SPC ARDMONA

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Ms Joanne Reid
Director, Operations 3
Anti-Dumping Commission
C/o Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
CANBERRA ACT 2601

Dear Ms Reid,

Subject: Response to findings in the Statement of Essential Facts on Preserved and Prepared Peaches Investigation

SPC Ardmona (SPCA) disagrees with the findings in the Statement of Essential Facts (SEF) dated 28 October 2013, that the imports from South Africa are at negligible dumping margins.

SPCA believes that exports of preserved and prepared peaches to Australia by Langberg and Ashton's (L&AF) and Rhodes Food Group (RFG) were at dumped prices and that dumping is significant and has caused, and continues to cause, material injury to the Australian industry producing like goods.

Some of the key concerns are highlighted below:

1. Assessment of normal value:

1.1 Quality of the imported products:

SPCA notes from Langberg and Ashton's verification report section 9 (page 33), that xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx have been identified as that of 'standard' grade.

SPCA would like to refer the Commission's attention to the customer's product specification which indicates the product quality required is 'Choice' grade (details of which have been provided to SPCA).

- SPCA submits confidential attachment 1 indicating SPCA assessment of customer specification.
- SPCA submits attachment 2 comparing South African grading to SPCA grading standards.

The percentage of tolerance for defects specified in the customer's specifications lead SPCA to believe that the product required is of 'Choice' grade quality.

Similarly, SPCA notes from Rhodes Foods group verification report that the XXXXXXXXX has been identified as 'standard' grade product.

However SPCA would like to contend the product being exported is of 'Choice' grade quality not 'standard' grade. This is based on the assessment of the requirements in the customer specifications, details of which have been provided to SPCA.

- SPCA submits confidential attachment 3 indicating assessment of customer specification.

The superior nature of the quality of the imported product is also evident from the importer GAF assessment on page 9 section 3.4

"GAF Foods explained that the quality of the fruit purchased from Rhodes Food Group to be sold as Coles' entry level Smart Buy label, was of the same type of peach to that produced domestically, and equal to the top quality. GAF Foods purchased 825 gram tinned sliced peaches in standard syrup. GAF Foods explained that its imported fruit was not bruised or damaged in any way, as would be expected of fruit sold under the entry level label. GAF Foods informed that the quality, colour and taste of South African peaches are more similar to Australian produced peaches than Chinese peaches. GAF Foods explained that Chinese peaches are perceived within the Australian market to be of inferior quality."

In light of the above evidence, SPCA requests that the Commission review its assessment of product quality and grading to establish the nature of exported product.

1.2 Selection of comparable products

Firstly, SPCA contends that the comparative products selected for XXXXXXX and XXXXXX [redacted] should have not been cheap private label brand sold in discount stores, rather branded products in line with higher quality product being exported to Australia. XXXXXXXXXXXXXXXXare a significant part of the private label architecture and their growth strategies are shown in the confidential table 1 below.

Table 1 – Confidential table showing market shares and growths by brands. (Source: Aztec Scan Data)

Imported private label products such asXXXXXXXXXXXXXXXXXX [redacted] compete with the branded products in the domestic market.

- SPCA submits confidential attachment 4 showing switching analysis from Aztec's scan database, which highlights that consumers view XXXXX (which are 'Choice' grade products), to be comparable to XXXXXX

Therefore private label brands of M&L distributors and Shoprite are not comparable to premium private label brands of the key retailers in Australia.

Secondly, a manufacturer will generally recover a lower margin, made in the sales of private label brands, from the higher margin made in sales of branded products. Selling higher value branded products allows the manufacturer to sell private label products at a lower price in the domestic market. Therefore excluding the branded products and selecting only the private label products in establishing the normal value of the domestic market is an unfair reflection of the true domestic price.

Thirdly, SPCA contends that the selection of a retail customer through which the domestic products are sold will also influence the domestic price. SPCA notes that the RFG verification report states on page 30, section 6.1 that sales through Shoprite have been considered for establishing normal values. However, the same report page 30, section 6.1 also states that the *"RFG stated that the Shoprite stores serve the low end of the market…"*

In the case of L&AF, SPCA notes that the sales through distributors - M&L Distributors and Patley's Ltd have been used to calculate the normal values.

Selecting this small subset of customers for establishing the normal value of the domestic market is an unfair reflection of the true domestic price.

2. Weighted average methodology for evaluation of dumping margin

SPCA notes that the Anti-Dumping Commission has used the weighted average methodology for assessment of normal value as highlighted on page 18/19 of the SEF:

"The dumping margin was determined by comparing the weighted average export price over the whole of the investigation period with the weighted average normal value over the whole of the investigation period"

- Firstly SPCA would like to contend that this methodology does not take into account variations at each product level. Therefore, if there are certain products in the mix that are being dumped, they will get compensated with others that are not being dumped.

- Secondly if the mix of products sold in the export market is weighted towards higher value products (as is the case here) compared to the products sold in the domestic market, the weighted average methodology will understate the dumping margin.

- The evaluation of the dumping margin will also be distorted when the products are bundled together in a deal and the margin made on one product compensates the other.

    - L&AF states in their response to the NZ inquiry (refer page 32, Sunset Review August 2013) canned peaches from South Africa) that 'XXXXX negotiates annual purchase requirements on behalf of its Australia and NZ businesses', indicating that the products are bundled together for negotiations.

    - The SEF document for Preserved and Prepared peaches states on page 18 'the margin made on 1kg plastic jar products is considerably higher than the canned products'.

    - Using the weighted average methodology (where the price variation in the combinations of goods is high) allows the exporters to 'game' the system, as the underlying dumping in the category can be hidden.

- SPCA is of the view that the assessment needs to be carried out at a transaction level, (or a group of transactions) comparing exported products with comparative domestic products as is highlighted in Section 259TACB subsection (2).

- The NZ Ministry carrying the dumping investigation identified this and in the July 2013 Sunset Review highlighted on page 12/ 13:

> 72. In past investigations and reviews the Ministry has undertaken the comparison of export prices and normal values on either a transaction-to-transaction basis or a weighted average-to-weighted average basis, according to the particular circumstances of each investigation/review. In the present case, there are some

significant variations in the prices of the canned peaches within each of the different categories (i.e. types and sizes) in which they have been grouped. There are also some significant differences between the types of canned peaches in each category that were exported to New Zealand and those that are sold on the South African domestic market and in the mix of product sold in each market within each category.

73. Because of these differences the Ministry considers that the most feasible and fairest comparison would be achieved through the use of the transaction-to-transaction methodology. This basis of comparison involves selecting an appropriate domestic transaction value (or when no suitable domestic transactions exist, constructing a domestic transaction value) for comparison with each export transaction value.

74. The use of the transaction-to-transaction methodology is in accordance with Article 2.4.2 of the Anti-dumping Agreement which states that the existence of margins of dumping shall normally be established on the basis of either a weighted average-to-weighted average comparison or a transaction-to-transaction comparison.

The NZ Ministry undertaking the dumping investigation has also accurately taken into account the effect of differences in the volume mix of domestic sales and export sales as highlighted on page 13 of July 2013 Sunset Review

77. To calculate an overall dumping margin for L&AF, the Ministry has multiplied the export price and the normal value of each transaction by the export volume of that transaction. The resulting export price and normal value amounts were summed and the total export price was subtracted from the total normal value and the difference, when calculated as a percentage of the total export price, was the overall dumping margin for L&AF. If the export price was lower than the normal value, the goods were considered to be dumped. The Ministry considers that the methodology used in this review is consistent with WTO jurisprudence.

SPCA believes this methodology will eliminate the differences in volume and capture the dumping impact appropriately

SPCA notes that the Australian legislation states that the Minister must determine, by comparison of export prices with normal values, whether dumping has occurred. It goes on to say (in Section 269TACB subsection (2)) that in order to compare those export prices with those normal values, the Minister may:

"(a) compare the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period; or

(aa) use the method of comparison referred to in paragraph (a) in respect of parts of the investigation period as if each of these parts were the whole of the investigation period; or

(b) compare the export prices determined in respect of individual transactions over the whole of the investigation period with the corresponding normal values determined over the whole of that period; or

(c) use:

(i) the method of comparison referred to in paragraph (a) in respect of a part or parts of the investigation period as if the part or each of these parts were the whole of the investigation period; and

(ii) the method of comparison referred to in paragraph (b) in respect of another part or other parts of the investigation period as if that other part or each of these other parts were the whole of the investigation period."

Moreover the above is subject to a subsection (3) which allows for another method, namely: if the Minister is satisfied:

"(a) that the export prices differ significantly among different purchasers, regions or periods; and

(b) that those differences make the methods referred to in subsection (2) inappropriate for use in respect of a period constituting the whole or a part of the investigation period; the Minister may, for that period, compare the respective export prices determined in relation to individual transactions during that period with the weighted average of corresponding normal values over that period".

The Customs Dumping and Subsidy Manual (August 2012) states on page 114 "that while the Act describes various methods by which dumping may be determined, neither it, nor the Anti-Dumping Agreement specifies the circumstances in which a particular method is to be preferred. However, the policy is to determine dumping margins using the weighted average method over the investigation period".
On page 115 the Manual indicates as follows:

"Section 269(TACB) outlines the following methods that may be used to calculate dumping margins:

- *compare the weighted average of export prices over the investigation period with the weighted average of corresponding normal values over that period;*
- *apply the weighted average method to parts of the investigation period;*
- *compare the export prices determined in respect of individual transactions over the investigation period with corresponding normal values in the same period;*
- *combine the weighted average with the transaction to transaction method, or (in rare circumstances); compare the weighted average normal value with the individual transaction export prices.*

It then states that "Only in rare circumstances would Customs and Border Protection deviate from determining dumping margins using the weighted average approach".

This indicates is that the decision to use weighted averages for evaluation of dumping margins is an administrative policy decision and not one mandated by the legislation.

The Manual does not elaborate on what the policy justification is for weighted average being the preferred methodology, nor does it describe the nature of what the "rare circumstances" would be in which Customs would deviate from using the weighted average method.

Restricting the use of different methodology options available in legislation, lead the potential offenders to anticipate the Commission's view and allows them to "game" the system.

In light of the specific circumstances outlined above, SPCA requests that the Commission use the alternative methodology to the weighted average, in determining the dumping margin.

3. <u>Other Issues</u>

SPCA has concerns that the product cost methodology, used by the exporters, would lead to under costing at product level. In particular, SPCA has concerns regarding the by-product costing in establishing the cost of goods. As the normal value adjustments are based on the product cost, it is imperative to establish accurate cost at product level.

4. Comments in SEF regarding 'Factors other than dumping'

- SPCA would like to clarify that supply of preserved and prepared peaches have always been in excess of the domestic demand and weather conditions have not impacted the reliability of supply of domestically produced preserved and prepared peached.
- SPCA submits again that SPCA has always been willing to supply private label products, however due to price suppression from the cheap imports, have been unable to compete.

Conclusion

SPCA wishes to reiterate its earlier representations and requests that the Commission reassess the normal value and dumping margin for preserved and prepared peaches from South Africa based on information provided above.

Yours sincerely,

Peter Kelly
Managing Director