



**Australian Government**  
**Anti-Dumping Commission**

---

**CUSTOMS ACT 1901 - PART XVB**

**CONSIDERATION REPORT  
NO. 216**

**APPLICATION FOR A DUMPING DUTY NOTICE**

**PREPARED OR PRESERVED PEACH PRODUCTS  
EXPORTED FROM SOUTH AFRICA**

**JULY 2013**

# PUBLIC RECORD

## 1 CONTENTS

1	CONTENTS.....	2
2	ABBREVIATIONS & SHORTENED FORMS.....	3
3	SUMMARY AND RECOMMENDATIONS.....	4
3.1	Background.....	4
3.2	Recommendations.....	4
3.3	Application of law to facts.....	4
3.4	The role of the Anti-Dumping Commission.....	4
3.5	The role of the Commissioner.....	4
3.6	Findings and conclusions.....	5
4	BACKGROUND.....	6
4.1	Application.....	6
4.2	The goods the subject of the application.....	6
4.3	Previous investigations.....	7
4.4	Current measures.....	8
4.5	Consideration of the application.....	8
5	COMPLIANCE WITH SUBSECTION 269TB(4).....	9
5.1	Finding.....	9
5.2	Legislative framework.....	9
5.3	The Commission's assessment.....	9
6	LIKE GOODS AND THE AUSTRALIAN MARKET.....	10
6.1	Finding.....	10
6.2	Legislative framework.....	10
6.3	Locally produced like goods.....	10
6.4	Australian market.....	13
6.5	Australian industry information.....	15
7	REASONABLE GROUNDS – DUMPING.....	17
7.1	Findings.....	17
7.2	Legislative framework.....	17
7.3	Export prices.....	17
7.4	Normal values.....	18
7.5	Dumping margins.....	19
7.6	Import volumes – South Africa.....	19
8	ECONOMIC CONDITION OF THE AUSTRALIAN INDUSTRY.....	20
8.1	Findings.....	20
8.2	Legislative framework.....	20
8.3	Injury claims.....	20
8.4	Commencement of injury.....	20
8.5	Approach to injury analysis.....	20
8.6	Volume effects.....	21
8.7	Price effects.....	22
8.8	Profit effects.....	23
8.9	Summary of major injury indicators.....	24
8.10	Other injury factors.....	24
9	CAUSATION FACTORS.....	26
9.1	Findings.....	26
9.2	Conclusion on material injury caused by dumped imports.....	27
10	CONCLUSION.....	28
11	APPENDICES AND ATTACHMENTS.....	29

## PUBLIC RECORD

### 2 ABBREVIATIONS & SHORTENED FORMS

Abbreviation / short form	Full reference
ABS	Australian Bureau of Statistics
ACBPS	Australian Customs and Border Protection Service
ACDN	Australian Customs Dumping Notice
the Act	<i>Customs Act 1901</i>
ADRP	Anti-Dumping Review Panel
AD Agreement	World Trade Organisation Agreement on Anti-Dumping
The Commission	Anti-Dumping Commission
the applicant	SPC Ardmona Operations Limited
the Commissioner	The Commissioner of the Anti-Dumping Commission
SPCA	SPC Ardmona Operations Limited
CON 216	Anti-Dumping Commission Consideration Report 216
CTMS	Cost to make and sell
the delegate	the delegate of the Commissioner
the Division	Division 2 of Part XVB of the Customs Act 1901
FOB	free-on-board
the goods	the goods the subject of the application (prepared or preserved peach products exported from South Africa in pack sizes ranging from 300 grams to 1.5 kilograms)
GUC	Goods under consideration (goods the subject of the application).
The Minister	the Minister for Home Affairs
NIP	non-injurious price
SEF	statement of essential facts
SG&A	Selling, general and administrative
USP	unsuppressed selling price
WTO	World Trade Organisation

### 3 SUMMARY AND RECOMMENDATIONS

#### 3.1 Background

This Consideration Report (CON 216) provides the results of the Anti-Dumping Commission's (the Commission's) consideration of an application lodged by SPC Ardmona Operations Limited (SPCA) for the publication of a dumping duty notice on prepared or preserved peach products exported to Australia from South Africa.

#### 3.2 Recommendations

The Commission recommends that the delegate of the Anti-Dumping Commissioner (the Commissioner)<sup>1</sup> decide not to reject the application.

If the Commissioner accepts this recommendation, to give effect to that decision, the Commissioner must publish the notice at **Appendix 1** indicating that the Commission will inquire into whether the grounds exist to publish a dumping duty notice in respect of prepared or preserved peach products.

#### 3.3 Application of law to facts

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

#### 3.4 The role of the Anti-Dumping Commission

The Commission is responsible for preparing a report for the Commissioner examining an application for a dumping duty notice.

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

- whether the application complies with subsection<sup>3</sup> (s.) 269TB(4) of the Act;
- whether there is, or is likely to be established, an Australian industry in respect of like goods; and
- whether there appear to be reasonable grounds for the publication of a dumping duty notice in respect of the goods the subject of the application.

#### 3.5 The role of the Commissioner

The Division empowers the Commissioner, after having regard to the Commission's report and to any other information that the Commissioner considers relevant, to reject or not reject an application for the publication of a dumping duty notice.

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

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

---

<sup>1</sup> References to the Commissioner in this report also refer to the Delegate of the Commissioner.

<sup>2</sup> All references in this report to sections of legislation, unless otherwise specified, are to the *Customs Act 1901*.

<sup>3</sup> The terms "section", "s." and "subsection" are used interchangeably in this report.

## **PUBLIC RECORD**

### **3.6 Findings and conclusions**

The Commission has examined the application and is satisfied that:

- the application complies with the requirements of s.269TB(4) of the Act (as set out in Section 5 of this report);
- there is an Australian industry in respect of like goods (as set out in Section 6 of this report); and
- there appear to be reasonable grounds for the publication of a dumping duty notice in respect of the goods the subject of the application (as set out in Sections 7, 8 and 9 of this report)

## **4 BACKGROUND**

### **4.1 Application**

On 17 June 2013, an application was lodged by SPCA requesting that the Minister for Home Affairs (the Minister) publish a dumping duty notice on prepared or preserved peach products (peaches) exported to Australia from South Africa.

SPCA alleges that the Australian industry has suffered material injury caused by peaches exported to Australia from South Africa at dumped prices.

SPCA claimed that material injury in respect of peaches began to impact profit and profitability from 2009. The application identified the injurious effects as:

- 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;
- reduced sales volumes; and
- reduced capacity utilisation.

### **4.2 The goods the subject of the application**

#### **4.2.1 Description**

The goods the subject of the application 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.

# PUBLIC RECORD

## 4.2.2 Product information

The goods under consideration (GUC) are generically called prepared or preserved peach products.

SPCA understands that imported peaches are commonly packed in different containers such as cans, glass jars, pouches, plastics or Tetra packs<sup>4</sup>. These are often referred to as “multi serve prepared peach” products as well. The present application covers all containers, in sizes from 300g to 1.5kg inclusive.

The imported multi serve 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.

## 4.2.3 Product standards

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

## 4.2.4 Tariff classifications

The application states that peaches are classified to tariff subheading 2008.70.00 statistical code 51. ACBPS's tariff branch has confirmed this is the correct classification.

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

## 4.3 Previous investigations

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

---

<sup>4</sup> Tetra packs are proprietary packaging mediums produced, under copyright, by the Tetra Pak company.

## **PUBLIC RECORD**

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.

### **4.4 Current measures**

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

### **4.5 Consideration of the application**

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

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

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

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



## PUBLIC RECORD

### 5 COMPLIANCE WITH SUBSECTION 269TB(4)

#### 5.1 Finding

Based on the information provided in the application, the Commission is satisfied that the application complies with s.269TB(4) of the Act.

#### 5.2 Legislative framework

Subsection 269TB(4) requires that the application must be in writing, be in an approved form, contain such information as the form requires, be signed in the manner indicated by the form and be supported by a sufficient part of the Australian industry.

#### 5.3 The Commission's assessment

##### 5.3.1 Approved form

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

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

##### 5.3.2 Supported by Australian industry

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

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

The application states that SPCA is the only Australian producer of prepared or preserved peach products and that the goods are not closed processed agricultural goods as defined in s.269T(4B) of the Act. Based on the evidence provided, the Commission agrees at this stage that the goods are not closed processed agricultural goods because it considers that the annual fresh peach crop in Australia is neither completely nor substantially destined for use in prepared or preserved peach products. Fresh peaches are used in products such as packaged fruit snacking, paste, pulp, juices and other prepared or preserved peach products produced for the food service industry, which are excluded from the application. The Commission considers the application is supported by a sufficient part of the Australian industry.

## 6 LIKE GOODS AND THE AUSTRALIAN MARKET

### 6.1 Finding

Based on the information provided in the application, the Commission is satisfied that there is an Australian industry producing like goods to the goods the subject of the application and that the data provided within the application is sufficient for the purpose of analysing the economic condition of the Australian industry for peaches (Section 8 refers).

### 6.2 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 first determine that the goods produced by the Australian industry are “like” to the imported goods. Subsection 269T(1) defines like goods as:

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

This issue is examined in Section 6.3.1 below.

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.

This issue is examined in Section 6.3.4 below.

### 6.3 Locally produced like goods

#### 6.3.1 SPCA’s claims

SPCA stated that it produces peaches matching the goods the subject of its application 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.

## PUBLIC RECORD

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.

### **6.3.2 The Commission's assessment**

The Commission has examined the evidence presented in the application 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 provided in the application, the applicant has demonstrated that:

- the primary physical characteristics of imported and locally produced goods are similar;

## **PUBLIC RECORD**

- 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; and
- the imported and locally produced goods are manufactured in a similar manner.

### **6.3.3 Manufacture 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.

### **6.3.4 Manufacturing process**

SPCA submits that it undertakes more than one substantial process of manufacture in the production of the GUC.

The stages of production are summarised as follows:

#### **1. Raw material delivery:**

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 (that is, an unlabelled can) as close as possible to within 24 hours of delivery time.

#### **2. Sorting**

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.

#### **3. Washing, peeling and second sorting**

After sorting, the peaches are transported on conveyor belts to a machine which halves and destines 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.

## PUBLIC RECORD

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.

### 6.3.5 The Commission's assessment

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

## 6.4 Australian market

### 6.4.1 Background

SPCA submitted that the primary end use for peaches, irrespective of cut profile and value add specifications, is for home consumption in food preparation.

### 6.4.2 Market segmentation and demand variability

The Australian market for the GUC is comprised of two main segments. These are:

- Sales to major supermarkets; and
- Sales to smaller food stores, green groceries and distressed channels.

SPCA explained that distressed channels are clearance stock stores where excess supply of particular products is often sold. The top 4 retailers are referred to as grocery channels by SPCA.

In addition there is a small proportion of sales to the food services industry. This mainly consists of sales to the catering industry, restaurant trade and institutions such as hospitals, nursing homes and prisons.

Grocery channels account for the most significant share of the sales of peaches for SPCA, with the remaining sales being to smaller retailers. The major users of the GUC are also the major consumers of the products, namely households purchasing the products from retailers for consumption.

SPCA submitted that there is no significant geographic or product segmentation of the GUC. Price is the key purchase criteria. SPCA provided NAT Woolworths scan data showing the comparison of price versus units purchased of several different peach products (**confidential attachment 1**). The data showed a direct correlation between reduced prices by way of weekly specials and increased sales, indicating consumers switching between SPCA's peaches and imported peaches based on price.

### 6.4.3 Marketing and distribution

The majority of SPCA sales volume of GUC was sold through retail grocery channels.

## **PUBLIC RECORD**

Marketing arrangements differ according to the channel through which the GUC are sold. Major supermarket chains purchase products and require SPCA to accept various marketing conditions for the sale of product.

Distribution arrangements differ according to the retailer concerned, with major retail chains requiring SPCA to supply products to their distribution centres and SPCA supplying smaller retailers directly through distributors.

SPCA submitted that consumer demand for peaches is relatively flat with Australian products being substituted by imported products. SPCA claim that demand for the Australian SPCA products has fallen considerably in recent years owing to the impact of the imported products. The major supermarket chains are the major purchasers of both products in the Australian market, and in recent years have imported increasing quantities, especially of products marketed under their own private label brands. SPCA understands that supermarkets generally import products under longer term contracts to ensure overseas supply.

Australian supply of raw peaches for processing is highly seasonal. SPCA's production is affected by seasonal Australian supply and in periods of extreme weather conditions such as drought or floods, production is adversely affected.

### **6.4.4 Alternative products**

SPCA stated that there are no commercially significant substitutable products with respect to peaches available in the Australian market.

### **6.4.5 Market size**

#### **6.5.5.1 SPCA's claims**

SPCA used import data sourced from Aztec and its own sales data to estimate the size of the Australian market for peaches for each calendar year during the period 2009-2012 inclusive. Aztec data captures actual sales volume and retail sales value of products sold through retailers.

#### **6.5.5.2 The Commission's assessment**

The Commission compared the estimated import volumes in the application to the data in the Australian Customs and Border Protection Service's (ACBPS's) import data base. The import data showed that total imports of peaches under the relevant classifications were similar to those estimated by SPCA.

The Commission considers that in the absence of detailed import information that would enable further categorisation of goods by size and composition, the data in ACBPS's import data base and the application 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 its import database and SPCA's sales data. The Commission estimates that in 2012 (ending December 2012) the size of the Australian market for peaches was approximately 19,500 tonnes.

## PUBLIC RECORD

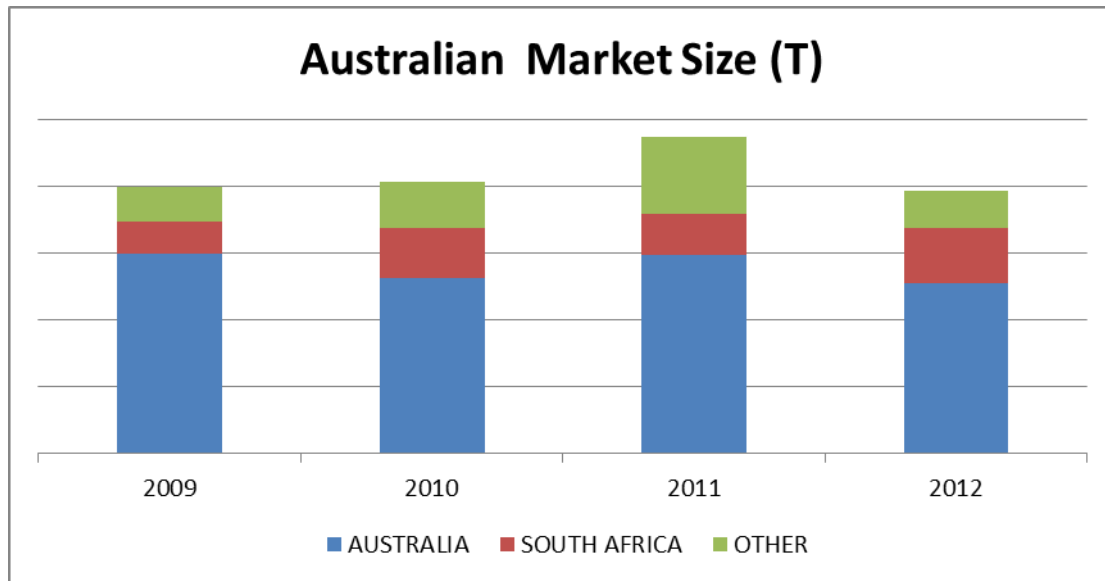


Figure 1: Australian market for peaches: 2009-2012

Figure 1 shows that the total Australian market size for peaches increased from 2009 to 2011 but has experienced a decline from 2011 to 2012.

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 whilst gaining market share from other imports in 2012.

The Commission's estimate of the Australian market for peaches is at **Confidential Appendix 2**.

### 6.5 Australian industry information

#### 6.5.1 General accounting / administration information

SPCA is a wholly owned subsidiary of SPC Ardmona Limited. SPC Ardmona Limited is a wholly owned subsidiary of Coca-Cola Amatil Limited. SPCA is a member of the Australian Food and Grocery council and the Canned Fruits Industry Council of Australia (CFICA).

SPCA's financial accounting period is from 1 January to 31 December. Coca-Cola Amatil Limited's consolidated audited financial statements and annual reports for 2011 and 2012 were provided. SPCA's individual audited financial statements have been requested for the same period and the Commission has been advised that they will be provided at the verification visit. SPCA provided its chart of accounts, internal management accounting reports for the month of December for both 2011 and 2012, including year to date figures for those two reports and general accounting and administration information.

#### 6.5.2 Australian industry's sales

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

## PUBLIC RECORD

production volumes and capacity for SPCA for the period 1 January 2011 to 31 December 2012.

The Commission examined the detail in, and link between, relevant appendices and identified some minor discrepancies. Some of these discrepancies were due to the use of particular sales channels being included in certain appendices, due to the availability of certain data. These discrepancies were explained as part of the application. SPCA provided reconciliation summaries to explain variances between appendices A4 and A6 (**confidential attachment 2**).

The Commission considers that SPCA's appendices are reliable for preliminarily assessing the economic condition of the industry in respect of peaches.

### **6.5.3 Cost information**

SPCA completed a Confidential Appendix A6 cost to make and sell (CTMS) spreadsheet for domestic and export sales. The information provided in this appendix included production and sales volumes, manufacturing costs, selling (including distribution), general and administrative (SG&A) expenses for the period 2010 to 2013 (part year).

The Commission examined the information provided and the link between other appendices and considers the information reliable for the purposes of preliminarily assessing the economic condition of the industry in respect of peaches.

### **6.5.4 Other economic factors**

SPCA completed Confidential Appendix A7 showing movements in assets, capital investment, revenue, capacity, capacity utilisation, closing stocks and cash flow measures.

### **6.5.5 The Commission's assessment – Australian industry**

Based on the information in the application, the Commission is satisfied that there is an Australian industry producing like goods to the goods the subject of the application and that the information contained in the application is sufficient for the purposes of a preliminary analysis of the economic condition of the industry in respect of peaches from 2009 to 2012.



## **7 REASONABLE GROUNDS – DUMPING**

### **7.1 Findings**

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

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

### **7.2 Legislative framework**

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

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

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

### **7.3 Export prices**

#### **7.3.1 SPCA's claims**

SPCA used ABS import data, which is available by country for this tariff classification, to estimate the weighted average export price of peaches from South Africa using the import quantity in kilograms and the value of imports.

The average South African export price for peaches estimated by SPCA for the 2012 calendar year was calculated by dividing the total Customs value by the export volume.

The conversion rate used by SPCA to convert Australian dollars to South African rand was the annual average conversion rate of AUD to ZAR obtained from the Ozforex foreign exchange website.

# PUBLIC RECORD

## 7.3.2 The Commission's assessment

The Commission compared the export price calculation provided by SPCA with data contained in ACBPS's import database. Prior to making the comparison, the Commission cleansed the ACBPS import data by removing product descriptions that were outside the size range noted in the application and any other fruit combinations and products that were not listed as peaches. Some product descriptions listed peaches 'including nectarines' as these are part of the same statistical code. Product lines containing this description have been left in the data, however the Commission notes that these formed less than 0.1% of the total volume. In many cases size specification did not form part of the product description so it is possible that some sizes outside the range of the application have been included in analysis at this stage. The Commission found that the volume in the import database was marginally lower than that estimated by SPCA.

The Commission considers that, based on the information submitted in the application, the amounts used by SPCA to estimate FOB export prices for peaches exported from South Africa to Australia appear to be reasonable.

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

## 7.4 Normal values

### (i) SPCA's claims

Actual retail prices of like products in South Africa's supermarkets were sourced from the Euromonitor data for SPCA's calculation of normal value. SPCA submitted that the data obtained from Euromonitor does not include any plastic retail packs for peaches, only canned peaches, therefore it is a conservative estimate for the retail price because canned peaches sell for a lower price. The month used by SPCA for its calculations was June 2012. SPCA submitted that it believed prices of the products do not vary significantly through the year. A copy of the data source was provided.

After establishing the average retail price, amounts were deducted for VAT (14%), the retailer's margin and freight to the customer, which resulted in an ex-works price per kilogram used as the normal value in SPCA's dumping margin calculation. The retailer's margin used by SPCA was based on information sourced from Euromonitor and a copy of the data and calculation of the margin was provided as part of the application. SPCA estimated delivery and freight from the manufacturer to the retailer for inclusion in the calculation, and advised that the rate was based on SPCA's knowledge of the market. SPCA did not provide any documentary evidence to support the assessment.

### (ii) The Commission's assessment

The Commission examined the Euro monitor source data provided in the application and noted that it contained some lines of product that were not considered to be the GUC. The removal of these items resulted in a lower average retail price, which in turn affected the dumping margin calculated. This discrepancy was raised with

## PUBLIC RECORD

SPCA and it subsequently provided an updated data set of retail sale prices with non-peach products excluded, covering an extended period of April 2013 to June 2013. The data provided in this revised spread sheet provided a weighted average retail price only marginally less than the original figure provided. Given that the revised data was for a different period to that of the export data, the Commission recalculated the normal value using the original data with non-peach items removed. This resulted in a lower dumping margin being calculated than that provided in the application.

The Commission considers that, based on the information submitted in the application, the applicant's estimate of the normal value for peaches sold in South Africa appears to be reasonable. The applicant has supported its estimates with information that is reasonably available to it and, where assumptions have been made, has explained the basis for those assumptions. Where appropriate, the applicant has used data from independent sources, to make adjustments to costs (eg. Retailer's margin) to make them appropriate to their understanding of industry conditions in South Africa.

While SPCA did not provide documentary evidence to support its estimate of delivery and freight, this component is estimated to be a small proportion of the calculated normal value. Any understatement of delivery and freight is likely to be offset by the fact that the normal value used above is an ex-works amount as opposed to an FOB amount, which understates the normal value.

### 7.5 Dumping margins

The dumping margin for peaches calculated by SPCA and provided in its application, using the revised normal value discussed above, is 34%.

The estimated dumping margin for peaches calculated by the Commission using data from ACBPS's import database is 32.3%.

The Commission's dumping margin calculations are at **Confidential Appendix 4**.

The Commission is satisfied that, based on the information submitted in the application, SPCA has demonstrated that there appear to be reasonable grounds for concluding that peaches have been exported to Australia from South Africa at dumped prices.

### 7.6 Import volumes – South Africa

From the information available from ACBPS's import database, it appears that imports of peaches South Africa represented more than 3% of the total import volume of peaches during the proposed investigation period (1 July 2012 to 30 June 2013) and are therefore not in negligible volumes as defined in s.269TDA of the Act.

## **8 ECONOMIC CONDITION OF THE AUSTRALIAN INDUSTRY**

### **8.1 Findings**

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

- reduced revenues;
- price depression;
- price suppression;
- reduced profits;
- reduced profitability;
- reduced sales volumes; and
- reduced capacity utilisation.

### **8.2 Legislative framework**

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

### **8.3 Injury claims**

In respect of peaches, SPCA claimed that the Australian industry has been injured through:

- 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;
- reduced sales volumes; and
- reduced capacity utilisation.

### **8.4 Commencement of injury**

SPCA submitted that material injury caused by importation of peaches has occurred since 2009.

### **8.5 Approach to injury analysis**

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

## PUBLIC RECORD

SPCA provided production, cost and sales data for peaches. The data was provided on an annual basis for the period January 2009 to December 2012. In some instances data was provided for the period January 2010 to April 2013.

This data has been used as the primary basis for the purpose of assessing the economic condition of the Australian industry. SPCA does not sell its product to any related entities but does export a small proportion.

### 8.6 Volume effects

#### 8.6.1 Sales volume

The following graph shows SPCA's domestic sales volumes for peaches for calendar years 2009 to 2012.

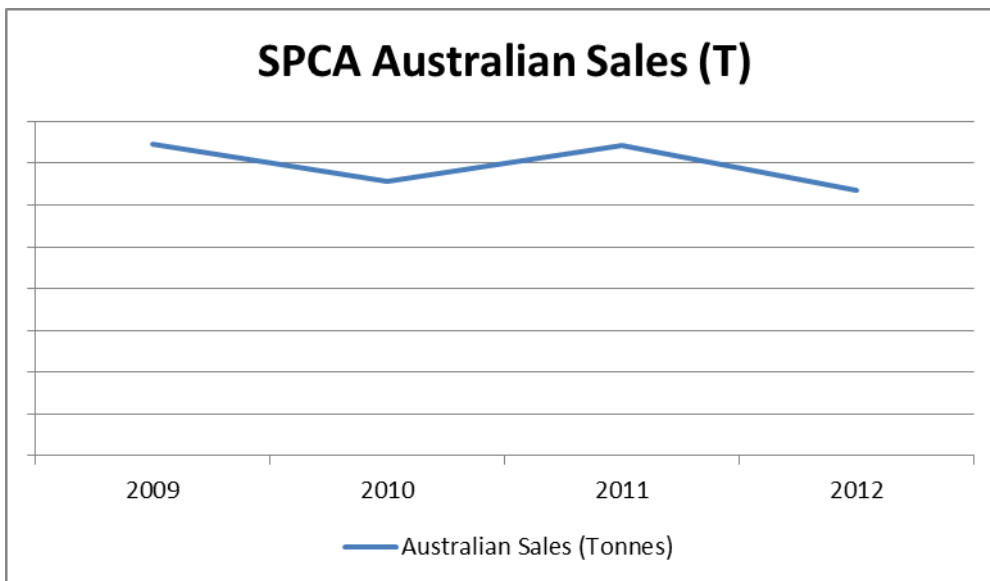


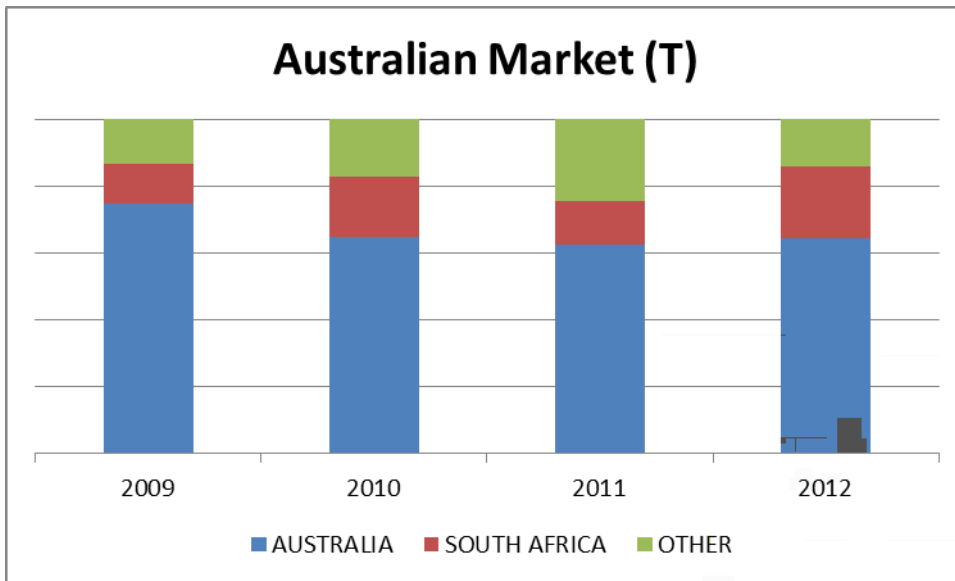
Figure 2: SPCA domestic sales

This graph shows that SPCA's domestic sales volumes of peaches have fluctuated over the injury analysis period based on the data provided.

#### 8.6.2 Market shares

The following graph shows movements in market shares, including SPCA's share, in the Australian market for peaches from CY 2009 to CY 2012.

## PUBLIC RECORD



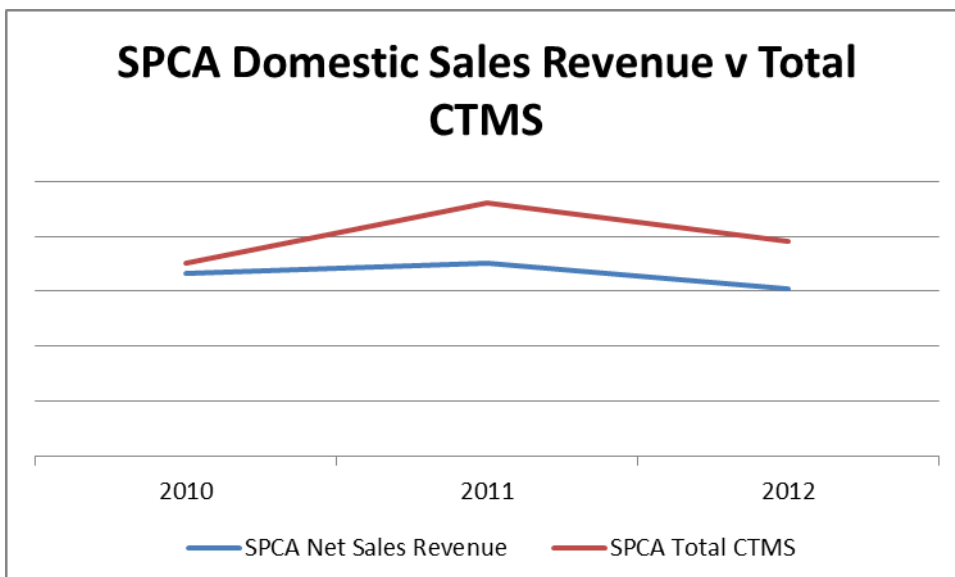
The graph shows that SPCA's market share in the Australian market for peaches remained relatively constant following a decrease in 2010. The increase in South African imports in 2012 was at the expense of imports from other countries, not SPCA's share of the market.

### 8.7 Price effects

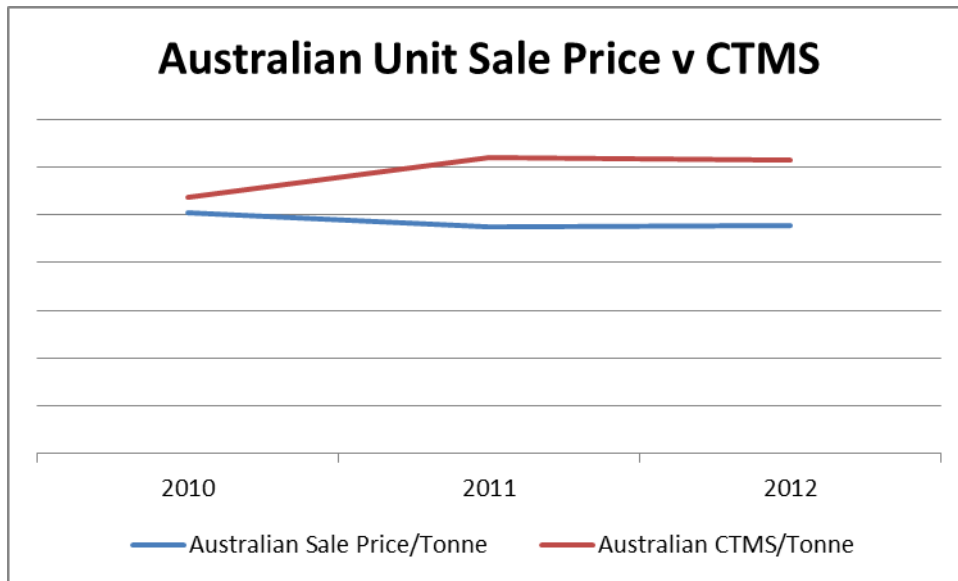
#### 8.7.1 Price depression and price suppression

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

The following graphs show the movements and relationships of SPCA's net revenue and cost to make and sell (CTMS) for peaches from CY 2010 to 2012. The first graph depicts total net revenues and total CTMS, while the second shows unit prices and unit CTMS.



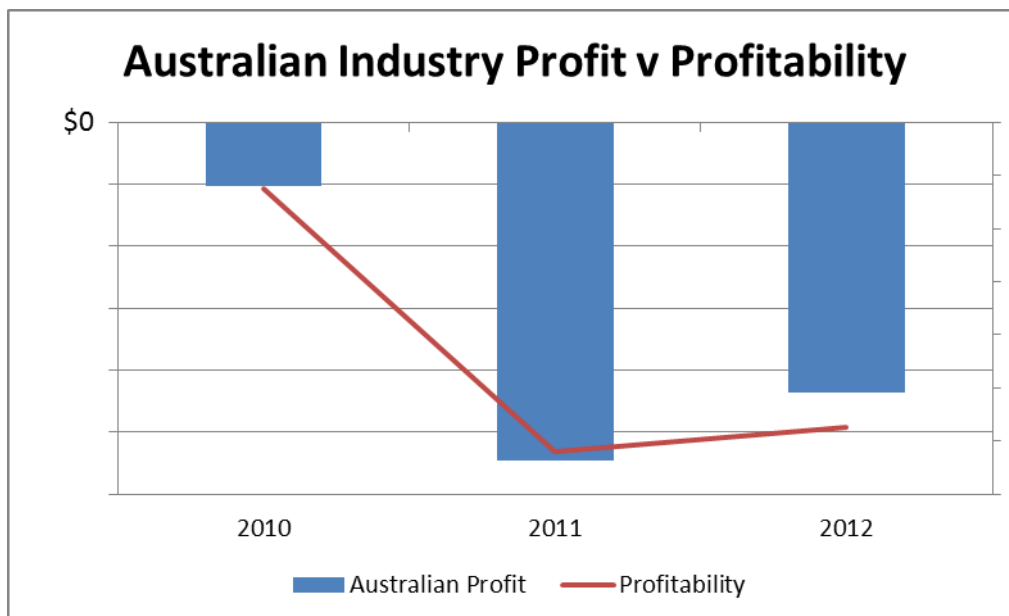
## PUBLIC RECORD



The graphs show that unit prices and total revenues have fallen over the three year period, while unit costs have increased and total costs have remained in excess of total revenue. The graphs support SPCA's claims of price depression and price suppression.

### 8.8 Profit effects

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 2012.



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

# PUBLIC RECORD

## 8.9 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 the form of:

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

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

The Commission's assessment of the economic condition of the Australian peaches industry is at **Confidential Appendix 5**.

## 8.10 Other injury factors

### 8.10.1 SPCA's claims

SPCA completed a Confidential Appendix A7 for peaches for the period CY 2010 to 2012. SPCA claims that it has experienced injury in respect of the following other injury factors:

- Reduced fixed assets;
- reduced domestic revenues;
- reduced capital investment; and
- reduced capacity utilisation.

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

- Assets: The value of assets used in the production of peaches decreased over the period.
- Capital investment: The level of capital investment in relation to the production of peaches decreased over the period.
- Revenue: The revenue in relation to sales of peaches fluctuated over the period and ultimately declined in 2012.
- Capacity: The production capacity in relation to peaches remained constant over the period.
- Capacity utilisation: Capacity utilisation in relation to production of peaches fluctuated over the period but decreased overall.



## **PUBLIC RECORD**

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

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

- reduced domestic revenues;
- reduced capital investment; and
- capacity utilisation.

## 9 CAUSATION FACTORS

### 9.1 Findings

Having regard to the matters contained in the application and to other information considered relevant, the Commission is satisfied that the goods under consideration exported to Australia from South Africa at allegedly dumped prices appears to have caused material injury to the Australian industry.

#### 9.1.1 The applicant's claims

SPCA claims that the consumer's key purchase criterion is the retail price. Data provided in the application shows significant undercutting by imported products compared to Australian produced prepared or preserved peach products.

In addition SPCA advised that it has been forced to increasingly discount its products in domestic channels in order to compete with imported peaches.

As a result of price undercutting, price depression and price suppression, SPCA's profits have been severely negatively affected. SPCA submitted that declines in sales volumes have added to the cost to make and sell. This has led to a poor overhead recovery rate and has eroded profits and profitability.

SPCA submitted that it has invested heavily in developing the business over the years, including improving its product quality and streamlining production processes. Losses suffered by SPCA have limited its ability to raise investment capital for operations and further development which effects its production and potentially employment levels going forward.

SPCA submitted that seasonal conditions that affect suppliers of raw peaches do not impact on consumer demand. Over the past few years SPCA claim there has been sufficient supply of raw fruit and processing capacity available to meet the demand.

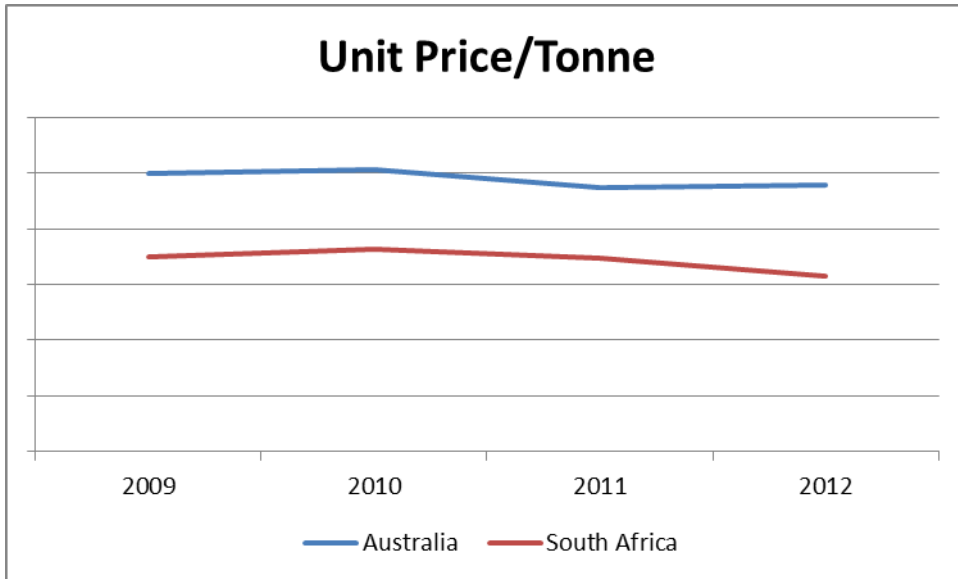
SPCA submitted that the cost of raw material and labour has decreased since 2009 and is therefore not a contributing cause of injury. However SPCA noted that the exchange rate does have the ability to cause injury through reduced sales of exports. SPCA also noted though that exports only constitute a minor part of the business.

#### 9.1.2 The Commission's assessment

Based on information provided in the application and information from ACBPS's import database, the Australian industry's share of the Australian market declined by approximately 10% from 2009 to 2012. Imports of peaches from South Africa appear to have increased by 9% over the same period.

The application contains probative evidence that the prices offered for the imported goods from South Africa have significantly undercut the applicant's prices of the locally produced goods. The following graph shows a comparison of the FIS unit export price per tonne from South Africa compared to SPCA's unit net selling price. This gap further widens when the FIS export price is compared to SPCA's gross unit price per tonne.

## PUBLIC RECORD



The undercutting appears to have inhibited SPCA's ability to raise prices in line with the increase in the CTMS the locally produced product and in some cases appears to have caused it to lower its prices. The price depression and price suppression have adversely impacted SPCA's profit and profitability.

The apparent loss of sales volume, price undercutting, price depression and price suppression indicates that the allegedly dumped imports from South Africa caused injury to the Australian industry. The estimated product dumping margin for imports from South Africa during 2012 is considered material. On the available information, the injury caused by the dumping appears to be material.

### 9.2 Conclusion on material injury caused by dumped imports

The Commission is satisfied that, based on the information submitted in the application, the applicant has demonstrated that:

- it appears to have suffered injury; and
- there appear to be reasonable grounds for concluding that the dumping of peaches exported to Australia from South Africa has caused material injury to the Australian industry producing like goods.

## 10 CONCLUSION

The Commission has examined the application in respect of prepared or preserved peach products and is satisfied that:

- the application complies with s.269TB(4) of the Act;
- there is an Australian industry in respect of like goods; and
- there appear to be reasonable grounds for the publication of a dumping duty notice in respect of prepared or preserved peach products exported to Australia from South Africa.

Accordingly, the Commissioner has not rejected the application for the publication of a dumping duty notice under s.269TC(1) of the Act.

For the purposes of the investigation:

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

## PUBLIC RECORD

### 11 APPENDICES AND ATTACHMENTS

<b>APPENDIX</b>	<b>Title</b>
Appendix 1	Delegate's notice
Confidential Appendix 2	The Commission's estimate of the Australian market for peaches
Confidential Appendix 3	Comparison of SPCA's and the Commission's import volumes and unit values
Confidential Appendix 4	The Commission's dumping margin calculations
Confidential Appendix 5	Assessment of the economic condition of the Australian peaches industry
<b>ATTACHMENT</b>	<b>Title</b>
Confidential Attachment 1	NAT Woolworths Scan data showing purchasing trends for domestic and imported peaches
Confidential Attachment 2	Gross sales reconciliation between application appendices A4 and A6