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## Submission to Productivity Commission's research on Developments in Anti-Dumping Arrangements

## **A] Introduction:**

SPC welcomes the opportunity to participate in Productivity Commission's research on Developments in Anti-Dumping Arrangements. SPC is Australia's last remaining major fruit and vegetable processor, located in the heart of Victoria's Goulburn Valley region. We support over 1500 jobs, 115 fruit and vegetable growers, numerous small and medium enterprises and contribute \$165 million in economic output within the region<sup>1</sup>. We source approximately 97% of our produce from Australian growers to create iconic brands such as SPC, Goulburn Valley, IXL, Ardmona and Taylor's.

SPC has been an active user of the Anti-Dumping system and has been an applicant in three Anti-Dumping cases since 2013. SPC has also participated in a review with ADRP, an exemption inquiry and a few accelerated reviews.

SPC supports the continuation of the Anti-Dumping and Countervailing system and considers that it vital to establish an effective trade remedies mechanism in light of increasing global trade.

## **B] Trends in anti-dumping activity and possible drivers of these trends**

Recent years have seen a significant rise in imports of foods into Australia. In particular, SPC has been impacted by imports from China, South Africa and Italy.

The products are predominantly sold to consumers through retail supermarkets or as ingredients to institutional customers in the food service channel through distributors. Consumers and customers in both these channels are highly price sensitive and a small price differential can lead to volume gains/losses.

Various factors can be attributed to this increase in imports:

- Australia's low tariff and non-tariff barriers compared to other destinations;
- Ease of import procedures compared to some other destination markets;
- Excessive global supply compared to demand;

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<sup>1</sup> Economic Impact of Potential withdrawal of SPC Ardmona from Greater Shepparton Region-Greater Shepparton City Council, 2013

- Need for economies of scale for investment returns;
- Aggressive private label strategies by the retailers; and
- Various Government export support programs and agriculture subsidies.

In 2013, SPC lodged two Anti-Dumping applications:

- Investigation into imports of canned peaches from South Africa
- Investigation into imports of canned tomatoes from Italy

The investigation into canned peaches from South Africa concluded in Dec 2013, establishing lower than de minimus dumping margins.

The investigation into dumping by exporters of canned tomatoes from Italy concluded that 103 out of the 105 exporters were dumping. The Anti-Dumping Commission issued a preliminary determination on the case in November 2013 and final notice in April 2014. Dumping duties ranging from 4% to 26.35% were applied. More than 90 exporters were found to be non-cooperative in the process.

In May 2014, the exporters lodged an appeal with the ADRP challenging the ADC's decision. However, the Review Panel upheld the decision of imposition of duties in September 2014.

Subsequently, the exporters lodged an application seeking exemption of duties on organic canned tomatoes, Cherry tomatoes and San Marzano variety of canned tomatoes. In Aug 2015, the ADC published its findings upholding its original decision and not granting exemption on these products.

To date more than 7 new exporters have applied for accelerated reviews of duties. This is likely to be an ongoing activity as new companies seek to export to Australia.

In 2015, SPC lodged another Anti-Dumping application alleging dumping by the two exporters that had missed the duties in the first investigation. This application further highlighted the impact of subsidies paid to the tomato growers in Italy under the EU's Common Agriculture Policy and called for that particular market situation to be assessed. The Statement of Essential Facts published on 4<sup>th</sup> Sept 2015 confirmed subsidies impact and a Preliminary Determination notice was published with dumping margins of 7.5% and 5.1% on the exporters.

The above highlights that dumping activity is widespread in the industry. It should also be highlighted that many competing nations offer subsidy and export support programs to their agriculture and food industry. In contrast, Australia has one of the lowest levels of government support and assistance globally.

Access to a fair, strong and effective Anti-Dumping system is therefore imperative to ensure that a level playing field can be established for the Australian domestic industry.

**C] How the anti-dumping system is operating, including outcomes for local industries and consequences for broader economic, trade and competition policy goals.**

SPC supports the current Anti-Dumping system as being in line with the WTO requirements of the Anti-Dumping Agreement.

There are some improvements that can be undertaken to improve operational effectiveness. (Some of these are covered in the next section).

SPC notes that avenues are available to provide feedback on improvements through forums such as ITRF, direct engagement with Department of Industry's or Anti-Dumping Commission's Policy team and/or through initiatives initiated by the Anti-Dumping Commission such as the recent Ernst and Young project.

Recent Anti-Dumping reforms announced in December 2014 and the changes announced in the Anti Circumvention legislation are steps in the right direction. However, as the changes are fairly recent, the full impact of these reforms are yet to be observed.

The Anti-Dumping Commission's affirmative decision in SPC's tomato case has had a positive impact on the sentiment and confidence in the Australian tomato industry. Imposition of duties has led to tomato growers returning to the industry. It has also enabled confidence to support investment in the industry and in the region.

The absence of a strong anti-dumping system, means there will be no incentive for the domestic industry to support long term investments. An effective anti-dumping system creates conditions for fair competition by providing a level playing field for domestic participants. Imposition of dumping duties, however, does not impede competition rather only resolves the unfair advantage importers have due to dumping and/or subsidisation.

SPC observes that the Productivity Commission is again assessing grounds for the introduction of a *Public Interest* test.

### **SPC opposes the introduction of a Public interest test into Australia's Anti-Dumping and Countervailing system:**

Firstly, the current system adequately addresses the interests of downstream users and customers by the application of the lesser duty rule, which ensures measures are only applied at a level sufficient to remove the injury from dumping (and/or subsidisation). This approach benefits the exporters and importers and goes beyond what is required by our WTO obligations.

Secondly, implementation of such a test would introduce subjectivity and discrimination on top of a process that relies on objective assessment of the evidence.

Thirdly, the introduction of a public interest test will introduce significant additional red tape, delays in timelines and expense to an already complex and expensive system.

Lastly, with the introduction of a public interest test in anti-dumping, a new element of uncertainty would be introduced into the process for all Australian industries.

### **D] Any opportunities to improve outcomes from the anti-dumping system.**

Following are some observations on improvements to the anti-dumping system.

- Limiting timeframe extensions to one 30-day period (with the exception for complex cases i.e. large number of exporters in multi-country cases, or market situation and subsidy cases);
- A strict adherence to deadlines for exporter and government questionnaire deadlines. No extensions to be granted unless in exceptional circumstances and only for nominated items where information cannot be sourced by the deadline;
- Adoption of the House of Representatives Agriculture and Industry Committee Inquiry into Anti-Circumvention Activities recommendation that the combination form of duty method as the “default” form of duty in all investigations;
- Rejecting exporters’ claims for non-disclosure of domestic grade information for like goods in model matching exercises. This has emerged as a “high-risk” to anti-dumping outcomes;
- Where normal values are determined under s.269TAC (2) (c) provisions, the level of profit applied represents an amount that permits ongoing maintenance and re-investment expenditure.