



**REPUBLIC OF TURKEY
MINISTRY OF ECONOMY
DIRECTORATE GENERAL OF EXPORTS**

**INITIAL VIEWS OF THE TURKISH GOVERNMENT REGARDING THE
SAFEGUARD INVESTIGATION INITIATED AGAINST ‘CERTAIN PROCESSED
FRUIT PRODUCTS’ IMPORTED BY AUSTRALIA**

This document includes the views of the Turkish Government in accordance with the Article 3.1 of the Agreement on Safeguards (hereinafter referred to as “AoS”) regarding the safeguard investigation initiated by the Australian Government Productivity Commission (“the Commission”)

1. General Remarks

On June 21, 2013 the Commission initiated a safeguard investigation regarding the imports of “Certain Processed Fruit Products” to Australia after evaluating a petition lodged by SPC Ardmona (“the Complainant”). Pursuant to the Article 12.1.(a) of the AoS Australia notified World Trade Organization (WTO) concerning the initiation of the safeguard investigation which was circulated on July 3, 2013 by WTO Committee on Safeguards.

The Commission released an “Issues Paper” on July 4, 2013 to assist the interested parties in preparing submissions during the course of the current safeguard inquiry.¹

i. The Nature of Safeguard Measures

First and foremost, Turkey would like to draw Australia’s attention to the fact that safeguard measures are emergency actions and therefore subject to stringent requirements in very exceptional circumstances with the existence of “unforeseen developments”. In this regard, three basic requirements should be settled for applying safeguard measures which can be classified as “unforeseen development”, “increased imports” and “serious injury”. According to the Article XIX of GATT 1994 and the pertinent WTO jurisprudence, the competent authorities are required to demonstrate that “unforeseen developments” have resulted in increased imports which should be recent enough, sudden enough, sharp enough, and significant enough. In addition, safeguard measures can only be imposed on the basis of objective evidence following the demonstration of the existence of the causal link between increased imports of the product concerned and serious injury or threat thereof.

The second thing worth noticing here is that contrary to the remedial purposes of anti-dumping and countervailing duty measures against trade distorting practices, safeguard actions affect fairly imported products irrespective of their resources. For this reason, WTO jurisdiction differentiates the concept of “serious injury” in the AoS and the concept of “material injury” contained in the Anti - Dumping Agreement (ADA) and the Subsidies and Countervailing Measures Agreement (SCMA). In this sense, the Appellate Body in US — Lamb specified that ‘serious injury’ in the AoS for the application of a safeguard measure has a much higher standard of injury when compared to the concept of “material injury” for

¹ See “Issues Paper” on <http://www.pc.gov.au/projects/inquiry/fruit-safeguards/issues>



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levying anti – dumping measures or countervailing duties under ADA and SCMA.² From this perspective, when construing the prerequisites for implementing safeguard actions, the investigating authorities should demonstrate that the injurious conditions prevalent over the period of investigation are extraordinary.

Regarding the term "threat of serious injury", the Appellate Body in US – Lamb also noted that in order to constitute a "threat", the serious injury must be "clearly imminent" and the anticipated "serious injury" must be on the very verge of occurring.³ In other words, the investigating authorities must use a very high standard of injury for the definition of "threat of serious injury", as well.

ii. Turkey's Significantly Low Share in Imports

Trademap statistics show that Turkey's share in Australia's pertinent imports of the said product progressively declined since 2006 and stands for only 2,7 % in 2012 in terms of quantity whereas the certain processed fruit imports originating in Turkey dropped by 42 % in the corresponding period.

In addition, bearing in mind that the European Union countries constitute the main destination points for Turkey's exports of the subject good, Australia is not coming to the forefront as a prominent export market for the relevant Turkish exporters. Turkey's official statistics demonstrate that Apricots under HS Code 2008.50 and Mixtures under 2008.97 include the majority, approximately 93 % in 2012, of certain processed fruit exports to Australia.

Within this context, Turkey expresses its regrets for the initiation of the current investigation and requests the Commission to make its determinations with due respect to the concerns presented herewith. Nevertheless, having taken the foregoing into account Turkey reserves all its rights under WTO legal texts to submit views throughout the whole investigation and kindly requests Australia to provide the non – confidential version of the petition, immediately, under the provisions of the Article 3.1 of the AoS.

2. Remarks on Increased Imports

As it is addressed under the provisions of the Article XIX of GATT 1994, the safeguard measures can be taken only in peculiar circumstances and a Member may only invoke a safeguard measure if the situation is "unforeseen". Likewise, the Article 2.1 of the AoS sets forth that "*a Member may apply a safeguard measure if that product is being imported into its territory in such increased quantities, absolute or relative to domestic production.*"

Besides, the Appellate Body in Argentina – Footwear Case ruled that: "*the increase in imports must have been recent enough, sudden enough, sharp enough, and significant*

² Appellate Body Report on US – Lamb; para.124

³ Appellate Body Report on US – Lamb ; para.125



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enough, both quantitatively and qualitatively, to cause or threaten to cause "serious injury"”⁴

The figures in the Notification indicate that the overall trend does not reveal any *sudden, recent, sharp and significant* increase in imports. For example, the imports of citrus fruits increased by 9 % from 2007 – 2008 to 2011 – 2012 whereas the imported mixtures dropped by 17 % in the corresponding period which obviously demonstrate the non – existence of continuous import increases. In fact, the Australian market seems to encounter an inherent recovery after the global slowdown of 2009.

In these circumstances, it would be difficult to claim an increase in imports in absolute or relative terms. The Appellate Body in Argentina – Footwear (EC)⁵ and US – Steel⁶ emphasized that the requirement for the increased quantities of imports under Article 2.1 of AoS and Article XIX of GATT 1994 is not a merely mathematical or technical determination and so, it is not enough for an investigation to show simply that imports of the product this year were more than last year – or five years ago. In Argentina – Preserved Peaches case, the Panel specified that *“a recent and sharp increase in imports is a necessary, but not a sufficient, condition to satisfy Article 2.1 and Article XIX:1(a). The increase is not merely the product of a quantitative analysis, it must also be qualitative.”*⁷ In this respect, the competent authorities are required to consider all the features of the development of import quantities, namely trends, rather than just comparing the starting and end points over the entire period of investigation.⁸ Therefore, the sporadic increases observed in import levels could not satisfy the relevant requirements mentioned in AoS without considering the overall trends in the investigation period.

Within the context of the pertinent WTO jurisprudence, Turkey expects Australia to explain how the trend in imports could be interpreted as an “increase” specified under the relevant provisions of the AoS and the Article XIX of the GATT 1994. Furthermore, Turkey requests the Australian authorities to provide a detailed causality analysis regarding the alleged deterioration on the financial indicators of the Complainant and the requirement of “increased imports”.

3. Remarks on Product Coverage

The Article 4.1.c of AoS specifies that: *“in determining injury or threat thereof, a "domestic industry" shall be understood to mean the producers as a whole of the like or directly competitive products operating within the territory of a Member, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products.”*

⁴ Appellate Body Report on Argentina — Footwear (EC); para. 131.

⁵ Appellate Body Report on Argentina - Footwear; para.131

⁶ Appellate Body Report on US - Steel; para.345 & 346

⁷ Panel Report on Argentina – Preserved Peaches; para. 7.54

⁸ Appellate Body Report on Argentina - Footwear; para. 129 & 131



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Furthermore, according to the Article 2.1 of the AoS *“a Member may apply a safeguard measure to a product only if that Member has determined, pursuant to the provisions set out below, that such product is being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.”*

Within the context of the Article 4.1.c and 2.1 of the AoS; the Panel on Dominican Republic-Polypropylene Bags concluded that *“in excluding from the definition of the directly competitive domestic product certain like or directly competitive products and, ultimately, producers of the like or directly competitive product, the determination of the domestic industry made by the competent authorities is inconsistent with the obligations contained in Article 4.1.c of the Agreement on Safeguards.”*⁹

The Appellate Body on US-Lamb states that *“[A] safeguard measure is imposed on a specific ‘product’, namely, the imported product. The measure may only be imposed if that specific product (‘such product’) is having the stated effects upon the ‘domestic industry that produces like or directly competitive products’. The conditions in Article 2.1, therefore, relate in several important respects to specific products. In particular, according to Article 2.1, the legal basis for imposing a safeguard measure exists only when imports of a specific product have prejudicial effects on domestic producers of products that are ‘like or directly competitive’ with that imported product.”*¹⁰

The present investigation focuses on a certain number of products classified under 6 different codes within the Australian Customs Tariff which means that the scope of the current investigation is excessively broad and is likely to generate complexities in the causation analysis.

With respect to the abovementioned Articles and WTO rulings, Turkey is of the opinion that the product coverage of the ongoing safeguard investigation lacks a coherent definition in determining likeness or direct competition. Having due regard to the consumer choices, diversified market realities and the degrees of substitutability, Turkey hereby requests the Australian authorities to clarify and provide a detailed explanation on whether the products subject to the actual probe are directly competitive or like products.

4. Remarks on the Complainant

Within the framework of the Article 4.1.(c), Turkey kindly needs clarification whether the production of SPC Ardmona constitutes a major proportion of the total domestic production of the products under investigation, and thereby meets the condition of “major proportion”. Turkey is also of the view that the Commission’s reliance exclusively on the Complainant as the producer of major proportion may have introduced a “material risk of distortion” into its analysis.

⁹ Panel Report on Dominican Republic – Polypropylene Bags; para. 7.199

¹⁰ Appellate Body Report on US — Lamb; para. 86.



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Besides, Turkey believes that the situation of the Complainant is of utmost importance in terms of an efficient conduct of this investigation. SPC Ardmona is the leading company in the processed fruit market of Australia and generates sales of AUD\$550 million per year. In the last decade, SPC Ardmona has expanded the presence of its brands and operations internationally to markets including New Zealand, UK/Europe, USA, Japan and South East Asia, as well as establishing operations in Thailand and Spain. Another brand of the company was launched in Europe in 2004, and it is now the number one brand of packaged fruit in the UK.¹¹

A general overview on the situation of the company clearly demonstrates that the company's standing is powerful. For example, right after the global financial crisis of 2009, SPC Ardmona opened a new factory sales outlet in March 2010. This outlet is said to be designed to help it grow its status as the most popular factory food outlet in the nation and it will contribute to the region's economic growth.¹²

Furthermore, in 2012, The Victorian Government announced support for a \$90 million upgrade for SPC Ardmona that would secure the future of its Goulburn Valley operations and create new jobs. The manufacturing plant and equipment is aimed to be modernized, increasing the company's efficiency and streamlining its manufacturing operations. The project also targeted to reduce SPC Ardmona's annual fruit processing costs by \$12.4 million and cut annual water use by 242 megalitres and annual energy consumption by almost 55,000 gigajoules. These improvement works mean new technologies and products that will significantly strengthen the company's operations.¹³

Apart from this program, the Complainant was entitled to take a grant of \$3.9 million from the Victorian Government's "Sustainable Process Development Project" in the second half of 2012 which aims at securing the profitability of the core SPC Ardmona business.¹⁴

Consequently, it is understood from all abovementioned points that although the Complainant is in a good situation, it has aimed at operating in the domestic market without competing with the imported goods. Therefore, it obviously resorts to superfluous trade remedy measures in a bid to control the whole market.

In this context, Turkey is of the view that the application of any trade remedy measures will give the Complainant a competitive advantage to control the domestic market. Nevertheless, any safeguard action will prevent the entrance of foreign players to Australia and such a decision will generate an uncompetitive environment which will be against the benefit of the consumers and Australian economy.

¹¹ <http://spcardmona.com.au/en/about-us/who-we-are>.

¹² "SPC Ardmona Opens New Factory Sales Outlet", International Business Times, March 19, 2010, <http://au.ibtimes.com/articles/20100319/spc-ardmona-opens-new-factory-sales-outlet.htm>

¹³ "Bright Future for SPC Ardmona's Goulburn Valley Operations", Regional Development Victoria, June 13 2012, <http://www.rdv.vic.gov.au/news/bright-future-for-spc-ardmonas-goulburn-valley-operations>

¹⁴ "Victorian Government Hands Out \$3.9 Million "Sustainability Grant" to One Company", Australian Food News, June 21, 2012, <http://www.ausfoodnews.com.au/2012/06/21/victorian-government-hands-out-3-9-million-%E2%80%9Csustainability-grant%E2%80%9D-to-one-company.html>



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Accordingly, Turkey rejects the implementation of safeguard measures with the aim of creating a monopolistic market which hinders competition with imports, and believes that these attempts are not in compliance with the relevant WTO rules.

5. Remarks on Injury

The Notification points out that New Zealand and Singapore are excluded from safeguard action under the Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) and the Singapore Australia Free Trade Agreement (SAFTA). Similarly, the Commission's "Issues Paper" refers that Australia's trade agreements with New Zealand and Singapore preclude any action against imports from those countries.¹⁵ Trademap statistics indicate that the certain processed fruit products imports from New Zealand increased by over 95 % since 2006 and this country constitutes a share of 9,7 % in Australia's subject good imports in 2012.

The Article 2.2 of the AoS stipulates that "Safeguard measures shall be applied to a product being imported irrespective of its source." In the Argentina – Footwear Case (EC), the Appellate Body concluded that "*Argentina cannot justify the imposition of its safeguard measures only on non-MERCOSUR third country sources of supply on the basis of an investigation that found serious injury or threat thereof caused by imports from all sources, including imports from other MERCOSUR member States.*"¹⁶

Turkey kindly requests the Commission to express whether the increased imports from New Zealand have repercussions on the alleged deterioration of the Complainant's financial indicators.

On the other hand, in Argentina – Footwear (EC), the Appellate Body upheld the Panel's findings that in an analysis of causation, "*it is the relationship between the movements in imports (volume and market share) and the movements in injury factors that must be central to a causation analysis and determination.*"¹⁷ In practical terms, an increase in imports normally should coincide with a decline in the relevant injury factors.

According to the provisions of Article 4.2(a) and 4.2.(b) of AoS, the competent authorities shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry and "*when factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports.*"

The Issues Paper states that "*SPC Ardmona export market volumes have declined by 90% in the past five years.*" It also continues with a statement that "*the company's forecasts for the coming seasons indicate that there will be even less demand for canning fruit.*"¹⁸

¹⁵ See page 19 of the "Issues Paper"

¹⁶ Appellate Body Report on Argentina - Footwear para.114

¹⁷ Appellate Body Report on Argentina - Footwear; para. 144

¹⁸ See page 4 of the "Issues Paper"



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Nevertheless, press reports specify that SPC Ardmona has experienced a decline in volume and earnings against imported products by virtue of the appreciation in the Australian dollar¹⁹ which also negatively affected the export performance of the Complainant²⁰.

In this sense, Turkey is of the view that any injury caused by the shrinking exports of the complainants due to the strong Australian dollar, the changes observed in the consumption patterns or the fluctuations in exchange rates should be separated and not be attributed to imports within the meaning of Article 4.2.(a) and Article 4.2. (b) of the AoS.

6. Conclusion

Turkey reiterates its regrets for the unexpected initiation of this investigation and states that the current safeguard proceeding involves certain deficiencies within the light of the Articles 2.1, 4.1(c), 4.2(a) and 4.2.(b) of the AoS, Article XIX of the GATT 1994 and the related rulings of WTO Panel and Appellate Body on specific disputes.

Bearing in mind the great value attributed by Turkey to the friendly relations with Australia, Turkey certainly believes that the abovementioned points will be taken into consideration and the Commission will act consistently with the pertinent provisions of the AoS and the Article XIX of the GATT 1994.

Turkey hereby kindly requests the Commission to terminate the ongoing safeguard investigation as soon as possible without imposition of any measures.

In this regard, we would like the Commission to know that Turkey follows the investigation closely and reserves all its rights under the WTO Agreements.

¹⁹“*CCA Expects First Half Decline Because of ‘Grocery Channel Difficulty’*”, May 8, 2013 <http://www.ausfoodnews.com.au/2013/05/08/cca-expects-first-half-decline-because-of-%E2%80%98grocery-channel-difficulty%E2%80%99.html>

²⁰ See page 4 of the “Issues Paper”



CONSULATE GENERAL OF THE REPUBLIC OF TURKEY
MELBOURNE

Australian Government, Productivity Commission
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18 July 2013

Ref: Inquiry Submission

Dear Sirs,

The Office of the Commercial Attache at the Consulate General of the Republic of Turkey presents its compliments to the Australian Government, Productivity Commission.

We would like to submit our initial views concerning the "Certain Processed Fruit Products" within the inquiry on "Safeguard Inquiries into the Impact of Imports of Certain Processed Fruit and Tomatoes on Australian Producers" referred to your Esteemed Commission by the Ministry of Trade and Competitiveness.

On this Occasion, Our Office cordially extends its best regards and warm wishes to the Australian Government, Productivity Commission and we look forward to your prompt reply.

Kind regards,

Selahattin TMER

Vice Consul (Trade)

ENCL:

1. Submission Cover Sheet (1 page)
2. Document-Initial Views of the Turkish Government from Ministry of Economy, General Directorate of Exports (7 pages)