Comments from Argentina in connection with the initiation by the Productivity Commission of the investigation for remedial action in the form of a safeguard measure on processed fruits products (2008.30.00; 2008.40.00; 2008.50.00; 2008.70.00; 2008.97.00 and 2008.99.00)

The Government of Argentina presents its compliments to the Productivity Commission of Australia, regarding the initiation of the investigation for remedial action in the form of a safeguard measure on processed fruits products (2008.30.00; 2008.40.00; 2008.50.00; 2008.70.00; 2008.97.00 and 2008.99.00) (hereinafter, "the Products").

On the basis of the following considerations, the Government of Argentina requests the closure of the investigation without the application of any safeguard measure given that the conditions required by the Safeguard Agreement are not met.

1. Lack of increase in the volume of imports of the Products

Australia's investigation for remedial action in the form of a safeguard is allegedly intended against the increased imports of processed fruits products. According to the statistics shown by the Australian Bureau of Statistics, there is a variation of imports into Australia in connection with the Products for the period but only for the inter-annual rate 2010-2011 and 2011-2012**.**

The above-referenced information is detailed in the following table:

Table I: Imports of processed tomato products to Australia

Imports of Citrus Fruit (2008.30.00)

	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012
Total volume (kg)	1,061,647	721,806	667,902	1,098,988	1,161,342
Percentage change from previous financial year		-32.01	-7.47	64.54	5.67

Imports of Pears (2008.40.00)

	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012
Total volume (kg)	1,864,034	1,226,892	1,334,078	1,763,003	2,076,775
Percentage change from previous financial year		-34.18	8.74	32.15	17.80

Imports of Apricots (2008.50.00)

	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012
Total volume (kg)	1,202,143	1,384,972	1,164,482	1,627,389	2,378,177
Percentage change from previous financial year		15.21	-15.92	39.75	46.14

Imports of Peaches, including nectarines (2008.70.00)

	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012
Total volume (kg)	6.446,820	6,511,185	5,826,782	9,100,998	9,338,104
Percentage change from previous financial year		1.00	-10.51	56.20	2.61

Imports of Mixtures (2008.97.00)
(Note: this code became operational as of 1 January 2012; subheading 2008.92.00 was repealed. Data for code 2008.92.00 is also included below.)

	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012
Total volume (kg)					3,551,999
Percentage change from previous financial year					

Imports of Mixtures (2008.92.00)

	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012
Total volume (litre)	5,373,253	4,206,987	6,181,069	7,825,336	4,421,904
Percentage change from previous financial year		20.48	22.00	26.60	-43.50

Imports of Other (2008.99.00)

	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012
Total volume (kg)	17,628,256	17,379,078	18,278,129	24,323,473	25,749,764
Percentage change from previous financial year		-1.41	5.17	33.07	5.86

Source: Australian Bureau of Statistics, International Trade, cat. No. 5368.0

Australia states that one of the primary sources of imports is Argentina[1], however, as the table below demonstrates, exports from Argentina have decreased during the period under investigation for the product classified under code 2008.99.00, and have reduced to zero since 2012. Concerning products classified under code 2008.30.00 and code 2008.40.90 there has been no imports from Argentina since 2008 and 2010 respectively. Lastly, regarding the product classified under code 2008.50.00 its export reduces to zero since 2011.

Table II: Exportation of processed fruits products from Argentina to Australia (2007 to 2013)

Año (year)	Producto (Product)	FOB (USD)	KILOS	Participation on imports
Total 2008	2008.30.00	23.562	11.900,00	1,65%
Total 2010	2008.40.90	27.992	22.095,00	1,25%
Total 2011	2008.50.00	300	240,00	0.01%
Total 2011	2008.99.00	742	720,00	0,002%
Total 2012	All	0	0	0
Total 2013	All	0	0	0

Source: Argentina's National Institute of Statistics and Censuses

Although the statistics show an increase during the last two years, in the case of Argentina goes precisely in the opposite direction. More than accompanying the trend of imports from the rest of the origins, imports from Argentina have plunged as stated in the third paragraph above.

In any case, if as a result of the current Investigation the Productivity Commission decides to apply a safeguard measure, imports from Argentina should be excluded since its share of imports into

[1] Australia's notification under article 12.1 (a) of the Agreement on Safeguards, G/SG/N/6/AUS/4 pag.3

Australia should be deemed "de minimis", pursuant to Article 9 b) of the Agreement on Safeguards, which specifies (emphasis added):

> "1. Safeguards measure shall not be applied against a product originating in a developing country Member as long as its share of imports of the product concerned in the importing Member does not exceed 3 per cent…"

2. Causal link

In the hypothetical case that the Productivity Commission considers that the Applicant has demonstrated the existence of a serious injury in the domestic market of the Products, the Applicant has to demonstrate the causal link between increased imports of the Products and the serious injury in the local industry. However, in this case the Applicant has not demonstrated the causal link.

Although figures show the increase, in Argentina's opinion they would no suffice as an unique factor explaining the alleged injury. Article 4.2. b) of the Agreement on Safeguards, require that an injury is based on evidence.

On the other hand, the Applicant supports the idea that there are other reasons, different from imports volume growth, that contribute to provoke a serious injury in its domestic industry, such as *"A more than 50% appreciation in the Australian dollar in the past four years has made cheap imported food even cheaper and has also severely impacted our export markets"[…] "SPC Ardmona export market volumes have declined by 90% in the past five years".*[2]

In this regard, it is important to remark that those arguments must be considered pursuant to Article 4.2. b) of the Agreement on Safeguards which specifies:

> "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."

In no case the Applicant identifies separately the injury that it alleges as an effect of the increase of imports. In that sense, in connection with the price, the Applicant argues that the effects of imports

[2] Import of processed tomato products, Productivity Commission Issue Paper, Terms of Reference pag 4.

is caused by "*A more than 50% appreciation in the Australian dollar in the past four years has made cheap imported food even cheaper*".[3].

The Panel in *Korea — Dairy* set forth the basic approach for determining "causation":

> "In performing its causal link assessment, it is our view that the national authority needs to analyze and determine whether developments in the industry, considered by the national authority to demonstrate serious injury, have been caused by the increased imports. In its causation assessment, the national authority is obliged to evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry. In addition, if the national authority has identified factors other than increased imports which have caused injury to the domestic industry, it shall ensure that any injury caused by such factors is not considered to have been caused by the increased imports"[4]

The Appellate Body in *US — Wheat Gluten* concluded that the incidence of increased imports must be sufficiently clear so as to establish the existence of "the causal link" required, but rejected the Panel's conclusion that the serious injury must be caused by the increased imports *alone* and that the increased imports had to be sufficient to cause "serious injury":

> "In essence, the Panel has read Article 4.2(b) of the *Agreement on Safeguards* as establishing that increased imports must make a particular contribution to causing the serious injury sustained by the domestic industry. The level of the contribution the Panel requires is that increased imports, looked at *'alone', 'in and of themselves'*, or *'per se'*, must be capable of causing injury that is 'serious'. It seems to us that the Panel arrived at this interpretation through the following steps of reasoning: first, under the first sentence of Article 4.2(b), there must be a 'causal link' between increased imports and serious injury; second, the non-'attribution' language of the last sentence of Article 4.2(b) means that the effects caused by increased imports must be *distinguished from* the effects caused by other factors; third, the effects caused by other factors must, therefore, be *excluded* totally from the determination of serious injury so as to ensure that these effects are not 'attributed' to the increased imports; fourth, the effects caused by increased imports *alone*, excluding the effects caused by other factors, must, therefore, be capable of causing serious injury.[5]

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[3] Id.

[4] Korea – Definitive Safeguard Measure on Imports of Certain Dairy Products (DS98), paragraph. 7.89.

[5]United States — Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities. DS166 paragraph 66.

In *US — Lamb*, the Appellate Body concluded that Article 4.2(b) requires a "demonstration" of the "existence" of a causal link, and it requires that this demonstration must be based on "objective data Also in *US — Lamb*, the Appellate Body again stressed the importance of the separation of injurious effects caused by increased imports on the one hand and other factors on the other hand:

> "Article 4.2(b) states expressly that injury caused to the domestic industry by factors other than increased imports 'shall not be attributed to increased imports.' In a situation where several factors are causing injury 'at the same time', a final determination about the injurious effects caused by increased imports can only be made if the injurious effects caused by all the different causal factors are distinguished and separated. Otherwise, any conclusion based exclusively on an assessment of only one of the causal factors — increased imports — rests on an uncertain foundation, because it assumes that the other causal factors are not causing the injury which has been ascribed to increased imports. The non-attribution language in Article 4.2(b) precludes such an assumption and, instead, requires that the competent authorities assess appropriately the injurious effects of the other factors, so that those effects may be disentangled from the injurious effects of the increased imports. In this way, the final determination rests, properly, on the genuine and substantial relationship of cause and effect between increased imports and serious injury."

The Government of Argentina understands that the causal link is not adequately analyzed by the Applicant since imports are considered *per se* and separately as the causal link for the serious injury independently of the fact that the alleged increase in imports is just as an element of a variety of causes for the injury alleged.

The effects of the alleged increased of the imports are not considered separately, and the effects of the other factors mentioned by the Applicant are attributed to the increased of the imports.

The Government of Argentina respectfully request to the Productivity Commission not to attribute the injury alleged only to imports in this Investigation, and that it evaluates instead, the extent to which those injurious effects should more properly be attributed to other known factors, such as the strength of the Australian currency.

The requirements of "serious injury" and the "causal link" pursuant by the Agreement on Safeguard are not met.

4. Conclusion

To conclude, the basic essential requirement to apply a safeguard measure pursuant the OMC rules, a sudden and recent import ´s growth, is not met. Product's imports into Australia from Argentina have decreased since 2011 to reduce to zero since 2012, exactly at the point in time that a general increase in imports was registered. The recent products import trend into Australia from Argentina is not reflecting an increase of any kind but a sharp decrease to zero imports into Australia. Moreover, as clearly shown in the tables included in this submission, even if the trend of imports from Argentina would have followed the same path as those from the other origins, imports from Argentina fall below the 3% *de minimis* threshold of Article 9.1 of the Safeguards Agreement.

For the reasons stated above, the Government of Argentina respectfully requests to the Productivity Commission of Australia to be excluded from the investigation based on the criteria set forth in the aforesaid article.