

Australian Government Productivity Commission

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Attention: Carole Gardner/Alex Maevsky/Steward Turner
Your Ref:
Our Ref: M187/20131110
Date: 10 November 2013



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Dear Productivity Commission,

SAFEGUARD INQUIRY INTO THE IMPORTS OF PROCESSED FRUIT & TOMATO PRODUCTS – SOUTH AFRICAN FRUIT AND VEGETABLE CANNERS' ASSOCIATION: SUBMISSION ON FINAL PUBLIC HEARING HELD IN MELBOURNE ON 28 OCTOBER 2013

We refer to the abovementioned Final Public Hearing held in Melbourne on 28 October 2013 (the "Final Public Hearing"). We hereby submit our comments, on behalf of the South African Fruit and Vegetable Canners' Association, on the submissions made by interested parties at the Public Hearing.

1. Submission by Dr Sharman Stone

- 1.1. Dr Stone alleges that the facts presented to the Productivity Commission clearly demonstrated a significant, sudden and sustained additional volume of imports entering Australia. In our opinion the facts relied on by the Productivity Commission, namely the official import statistics obtained from the Australian Bureau of Statistics, do not in fact support Dr Stone's allegation. To the contrary, as the Productivity Commission has determined in its Accelerated Reports, the facts do not indicate either an increase or a sudden enough or significant enough increase that meets the requirements of Article 2.1 of the WTO Agreement on Safeguards.
- 1.2. Dr Stone hints at the decrease in exports by SPC Ardmona as being caused by the imports. We are however of the opinion that the decrease in exports are not

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in fact caused by the imports, but rather by a strong Australian Dollar, adverse climatic conditions as well as SPC Ardmona's foreign operations whereby they service their traditional export markets from these foreign operations. In regard to these foreign operations please refer to the annexure entitled "Foreign Operations". From this annexure, originating from SPC Ardmona, it is clear that SPC Ardmona does have foreign operations which supply SPC Ardmona's traditional export markets¹. We understand that SPC Ardmona currently supplies the United Kingdom and selected European markets with multiserve products from its Spanish Joint Venture (and not from Australian products) whilst it supplies these markets with snack packs from its Joint Venture in Thailand². We further understand that its joint ventures in China and Thailand supply the Asian markets. As we have demonstrated previously SPC Ardmona also imports some of the subject product into Australia from South Africa branded as SPC Ardmona products. The sourcing in these markets by SPC Ardmona and supply to these markets by SPC Ardmona are also confirmed on page 5 of Annexure E of our submission in respect to the processed fruit enquiry dated 17 July 2013. As such we are of the opinion that the decrease in SPC Ardmona exports is not caused by any imports but by other factors³.

- 1.3. We note Dr Stone's assertion that the growers should form part of this investigation. In this regard we refer the Productivity Commission to our opinion on the matter as per our submission dated 24 October 2013.
- 1.4. We note that Dr Stone states that the two retailers (Woolworths and Coles) have over 80% of the retail market. This seems contradictory to the statement by SPC Ardmona that ALDI in fact has a larger part of the retail market for the subject products than that of Woolworths and Coles combined.
- 1.5. Dr Stone states that the two retailers (Woolworths and Coles) took advantage of the "very cheap imported fruit" to boost their private label products. In our opinion this is contradictory with what has been submitted in this investigation thus far. We note that the Productivity Commission has received evidence of the fact that one retailer's (ALDI, who sources the majority of its products from SPC Ardmona) entry into the Australian market prompted other retailers (Woolworths and Coles) to also pursue a private label strategy. We also draw the Productivity Commission's attention to the fact that we have made submissions that SPC Ardmona, until very recently, did not want to supply private label products to the retailers. We also note that the Productivity Commission has received additional submissions in support hereof. We also submit herewith the Australian Anti-Dumping Commission's Statement of Essential Facts in terms of which that authority independently finds that the

¹ Please also refer to the annexures entitled "SPCA Spain1" and "SPCA Spain2" for additional proof of SPC Ardmona's Spanish operations.

² Please refer to the attachment entitled "Sample" for photographic evidence hereof.

³ Including those listed herein as well as our previous submissions.

retailers confirmed that until recently SPC Ardmona did not want to supply private label products⁴. In addition a continuous supply of products is a source of concern for the retailers and adverse climatic conditions which result in shortages will also prompt retailers to source products outside of Australia⁵. We submit that the South African producers were initially contacted by the Australian retailers to supply product due to shortages and SPC Ardmona's refusal to supply private label products, rather than by any price motivation.

- 1.6. Dr Stone asserts that Australia's "very lax and inappropriate labelling laws" confused consumers as they didn't know the origin of the products that they consumed. We note that the subject products, whether imported or not, do in fact contain a country of origin label. In this regard we also draw the Productivity Commission's attention to our submissions in which we have clearly demonstrated that SPC Ardmona actually uses substantial volumes of imported products and label them as SPC's own brand.
- 1.7. Contrary to what Dr Stone asserts, we are of the opinion that there is no emergency to justify the imposition of any safeguard measures as time is not of the essence. In fact we are of the opinion that there is no need whatsoever to impose safeguard measures. We have supplied the Productivity Commission with evidence that Woolworths, Coles and ALDI have shifted their sourcing of private labels to SPC Ardmona following the initiation of this investigation. Consequently for the immediate future there will be either no imports or substantially less imports than before. As stated at the public hearing, it is also our understanding that the Australian retailers would source their private label products from SPC Ardmona for three years as in our experience this has been the norm in the Australian industry. Hence there is no need for safeguard measures.

2. Submission by Greater Shepparton City Council

- 2.1. As submitted in our previous submissions, we are of the opinion that any alleged injury, whether serious or not, has not been caused by imports in such increased quantities as required under the WTO Agreement on Safeguards. As per our previous submissions, we have drawn the Productivity Commission's attention to a host of factors which have caused and are causing injury to the SPC Ardmona. The submission by the Greater Shepparton City Council also draws attentions to the fact its economy has been harmed in terms of "consumer confidence and investor confidence, by floods, drought, introduction of the carbon tax, the draft Murray-Darling Basin Plan and the introduction of sustainable diversion limits". In our opinion these abovementioned factors as

⁴ Pages 28 and 29 of the Statement of Essential Facts.

⁵ Page 29 of the Statement of Essential Facts.

well as the factors mentioned herein and in our other submissions are in fact causing the alleged injury and not the imports.

- 2.2. We also note that it is alleged that the imported products may be of inferior quality. Although we cannot respond on behalf of all imports we can state that the South African sub-standard and standard grade product are superior to the choice grade (or first grade) product produced by SPC Ardmona. This is evidenced by the fact that when SPC Ardmona imports South African produced products for its SPC Ardmona labelled premium products it is in fact specified to be standard grade or sub-standard grade products. Should the Productivity Commission require further information hereon, we can supply the Productivity Commission with actual products which will demonstrate the quality difference we assert.
- 2.3. We note that the Greater Shepparton City Council states the “cheap” imports is allegedly causing injury. In our opinion the question in a safeguards investigation is not whether or not the imports are in fact “cheap”. The question that should be investigated in a safeguards investigation is whether there has been an increase in imports (the price is irrelevant). Once it has been determined that the requirements of Article 2.1 of the WTO Agreement on Safeguard have been met, then an analysis of serious injury needs to be undertaken. If there is indeed serious injury (or threat thereof), then the question that needs consideration is whether the increased imports (not exclusively the price of the imports) cause the serious injury (or threat thereof)⁶. In this determination the investigating authority must also investigate other causes (especially those listed in Article 4.2⁷ as well as those brought to the attention of the investigating authority) which could be contributing to any serious injury and it must ensure that the injury caused by factors other than the increased imports must not be attributed to increased imports⁸. Although pricing is not listed as any of the relevant other factors in Article 4.2 of the WTO Agreement on Safeguard (and as such there is no legal obligation to perform an analysis of the imported sales prices versus the domestic sales prices), of course sales price considerations may be considered in evaluating these other factors. Yet, price cannot be the sole consideration and due consideration should be given to other factors which may also contribute to any alleged serious injury.
- 2.4. We also reiterate that SPC Ardmona will no longer be suffering any injury as a result of any imports as in the immediate future there will be either no imports or substantially less imports than before due to the fact that the retailers have sourced their requirements from SPC Ardmona. As stated at the Final Public Hearing, it is also our understanding that the Australian retailers would source

⁶ Article 4 of the WTO Agreement on Safeguards.

⁷ Of the WTO Agreement on Safeguards.

⁸ Article 4 of the WTO Agreement on Safeguards.

their private label products from SPC Ardmona for three years as in our experience this has been the norm in the Australian industry. Hence there is no need for safeguard measures.

3. Submission by Turnbull Bros Orchards Pty Ltd

- 3.1. We agree with Mr Turnbull's submission that had the Australian dollar not been this strong then the domestic industry "wouldn't have the problem we've got" as "it's been dollar driven". This coincides with our previous submissions on this aspect.
- 3.2. We also agree with Mr Turnbull's submission that supermarket's private labels will lead to a reduction in SPC Ardmona branded products. As previously submitted it is our opinion that the supermarkets' private label strategy and SPC Ardmona's strategy (at least until recently) were at odds and this is to blame for any alleged serious injury and not the imports. Although we agree with Mr Turnbull that internationally there are diminished sales of the subject product, we do not agree that this is caused by supermarkets' private label strategies. Processors, such as SPC Ardmona, are still free to supply these private labels in addition to its own labels (and indeed the market allows for both private label and producer labels to co-exist). In addition processors can supply innovative private label products to the retailers in order to increase its value proposition. Internationally the consumption of canned and processed fruit and tomatoes is on the decline due to the yearlong availability⁹ and price of fresh produce¹⁰ which consumers prefer above the processed variety. We have already provided the Productivity Commission with some proof of this trend. Our offer also stands that the two South Africa canners can supply the Productivity Commission with its confidential commercial information substantiating the trend¹¹. We further draw the Productivity Commission's attention to the fact that internationally retailers are pursuing a private label strategy not only in the subject product but also in all food products. To this end please refer to pages 17 to 19 of the attachment entitled "2020 industry at a crossroads" which indicates that although Australian retailers are lagging far behind the international trend of increasing private labels, it is clear that the international trend is focussed towards the growth of the private labels. It is thus up to SPC Ardmona to decide whether it will supply the supermarkets with these private

⁹ Please refer to the annexure entitled "Fresh Produce".

¹⁰ Please refer to page 3 of annexure entitled "CCA Annual Report 2012" which states that the deflation of fresh fruit prices, private label strategy and the high dollar has caused SPC Ardmona to become uncompetitive. There are numerous references thereto throughout the report. Page 53 of the annexure entitled "CCA Annual Report 2011" in turn highlights that the reason for the restructuring and consolidation of the SPC Ardmona business is for its long term growth and profitability. It also notes that SPC Ardmona has exited certain domestic supply contracts as well as international export markets due to profitability.

¹¹ Provided the information remains confidential.

labels¹². As mentioned above, we have submitted evidence, as well as others, that SPC Ardmona decided not to supply the private labels (at least until recently). In addition, the report highlights that certain factors, such as rising costs¹³, strong Australian Dollar¹⁴ and supermarket discounts¹⁵ impact on processors' margins. In our opinion these factors should be taken into consideration when analysing the causation.

4. Submission by K. Besim and Co

- 4.1. We agree with Mr Besim that there has been a consolidation of canners in the past decades. As submitted previously this is an international trend which has also affected the South African canners. We do not however believe that this is as a result of imports of processed fruit and tomatoes.
- 4.2. Mr Besim also makes the pertinent point that there are many things to consider, such as where fruit will be sourced from when adverse climatic conditions are at play. In our opinion, should safeguard measure be imposed and adverse weather conditions do result in shortages in Australia, there may be adverse conditions emanating from being reliant on only one supplier (being SPC Ardmona) which needs to be considered.
- 4.3. In our opinion Mr Besim also correctly point out the injury caused by adverse climatic conditions and rising costs which coincides with the information that we have submitted on previous occasions. In addition Mr Besim highlights the higher import tariffs faced in SPC Ardmona's export markets which could also contribute to SPC Ardmona's strategy to service export markets from its foreign operations and may indeed contribute to the loss of exports from Australia. We request that the Productivity Commission considers the injury that these factors have caused to the domestic industry and does not attribute such injury to the imports.
- 4.4. In terms of Mr Besim's opinion on labelling laws we again state that the subject products do in fact contain country of origin labelling. We also again state that SPC Ardmona uses imported subject products for its own SPC brand which clearly state the country of origin (as not being Australia).
- 4.5. In terms of Mr Besim's opinion on testing we cannot respond on behalf of all imports. However we can confirm that all fresh fruit in South Africa has stringent testing requirements contrary to the opinion of Mr Besim. As this allegation has no bearing on the present enquiries, we do not elaborate hereon further.

¹² Please note that the report states that there is indeed room for a processor's brand.

¹³ The foreword and pages 25 and 30.

¹⁴ Page 23.

¹⁵ The foreword and pages 13 and 22

5. Submission on behalf of SPC Ardmona

- 5.1. In respect to the procedural fairness issue raised by SPC Ardmona we reiterate what has been stated at the Final Public Hearing.
 - 5.1.1. Firstly we have indeed submitted our written submissions on both investigations prior to the deadline. Furthermore prior to the commencement of the meeting on the 28th of October, we provided the Productivity Commission with electronic copies of these submissions as well as proof that it has been submitted as we were informed that our submissions were not received. After the Final Public Hearing we also provided further electronic copies of confirmation of our submission as well as subsequent correspondence enquiring whether the Productivity Commission did indeed receive our two written submissions. We have also enquired from the Productivity Commission why it seems our submission and correspondence in the matter were not received. We understand that the Productivity Commission is still enquiring as to any technical problems it may have experienced. We would like the record to reflect that we in fact did submit our submissions prior to the deadline.
 - 5.1.2. Secondly we were allowed to make a presentation of our written submissions which were not received by parties (for reasons which we are not at fault). However no further enquiries were made into our submission and indeed we agreed thereto in the interest of fairness. We would like to note that at the Initial Public Hearing in Canberra the interested parties had no sight of the non-confidential information supplied by SPC Ardmona leading to the initiation of this investigation. Although some parties made reference hereto we did not as we understood that the oral submissions could be supplemented. As such we question why SPC Ardmona has raised this procedural issue when it is clear that SPC Ardmona can make a written submission on either our written submission or what we state at the Final Public Hearing.
 - 5.1.3. Thirdly we'd also like to note that the deadline was not 20 October 2013 as alleged by Dr Heilbron, but 25 October 2013 and we submitted our submissions prior to this date.
 - 5.1.4. Fourthly, as we did not have the opportunity to properly engage with the Productivity Commission at the Final Public Hearing we would request that the Productivity Commission contact us should it require any clarification or additional material on what we have submitted in writing.

- 5.2. In respect of the alleged breaches in confidentiality, we are of the opinion that the Accelerated Reports enable interested parties to understand the essence of these reports without compromising any confidential or commercially sensitive information. The Accelerated Reports merely show that there has been a reduction in profit and employment, although interested parties do not know from what basis the reduction comes from. The information on capacity is available publicly as we have supplied it to the Productivity Commission and the data on which market share is based is also publicly available. As such we do not consider there to be any breach of confidentiality.
- 5.3. We note that the Aztec data does not include ALDI's sales information but does include the major retailers Woolworths, Coles and Metcash. It is our understanding, based on South African sales¹⁶, that these three supermarkets have very close to the entire market for the subject product. If this is indeed not the case, the Productivity Commission should request ALDI or SPC Ardmona to provide them with information in order to quantify the market share of ALDI in the subject products. We do note with concern SPC Ardmona's reluctance to provide information on ALDI's sales. In this regard we are of the opinion that any information supplied by SPC Ardmona on ALDI's sales should be verified by ALDI. Nevertheless we again express our opinion that not only the retail sales data should be considered but the entire domestic market, which includes all sales channels. We further note that we were under the impression that SPC Ardmona has been complaining about Woolworths and Coles' private label and not that of ALDI. SPC Ardmona has been ALDI's major supplier of private label products¹⁷ and recently¹⁸ they announced that all of their 825g cans will also be supplied by SPC Ardmona. As such we are of the opinion that the consideration of ALDI's sales data in determining whether any injury has been caused by imports will not in fact lead to a determination that safeguard measures may be imposed. We do further note that ALDI's imports are of course included in the official import statistics and that ALDI has also submitted information to the Productivity Commission on its sourcing of the subject products from imports and SPC Ardmona and as such it is our understanding that it has in fact been considered by the Productivity Commission. We note that Dr Heilbron states SPC Ardmona did in fact provide information in this regard in respect to ALDI in the initial submission. We note that the public file does not reflect this.
- 5.4. We note that the Productivity Commission relied on some information submitted by some of the parties, some of which we assume originate from the Canned Fruits Industry Council Australia (of which the two grower associations and SPC Ardmona are members), in order to draw a conclusion on an increase in costs. We note with concern that SPC Ardmona states that it has not provided any

¹⁶ Which in many tariff sub-headings represent a sizable portion of all imports according to the official import statistics relied upon.

¹⁷ As submitted by ALDI.

¹⁸ Please refer to our submission on the Accelerated Report for the Processed Fruit Investigation.

breakdown of fixed and variable costs and we have to question why SPC Ardmona elected to omit this information, which information is a key factor in determining whether any alleged serious injury is in fact caused by imports.

- 5.5. We further note SPC Ardmona's concern with any information either SPC Ardmona or the Canned Fruits Industry Council Australia (of which the two grower associations and SPC Ardmona are members) presented at international conferences. In our opinion it is rather unlikely that such information presented, with the input no less of SPC Ardmona and the growers, would be far removed from the actual data. Certainly historic data would be accurate. Mr Kelly of SPC Ardmona seems to admit same when stating "... you used the overseas conference data, which we said wasn't incorrect at the time". Mr Kelly of SPC Ardmona seems not to favour the information submitted by SPC Ardmona and the Canned Fruits Industry Council Australia as "the conference presentation data cannot be confirmed to be aligned with the products that are relevant to the inquiry". The information contained in these presentations relate to the subject product as defined in the initiation notice and as defined in the Accelerated Reports. In our opinion the information is thus aligned to the subject product relevant to this inquiry¹⁹.
- 5.6. We are of the opinion that the Productivity Commission is correct in its approach to consider the impact of imports on unit prices at an aggregate level as this reflects the authority is has been given to conduct this investigation in respect of the tariff subheading identified in the WTO Notifications.
- 5.7. In our opinion an analysis of sub-markets within a specific tariff subheading with a view to creating a new tariff line for purposes of imposing either a tariff or quota is untenable.
 - 5.7.1. Firstly the WTO Notifications defines the tariff subheadings which are relevant and need to be considered for purposes of these two safeguard investigations.
 - 5.7.2. Secondly this definition of the subject of the safeguard investigations is supported by the Terms of Reference.
 - 5.7.3. Thirdly, all parties have submitted comments on the defined tariff subheadings as it was understood that these investigations are concerned with those defined tariff subheadings and not some sub-markets within those tariff sub-headings. We note SPC Ardmona's insistence²⁰ on focusing on the multiserve processed fruit product sold at the retail level, however this is not the scope of the investigations. Prior to the Final Public Hearing,

¹⁹ It may not be fully aligned with the multiserve processed fruit products as SPC Ardmona contends, but the multiserve processed fruit products are not the only subject of this investigation.

²⁰ As contained in the public record up to 28 October 2013.

none of the interested parties have been made aware of this requested need to investigate sub-markets within the defined tariff subheadings. As such no interested party has seen any information in this regard that it may submit comments on.

- 5.7.4. Fourthly we are of the opinion that the defined tariff subheadings do not distinguish between different containers sizes, different product offerings, suitability for different sales channels or any other differences which may in fact be found in those defined tariff subheadings. We are of the opinion that it would be very difficult if not impossible to distinguish the actual differences within the import statistics relied upon for purposes of initiating and conducting these investigations. As such we are of the opinion that due to the fact that the investigations are concerned with the impact of the imports of these defined tariff subheadings, it would be very difficult if not impossible for the Productivity Commission to establish whether there was indeed an increase in imports of these products falling within certain unknown sub-markets (as contented for by SPC Ardmona) contained in the defined tariff subheadings as required by the WTO Agreement on Safeguards.
- 5.7.5. Fifthly, if it is indeed possible for the Productivity Commission to obtain reliable information on the imports of the products falling within these unknown submarkets, we are of the opinion that the investigations would again have to be notified at the WTO, the Terms of Reference would have to be republished and the investigation process should be restarted as the scope of the investigation has then changed significantly and interested parties would need to have an opportunity to comment on the newly initiated investigations as required by Article 3 of the WTO Agreement on Safeguards.
- 5.8. We share the opinion of the Productivity Commission that in determining whether there has been an increase in imports as required under the WTO Agreement on Safeguards the Productivity Commission is bound to the wording of the WTO Agreement on Safeguards. The wording clearly states that the investigation should consider whether the "product is being imported in such increased quantities, absolute or relative to domestic production". Thus where there is no clear evidence that there is an absolute increase and regard is had to whether there is in fact a relative increase which meets the requirements of Article 2.1 of the WTO Agreement on Safeguard, the Productivity Commission is bound to consider the imports in relation to the domestic production and not the domestic consumption of domestic production or some other departure from the actual domestic production. We note that the Productivity Commission will surely consider the entire domestic production and not only the production of multiserve processed fruit products and will take into consideration data presented by SPC Ardmona and the Canned Fruits Industry Council Australia

(of which the two grower associations and SPC Ardmona are members) presented at international conferences. We further note that the Productivity Commission will, in its injury analysis, surely seek to verify what volume²¹ of the stock write-off is in fact discontinued lines which is not stock that cannot be sold due to any import competition but discontinued for other reasons. Lastly we are of the opinion that SPC Ardmona is incorrect in stating that the future will have less domestic production and this should be taken into account in determining the relative ratio of imports to domestic production. We cannot find any authority in either WTO law or jurisprudence to support SPC Ardmona's contention. If it indeed was possible, the analysis should then also take into consideration future imports, which due to the Australian retailers' almost exclusive sourcing of their needs from SPC Ardmona, would be negligible or at least significantly reduced.

- 5.9. It is noted that SPC Ardmona disputes the fact that its corporate strategy has been to use foreign processing plants to supply SPC Ardmona's branded products in export markets. In our opinion we have provided evidence to support this in previous submissions and the Productivity Commission also rightly relied on the academic study referenced in the Accelerated Report. This submission also contains substantial evidence to support this fact.
- 5.10. In relation to SPC Ardmona's questioning of the proof submitted showing that until recently it did not want to supply private label products to the retailers we refer the Productivity Commission to the relevant section of paragraph 1.5 above.
- 5.11. We also note that Mr Ken Wilson's testimony that the prices went up in Australia by 40 per cent post the merger between SPC and Ardmona relates to the prices that SPC Ardmona presented to the retailers and not the retail data and hence the Aztec data would not necessarily reflect a 40% increase.
- 5.12. In our opinion the likelihood of a closure of SPC Ardmona seems slight. In fact given the fact that the retailers are now obtaining their private label needs from SPC Ardmona and that therefore there should be no imports or significantly reduced import volumes, it is more likely that SPC Ardmona will not only survive but may become a lucrative acquisition prospect.

We thank the Productivity Commission in this regard for the opportunity to allow interested parties to submit comments on the Final Hearing held at Melbourne and we look forward to receiving your determination(s) in due course.

Yours faithfully

²¹ We believe this number to be significant.

Rian Geldenhuys

Director