 8,975 tonnes to 6,619 tonnes



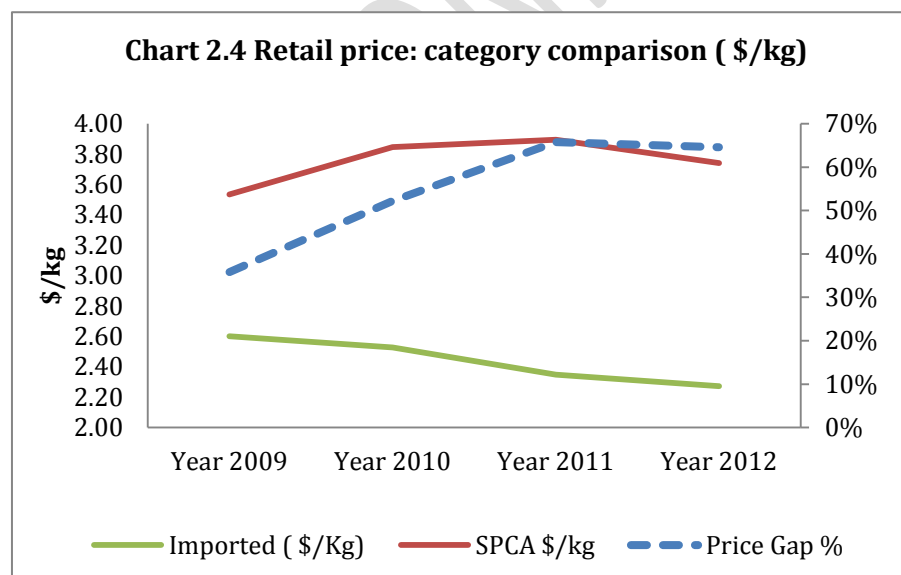
Source: Canned tomato volumes from Aztec data and SPCA estimates

Total retail sales value of the canned tomato category has declined in recent years. This has been due to aggressive pricing strategies by supermarkets, facilitated by cheap imports. This in turn has impacted SPCA's retail sales value which declined from \$30M to \$24M.



Source: Canned tomato RSV from Aztec data and SPCA estimates

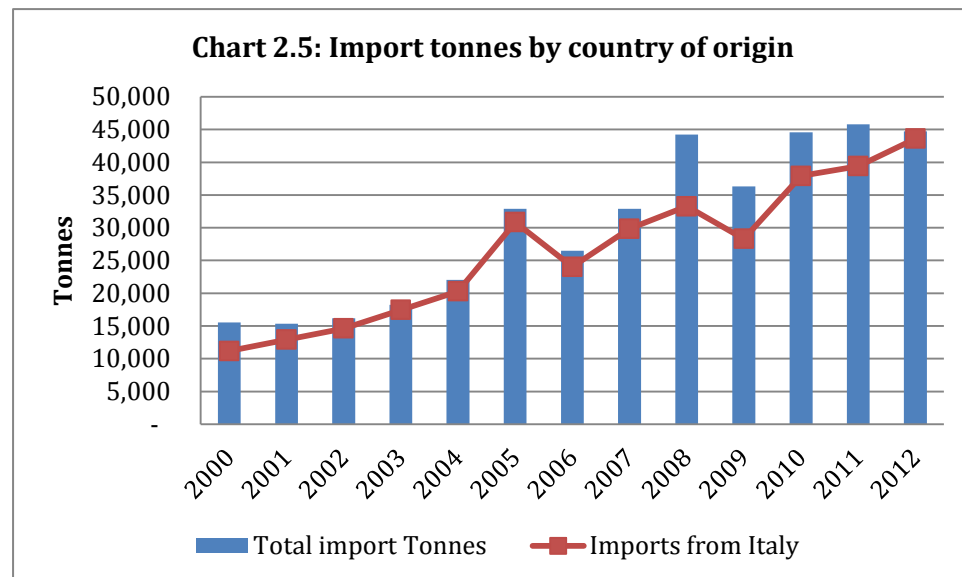
Chart 2.4 below shows the retail sell price of imported products was \$2.60/kg in 2009 and \$2.30/kg



Source: Aztec data on canned tomatoes and SPCA estimate

Has there been a change in the major countries of origin of imports?

Italy is the dominant exporter of canned tomatoes to Australia as can be seen from chart 2.5



Source: ABS data

Has there been a change in the nature of imports (for example, different type of packaging, product quality, mixture or composition)?

No significant change in the nature of imports.

Question 3: Was the increase in imports the result of unforeseen developments and the result of [WTO] obligations incurred?

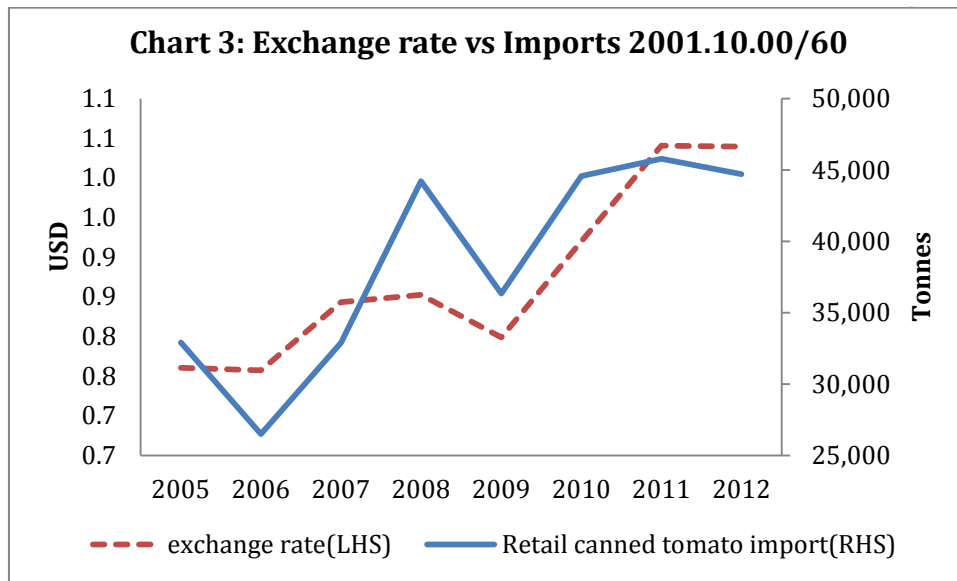
What are the unforeseen developments that have led to increased imports of processed tomato products? When did they occur? Why could they not have been foreseen?

The following unexpected events created a 'perfect storm' for the canned tomato industry.

1. Imports were cheapened by an unexpected increase in high exchange rate
2. The further cheapening of imported products through dumping
3. The supermarkets used cheap imports to advance their private label product strategies

1. Imports were cheapened by unexpected increase in high exchange rate

These events were wholly unexpected, historic developments - as the Deputy Governor of the RBA has stated, *“As is well known, Australia is currently experiencing, on the one hand, a once-in-a-century terms of trade and investment boom and, on the other, a very high exchange rate. These events are, of course, related to one another and are really different sides of the same coin”* Recent developments in Australia becoming effectively a reserve currency, the mining boom and the printing of money on a gigantic scale by overseas Central Banks which served to raise the Australian currency to record levels were unforeseen and unexpected circumstances.



2. The further cheapening of imported products through dumping

SPCA considers the products that are the subject of this submission have also been dumped in Australia. The Anti-Dumping Commission has instigated investigations into SPCA's claims

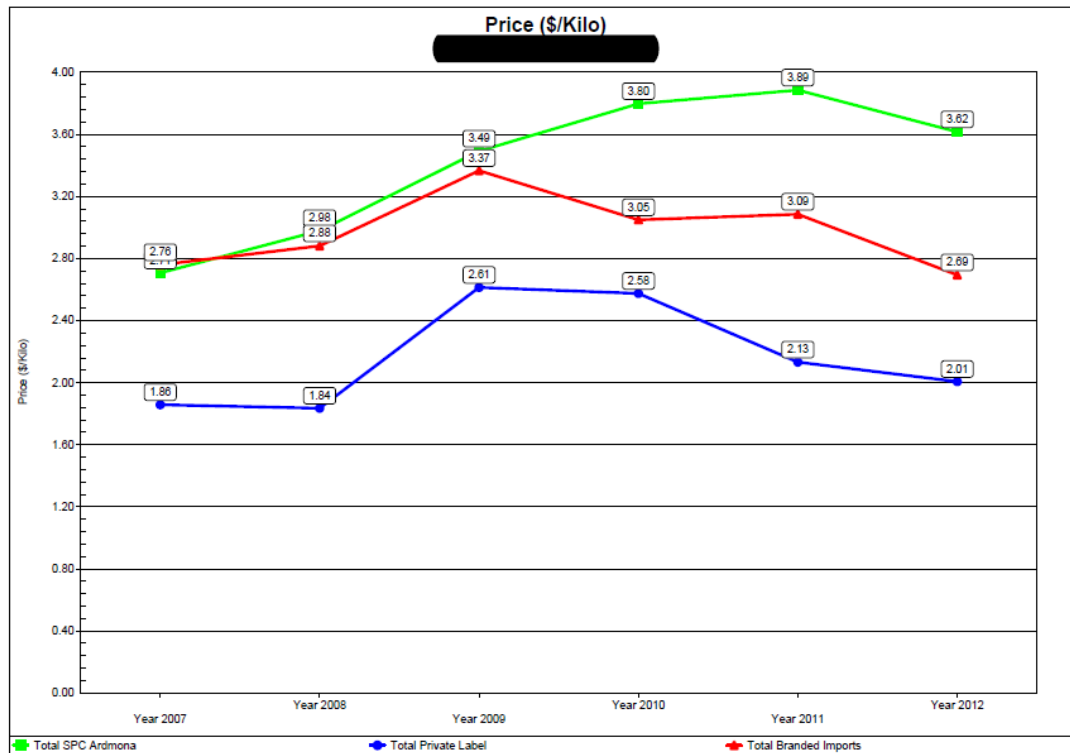
3. The supermarkets used cheap imports to advance their private label product strategies

The major supermarket chains, which traditionally claimed publicly that they supported Australian produce, moved strongly from 2010 to import products cheapened by the exchange rate appreciation and, unknowingly to them cheapened also by dumping, for their strategy of developing private label products. This is evident in the following graphs.

3.1 Aggressive pricing strategies from 2010 for imported private label products

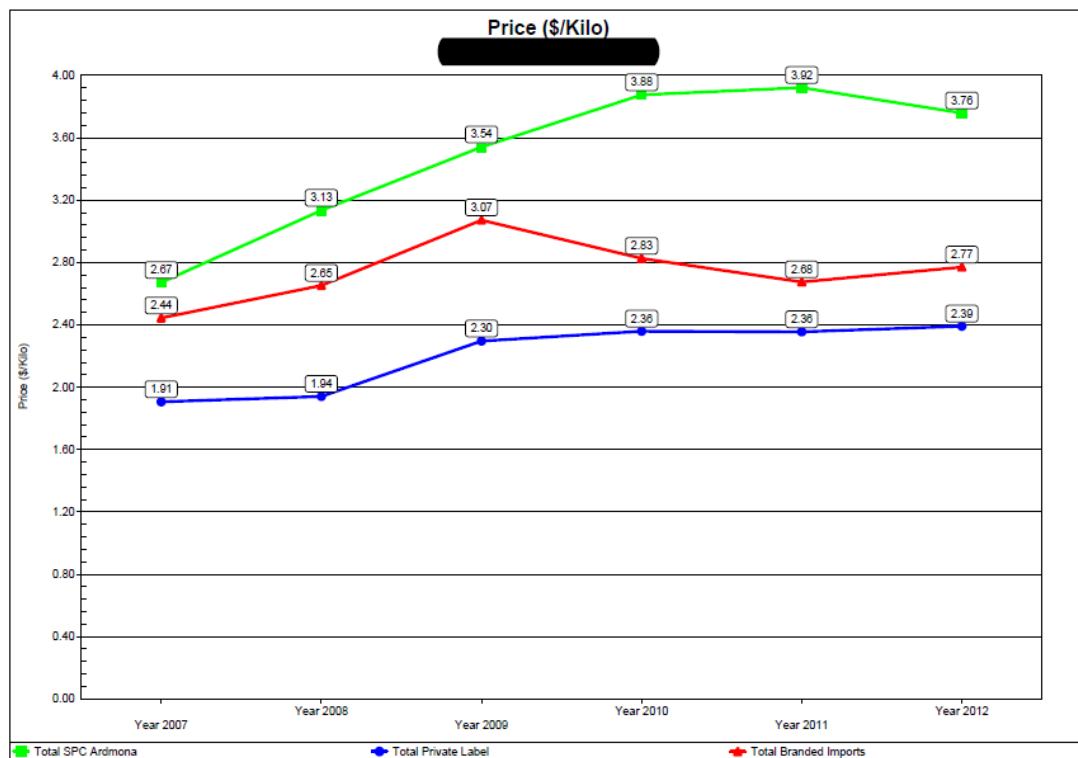
Chart 3.3(a.1) and Chart 3.3(a.2) below indicates the aggressive pricing strategies by supermarket XX and supermarket XX from 2010

Chart 3.3(a.1)



Source: Aztec scan data

Chart 3.3(a.2)

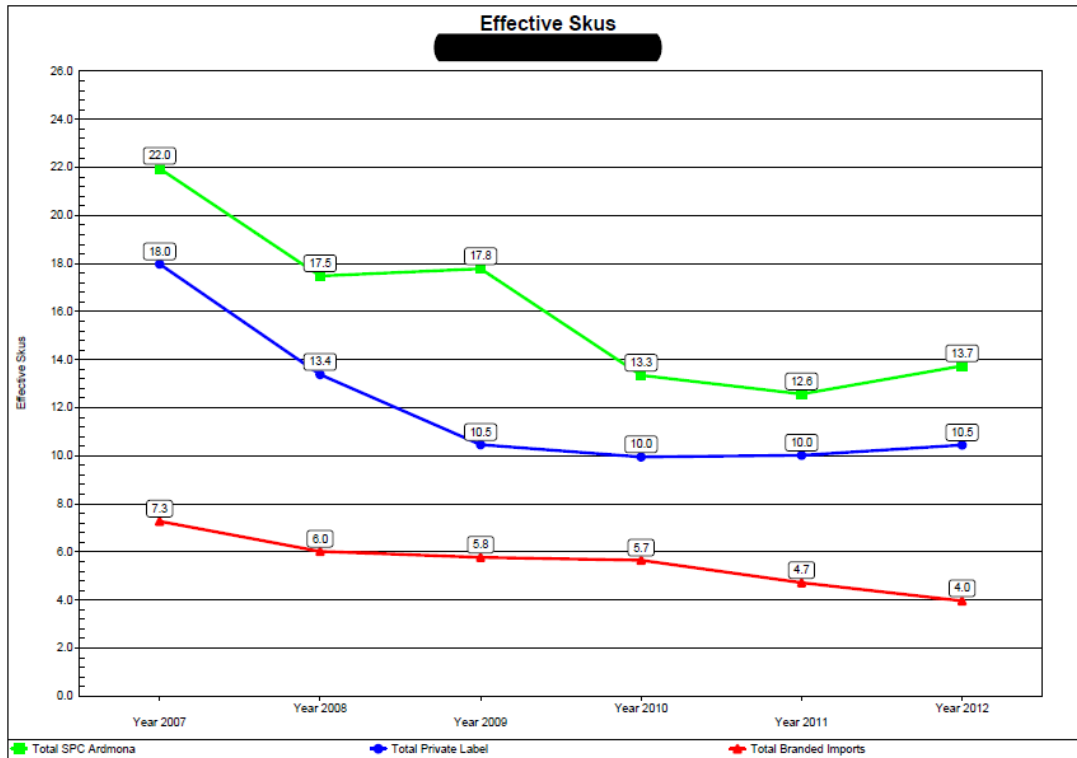


Source: Aztec scan data

3.2 Reduced depth of distribution for SPCA portfolio

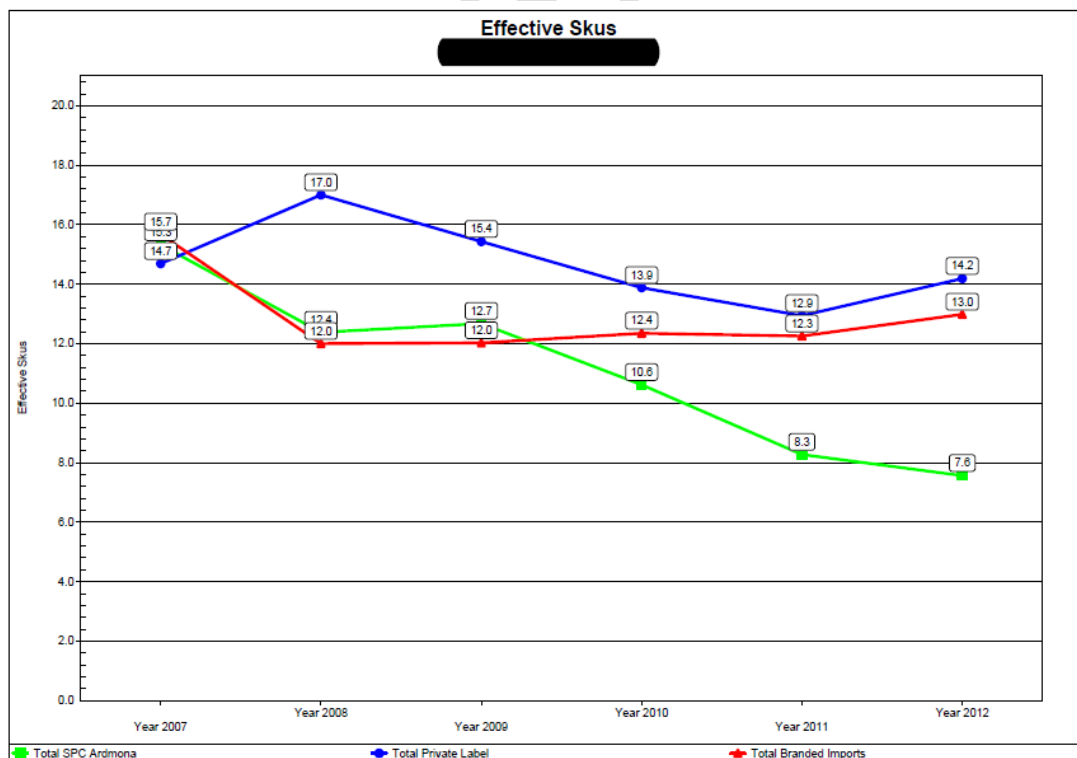
Depth of distribution is measured as number of skus (Stock Keeping Units) per 100 stores. This is referred to as 'Effective Skus'. As is indicated in Chart 3.3(b.1) and Chart 3.3 (b.2), number of SPCA skus per 100 stores in the market reduced from 2009 due to deletions.

Chart 3.3(b.1) indicates decreased number of skus in Supermarket XX



Source: Aztec scan data

Chart 3.3(b.2) indicates decreased number of skus in supermarket X



Source: Aztec scan data

3.3 Imported private labels taking over priority shelves

Apart from above, supermarkets have increasingly used priority shelves and layouts to support private label brands and imported brands. This led to reduced visibility of Australian products. Attachment 2, Supporting Data, shows comparison of the layouts in supermarket XX and supermarket XX in 2009 vs. 2012.

All of the above have led to increased share of imports in supermarkets XX. Attachment 2, Supporting Data, shows the absolute and relative position of imports in Supermarkets XX.

These unforeseen and unexpected events created the resultant 'perfect storm'.

The PC Issues Paper identifies four criteria for safeguards based on what it asserts to be the precedent provided by an Appellate Body decision in the Argentinian footwear case, namely that imports must be "recent enough, sudden enough, sharp enough and significant enough"

- **Recent:** imports have been rising for some years, and have continued to rise in 2012 and into 2013 in relative terms.
- **Sudden:** exchange rate movements which led to the rise in imports are international developments which are inherently unexpected for industry participants and exchange rate-driven changes in imports have therefore been unexpected and sudden. The rate of change in imports increased in the period under consideration relative to earlier years.
- **Sharp enough:** exchange rate reached record levels and imports have risen sharply in recent years.
- **Significant enough:** rises in imports have been significant in relative or absolute terms.

Question 4: Has the industry suffered, or is it likely to suffer, *serious injury*?

The Commission requests that the industry provide evidence of serious injury, such as the magnitude of:

- *lower sales and/or reduced market share*
- *lower production levels and/or closure of facilities*
- *reduced profitability or losses*
- *reduced capacity utilisation*
- *lower productivity*
- *Lower employment levels.*

*In order to assess whether serious injury is **threatened**, the Commission also seeks information about:*

- *likely trends in imports, domestic sales and exports*
- *changes in inventories*

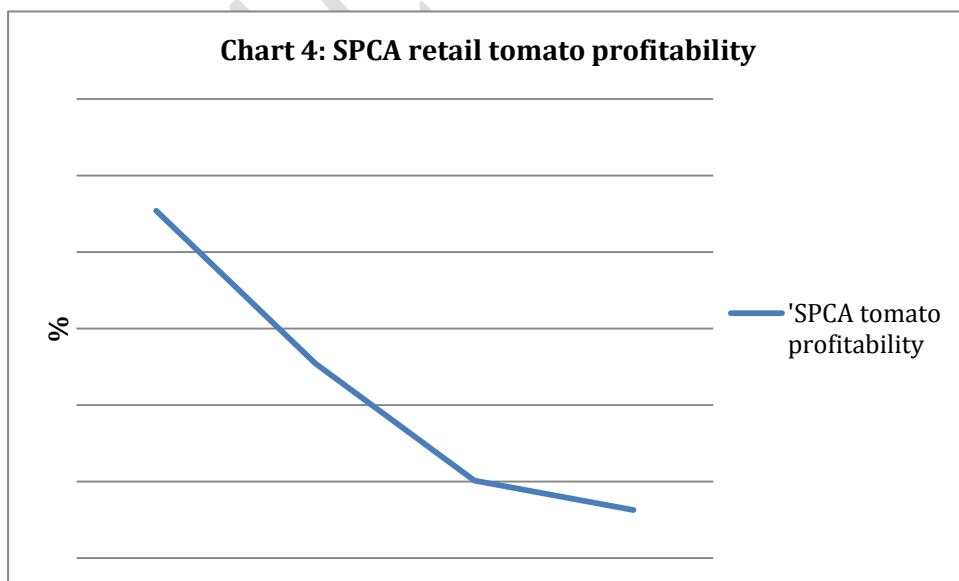
- *likely trends in profits, output and employment*
- *The industry's investment outlook and its ability to raise finance.*

In 2009 market share of the imported canned tomatoes in supermarkets for use in private label brands and proprietary brands was 63% and by 2012 this share has risen to 82% of the total sales of products through supermarkets in Australia. As the volume of imported products increased by 35% from 2009 to 2012, sales of domestically, manufactured products fell by 27% from 2009 to 2012.

This led to:

- Loss of critical economies of scale for SPCA and resultant increase in cost of goods.
- Loss of its relative position in the prepared tomato category.
- Retail sell price of the imported products has also been declining since 2009.
- Retail sell price of imported products was \$2.60kg in 2009 and \$2.30kg in 2012 (as shown in chart 2.4).
- Imported products are available at significantly lower prices than the Australian SPCA's products; this in turn meant that SPCA had to compete for sales by discounting its prices and increasing promotional spend.
- SPCA's discounts and rebates as a per cent of Gross sales revenue increased from 21% in 2010 to 24% in 2012.

The above factors have led to decline in SPCA's profit margins from X% in 2010 to X% in 2013 year to date. Processed tomato products account for a significant amount of capital employed in the SPCA business and a decline in profitability is significant to the business.



As a result of the increased proportion of imported prepared or preserved tomatoes to total consumption in Australia, the viability of the domestic prepared or prepared tomato industry is under threat.

- Demand for raw tonnes of tomatoes has declined from 25,000 tonnes in 2009 to 14,000 tonnes in 2012. This is forecast to decline further if the trend continues.
- The losses suffered by SPCA as a result of imports have meant there is no capacity by SPCA to raise investment capital for the operations or for innovation.
- SPCA's tomato products are manufactured in its Mooroopna plant. Decline in the volume is leading to underutilisation of the assets which results in increased cost of operations.

If the trend continues this will put the viability of the Tomato operations under threat and SPCA would have to re-evaluate its position as the only Australian manufacturer of retail sized canned tomato products.

Question 5: Do critical circumstances warranting a provisional safeguard determination exist?

Are there any critical circumstances that would warrant a provisional safeguard determination? What is the cost of delay until a definitive safeguard determination is made and what would be the longer term impact on the industry?

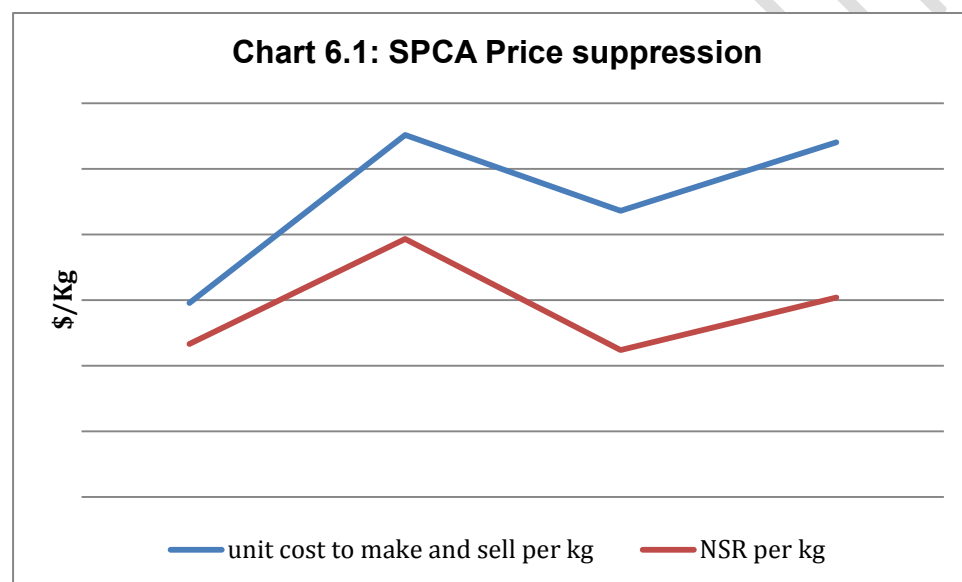
Requirement for raw tomatoes for 2014 season has further dropped by an estimated 20%. Processing these volumes would lead to more losses for SPCA. This will mean SPCA will need to re-evaluate its position in canned tomato industry and in the region.

Question 6: Are increased imports *causing* serious injury?

The Commission seeks evidence that increased imports have caused deterioration in the performance of the domestic industry.

- As is evident from chart 2.3(a) and chart 2.3(b) SPCA has lost volume share and value share to imports since 2010.
- This has resulted in
 - Poorer economies of scale for SPCA and therefore increase in unit cost.
 - Depressed net realisation per unit for SPCA.

This is indicated in chart 6.1 below:



Source: SPCA

Non-attribution of other sources of injury to imports

- *performance of the economy generally*

Canned tomatoes are a relatively stable product in demand terms. Consumption usually is in line with population growth.
- *exchange rate changes*

covered in section Q 3
- *weather conditions, such as droughts or flood*

Droughts and floods may have impacted the rise in imports in the past; however conditions have returned to normal and imports are continuing to rise. Domestic supply of tomatoes for canning are not generally a constraint.

- *changes in consumer preferences, such as a switch to fresh tomatoes or different types of processed tomato products*

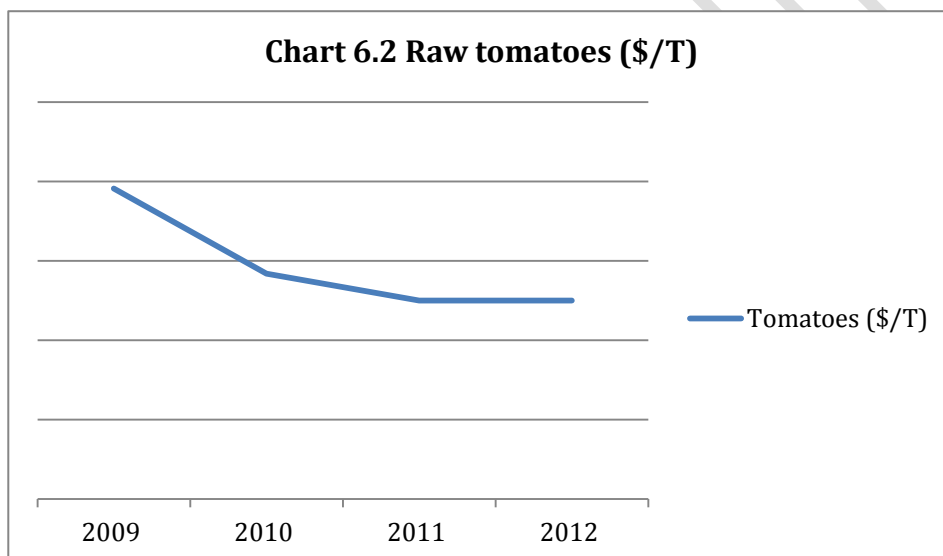
No evidence of switching evident. Different usage and occasions.

- *changes in productivity and product quality*

Not Applicable

- *costs of inputs including water, fresh tomatoes, labour and capital*

Costs of tomatoes have decreased over the past few years, post the drought as is shown in the chart 6.2 below.



- other factors affecting the supply of inputs - N/A
- the impact of changes in the prices of substitutes, such as fresh tomatoes - N/A
- investment/management/marketing strategies within the industry - N/A
- regulation of the industry - N/A
- industry structure and supply chains - N/A

Views and evidence are sought on the impact of these or other factors on the industry's performance.

Question 7: What safeguard measures would remedy serious injury?

What safeguard measures are warranted and at what level should they be set? How would those measures remedy the serious injury? How would they facilitate adjustment?

And Question 7A: What provisional safeguard measures would remedy serious injury?

*What **provisional** safeguard measures are warranted and at what level should they be set? How would those measures remedy the serious injury? How would they facilitate adjustment?*

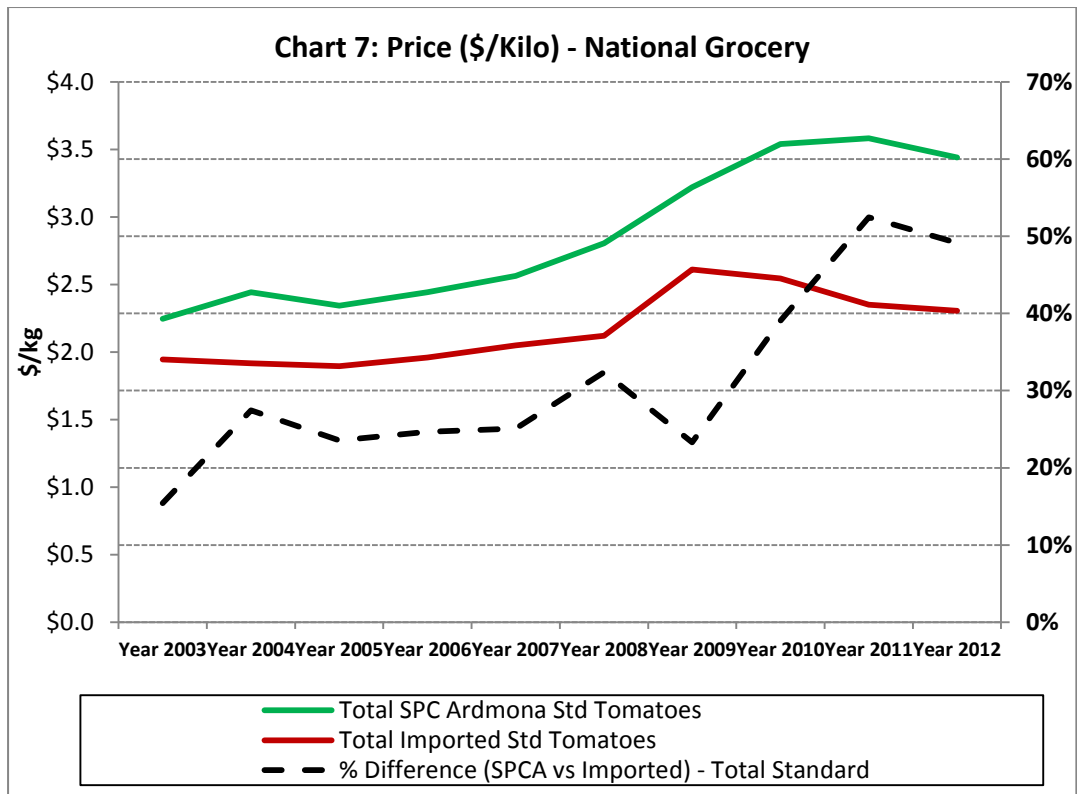
The WTO Safeguards Agreement provides that a member may take a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury.

The duration of the provisional measure shall not exceed 200 days. Such measures should take the form of tariff increases to be promptly refunded if the subsequent full safeguards investigation does not determine that increased imports have caused or threatened to cause serious injury to a domestic industry.

Other than the general requirement that safeguard measures be applied only to the extent necessary to remedy or prevent serious injury and to facilitate adjustment, the Agreement provides no guidance as to how the level of a safeguard measure in the form of an increase in the tariff above the bound rate should be set.

By raising the import price of competing products to the extent that the reduced volume of imports in the marketplace can then be fulfilled by increased domestic production. In doing so the measure will reduce the threat of injury caused to the domestic canned tomato industry.

The difference in price between imported and SPCA brand products is shown in Chart 7.



A tariff set at a minimum of 30% would ease the average difference in price between imported products and SPCA retail canned tomato products. Although a higher level of tariff could easily be justified to ensure the safeguard measure has a full impact in remedying damage.

If maintained for a full year, one could assume that imports might be fully replaced by the effects of a minimum 30% tariff that is an additional 45,000 tonnes of demand would become available to the Australian industry for canned retail tomatoes. An increase in demand of this magnitude would provide for economies of scale to be realized in the Australian industry and lead to substantially lower production costs.

The imposition of a minimum 30% emergency tariff should be continued under full safeguards but should be phased out over three years while SPCA undertakes an adjustment plan that aims to enable the industry to be competitive against imports without the tariff.

While the price difference between the imported canned tomatoes and SPCA products in past three years and in 2013 has averaged around 50%, the price difference has averaged around 30% from 2003 – 2009.

The recommended safeguard tariff would be accompanied by an adjustment plan as outlined in the next section, to ensure SPCA's operations are competitive against imports in the longer term.

SPCA'S ADJUSTMENT PLAN

The SPC Ardmona Goulburn Valley Packaged Deciduous Fruit Industry Competitiveness and Modernisation Program (Competitiveness and Modernisation Program) is a multimillion dollar undertaking encompassing investment in the SPCA manufacturing facility at Shepparton along with fruit grower development initiatives to create a modern and competitive deciduous packaged fruit and vegetable industry.

The outcome of the program will be a viable SPCA business and fruit grower base for the long term future of packaged deciduous fruit and vegetable industry in the Goulburn Valley.

The far-reaching program will encompass fruit grower developments, new product innovation, process improvements, efficiency and sustainability enhancements.

The program will involve investment at the SPCA Shepparton site with new buildings, new plant and new equipment including state-of-the art packaging machinery and new packaging format technologies. This project will drive change in day-to-day operations within SPCA and the grower supplier base with an aim to increase efficiencies, reduce the cost base of business and support SPCA to become a competitive and environmentally friendly business.

Under the program the current operations at Mooroopna and Kyabram will be consolidated to the upgraded Shepparton site reducing the cost base and driving efficiency savings with the investment in modern and efficient processing and packaging equipment.

Revenue growth will be delivered through new products and pack formats, entering new product categories, creating a diversified and sustainable business both in Australia and Internationally.

The total cost of the project will be \$211 million investment in capital and other significant items including restructuring costs and asset write downs. Within the program there will be \$161 million of investment modernising the manufacturing capability and grower development initiatives.

The Tomato adjustment plan is part of this broader transformation plan for SPCA.

Question 8: What are the impacts on other parties?

What would be the impact of the imposition of safeguard measures on other affected parties including: consumers; tomato growers and other suppliers; the food service industry; grocery wholesalers and retailers; importers; local exporters; foreign exporters and governments?

In the short term Australian consumers may pay more for processed tomato products which are the subject of safeguards. However as SPCA's proposed adjustment plan is implemented, the price competitiveness of SPCA's product will increase and in the longer term Australian consumers will benefit. In the absence of SPCA's production caused by continuing import penetration, the Australian consumer will be faced with little competition to the supermarket chains' imports for use in private label products. A longer term reduction in the exchange rate will thus see prices to consumers rise.

OTHER ATTACHMENTS (Confidential Version)

- 2. XXXXXXXX
- 3. XXXXXXXX
- 4. XXXXXXXX
- 5. XXXXXXXX
- 6. XXXXXXXX
- 7. XXXXXXXX

NON CONFIDENTIAL