

Director Operations 2
Australian Anti-Dumping Commission

By E-mail: operations2@adcommission.gov.au

Attention: Director Operations 2
Your Ref:
Our Ref: M187/20131114
Date: 14 November 2013



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Dear Director Operations 2,

RESPONSE TO STATEMENT OF ESSENTIAL FACTS NO. 216 ON BEHALF OF RHODES FOOD GROUP AND LANGEBERG & ASHTON FOODS

We confirm that we are acting on behalf of Rhodes Food Group (Pty) Ltd and Langeberg & Ashton Foods (Pty) Ltd and responding on their behalf to the Statement of Essential Facts No. 216 (hereinafter referred to as "SEF"). We further confirm that this submission is non-confidential and may be placed on the public file.

1. General

In general we concur with the Anti-Dumping Commission's finding that the investigation should be terminated as both exporters' dumping margins are *de minimis* and it does not appear as if the alleged dumped imports are causing injury to SPC Ardmona.

2. Preliminary Finding – Australian Market

- a. We note that the preliminary finding 1.4.3 on page 5 of the SEF states that the Australian market is predominately supplied by Australian products and imports from South Africa, with a small volume of imports from other countries. In this regard we note that imports from countries other than South Africa account for a rather large portion of imports (approximately equal to the South African import volumes) and hence of the Australian market.
- b. Although South African imports are significant in its share of all imports of the subject product, the Australian Bureau of Statistics as well as information contained in SPC

In association with: Geldenhuys Joubert Inc Attorneys & WTI Advisors

Directors:

Rian Geldenhuys BA (Law), LLB, LLM (International Trade), Hons B (B and A), MBA (Stellenbosch)

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Registration no: 2008/018066/07 Trade Law Chambers (Pty) Ltd



Ardmona's application clearly show that over the injury period the imports from other countries (of which China and Greece are significant importing nations who have previously had trade remedies imposed against their imports) account for approximately 42% to 64% of the imports. This is also reflected in the graph on page 16 of the SEF.

- c. In our opinion the Anti-Dumping Commission should also consider the impact that the significant imports from countries other than South Africa may have on any alleged injury suffered by SPC Ardmona.
- d. Not only does Article 3.5 of the WTO Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (hereinafter the "WTO Anti-dumping Agreement") require the examination of the effect of the volume of these imports from countries other than South Africa, but it also requires an examination of the price of those imports and what impact that has on any alleged injury. We submit that the prices of those imports would be less than the prices of SPC Ardmona and given the retailers' private label strategy due to Australian consumer demand for it, we are of the opinion that these imports would also 'cause' injury to SPC Ardmona. As such, in our opinion, the injury suffered by SCP Ardmona cannot be solely attributed to the South African imports (whether dumped or not).
- e. We note with interest the finding that the market share of the Australian product versus all imported products has remained constant from January 2009 to June 2013, thus indicating that although a decline in market share was alleged by SPC Ardmona in its application, it is indeed not the case. We do note that the graph on page 16¹ as well as the graph² on page 23 of the SEF indicates a slight contraction in demand for the subject product (as a whole and not only for the subject product produced by SPC Ardmona). This much is also confirmed by the Anti-dumping Commission on page 28 of the SEF as the yearlong availability of fresh fruit³ has an impact on demand for the subject product. In our opinion this contraction in demand and the injury that this has caused to SPC Ardmona (and indeed the international market for all producers of the subject product) should not be attributed to any imports of the subject product from South Africa.

¹ Entitled "Australian Market (T)".

² Figure 3.

³ Please refer to Annexure "Fresh Produce".

3. **Preliminary finding – Dumping**

We agree with the Anti-dumping Commission's finding that the dumping margins of the two cooperating and verified exporters are *de minimis* and that the investigation should be terminated immediately in accordance with Article 5.8 of the WTO Anti-dumping Agreement. We further agree that the volume of exports by other South African exporters is negligible and as such the investigation should be terminated.

4. **Preliminary Finding – Injury: Sales Volume and Market Share**

- a. We note our agreement with the Anti-dumping Commission's finding that SPC Ardmona's market share has remained constant and in fact the only fluctuation that is present is in the origin of imports (and not the volume).
- b. We further note a decline in sales of the subject product, however in our opinion all the sales of the subject product (whether of Australian or foreign origin) is on a decline. We are of the opinion that this contraction in demand for the subject product is due to the yearlong availability of fresh fruit and consumers' demand for healthier products.
- c. We further are of the opinion that any decline in sales volume is due to the fact that SPC Ardmona was either not willing to supply a private label product which the consumers demand or was not able to supply such a product at a reasonable price.
- d. We further note that adverse weather conditions have played a role and this resulted in SPC Ardmona not being able to supply the domestic demand which had to be sourced from foreign sources (whether from South Africa or not and whether at alleged dumped prices or not).
- e. In addition we are of the opinion that the discounting by the retailers of imported products (whether from South Africa or not and whether at alleged dumped prices or not) would result in a decrease in the sales volume of SPC Ardmona. In our opinion, such discounting and the injurious effect that it may have on SPC Ardmona, should not be attributed to the imports originating in South Africa.
- f. We further note that Figure 4 on page 23 of the SEF seems to indicate that the entire market for the subject product is in fact on a decline as mentioned above, but that the

imports' market share (the origin is immaterial) has remained slightly more stable (although also declining) than the market share of SPC Ardmona. In our opinion this indicates that the imported private labels are perhaps a cause of concern for SPC Ardmona. As such we are of the opinion that any injury suffered by SPC Ardmona should not solely be attributed to any alleged dumped imports from South Africa.

5. Preliminary Finding – Price Suppression

We note the Anti-dumping Commission's preliminary finding that SPC Ardmona did suffer price suppression. In our opinion such price suppression is not caused by alleged dumped imports from South Africa. Instead it has to do with the retailers' strategy of selling a private label product at low prices⁴, sometimes at little to no profit, as customers demand it. In fact SPC Ardmona even noted⁵ that the price suppression is caused by the pressure of the sales of lower cost, not dumped, retail products. As such we are of the opinion that any price suppression suffered by SPC Ardmona should not be attributed to alleged dumped imports from South Africa.

6. Preliminary Finding – Profit and Profitability

We note the Anti-dumping Commission's preliminary finding that SPC Ardmona did suffer reduced profitability. Again it is our opinion that the reduced profitability is not due to the alleged dumped imports from South Africa, but instead is caused by the impact of the retailers' strategies as elaborated upon in paragraph 5.

7. Preliminary Finding – Capacity Utilization

- a. We note the Anti-dumping Commission's preliminary finding that SPC Ardmona did suffer reduced capacity utilisation. In our opinion the reduction in capacity utilization is not due to any alleged dumped South African imports but other factors listed below.
- b. We refer the Anti-dumping Commission to Annexure A attached hereto. Annexure A is a presentation by the Canned Fruits Industry Council of Australia (representing the interests of the growers and SPC Ardmona) at the 11th World Canned Deciduous Fruit

⁴ Including any discounting strategy which the retailers detailed for the Anti-dumping Commission.

⁵ According to page 29 of the SEF.

Conference held in June 2012⁶. According to the Canned Fruits Industry Council of Australia the hectares under production for canning peaches have reduced by 15% from 2007 to 2011 which led to a reduction in tonnage of peaches grown for canning purposes. In our opinion this reduction in hectares under production and resultant decrease in tonnage thus had a negative effect on the capacity utilization of SPC Ardmona and should be taken into consideration in determining whether the alleged dumped imports from South Africa actually caused the reduction in capacity utilization. The Canned Fruits Industry Council of Australia also highlights adverse climatic conditions which resulted in a decrease of peaches produced for canning purposes. Again in our opinion such a decrease should not be attributed to the alleged dumped imports from South Africa.

- c. We also refer the Anti-dumping Commission to our submissions in respect of the retailers' strategy whereby they are stocking private label products (independent of the origin of the product) which will have a decrease in capacity utilization by SPC Ardmona. In our opinion the decrease thus is caused by the retailers' strategy and SPC Ardmona's capacity utilization should not be attributed to the alleged dumped imports from South Africa.

- d. We also refer the Anti-dumping Commission to our submission and the Anti-dumping Commission's finding on the decline of the market of the subject product. In our opinion the decrease thus caused by the decline in the market to SPC Ardmona's capacity utilization should not be attributed to the alleged dumped imports from South Africa.

- e. We also refer the Anti-dumping Commission to the impact that a strong Australian dollar has had on SPC Ardmona's exports. Due to the strong Australian dollar, it has become less feasible for SPC Ardmona to export from Australia. This would lead to a reduction in capacity utilization which in our opinion should not be attributed to the alleged dumped imports from South Africa. In this regard we also refer the Anti-dumping Commission to SPC Ardmona's foreign operations⁷. We understand that SPC Ardmona currently supplies the United Kingdom and selected European markets with multiserve products (which include the subject product) from its Spanish Joint Venture (and not from Australian products) whilst its supplies these markets with snack packs from its Joint Venture in Thailand. We further understand that its joint ventures in

⁶ Please note that the 12th World Canned Deciduous Fruit Conference reflecting more recent information will only be held in March 2014 in South Africa and as such we have no access to more recent information.

⁷ Please refer to the annexures entitled "Foreign Operations", "SPCA Spain 1" and "SPCA Spain 2".

China and Thailand supply the Asian markets with the subject products. As such, the sourcing of subject products originating from foreign countries will lead to a reduction in capacity utilization by SPC Ardmona in Australia. We are of the opinion that this reduction should not be attributed to the alleged dumped imports from South Africa.

8. Preliminary Finding – Reduced Revenue

As mentioned above, we are of the opinion that SPC Ardmona has experienced reduced revenues as the demand for the subject product declined and due to the fact that SPC Ardmona's products have suffered price suppression as a result of pressure from the sales of lower cost, not dumped, retail products due to the retailers' private label strategies as demanded by consumers. As such we are of the opinion that the reduction in revenue should not be attributed to the alleged dumped imports from South Africa. We also note that SPC Ardmona had increased costs (as confirmed by its application and the SEF) which, in our opinion, coupled with a declining market for the subject product and an inability to supply the retailers with private label products caused a reduction in revenues which should not be attributed to any alleged dumped imports from South Africa.

9. Preliminary Finding – Factors other than dumping

We note our agreement with the Anti-dumping Commission's preliminary finding that due to only a *de minimis* dumping margin being found, that the injury cannot be caused by the alleged dumped imports. We also agree with the Anti-dumping Commission's finding that a range of factors listed in the SEF have caused injury to SPC Ardmona. In our opinion the Anti-dumping Commission should also give due consideration to the factors which we raise in this submission.

10. Preliminary Finding – Non-injurious Price and Unsuppressed Selling Price

We note the Anti-dumping Commission preliminary finding with regards to the findings on the non-injurious price and unsuppressed selling price. It may indeed be that price undercutting occurs, however as there is a finding of *de minimis* dumping, the injury cannot be attributed to the alleged dumped imports for purposes of imposing any anti-dumping duty. In our opinion price undercutting will also be found when comparing the export prices of imported products originating in countries other than South Africa which are not dumped. As such it is our opinion that it is not dumped products which undercuts

SPC Ardmona's products but simply a cheaper product which is fairly imported into Australia.

11. **Conclusion**

As there is a finding of *de minimis* dumping by the two relevant South African producers of the subject product and given that the facts show that any alleged injury suffered by SPC Ardmona is not caused by any dumped imports, we are of the opinion that the investigation should be terminated immediately.

We thank the Australian Anti-dumping Commission for its considered Statement of Essential Facts and for allowing us the opportunity to make a submission thereon. We trust that our submission will be considered and we look forward to receiving confirmation that the Commissioner will terminate this investigation.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Rian Geldenhuys', with a large, sweeping flourish at the end.

Rian Geldenhuys
Director



Canned Fruits Industry Council Australia

11th World Canned Deciduous Fruit Conference
Litochoro, Greece

May 30 – June 2, 2012

Presented by
Simon Mills
Chairman, CFICA



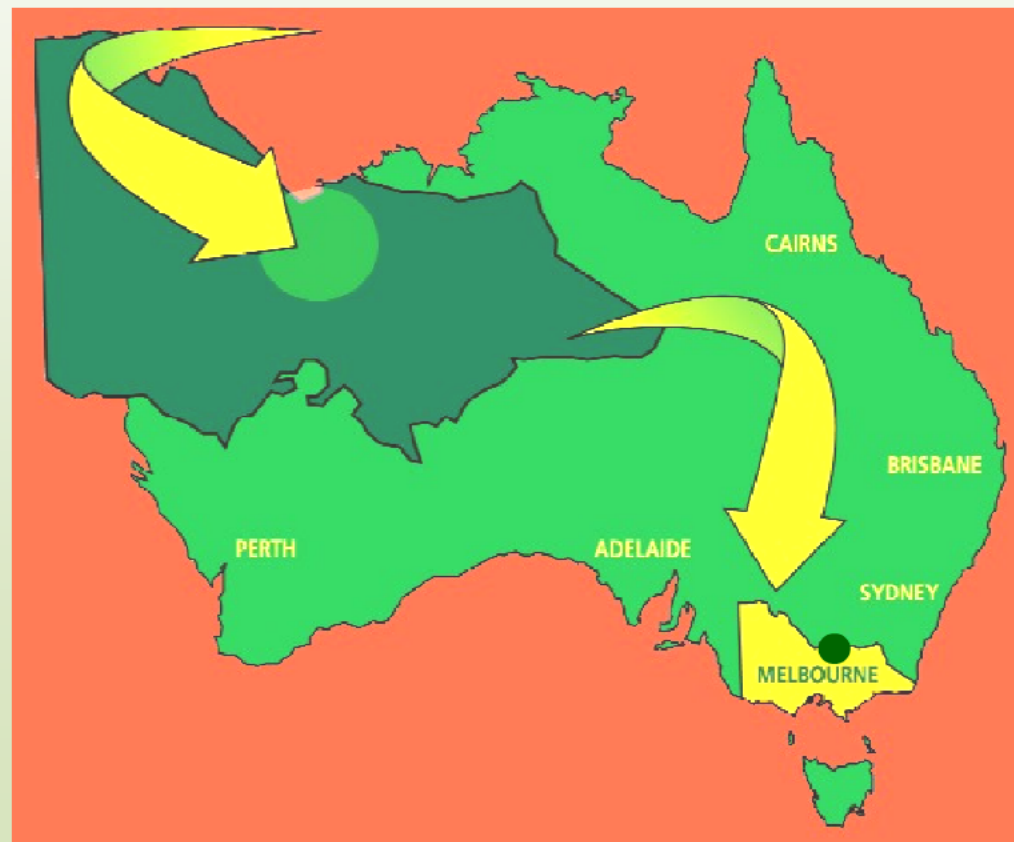
Industry Overview

- Canned Fruits Industry Council of Australia
 - Peak industry organization
 - CFICA represents the interests of both the growers and the canner
 - CFICA membership now comprises only
 - 2 Fruit Grower Associations
 - 1 Fruit Canner
- SPC Ardmona
 - 2002 - SPC and Ardmona merged
 - Only 1 canner remaining, operating 3 factories in Victoria
 - 2005 - SPC Ardmona acquired by Coca Cola Amatil
 - CCA is Australian owned beverage manufacturer
 - Sole bottler of Coca Cola products in Australia, New Zealand, Indonesia
 - The Coca Cola Company (US) is the largest shareholder

Industry Overview

- Growers

- All deciduous canning fruit grown within 80km of Shepparton factory
- Approximately 210 growers will supply deciduous fruit to the canner
 - A 30% reduction since the commencement of rationalization in 2006



Industry Overview

- Growers
 - 210 Growers supply canning fruit to SPC Ardmona
 - Supplier rationalization has resulted in 30% reduction in number of canning fruit growers since 2006
 - Average canning grower now derives 40% of total business farm gate income from canning fruit. (up from 35%)
 - Balance of income is from fresh market varieties
 - Most growers supply at least 2 canning crops; Pear + Peach, or Peach + Apricot + Plum, etc.



Industry Overview

- Production Capacity

- 2007-2011:

- Canning Apricot hectares reduced by 41%
 - Canning Peach hectares reduced by 15%
 - Canning Pear hectares reduced by 15%,
 - Crops have been further reduced due a series of bad seasons,
 - Frost, Hail, Drought, Heat, Rain
 - Growers are suffering
 - Grower costs have increased substantially
 - Wages now account for 65% of annual production cost in some varieties



Industry Overview

- Current Plantings (Goulburn Valley)

<u>Crop</u>	<u>2007 Ha</u>	<u>2011 Ha</u>	<u>+/-</u>
Apples	2,260	2,236	+ 1%
Apricots (all varieties)	610	494	- 19%
Nectarines	725	618	- 15%
Peach Cling	1,840	1,556	- 15%
Peach Fresh Market	457	571	+ 32%
Pear WBC	1,649	1,397	- 15%
Pear Fresh Market	2,040	1,945	- 5%
Plums	600	554	- 8%
Other	<u>800</u>	<u>1,200</u>	+ 50%
	10,981	10,571	- 3.7%



Production Issues

- Irrigation Water
 - Availability
 - All canning fruit growers are reliant on irrigation water supplied by a government controlled channel system
 - Allocation of irrigation water is regulated
 - 11 year drought has ended, all reservoirs are now full (now we have floods)
- Labour
 - Costs
 - Recent changes to legislation has increased costs of orchard labour
 - Factory labour costs continue to rise:
 - AUD 23.40 basic rate in 2012
 - Plus Leave accruals, Insurance, Superannuation etc
 - Plus shift and overtime allowances
 - Full cost approximately AUD 33.00 per hour
 - Availability
 - Reliance on international backpackers to supplement numbers at harvest





Rain 2011 and 2012



Agronomic Research and Development

- Breeding Programs
 - Apricot
 - Peach
 - Pear
- Labour Reduction
 - Mechanical harvesting
 - Mechanical and chemical thinning
- Integrated Pest Management
 - Use of Pheromones has lead to problems with other pests
 - Diminishing list of chemicals to choose from
- Climate Change
 - Reduced Chill Hours with warmer winters
 - Increased Frost Risk due to drier winters





Peach Breeding Program



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Clingstone Peaches



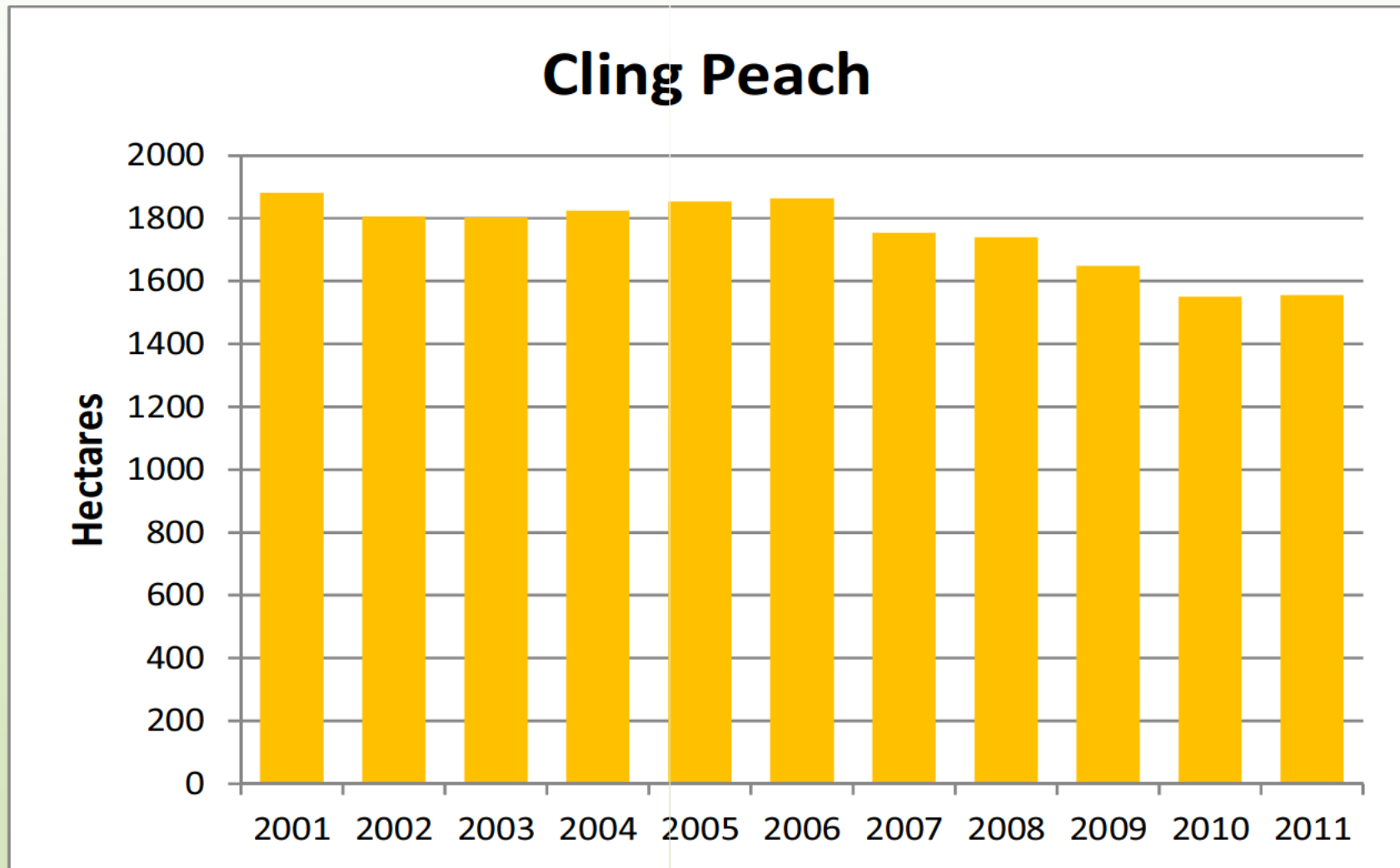
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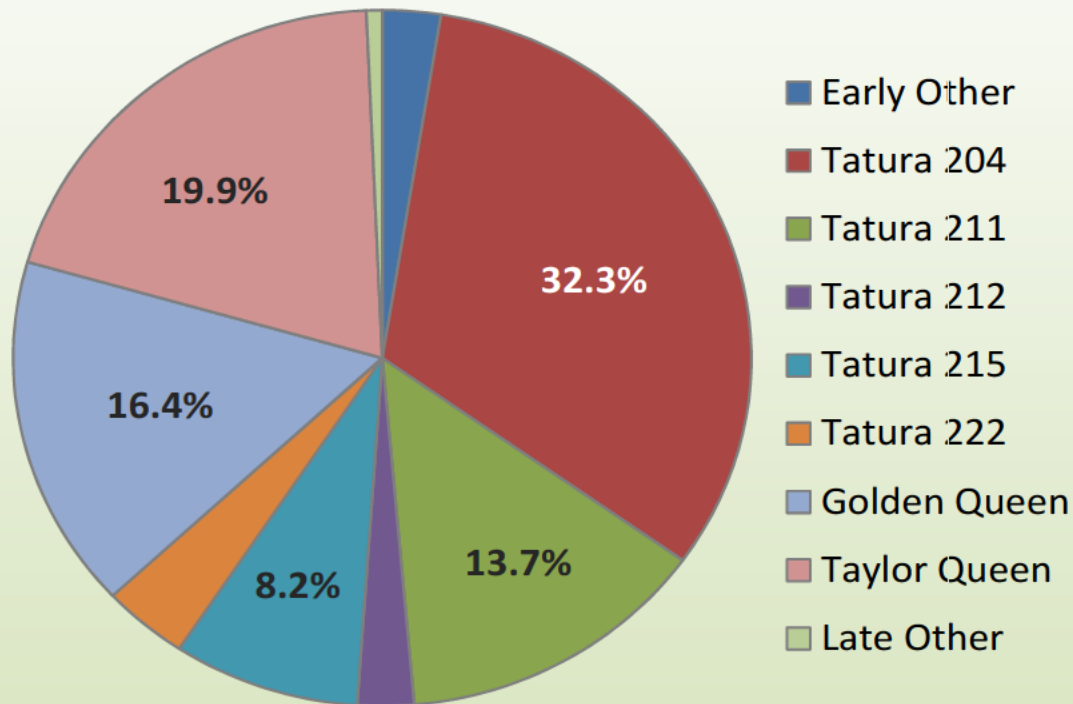
Peach Planting Trends

- Area planted to Cling Peach has reduced by 15% since 2001

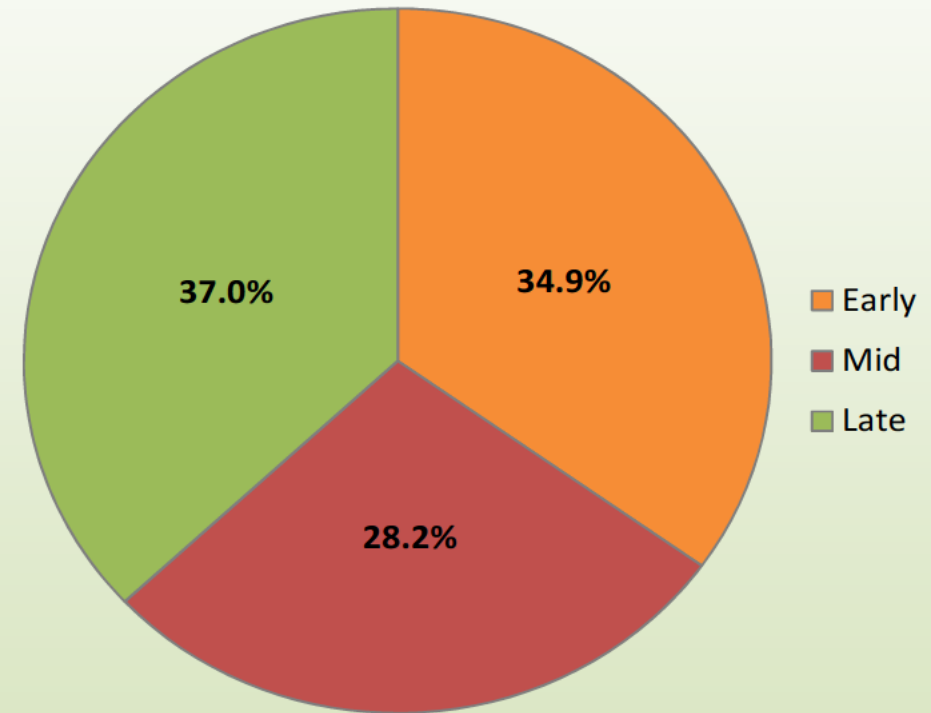


Peach Varieties and Harvest Timing - 2012

Peach % by Variety

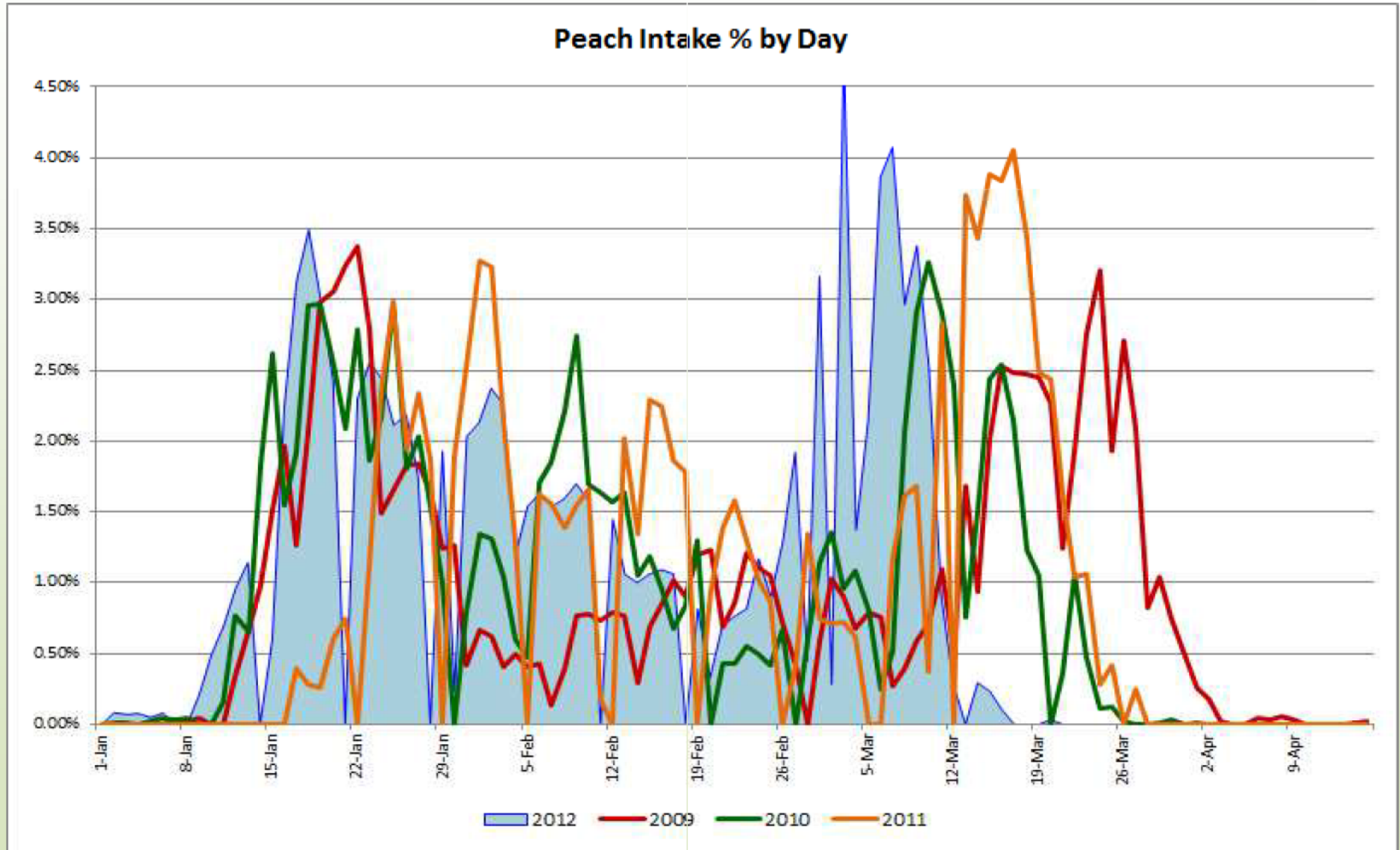


Peach % by Group





Peach Intake Timing



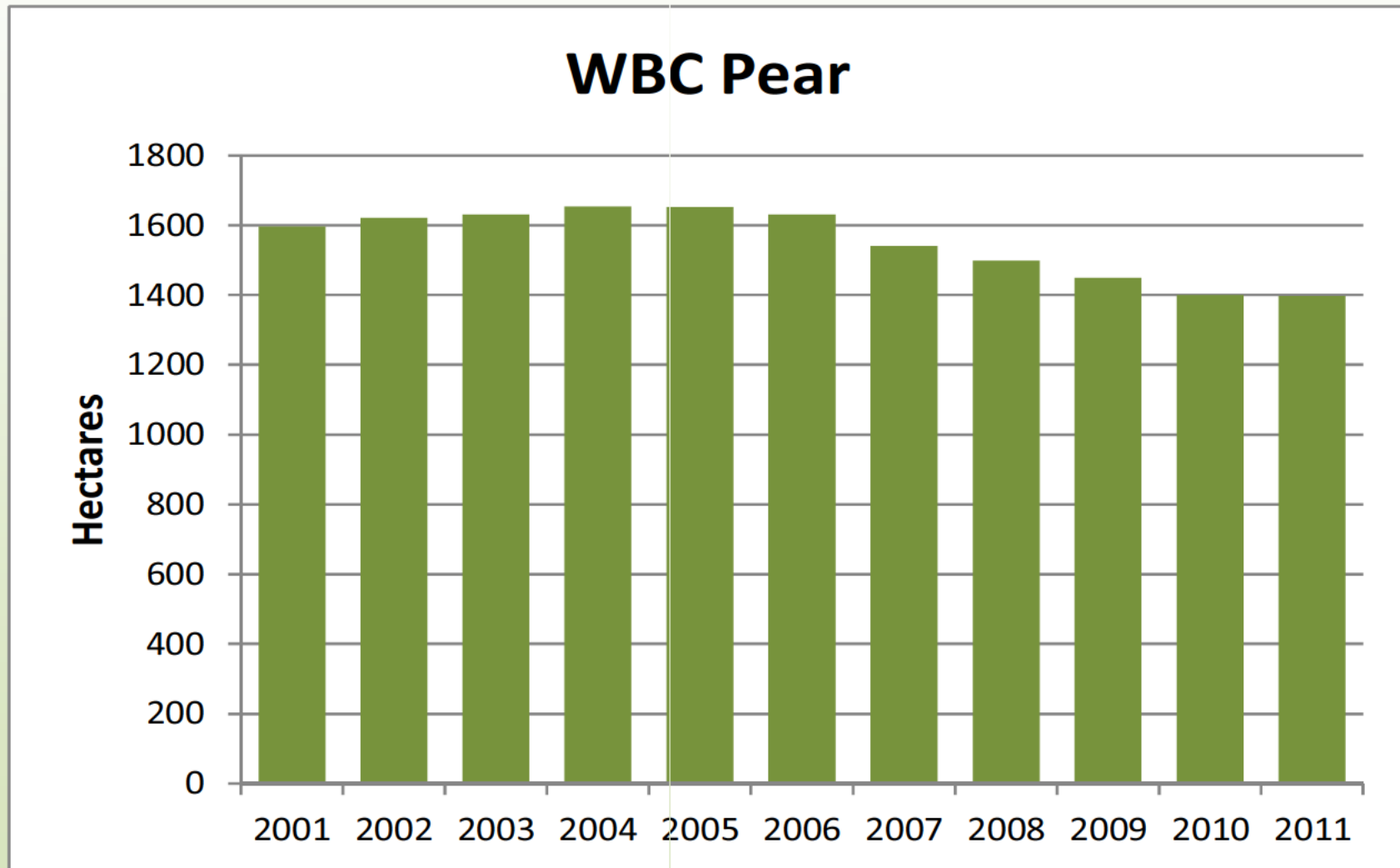


William Bon Chretien (Bartlett) Pear



Pear Planting Trends

- Area planted to WBC Pear has reduced by 13% since 2001



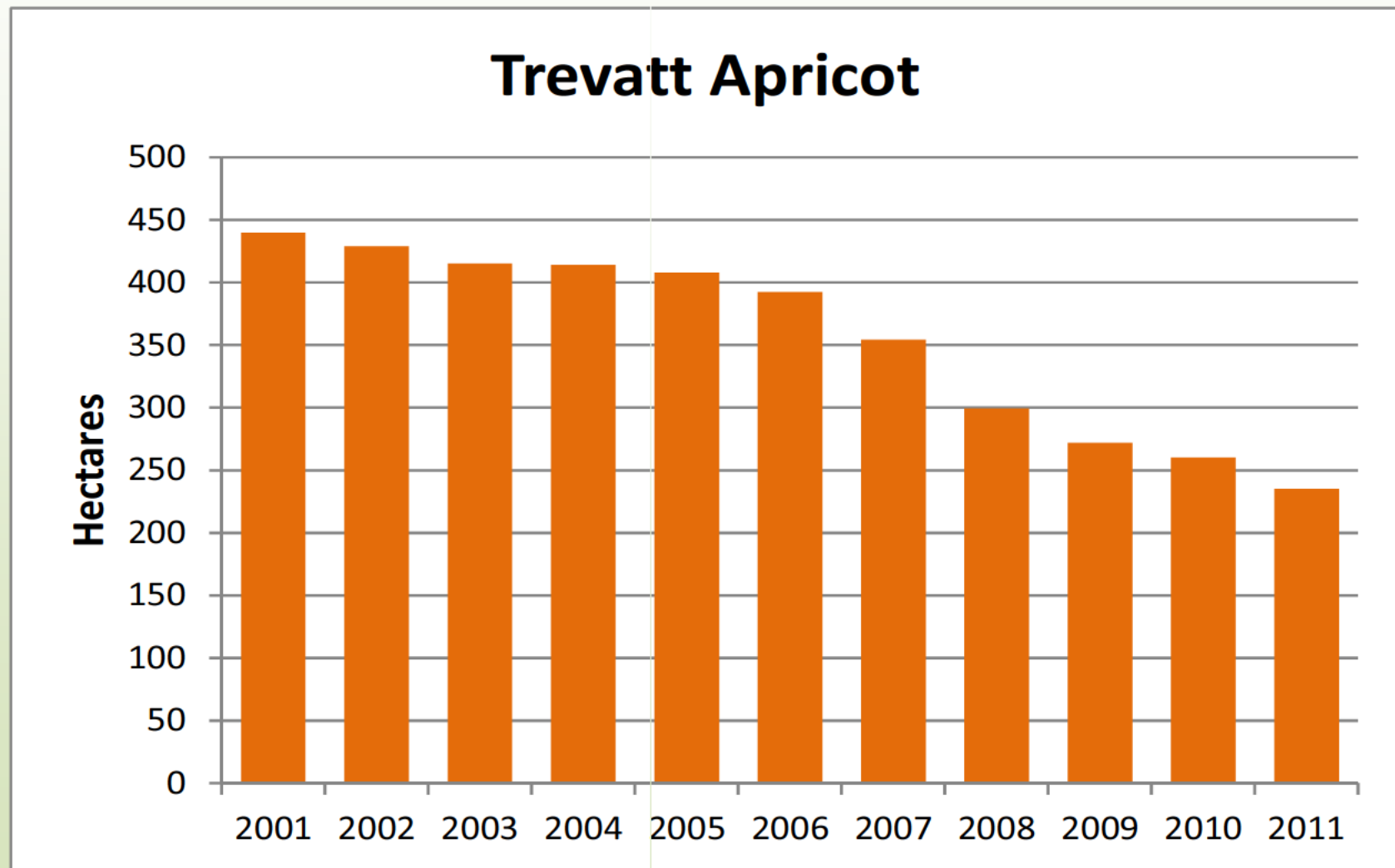


Trevatt Apricot



Apricot Planting Trends

- Area planted to Trevatt Apricot has reduced by 47% since 2001



TOTAL AGRICULTURAL PRODUCTION OF DECIDUOUS FRUITS (All varieties in Metric Tonnes And Hectares) (Canning Varieties only)

	UNIT	2007/2008	2008/2009	2009/2010	2010/2011	2011/2012
PEACHES	MT	49,130	48,080	41,150	36,115	39,520
	HA	1,753	1,739	1,648	1,550	1,556
PEARS	MT	76,997	67,451	42,030	72,800	67,050
	HA	1,540	1,499	1,449	1,400	1,397
APRICOTS	MT	8,460	5,948	6,181	5,672	5,150
	HA	354	299	272	260	235



AGRICULTURAL PRODUCTION OF DECIDUOUS FRUITS VARIETIES FOR THE CANNING INDUSTRIES (MT)

	2007/2008	2008/2009	2009/2010	2010/2011	2011/2012
PEACHES	46,791	44,935	37,403	28,495	31,786
PEARS	39,917	35,518	21,300	25,165	25,963
APRICOTS	6,769	4,957	5,375	5,048	4,169



AMOUNT OF FRESH FRUIT CANNED MARKETING YEAR (MT)

	2007/2008	2008/2009	2009/2010	2010/2011	2011/2012
PEACHES	40,955	39,259	31,843	27,854	30,685
PEARS	31,621	28,509	19,153	19,692	23,859
APRICOTS	4,001	3,884	3,635	3,871	3,484



AMOUNT OF FRESH FRUIT USED IN PUREE MARKETING YEAR (MT)

	2007/2008	2008/2009	2009/2010	2010/2011	2011/2012
PEACHES	3,455	3,100	1,750	641	1,021
PEARS	1,150	1,400	1,200	1,450	900
APRICOTS	2,768	1,073	1,740	2,019	1,045



TOTAL INDUSTRIAL PRODUCTION CAPACITY

BASIC CARTONS (24 Cans / 1 Kg)

		2007/2008	2008/2009	2009/2010	2010/2011	2011/2012
PEACHES	N° Industries	1	1	1	1	1
	Prod. Cap.	1,600,000	1,600,000	1,600,000	1,000,000	1,000,000
PEARS	N° Industries	1	1	1	1	1
	Prod. Cap.	1,400,000	1,400,000	1,400,000	900,000	900,000
APRICOTS	N° Industries	1	1	1	1	1
	Prod. Can.	825,000	825,000	825,000	460,000	460,000
MIXED FRUITS	N° Industries	1	1	1	1	1
	Prod. Can.	2,600,000	2,600,000	2,600,000	2,000,000	2,000,000



TOTAL CANNED PRODUCTION IN BASIC CARTONS

	2007/2008	2008/2009	2009/2010	2010/2011	2011/2012
PEACHES	1,208,465	1,109,760	903,855	777,126	877,951
PEARS	654,238	582,960	361,505	360,363	433,040
APRICOTS	310,558	291,883	219,942	294,970	278,023
MIXED FRUITS	1,794,345	1,624,144	1,034,239	1,106,530	1,387,872



NET PRICE PAID BY THE INDUSTRY PER METRIC TONNE

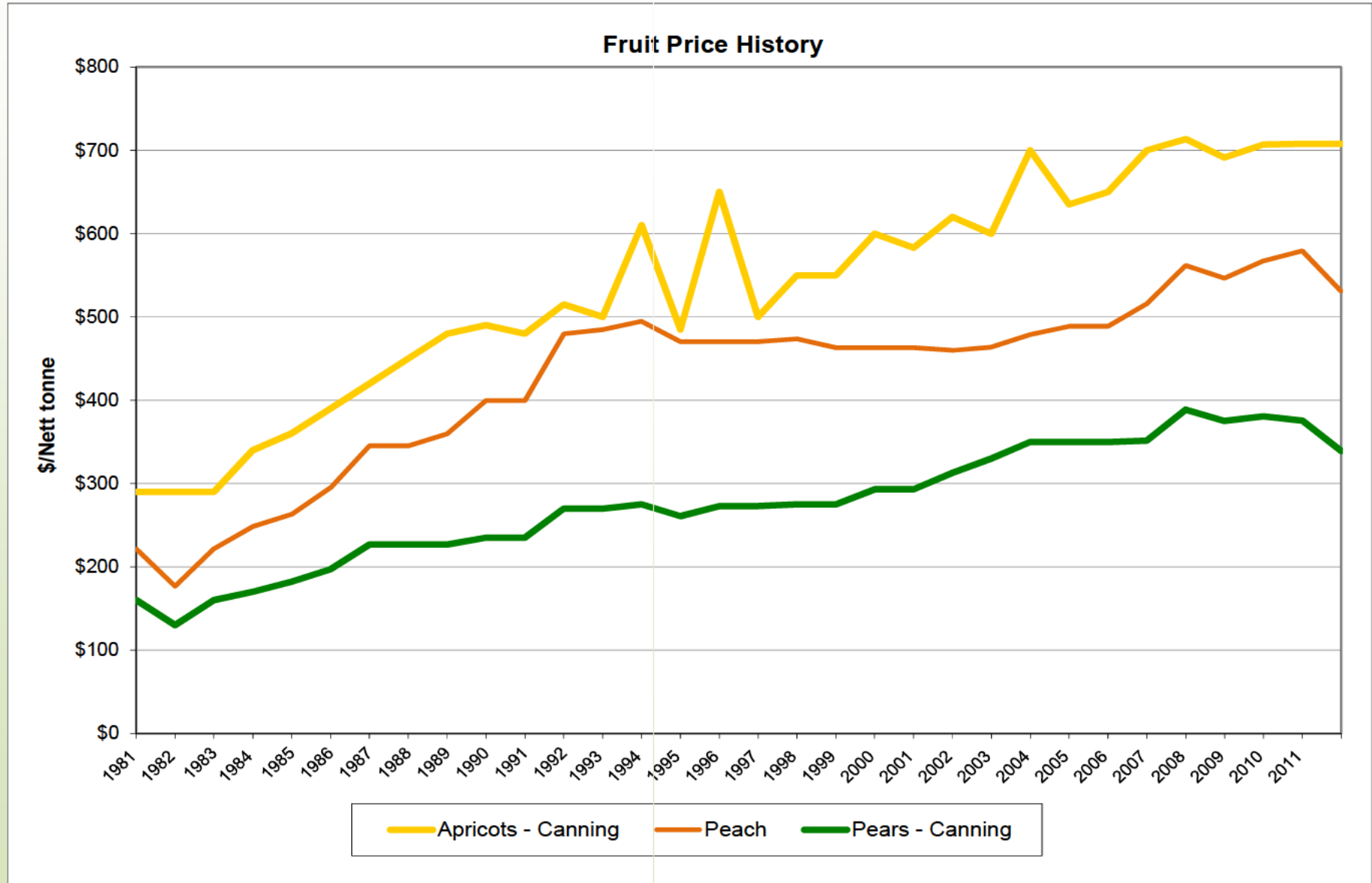
PRICE IN AUD

		2007/2008	2008/2009	2009/2010	2010/2011	2011/2012
PEACHES	AUD	565	572	588	579	531
	USD	435	484	554	601	534
PEARS	AUD	389	393	404	396	339
	USD	300	333	380	411	341
APRICOTS	AUD	715	721	724	708	708
	USD	551	610	682	735	712





Fruit Price History





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Thank you.





<http://www.spcnaturesfinest.co.uk/about> - accessed 06 November 2013



<http://spcardmona.com.au/about-us/international-business> - accessed 6 November 2013



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USA Stonefruit Lands in Australia

Following approval of a protocol in Australia, Fresh Produce Group have secured the rights to import stone fruit from California for the first time ever.

This will be the first time shoppers in Australia will be able to buy peaches and nectarines in the winter period when they are out of season locally and can't be grown.

FPG have been anticipating the legislation change for some time, and have strong relationships with selected growers in California where the exceptional tasting fruit is sourced from.

The stone fruit will be available until mid-October when the first domestically grown crops are likely to be available again and FPG will focus its efforts back on the local supply.

Early indications suggest the sweet and juicy peaches and nectarines are in high demand!

Wholesale supply contact:-

T: 02 9704 8380



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 Gorodok, Lviv region, 81500, Ukraine
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New fridge pack ready


Friday August 06 2004
 Volume: 32 Issue: 32

SPC Ardmona (SPCA), Australia's largest producer of canned fruit, has begun trial production of its 1kg Fridge Pack with its partner in Spain and expects finished goods to be on British shelves by September. SPCA finished installing packaging equipment costing A\$4.1 million (US\$2.9 million) a week early and full output is expected to be reached by the end of the month. The company hopes its assault on the UK, where retailers Tesco, Safeway and Sainsbury's have all agreed to stock the Fridge Pack, will net it A\$15 million from the sale of 6-8 million units. Initially SPCA's product range will comprise three fruit varieties, but another three could be added if demand warrants it. In Australia, the integration of the newly acquired Henry Jones DXL jam business is proceeding as planned, managing director Nigel Garrard told local media. An annual cost saving of A\$900 000 has already been made through staff cuts and the company forecasts cost savings of A\$3.5 million a year in the future.


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Partner in Spain
Friday June 04 2004
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SPC Armona (SPCA) has announced a new partner located in Murcia, southern Spain. Columbia Fruits, owned and run by the Marin family, processes about 7 000 tonnes of peaches, 7 000 tonnes of apricots, 6 000 tonnes of strawberries and about 5 000 tonnes of pears annually. SPCA managing director Nigel Garrard said the alliance should help the company build its presence in the UK.

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