

Initial Submission by Chile
Australia, Safeguard Investigation on Imported Processed Fruits
18 July 2013

The purpose of the submission is to introduce the preliminary arguments and background information the Government of Chile deems indispensable, for an accurate, fair and complete consideration by the Australian Productivity Commission (hereafter “the Commission”) of the request filed before it.

In this context, we have proceeded to ask the Australian Productivity Commission to provide us with a copy of the petition filed by SPC Ardmona. Unfortunately though, the Commission has not been able to address our request in the terms we would have expected. Thus, we look forward to receiving this crucial information as soon as possible.

On the basis of the information available¹, the Government of Chile considers that:

- (i) In accordance with the existing rules of the World Trade Organization (hereafter “WTO”), and the relevant Australian laws and regulations, the information available at the moment at which the increase in imports due to unforeseen developments allegedly occurs, is not sufficient to justify the application of a safeguard measure.
- (ii) There are other elements not attributable to the recent behavior of processed fruits imports, that should be considered in the context of the ongoing investigation, and
- (iii) The amount of imports originated in Chile of the products under investigation is marginal. Moreover, it has significantly decreased during the most recent period under scrutiny. Therefore, a determination of injury or risk thereof to the domestic industry cannot be attributed to it.

I. Introduction

On June 21st 2013, Australia initiated an investigation to determine the need for the application of a safeguard measure on imports of processed fruits products classified under the following Tariff Lines:

- 2008.30.00 Citrus fruit;
- 2008.40.00 Pears;
- 2008.50.00 Apricots;

¹ In the preparation of this submission, we have considered the “Issues Paper”, prepared by the Productivity Commission. Likewise, we have taken into account the relevant submissions available on the investigation’s website.

- 2008.70.00 Peaches, including nectarines;
- 2008.97.00 Mixtures;
- 2008.99.00 Other.

II. Question 1: Defining the industry: who are producers of 'like' or 'directly competitive' goods?

To date, there are no elements which would allow to determine that the imported products specified in the terms of reference, are neither like products nor directly competitive vis a vis the locally produced products.

III. Question 2: Have imports increased?

On the basis of the data contained on the investigation's web page, we would like to draw the Commissions' attention to the following table:

Australia: Imports of Processed Fruit Products

Value (FOB)

Source	2007	2008	2009	2010	2011	2012
<i>Total imports</i>	57.863.727	63.001.198	66.236.188	72.892.222	88.928.504	76.521.047
<i>Annual var.</i>		8,9%	5,1%	10,0%	22,0%	-14,0%
Imports from Chile	493.395	477.867	427.049	925.050	1.189.921	393.887
<i>Annual var.</i>		-3,1%	-10,6%	116,6%	28,6%	-66,9%
<i>Part. in total imports</i>	0,9%	0,8%	0,6%	1,3%	1,3%	0,5%
<u>Tariff code</u>	<u>Description</u>					
2008400049 Pears						1.274
<i>Annual var.</i>		-	-	-	-	-
2008700051 Peaches, including nectarines	6		1.866	180.743	837.756	319.243
<i>Annual var.</i>		-100,0%	-	9586,1%	363,5%	-61,9%
2008.97 & 2008.99 Mixtures & Other	493.389	477.867	425.183	744.307	352.165	73.370
<i>Annual var.</i>		-3,1%	-11,0%	75,1%	-52,7%	-79,2%

Source: Australian Bureau of Statistics. Calculations made by DIRECON, Chile.

From the table above, we can draw the following conclusions:

- At the aggregate level, imports in the most recent period (2010 – 2012) increased by 5% in terms of FOB value. Likewise, for the immediately precedent period (2008 – 2010), the increase rate was three times higher (15%).
- In 2012, the imports decreased by 14% compared to the registered value in 2011.
- Therefore, it is not possible to argue that there has been a recent increase in the volume of imports.
- When products covered by the investigation are analyzed individually, the conclusions are similar. Indeed, there are fluctuations in the volume of imports, but no abrupt or sharp increase of imports within the recent period.
- Regarding imports originated in Chile, “canned peaches” revealed the most relevant. Nevertheless, they have decreased significantly during years 2012 and 2013.
- Imports originated in Chile represent only a marginal portion of total imports into Australia.

Only once there is a determination on which products and specific domestic industry the investigation will effectively be conducted upon, it will be possible to determine the rhythm and amount of the volume of imports into the Australian market.

IV. Question 3: Was the increase in imports the result of unforeseen developments and the result of [WTO] obligations incurred?

On the basis of the information available, we do not believe that the existence of unforeseen developments which would have influenced the fluctuations in import volumes has been established.

Moreover, under the Chile- Australia Free Trade Agreement (March 2009), Parties agreed to a tariff elimination scheme encompassing the products identified in the investigation’s terms of reference.

Indeed, “Annex 3-B Elimination of Customs Duties; Section 1: Schedule of Australia; Customs Duties on Goods Originating in Chile”, provides:

“The categories which are applicable to imports into Australia from Chile are the following:

1) Year 0: customs duties shall be eliminated entirely and such goods shall be duty-free on the date this Agreement enters into force.

Code	Description	Base Rate	Category
2008	Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included:		
2008.30.00	-Citrus fruit	0.0%	Year 0
2008.40.00	-Pears	5.0%	Year 0
2008.50.00	-Apricots	5.0%	Year 0
2008.70.00	-Peaches, including nectarines	5.0%	Year 0
2008.9	-Other, including mixtures other than those of 2008.19.00:		
2008.92.00	-- Mixtures	0.0%	Year 0
2008.99.00	--Other	5.0%	Year 0

Consequently, the positive variation in the volume of imports of products originating in Chile has been influenced by the tariff elimination agreed under the Free Trade Agreement. In fact, the increase in bilateral trade flows is an expected result of the implementation of the Agreement by the Parties. Thus, its occurrence should not be construed as an “unforeseen development”.

V. Question 4: Has the industry suffered, or is it likely to suffer, serious injury?

Given that we have not yet had access to the copy of the petition filed by SPC Ardmona, there are not enough elements to properly assess the factors determining the existence of the alleged injury.

Question 4A: Do critical circumstances warranting a provisional safeguard determination exist?

In light of the information presented, particularly regarding the fluctuations in the volume of imports, and the effects that other factors such as the appreciation of the Australian dollar have in calculating the total value of imports, we do not believe the existence of “critical circumstances” has been established. Therefore, no provisional safeguard should be applied.

If “critical circumstances” were to be found, such determination would have to be based on findings of fact properly established in the course of the procedure. Otherwise, no provisional measure could be applied.

VI. Question 5: Are increased imports causing serious injury?

Given that we have not yet had access to the copy of the petition filed by SPC Ardmona, there are not enough elements to assess the causal link between the increased imports and the alleged injury. The

available information however, allows us to infer that other factors such as the evolution of exchange rates in Australia could be affecting the competitiveness of the local industry.

Non-attribution of other sources of injury to imports

According to article 4.2(b) of the Agreement on Safeguards, the assessment of causation includes the following steps: first, under the first sentence, there must be a 'causal link' between increased imports and serious injury; second, the non-'attribution' language of the last sentence 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.

- Exchange rate changes

In the present case, prior to the announcement of the inquiry, SPC Ardmona had invoked the appreciation in the Australian dollar in the past four years as one of the factors affecting the industry. This argument has been mentioned in several press releases. For instance:

"At the meeting SPC Ardmona communicated the planned fruit intake and pricing varieties. The company continues to face challenging trading conditions as a consequence of the high Australian dollar, significant deflation in fresh fruit prices and competition from cheap imported products." Press Release, SPC ARDMONA 2013 SEASON UPDATE, December 12, 2012.

"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." Press Release, SPC Ardmona seeks support for fruit growers, April 16, 2013.

This argument has been included in a number of the submissions filed by suppliers of SPC Ardmona².

² "As a result of the high Australian Dollar, the canned fruit industry has seen a flood of cheap imported product displace Australian grown product from supermarket shelves, resulting in reduced intakes of fruit by SPC-Ardmona. This has resulted in a reduction in the amount of fruit SPC-A has been able to accept from us." Submission 1, Ivan Routley.

"We believe that the Australian Multi serve fruit and canned tomato industries have suffered immense damage from cheap imports that have flooded our markets on the back of the strong Aussie Dollar." Submission 2, V Yosifofski and Sons Pty Ltd.

The fluctuations in exchange rates are known to affect the competitiveness of specific economic sectors. However, its effects on the conditions of a particular sector cannot and should not be addressed, through the application of a safeguard measure.

This is an example of a factor of an objective and quantifiable nature other than increase imports, having a bearing on the situation of the relevant industry. According to the WTO jurisprudence, the national authority is obliged to evaluate these kinds of factors which have caused injury to the domestic industry, ensuring that any injury caused by such factors is not considered to have been caused by 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.

- changes in consumer preferences, such as a switch to fresh fruit or different types of processed fruit

SPC Ardmona has referred to the changes in consumers preferences in number of press releases. We hereby reproduce the relevant sections:

“While we have grown our market share the reality is that demand for packaged fruit has been declining and our fruit intake for the 2013 season reflects this,” said Managing Director, Vince Pinneri.” Press Release, SPC ARDMONA 2013 SEASON UPDATE, December 12, 2012.

“Our fruit intake must be driven by the market demand. The reality is that Australian’s are not consuming our canned fruit products in the same quantities that they have in the past. Demand for packaged fruit has been declining and for that reason our fruit intake requirements have reduced.”

And continues”...The company is working with their key customers to reverse declining trends and deliver products that consumers want...”

“The simple truth is that consumer tastes have changed and if we are to survive we must adapt and transform the way we do business,” Mr Pinneri said. Press Release, SPC ARDMONA 2013 SEASON UPDATE, December 12, 2012.

“The company’s forecasts for the coming seasons indicate that there will be even less demand for canning fruit. This has led to a forecast reduction of up to 50% in intake tonnages for some fruit categories for the 2014 season.” Press Release, SPC Ardmona seeks support for fruit growers, April 16, 2013.

The Chilean Government believes that the changes in demand which could affect the performance of domestic producers, and the volume of imports in the affected sector, should be considered by the investigative authority in its determination of the existence of injury. Nevertheless, this element alone cannot determine such existence.

- Food security

Another argument shared by SPC Ardmona with the press, has been the overall commitment of the Australian Government towards “food security.”

“Food security is a very important strategic issue for this country and we would hope that the Government understands that the fruit industry needs to be temporarily supported during this period.” Media Release, SPC ARDMONA TAKES AFFIRMATIVE ACTION, May 9, 2013.

Notwithstanding the legitimacy of the concern, we believe no relationship can be drawn between the application of a safeguard measure and a Member’s overall commitment towards food security. In other words, there is no causal link between food security objectives, and the serious injury or threat thereof required to proceed to the application of a safeguard measure.

VII. Antidumping investigation requests

The Chilean Government has learned that the new, Melbourne based, Australian Anti-Dumping Commission has initiated investigations into prepared or preserved peach products imported from South Africa and prepared or preserved tomato products imported from Italy. Both investigations have been initiated on the request of SPC Ardmona.

On this matter, SPC Ardmona has declared (<http://www.abc.net.au/news/2013-07-11/nrn-anti-dumping-spc/4813594>): “They (South African peaches) are 65 per cent of the problem at the moment”,

The above, referring to the difficulties faced by the Australian fruits and tomatoes processing industry.

Given the relevance SPC Ardmona has attributed to the allegedly dumped imports originating from South Africa and Italy, the Government of Chile would like to ask the Commission to examine this issue in the context of its ongoing investigation on imported processed fruits.

VIII. Exclusion of New Zealand and Singapore

In accordance with Paragraph 2 of Article 2 of the WTO Agreement on Safeguards, a safeguard measure “...shall be applied to a product being imported irrespective of its source.” In other words, it must be applied in accordance with the principle of non selectivity.

Accordingly, Chile shall pay particular attention to any reason which may be invoked by the Australian investigative authority in order to justify the application of a safeguard measure without due consideration of all sources of imports of the concerned product.