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SAFEGUARD INQUIRY INTO THE IMPORT OF CANNED PROCESSED FRUIT PRODUCTS FROM AUSTRALIA - ACCELERATED REPORT

COMMENTS BY THE SOUTH AFRICAN GOVERNMENT

INTRODUCTION

The South African government as an interested party in this investigation appreciates the opportunity extended by the Australian Government in the Accelerated Report of the Productivity Commission dated 18 September 2013 to submit further comments to this safeguard investigation, including written and oral submissions made on the Issues Paper as per Article 3 of the WTO Safeguards Agreement.

South Africa is a major player on the world's markets in the Agro-Processing sector. The government noted with concern the initiation of an anti-dumping investigation as well as a safeguard investigation of subject products from a sector that is the third largest contributor to GDP, after chemicals and metals. According to the Industrial Policy Action Plan of South Africa, the food-processing sector is the largest manufacturing sector in employment terms. World-class infrastructure, counter-seasonality to foreign markets, vast biodiversity and competitive input costs make South Africa a strong player in global markets with regard to the agro-processing sector.



South Africa is a major supplier of canned processed fruit products to the Australian market with regard to peaches and apricots. The government is concerned with regard to the impact this investigation will have on the South African agro-processing sector as well as its related association (the South African Fruit and Veggies Cannery Association), if measures are implemented.

The South African government noted the findings in the Accelerated Report by the Productivity Commission and it seems clear that the imposition of safeguard measures is unwarranted in this regard. The government further notes with concern that SPC Ardmona also applied for anti-dumping measures on the prepared or preserved peach products imported from South Africa.

COMMENTS TO THE ACCELERATED REPORT

Product under investigation

The products subject to the initiation of this safeguard investigation incorporated the following processed fruit products of the Australian customs tariff:

- 2008.30.00 citrus fruit,
- 2008.40.00 pears,
- 2008.50.00 apricot,
- 2008.70.00 peaches, including nectarines,
- 2008.97.00 mixtures,
- 2008.99.00 other.

The Accelerated Report recommended exclusion of the products under tariff subheading 2008.30.00 — citrus fruit (prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included). These excluded subject products represented 66% of China's exports to the Australian

market. As indicated in the report, the South African government supports the Commission's finding that there is no domestically produced or like as well as directly competitive products that would fall within this tariff heading and therefore recommended that provisional safeguard measures are not warranted for processed citrus products.

Domestic industry

The domestic industry in the initiation of a safeguard investigation on imports of canned processed fruit products was defined according to WTO Article 1 of the Safeguards Agreement, as indicated in the Issues Paper as well as the Accelerated Report. The domestic industry, SPC Ardmona (a food processing company), is considered to be the Applicant in this investigation as well as sole producer of processed fruit products which still has a dominant share of the Australian market¹.

South Africa noted that the fruit growers as part of the public interest considerations in the investigation process were afforded an opportunity to submit comments in this investigation. We support the Commission's determination in the Accelerated Report that the fruit growers were considered not to be part of the domestic industry in this investigation. Further, the Commission determined that fresh fruit was purchased by the processor as an intermediate input and at that point the grower's involvement in the production process terminated.

We trust that the Commission even though considered the public interest in its determination in the Accelerated Report, will adhere to the requirements of the WTO Agreement on Safeguards with regards to its decision whether or not the increase in

¹ WTO Safeguards Agreement Article 4 2(a) provides that [in determining injury or threat thereof, a "domestic industry" shall be understood to mean the producers as a whole of the like or directly competitive products operating within the territory of a Member, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products].

imports are attributed to the serious injury suffered by the “domestic industry”², an industry which has already been determined to be the Applicant SPC Ardmona³.

Like product

The like product determination by Commission indicated that processed and fresh fruit products are to some degree substitutable and in competition with each other, the relationship is insufficiently close for fresh fruit to be considered ‘directly competitive’ since these products had distinct physical characteristics and involved different production processes. The Commission further determined that the processing of fruit involved cutting and cooking the fruit and materially transformed the fruit from its original state. The potential end use of fresh and processed fruits was determined by the Commission not to be identical, with fresh fruit allowing a broader range of applications. South Africa is in support of the Commission’s determination in this regard.

Processed Fruit Products Preliminary Assessment

The South African agro processing sector is a significant component of agriculture which has a central role to play in building a strong economy and in the process, reducing inequalities by increasing incomes and employment opportunities for the poor, while nurturing inheritance of natural resources.

² WTO Safeguards Agreement Article 4 1(a) provides that the determination of “serious injury” shall be understood to mean a significant overall impairment in the position of a domestic industry.

³ The WTO Appellate Body in *US – Lamb* (DS 177, 178), in looking at whether producers of live lambs are part of the lamb meat industry, determined that a ‘substantial coincidence of economic interests’ is not sufficient to be considered a domestic producer.

South Africa appreciates and supports the Commission's determination in the Accelerated Report that the evidence of a recent increase in import volumes of processed pears, apricots, as well as those of peaches and nectarines products appeared insufficient to meet the requirement under Article 2.1 of the WTO Agreement on Safeguards.

South African imports of processed mixtures in the Australian market were determined to be 24% as compared to those of China which are 40%. The Commission determined that the increase in imports of these subject products relative to domestic production was significant and the evidence in the analysis of these products may be sufficient to meet the requirements of the Agreement on Safeguards. However, we are of the opinion that it is questionable whether the increase in imports of mixtures meets the standard set by the WTO Appellate Body in the Argentina Footwear dispute which stated that the increase in imports in a safeguard investigation must be "recent enough, sudden enough, sharp enough and significant enough".

Serious Injury

The commercial reality of the declining market for processed fruits products over time as well as the related challenges is a global issue not isolated to Australia. The unfavorable situation resulted in long-term reductions in the domestic demand for processed fruit products.

The Commission determined that there is sufficient cumulative evidence of actual or threat of serious injury to the domestic industry. However, the serious injury or a threat thereof suffered by SPC Ardmona is not related to the increased imports of processed fruit products in the domestic market. Other factors not related to increase in imports

significantly impacted on the serious injury to the Applicant in this investigation. The challenges experienced by the domestic industry included weather conditions, flooding, high input costs including labour, water and electricity, exchange rate, reduced export volumes, substitution and diversification of supply sources and unfair trade practices of supermarkets and retailers in the domestic market. We support the Commission in taking these challenges into account in its determination in the Accelerated Report.

It is clear that the challenges mentioned above are the major source of the injury being experienced by the Applicant in this investigation. We trust that the Commission will adhere to the requirements of the WTO Agreement on Safeguards with regards to its decision whether or not the increase in imports are attributed to the serious injury suffered by the domestic industry.

Conclusion

The South African government is concerned with the adequacy of information provided by the Applicant and accepted by the Commission as prima facie proof that there was a prima facie case of imports surge as well as a positive determination of serious injury or threat thereof. The key findings and conclusions by the Commission at this stage of the investigation do not indicate the justification for imposition of any safeguard measures either preliminary or final.

The Commission's preliminary determination in the Accelerated Report which is based on legal and commercial arguments further supported by leading WTO precedent as well as consideration of comments from interested parties, either written or oral, demonstrate that there is no basis as well as justification for the continuation of this safeguard investigation.

An interested party in this investigation, South Africa appreciates the opportunity to submit further comments in this investigation. Further information as well as

clarifications sought will be submitted when required.