SPC ARDMONA

SUBMISSION TO THE

AUSTRALIAN PRODUCTIVITY COMMISSION

SAFEGUARDS INQUIRY INTO IMPORTS OF

PROCESSED FRUIT AND PROCESSED TOMATO INDUSTRIES

Date: 15 November 2013

SPCA's submission on the 20 Oct 2013 detailed concerns regarding the Productivity Commission (PC) accelerated report. SPCA believes that the reports are unbalanced (listing every argument against safeguards) and contain many factual, analytical and judgemental errors.

In addition to these errors, SPCA expressed its concern that the PC reports might have disclosed **commercially sensitive information** which was provided in confidence by SPCA and released without our permission.

SPCA also raised concerns regarding the PC's imported tomatoes report referring to the claim that the Australian Government has to apply "higher standards'' of evidence and analysis in safeguards than other countries because of Australia's membership of the Friends of Safeguards Procedures group of WTO members (page 7). When SPCA made the submission we were, and to date remain, unaware of this group, the ramifications of being part of the group and its role in the PC's assessment of our application

SPCA further presented its concerns, including concerns regarding procedural fairness, at the Commission's public hearing on the 28 Oct 2013.

At the hearing on 28 October the PC asked for further information of a highly commercially confidential nature from SPCA, notably information on ALDI's share of the market for the products which were omitted in the PC's accelerated report but are critical to the accuracy of the analysis and validity of the recommendations in its inquiries, and information on the adjustment and investment assistance plan which SPCA has presented to the Federal and State Governments.

SPCA again asked at the hearing what comfort the PC could provide that such information would be protected, in light of the potentially serious breaches in confidentiality which have occurred in the inquiries to date. The PC informed SPCA that it could not respond on the question of confidentiality and instead SPCA would need to wait for a response on this matter from the Federal Treasurer. To date SPCA has received no such response.

SPCA wrote to the PC on 8 November 2013 reiterating the company's concerns and again to date SPCA has received no response.

SPCA would again like to emphasize that the factual and analytical errors need be addressed before the final reports on the PC's inquiries.

SPCA is willing to supply the information to PC, if PC can assure the company that the confidentiality of the information can be respected.

Some of the areas which SPCA would like to reiterate for re consideration by the Commission, in producing its final reports are:

1. The need to include ALDI private label sales in the assessment of the case. Aldi has as much own label packaged fruit sales as Coles and Woolworths combined! Ignoring Aldi underestimates the size of private label sales by an enormous factor.

2. The use of SPCA supplied information in cost of production and capacity analysis to assess injury caused by imports.

3. The necessity to analyze impact on unit prices at sub market level, to accurately reflect the impact of cheap imports on prices in the domestic market.

4. Inclusion of full market including Food Service for the assessment of import penetration

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5. For the record, SPCA would like to reiterate, that SPCA disagrees with findings of the accelerated report on Processed fruit on page 55 that "*this evidence of decreasing export volumes should be considered in conjunction with evidence of SPC Ardmona's corporate strategy to use its processing plants overseas to supply*

the company's branded products in export markets (Hattersley, Isaacs and Burch 2013; South African Fruit and Vegetable Canners' Association, trans., p. 74, sub. 59)." SPCA is willing to supply any further information required by PC in relation to the aforementioned inaccuracy.

6. For the record, SPCA would again like highlight that the company disagrees with the statement in on page 61 of Processed Fruit report that "*SPC Ardmona's strategy is to push its own brands, whereas retailers are pushing their own private labels … Until recently SPC Ardmona did not want to supply a product (branded) as required by the retailers."* SPCA is willing to provide further confidential evidence to reject the assertion that SPCA was unwilling to supply the product as required by retailer.

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7. SPCA disagrees with PC's judgment that the imports did not cause damage to the industry. The PC report cites on page 63 of processed fruit reports that the injury was caused by other areas
   - *reduced export volumes such as*
   - *Rising costs of domestic production, driven by increased labour costs, and by declining economies of scale due substantially to reduced export volumes*
   - *Long term reductions in the domestic demand for processed fruit products*
   - *Domestic retailers promoting private label brand products to compete with the sole domestic producer and with each other, as well as to improve reliability of supply and meet the shortfalls in domestic production.*

The PC report's conclusion on impact of export volumes cannot be substantiated as no evidence was requested from or provided by SPCA relating to this. In fact the tomato report does not even use the data relevant to the terms of reference to make this claim. Exports of processed tomatoes were less than 0.3% of our total sales of processed tomatoes in 2008, yet exports have been sighted as reason for causing injury.

The PC analysis on labour costs is erroneous and contradictory as has been highlighted in our submission on 20th Oct 2013 and also conveyed during the hearing on 28th 0ct 2013.

The PC report's analysis of domestic demand is incomplete as it fails to capture key channels such as food service and key retailers such as ALDI.

The PC has ignored evidence supplied by SPCA highlighting that in recent year's supply of raw fruit and capacity to process has exceeded the demand.

SPCA would like to highlight that the Anti dumping commission team, investigating case for imported processed tomatoes, has concluded that the imports have caused material injury and have issued Preliminary Affirmative Decision for securities to be charged on 14 exporters immediately.

8. The PC report on processed tomatoes claims that while imports and domestic supply enabled certain supermarket pricing strategies to take place, it implies these did not cause injury because the price of imports themselves did not vary (when expressed in Euros).

- When the Australian dollar appreciated against the Euro by 45% from 2007 to 2012, it facilitated cheap imports to be used in private label brands hence impacting share of domestic products and causing damage.

- Why has the PC selectively chosen to cite price movements in foreign currency, while simultaneously acknowledging elsewhere in the reports that the appreciation of the Australian dollar was a factor in driving imports?

9. SPCA disagrees with the PC findings that no compelling evidence of critical circumstances that would warrant a provisional safeguard measure was provided. .

Conclusion:

This submission has identified only a sample of the factual, judgemental and analytical errors contained in the accelerated safeguards report. The inadequacies of the accelerated report must be addressed before considering of the matters relating to full safeguards.

Furthermore in the absence of any assurance regarding confidentiality, we are placed in an impossible situation with regard to participation in PC's inquiries.