

Director Operations 2  
Australian Anti-Dumping Commission

By E-mail: [operations2@adcommission.gov.au](mailto:operations2@adcommission.gov.au)

Attention: Director Operations 2  
Your Ref:  
Our Ref: M187/20131120  
Date: 20 November 2013



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## NON-CONFIDENTIAL

Dear Director Operations 2,

### **COMMENTS ON SPC ARDMONA NON-CONFIDENTIAL SUBMISSION DATED 18 NOVEMBER 2013 ON BEHALF OF RHODES FOOD GROUP AND LANGEBERG & ASHTON FOODS**

We confirm that we are acting on behalf of Rhodes Food Group (Pty) Ltd ("RFG") and Langeberg & Ashton Foods (Pty) Ltd ("L&AF"). We further confirm that this is a submission on the non-confidential submission of SPC Ardmona dated 18 November 2013. We also confirm that this submission is **non-confidential** and may therefore be placed on the public file. A separate confidential version has also been submitted which is for official use only and may not be placed on the public file.

#### 1. **General**

We disagree with SPC Ardmona's allegation that the exports of the subject product were at significant dumped prices. Both RFG and L&AF demonstrated that its exports were at *de minimis* dumped prices. We further disagree that the exports of the subject product has caused and continues to cause material injury to SPC Ardmona. It is clear from the factors considered and mentioned in the Statement of Essential Facts, as well as from the factors we mention in our submission on the Statement of Essential Facts, that any alleged injury is not caused by dumped imports from RFG and L&AF.

In association with: Geldenhuys Joubert Inc Attorneys & WTI Advisors

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## 2. **Assessment of normal value**

### a. Quality of the imported products

- i. We note that SPC Ardmona refers to section 9 on page 33 of L&AF's verification report that a certain product<sup>1</sup> has been identified as being of standard grade quality. SPC Ardmona also submits a confidential attachment indicating SPC Ardmona's assessment of customer specifications. We do not know what this "assessment" entails. Is SPC Ardmona guessing what the customer specification is? We refer the Anti-dumping Commission to the confidential annexure XXXXXX annexed to L&AF's confidential exporter's questionnaire. Appendix 6(a) in the XXXXXX annexure is the actual customer specifications.

This annexure confirms that the customer in fact did specify that both choice grade and standard grade products are required. More importantly, the actual customer specification<sup>2</sup> serves as proof that the Anti-dumping Commission correctly identified that the customer requested standard grade products as standard grade and that the customer requested choice grade products as choice grade. Furthermore regard has to be had to the fact that the Perishable Products Export Control Board ("PPECB") independently ensures that when a product is exported it is in fact of the quality claimed (as detailed under paragraph iv below). As such L&AF would have exported standard grade products where the customer requires same and would have exported choice grade products where the customer requires same.

- ii. We also submit to the Anti-dumping Commission the confidential product specifications<sup>3</sup> in respect of the Mayfair and Farm Girl products sold domestically.
- iii. We note SPC Ardmona contends that the product exported by RFG is choice grade and not standard grade. This contention is apparently founded on SPC Ardmona's assessment of the customers' specifications. Unlike for some customers, the customers supplied by RFG have not sent RFG a specification request in numerous years as they have continued supplying standard grade products for several years. As such we can only surmise that the assessment of the customer specifications by SPC Ardmona is at best a guess or in fact refers to the customer specifications as

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<sup>1</sup> As it has been blocked out we do not know exactly which product is referred to.

<sup>2</sup> Appendix 6(a) of the Annexure XXXXXX.

<sup>3</sup> Attached hereto marked XXXXXX.

required of SPC Ardmona and not of RFG. Nevertheless, we again submit that regard has to be had to the fact that the Perishable Products Export Control Board ("PPECB") independently ensures that when a product is exported it is in fact of the quality claimed (as detailed under paragraph iv below). As such the product exported is in fact a standard grade product.

We agree with the quote from GAF Foods. As we have stated during the verification visits both RFG and L&AF have found that their Australian customers are of the opinion that the South African standard grade product is equal to the choice grade product produced by SPC Ardmona. In some cases customers prefer the South African quality of the standard grade product to the quality of SPC Ardmona's choice grade. However, this does not imply that the South African choice grade product is of the same standard as the Australian choice grade product neither does it imply that those two products are comparable. In our opinion they are not as the South African produced choice grade product is superior to the Australian produced choice grade product. It is also priced both domestically and in export markets differently than the standard grade product as a result of numerous factors including quality, demand, cost and branding.

As such we are of the opinion that one cannot compare the South African choice grade product sold domestically with the standard grade product sold in Australia as the products are not comparable. Not only does the quality of the choice grade and standard grade product produced by South African canners differ in terms of the regulations, the quality was also demonstrated to the investigating officials during the verification visit at RFG. In our opinion it would be an unfair comparison to compare the normal value of the South African choice grade product, which is not sold in the Australian market, to the export price of the South African standard grade product which is sold in the Australian market.

We also note that although it has been established that the vast majority of South African exports to Australia are standard grade products, SPC Ardmona itself recognises the quality of the South African product by stating in its application that "[i]t is however SPC Ardmona's understanding that ... South Africa supplies the higher quality retail pack sizes that compete directly with SPC Ardmona branded products in retail channel". As such there is a recognition by SPC Ardmona that the South African imported standard grade product competes with SPC Ardmona's branded (choice grade) products. One therefore cannot compare the South African

choice grade product not exported to Australia to the standard grade product actually exported to Australia.

iv. As demonstrated during the verification visits we again confirm that South Africa has regulations in place regulating the quality of domestically sold canned peaches. We attach hereto the confidential annexure entitled XXXXX. We also attach hereto a confidential extract thereof indicating the quality of peaches entitled XXXXX. We again confirm that the PPECB is the independent body designated with ensuring compliance with these standards. The PPECB also ensures compliance with these quality standards in terms of the applicable standards for export canned products, which standard are the same as for domestically sold canned products. In this regard please refer to the confidential annexure entitle XXXXX. We also attach a confidential PPECB annexure confirming the content of the regulation<sup>4</sup>. A copy of the Perishable Products Export Control Act can also be made available if required by the Anti-dumping Commission. As such we again confirm that due to the independent PPECB inspections carried out on domestic and exported products, the products will in fact confirm to the standards.

v. We note also that SPC Ardmona makes reference to "SPCA Grading standards". To our knowledge there are no official grading standards in Australia and thus SPCA is free to determine its own grading which may be shifting goalposts to suit their needs. This is in contrast to the situation in South Africa where the standard of both the domestically sold and exported products have been legislated and is independently inspected and verified. As such although we can prove that a product sold domestically or exported is of the quality claimed as per the legislation, we cannot have the same confidence in SPC Ardmona's claims. Proof thereof can only be substantiated by opening the products to inspect the fruit quality. As such we are of the opinion that SPC Ardmona's comparison<sup>5</sup> of the South African grading with the SPC grading standards cannot be relied upon.

b. Selection of comparable products

i. We note that SPC Ardmona contends that the comparative products selected should not have been private label products sold in discount stores but rather branded products. Firstly it would be incorrect to insinuate that the subject products are sold domestically through discount stores. One exporter's main

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<sup>4</sup> Attached as XXXXX.

<sup>5</sup> Attachment 2 to their submission of 18 November 2013.

domestic customer (XXXXXX) of the comparable product sold in Australia is most definitely not a discount store and is comparable with the major retailers in Australia and most definitely comparable to the Australian retailers it supplies. It may be that retailers run specials, as in the case in Australia, but that does not imply nor prove that it is a discount store. Furthermore the neither RFG nor L&AF are responsible for any discounting effected by any retailer (whether South African or Australian). The issue at hand is the price at which the manufactures sell domestically and in South Africa and in Australia. The other exporter's domestic customer (M&L Distributors) of the comparable product sold in Australia is also most certainly not a discount store. In fact that customer sells to retailers comparable to the major retailers in Australia and to retailers who are even more upmarket than the two major Australian retailers.

Secondly in our opinion it would be incorrect and unfair to compare the South African branded product, which is a premium and choice grade product to the branded product of SPC Ardmona. We are of this opinion due to the fact that SPC Ardmona itself recognises that the standard grade product sold<sup>6</sup> by RFG and L&AF "compete directly with SPC Ardmona branded products in retail channel"<sup>7</sup>. Furthermore the South African canners do not sell their choice grade products in Australia and it would therefore be incorrect to compare a product that is not comparable and not sold<sup>8</sup> in the Australian market where there is in fact a directly comparable product available.

- ii. We further note SPC Ardmona's contention that a manufacturer may generally recover a lower margin, made in the sales of private label brands, from the higher margin made in the sales of branded products. We note that this is a contention only and no actual proof has been submitted. We submit that the Anti-dumping Commission should consider that the South African producers are set up to only produce choice grade products. However as demonstrated during both verification visits there is a small portion of standard grade products that do have to get produced (which are sold domestically and exported to Australia). However this does not imply that this by-product (the standard grade product) is sold domestically for cheaper than what it sells the standard grade product in foreign markets. The comparison that should be made is comparing the comparable product sold domestically and in Australia. The fact remains that this comparable

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<sup>6</sup> At least by far the vast majority of product sold.

<sup>7</sup> As per SPC Ardmona's application.

<sup>8</sup> Where a South African choice grade product is in fact exported the Anti-dumping Commission did compare those products to the choice grade sold domestically.

product in the current instance is the standard grade product<sup>9</sup>. The fact further remains that on the comparable product no dumping occurs<sup>10</sup>.

We further note that manufacturers will sometimes make a lesser margin on a specific product, for instance the subject product (irrespective of the quality grade of that product) in order to make a higher margin on other products (i.e. not the subject product). This is not a strange phenomenon nor does it constitute an unfair trade practice. It only constitutes an unfair trade practice, specifically dumping, where that product is sold in an export market for less than it sells domestically and it causes material injury. In our opinion the comparable product is not dumped nor does it cause material injury.

- iii. As mentioned above it is incorrect to classify Shoprite as a discount store. Furthermore Shoprite is comparable to the one Australian customer RFG supplies. These retailers (South African and Australian) may serve the lower end of the market, but they are comparable. Furthermore Shoprite is the major customer for the comparable product sold by RFG domestically and exported to Australia which makes for a much better comparison than domestic customers who do not purchase the same quantity as the Australian equivalent. Thus in our opinion there is no validity in SPC Ardmona's contentions.
- iv. We submit that the two customers of L&AF is not a small subset, but are in fact comparable to the volume of exports sales of L&AF to Australia. Furthermore we draw the Anti-dumping Commission's attention to the fact that L&AF's other domestic customer is a buyer of choice grade product and as such the product bought is not comparable to the product exported to Australia. As such we are of the opinion that the products are not comparable for purposes of determining a dumping margin for the product exported to Australia.
- v. We submit that the Anti-dumping Commission followed the correct methodology by utilising the weighted average methodology for evaluation the dumping margin. Firstly there are numerous products being exported and sold domestically. These multiple products are not separately identifiable by the Australian Customs and Border Protection Service. As such if a particular transaction relating to for instance only product X is found to be at a dumping level that is *de minimis* and

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<sup>9</sup> At least for the majority of exports as there are instances where the normal value of a choice grade product is compared to the comparable export price of a choice grade product.

<sup>10</sup> Or at least *de minimis* dumping.

that does indeed cause material injury to its directly comparable product on that transaction, how will the Australian Customs and Border Protection Service be able to identify that specific product when it enters the market in order to levy any anti-dumping duty?

We also refer the Anti-dumping Commission to the WTO Panel in *US — Orange Juice (Brazil)* where it was held that the only permissible interpretation of the definition of 'dumping' is one that is based on an understanding that 'dumping' can only be determined for the product as a whole and not individual transactions. In our opinion this is in fact the case where there are numerous products in the product definition which is not distinguishable by the relevant customs authorities.

We submit that there are no circumstances to allow for the indulgence of undertaking a transaction-by-transaction comparison. In any event even if it was possible we submit that any negative dumping margins would offset any positive dumping margins as the practice of zeroing is not allowed. Furthermore the Anti-dumping Commission did consider the normal value of the different subject products of parts of the investigation period as if each of these parts were the whole of the investigation period (thus making an assessment at a group of transaction level)<sup>11</sup> as it is not possible to make a transaction-by-transaction comparison. As such we are of the opinion that it is not possible nor justified to undertake a comparison on a transaction-by-transaction level.

We note some reliance is placed by SPC Ardmona on the investigation by the New Zealand authorities. Firstly we are of the opinion that neither SPC Ardmona nor the Anti-dumping Commission can rely on the investigation of another authority. Secondly any reliance placed on any investigation of other countries' investigating authorities makes an assumption that the market is the same (both in terms of the type of product, quality thereof, volume sold, prices sold at, customer demand and exporters' strategies). Thirdly we like to draw the Anti-dumping Commission's attention to the fact that there is not any final decision in regard to the investigation conducted by the New Zealand authorities. In this regard the private sector as well as the South African government has serious concerns over the methodology as well as findings of the New Zealand authorities. To this extent the

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<sup>11</sup> As evidenced by the confidential verification reports

South African government has raised numerous issues<sup>12</sup> with the New Zealand government at the WTO Rules Committee meetings which took place in the week of 21 to 25 October 2013<sup>13</sup>. Unfortunately the WTO has not yet completed the minutes of that meeting and hence we cannot send you their confirmation in the limited time at our disposal in order for the Anti-dumping Commission to consider this submission. The discussion on this front is ongoing. In addition we are currently attempting to organise a meeting with the relevant New Zealand Minister in order to resolve our concerns and have the findings made by the New Zealand investigating officials rejected. As such any reliance placed on the investigation of the New Zealand authorities would in our opinion be misplaced. We are therefore of the opinion that the erroneous reliance on the New Zealand investigation methodology is unfounded in the present instance.

- vi. We deny the allegation that the mix of product sold in the export market is weighted towards higher value products. It is in fact not the case as evidenced by the confidential information submitted by RFG and L&AF and verified by the Anti-dumping Commission. As such we deny that there is any understatement of dumping.
  
- vii. We deny that the evaluation of dumping will be distorted when products are bundled together. As stated herein many factors can influence the margin of a product and in our example it may well be that a customer requires a certain mix of products. It may also be that some products are traded more heavily and hence the margins are lower. In contrast a product which is not traded heavily (the 1kg plastic jar as a case in point) will have a higher margin. This is not a strange phenomenon nor does it constitute an unfair trade practice. It only constitutes an unfair trade practice, specifically dumping, where that product is sold in an export market for less than it sells domestically and it causes material injury. In our opinion the comparable product is not dumped nor does it cause material injury.

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<sup>12</sup> The issues are directly concerned with the incorrect methodology employed in calculating the normal value, incorrectly assessing the injury, incorrectly disregarding the methodology relied upon in the original investigation and not taking into consideration some of the data and information submitted by the cooperating canner.

<sup>13</sup> We do attach confidential confirmation hereof hereto as Annexure XXXXXX.



### 3. **Conclusion**

We are therefore of the opinion that the submission made by SPC Ardmona dated 18 November 2013 is without any merit. Accordingly we are of the opinion that the anti-dumping investigation should be terminated immediately.

We thank the Australian Anti-dumping Commission for allowing us the opportunity to make a submission thereon. We trust that our submission will be considered and we look forward to receiving confirmation that the Commissioner will terminate this investigation.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Rian Geldenhuys', with a stylized flourish at the end.

**Rian Geldenhuys**  
**Director**